



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

ON THE FOLLOWING MEASURE:

H.B. NO. 748, H.D. 2, RELATING TO PROPERTY FORFEITURE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, March 14, 2019

TIME: 9:30 a.m.

LOCATION: State Capitol, Room 016

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

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (“the Department”) provides the following comments on H.B. No. 748, H.D. 2. The bill proposes changes to the asset forfeiture program by requiring a felony conviction prior to the forfeiture of any property and changing 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 Senate Committee on
JUDICIARY**

**Thursday, March 14, 2019
9:30 AM
State Capitol, Conference Room 016**

**In consideration of
HOUSE BILL 748, HOUSE DRAFT 2
RELATING TO PROPERTY FORFEITURE**

House Bill 748, House Draft 2 proposes to: 1) 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; 2) Prohibit the forfeiture of an animal prior to the disposition of criminal charges; and 3) Require 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 its 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

HB-748-HD-2

Submitted on: 3/11/2019 10:45:51 AM

Testimony for JDC on 3/14/2019 9:30:00 AM

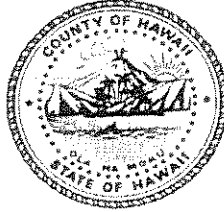
Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Testifying for Maui Police Department	Oppose	No

Comments:

Strong opposition.

MITCHELL D. ROTH
PROSECUTING ATTORNEY

DALE A. ROSS
FIRST DEPUTY
PROSECUTING ATTORNEY



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

WEST HAWAII UNIT
81-980 HALEKII 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, HD2

A BILL FOR AN ACT RELATING TO PROPERTY
FOREITURE

COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair
Senator Glenn Wakai, Vice Chair

Thursday, March 14, 2019, 9:30 a.m.
State Capitol, Conference Room 016

Honorable Chair Rhoads, Honorable Vice Chair Wakai, and Members of the Committee on Judiciary, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in **STRONG OPPOSITION** to House Bill 748, HD2.

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, HD2 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 2. 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

**THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
The Thirtieth Legislature
Regular Session of 2019
State of Hawai'i**

March 12, 2019

RE: H.B. NO. 748, H.D. 2, RELATING TO PROPERTY FORFEITURE

Chair Rhoads, Vice-Chair Wakai, and members of the Senate Committee on Judiciary:

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. 2. 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.honoluluupd.org

LATE

KIRK CALDWELL
MAYOR



SUSAN BALLARD
CHIEF

JOHN D. McCARTHY
JONATHAN GREMS
DEPUTY CHIEFS

OUR REFERENCE CT-TA

March 14, 2019

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 016
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: House Bill No. 748, H.D. 2, 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. 2, Relating to Property Forfeiture.

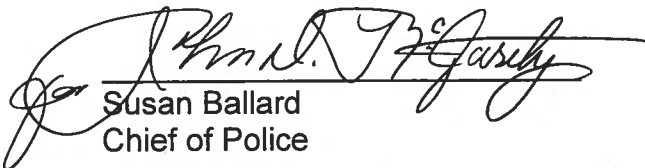
This bill eliminates the investigating local law enforcement agency from the proceeds of the forfeited property. The HPD relies on the proceeds from forfeiture property to fund unbudgeted equipment, training, and investigative expenses. Cutting these funds would have a direct impact on the services we 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. 2, Relating to Property Forfeiture.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


Susan Ballard
Chief of Police


Calvin Tong, Major
Narcotics/Vice Division

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

DWIGHT K. NADAMOTO
ACTING PROSECUTING ATTORNEY

ACTING FIRST DEPUTY
PROSECUTING ATTORNEY



THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2019
State of Hawai'i

March 14, 2019

RE: H.B. 748, H.D. 2; RELATING TO PROPERTY FORFEITURE.

Chair Rhoads, Vice-Chair Wakai and members of the House Committee on Judiciary, 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. 2.

