

Honolulu, Hawaii

MAR 16 2020

RE: H.B. No. 2069  
H.D. 1  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Thirtieth State Legislature  
Regular Session of 2020  
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 2069, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PROPERTY FORFEITURE,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Prohibit civil asset forfeiture unless the covered offense is a felony for which the property owner has been convicted, excluding the forfeiture proceedings for an animal pending criminal charges; and
- (2) Require the Attorney General to deposit the net proceeds of the forfeited property to the credit of the state general fund.

Your Committee received testimony in support of this measure from the Office of the Public Defender, Hawai'i Health & Harm Reduction Center, The Drug Policy Forum of Hawai'i, Common Cause Hawaii, Americans for Democratic Action, Community Alliance on Prisons, American Civil Liberties Union of Hawai'i, and nine individuals. Your Committee received testimony in opposition to this measure from the Department of the Attorney General, Department of Land and Natural Resources, Honolulu Police Department, Maui Police Department, Office of the Prosecuting



Attorney of the County of Hawai'i, Department of the Prosecuting Attorney of the City and County of Honolulu, and two individuals. Your Committee received comments on this measure from the Office of Hawaiian Affairs, Department of the Prosecuting Attorney of the County of Maui, and Grassroot Institute of Hawaii.

Your Committee finds that asset forfeiture can be an effective tool for law enforcement to disrupt criminal activity and protect the community. However, your Committee further finds that allowing asset forfeiture to proceed before conviction is contrary to the presumption of innocence in criminal cases and has the potential to unjustly violate the property rights of some persons.

Your Committee additionally finds that H.B. No. 748, H.D. 2, S.D. 2 (Regular Session of 2019), which was previously passed by the Legislature and vetoed by the Governor, is a substantially similar measure that also would have prohibited civil asset forfeiture unless the covered offense is a felony for which the property owner has been convicted, excluding the forfeiture proceedings for an animal pending criminal charges.

Your Committee notes that S.B. No. 1467, S.D. 1 (Regular Session of 2019), which was previously passed by your Committee, also relates to civil asset forfeiture. Your Committee finds that the language in S.B. No. 1467 S.D. 1, is preferable because it recognizes that there are certain misdemeanors for which asset forfeiture can be a useful tool to combat criminal activity and therefore the list of covered offenses eligible for asset forfeiture includes felony and misdemeanor offenses. The language in S.B. No. 1467, S.D. 1, is also preferable because it heightens the standard of proof for asset forfeiture from preponderance of the evidence to beyond a reasonable doubt, establishes procedures for seizure and storage of property, repeals administrative forfeiture, and directs all proceeds, after expenses, to be deposited into the general fund and used for public education purposes. Your Committee additionally finds that the prohibition of forfeiture until after conviction should not be construed to limit the ability of law enforcement to seize property prior to conviction as provided by law.



Accordingly, your Committee has amended this measure by inserting language based substantially on S.B. No. 1467, S.D. 1, which achieves the following:

- (1) Restrict asset forfeiture to cases involving the commission of a covered criminal misdemeanor or felony offense;
- (2) Require seized property to be forfeited only when the property owner has been convicted of an underlying covered criminal misdemeanor or felony offense;
- (3) Allow property to be seized prior to conviction as provided by law;
- (4) Change the standard of proof that the State must meet in order for property to be forfeited from "preponderance of the evidence" to "beyond a reasonable doubt";
- (5) Exclude proceedings for the forfeiture of an animal pending criminal charges;
- (6) Require the State to prove that owners consented to or possessed knowledge of the crime that led to the seizure of their property;
- (7) Restrict in rem forfeiture proceedings to certain circumstances including where the owner has fled and is deemed to have been convicted of a covered offense;
- (8) Require that the agency seizing the property pay for safe and secure storage of the seized property until the completion of the forfeiture proceeding or final disposition of the property;
- (9) Direct any proceeds from a civil forfeiture to the general revenue fund for public education purposes;
- (10) Repeal administrative forfeiture proceedings, so that any forfeiture proceedings must be brought in court; and
- (11) Insert an effective date of December 31, 2020.



As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2069, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2069, H.D. 1, S.D. 1, and be referred to your Committee on Ways and Means.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary,



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KARL RHOADS, Chair