Essentially, this measure would prohibit civil asset forfeiture unless the State proves various matters “beyond a reasonable doubt” (a standard of proof often used in criminal law). While the bill appears to have good intentions, it conflates civil and criminal matters, indicating that people should never be penalized if their culpability is only proven by “preponderance of the evidence”; however, that standard of proof is commonly used in civil law to decide matters affecting only assets or property. Because criminal law potentially affects someone’s liberty (e.g. imprisonment, limitations on their freedoms, etc), the highest standard of “beyond a reasonable doubt” is utilized for criminal proceedings.

Rather than forcing such a far-reaching and premature overhaul of Hawaii’s well-conceived program, the Department urges the Legislature to consider the State Auditor’s recommendations, published June 2018 (available at 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. 2, 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. 2, 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. 2. Thank for you the opportunity to testify on this matter.

HB-748-HD-2

Submitted on: 3/11/2019 10:02:49 AM

Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	Testifying for LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

Aloha Senators,

The LGBT Caucus of the Democratic Party of Hawaii supports the passage of HB 748 HD 2.

Mahalo for your consideration and for the opportunity to testify.

Mahalo,

Michael Golojuch, Jr.

Chair

LGBT Caucus of the Democratic Party of Hawaii

COMMUNITY ALLIANCE ON PRISONS

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

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



COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Glenn Wakai, Vice Chair

Thursday, March 14, 2019

9:30 am - Room 016

STRONG SUPPORT FOR HB 748 HD2 - ASSET FORFEITURE

Aloha Chair Rhoads, Vice Chair Wakai 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.

HB 748 HD2 prohibits civil asset forfeiture unless the covered offense for which the property owner has been convicted and requires the Attorney General to distribute one-half of all forfeited property and the sale and proceeds thereof to the Hawai'i law enforcement assisted diversion (LEAD) program with the remaining half to be distributed to the state general fund.

Community Alliance on Prisons applauds this bill and we thank the committee for hearing it. Hawai'i's audit of the civil asset forfeiture program highlighted the mismanagement of the program

In 2015, the Institute of Justice graded states on their programs: **Hawaii** earns a **D-** for its civil forfeiture laws¹ because of 1) the low bar to forfeit and no conviction required; 2) the poor protections for innocent third-party property owners; and 3) the fact that 100% of forfeiture proceeds go to law enforcement. This only encourages corruption.

In 2010, Hawai'i received a grade of **D-** for Forfeiture Law; **C** for State Law and an overall grade of **D**²; showing that things have gotten worse. As part of the Cooperative Congressional Election Study National Survey, the Institute for Justice asked a random sample of 1,000 participants nationwide whether they agree or disagree with various features of modern civil forfeiture laws. The results show that the public overwhelmingly favors greater protections for property owners and removing financial incentives that encourage civil forfeiture.

And then the long-awaited audit of the Forfeiture program was released and it highlighted the mismanagement of the program by the Attorney General's office.

Community Alliance on Prisons urges the committee to pass this bill. Mahalo for the opportunity to testify.

¹ Institute for Justice <https://ij.org/pfp-state-pages/pfp-hawaii/>

² Institute for Justice, March 2010. <https://ij.org/report/policing-for-profit-first-edition/part-ii-grading-the-states/hawaii/>



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

TO: Senate Committee on Judiciary
FROM: Carl Bergquist, Executive Director
HEARING DATE: March 13, 2019, 9:30AM
RE: HB748 HD2, Relating to Property Forfeiture, **SUPPORT**

Dear Chair Rhoads, Vice Chair Wakai and Committee Members:

The Drug Policy Forum of Hawai'i (DPFH) **strongly supports** this measure to reform Hawaii's outdated civil asset forfeiture law. The law itself is a relic of the 1980s' War on Drugs, and [consigns Hawaii to the very bottom of a nationwide ranking of similar laws](#). In short, our forfeiture law allows for the use of an upside down civil process to seize people's assets after using the low "preponderance of the evidence" standard to establish a connection, but requiring no conviction or charge, to an alleged crime. Requiring a conviction related to the property seizure, as HB748 does, brings a modicum of justice into the process. We applaud that the bill seemingly removes the profit incentive from the arresting and prosecuting agencies as the Department of the Attorney General, and instead redirects one half of sale proceeds to the state general fund. While we are strong supporters of Law Enforcement Assisted Diversion (LEAD), we are leery of funding, even in part, this important program with forfeiture proceeds. We also suggest a few amendments to the bill.

At the very latest, the revelations in the Auditor's Report "Audit of the Department of the Attorney General's Asset Forfeiture Program" (18-09) amply highlighted the degree to which forfeiture had been shrouded in a lack of accountability and injustice.¹ There were no administrative rules, no policies or procedures and no responsible manager in place for a program that oversaw the seizure and sale of innocent people's assets. Orwellian is an apt term here. Further, **the guidance for property owners to recover property lost was completely insufficient**. For many people, even one day without a

¹ <http://files.hawaii.gov/auditor/Overviews/2018/18-09AuditorSummary.pdf>

vehicle unjustly seized can mean the loss of a job with resulting devastation for a family. At this point, we must remind ourselves that this program nominally exists to tackle crime and target drug kingpins. The innocent here are not just collateral damage of a possibly unconstitutional policy, but of a dereliction of duty of their own highest law enforcement officer, the Department of the Attorney General.

DPFH was recently party to an amicus brief filed in the U.S. Supreme Court in a case involving forfeiture, [Timbs v. Indiana](#).² On February 20th, the Court issued its ruling and decided that the Excessive Fines Clause of the Eight Amendment of the US Constitution applies to the states. At its core, however, *Timbs* involved a forfeiture case of vehicle worth far more than the crime at issue. In the amicus, we ensured that the Hawai'i Auditor's report was referenced, highlighting that a whopping 85% of forfeiture cases were uncontested between 2006 and 2015.³ One day the Court is likely to return to the broader issue of forfeiture laws like Indiana's or Hawaii's, and strike them down. If HB748 is adopted by the Legislature, we may well have nipped that issue in the bud.

SUGGESTED AMENDMENTS:

- Introduction of a "beyond a reasonable doubt" standard of proof replacing the current "preponderance of the evidence" standard, see [SB1467 SD1](#) (Section 3);
- Termination of the use of administrative proceedings to handle forfeiture cases, replacing them with judicial proceedings, see [SB1467 SD1](#) (Section 7);
- Requiring that the State pay for the secure storage of seized assets, see [SB1467 SD1](#) (Section 5);
- Narrowing the list of covered offenses in HRS §712A-4 to felonies, exempting small amount drug possession, "promoting a dangerous drugs in the third degree" (§712-1243);
- Inserting a prohibition of Hawai'i law enforcement agencies participating in "[equitable sharing](#)" operations with federal law enforcement .Without such a prohibition, local police could circumvent the intent of this bill, be party to the

² *Timbs v. Indiana*, Docket Nr 17-1091, argued November 28, 2018. Decision expected by June 2019.

³ <http://www.drugpolicy.org/press-release/2018/09/dpa-files-amicus-brief-supreme-court-case-arguing-excessive-fines-clause>.

deprivation of Hawai'i residents property without a charge or conviction and profit off such forfeitures. California and other states have successfully reigned in this practice, which has been expanded by the Trump Administration.⁴;

- Distributing all proceeds to the State General Fund. It is our hope that fewer forfeitures will be conducted as a result of this bill, and as such we would not want an important program like LEAD to be dependent on a unstable, shrinking revenue stream.

Mahalo for the opportunity to testify.

⁴ <https://harvardlawreview.org/2018/06/how-crime-pays-the-unconstitutionality-of-modern-civil-asset-forfeiture-as-a-tool-of-criminal-law-enforcement/>.



Hawai'i

Committee: Senate Committee on Judiciary
Hearing Date/Time: Thursday, March 14, 2019, 9:30 a.m.
Place: Conference Room 016
Re: *Testimony of the ACLU of Hawai'i in Support of H.B. 748, H.D. 2, Relating to Property Forfeiture*

Dear Chair Rhoads, Vice Chair Wakai, and Members of the Committee on Judiciary:

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. 2, 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 2018.¹ 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

¹ 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
www.acluHawai'i.org

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

It comes as no surprise that Hawaii's civil asset forfeiture law is regarded among the worst in the nation, receiving a grade of D- by the Institute for Justice.³ 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.

² 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.

³ 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>.