



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

H.B. NO. 2069, H.D. 1, RELATING TO PROPERTY FORFEITURE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 10, 2020

TIME: 10:00 a.m.

LOCATION: State Capitol, Room 016

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

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) opposes the bill. The bill proposes to require a felony conviction of the owner of property prior to the forfeiture of that property. The bill also changes the distribution of the forfeited property and money from the state and local law enforcement agencies to the state general fund.

As the Legislature in Act 307, Session Laws of Hawaii 1998, noted, the forfeiture of property has proven to be a successful deterrent to criminal activity. Keeping this important tool especially in the face of recent surge of criminal activities will continue to benefit the community. The wording of the bill characterizes asset forfeiture as “government-sponsored theft,” but, as the Governor mentioned in his statement of objections relating to the H.B. No. 748 last year, there are significant safeguards against abuse and the Department takes its responsibility to enforce those safeguards seriously.

In Legislative Audit Report Number 18-09, the Auditor expressed concerns that many of the transparency and accountability problems with the civil asset forfeiture program stem from the lack of administrative rules. While continuously working to improve on the problems from various aspects, the Department promulgated the new rules last year.

Additionally, one of the other concerns raised in the Auditor's report was that property held pending forfeiture may "deteriorate or fall into disrepair" due to the Department's delay of over a year and a half on average to process a petition for administrative forfeiture. The Department has taken steps, including setting definite filing deadlines in the rules, to streamline and speed up the adjudication process. However, the bill's requirement of a felony conviction will have the unwanted effect of prolonging the process.

The Department also has several concerns with technical aspects of the bill. In section 2, page 2, lines 3 through 20, section 712A-5(2)(b)(i), Hawaii Revised Statutes (HRS), is amended to state that no property shall be forfeited unless the owner has been convicted of a felony. The next amended paragraph (b)(ii) goes on to say that, alternatively, no property shall be forfeited by any act or omission established to have been committed or omitted without the owner's consent. It is unclear how paragraph (b)(i) interacts with paragraph (b)(ii) since the former requires a felony conviction or plea, while the latter is based only on acts, omissions, and knowledge.

Furthermore, the bill's requirement of a felony conviction conflicts with other provisions in chapters 712A and 712, HRS. For example, section 712A-11, which covers judicial forfeiture proceedings, states in subsection (6), "[a]n acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this chapter." This inconsistency makes it unclear if we are going to have a felony conviction requirement for the administrative proceeding only but not for the judicial proceeding.

Other statutes that will be negatively impacted and/or rendered obsolete by the passage of the bill include sections 712-1230 (forfeiture of property used in illegal gambling), 712-1281 (fireworks), 132C-6 (contraband cigarettes), 134-12.5 (firearms, ammunition, deadly or dangerous weapons, and switchblade knives), 188-40.7 (shark fins), 199-7 (conservation and resources enforcement program), 245-2.5 (cigarettes and tobacco products), 245-9 (cigarettes, stamps or counterfeit stamps), 245-40 (illegal cigarettes), 245-55 (illegal cigarettes), 291C-103 (racing on highways), 291E-61.5 (habitually operating a vehicle under the influence of an intoxicant), 329-55 (controlled

substance, drug paraphernalia etc.), 329-70 (precursor chemicals), 329C-3 (imitation controlled substances), and 708-894 (computer crime), HRS. The majority of these statutes specifically authorize forfeiture of contraband and properties used in the commission of crimes regardless of whether the corresponding offenses are felonies or misdemeanors.

For example, section 712-1230, HRS, allows forfeiture of any gambling device and any money or personal property used as a bet or stake in illegal gambling activity. According to the forfeiture petitions we have received in the past, most of the arrestees are only cashiers and not operators of the gambling operations, thus resulting in mere misdemeanor charges. While the bill does not prevent misdemeanor contraband to be seized for evidence, it will prohibit the state from forfeiting the gambling machines and any proceeds found in the machines. It is our understanding that forfeiture of gambling machines for the purpose of destroying them and forfeiture of proceeds have been an integral part of law enforcement's strategy to fight illegal gambling activities occurring in our communities. This bill will completely take the teeth out of section 712-1230, HRS, making the control of illegal gambling activities significantly harder.

Forfeiture in response to violations of chapter 245, HRS, is another example of an existing statute that could also be adversely affected by this bill. Currently, under section 712A-5(1)(d), HRS, "[c]ontraband or untaxed cigarettes in violation of chapter 245¹, shall be seized and summarily forfeited to the State without regard to the procedures set forth in this chapter." Summary forfeiture of the contraband items has proven effective to prevent those products from being redistributed into the community. The bill, however, appears to fail to address how these contraband items should be disposed where a misdemeanor offense² is committed, or felony offense charge does not result in conviction.

¹ Sections 245-2.5, 245-9, 245-55, and 245-40, HRS, authorize forfeiture of various cigarettes and tobacco products pursuant to chapter 712A, HRS.

² Misdemeanor offenses under chapter 245 include violations of sections 245-2.6 and 245-2.7, (unlawful tobacco retailing in the first and second degrees), 245-16(d) (unlawful shipment of less than 1,000 cigarettes), and 245-37(b) (sales or purchase of packages of between 1,000 and 2,999 cigarettes without stamps), HRS.

The Department is also concerned that the bill does not address what happens to seized property in those cases where the defendant who has been arrested and charged in an underlying criminal action then fails to appear or flees to evade prosecution or where the defendant enters into a plea deal to have the property forfeited for a lesser offense or a referral to a diversion program.

For the reasons above, the Department strongly recommends that more studies be conducted on the legal and practical ramifications of this bill.

Alternatively, the Department suggests the following amendments to the bill should it pass:

The wording on page 2, lines 9 to 10, should be replaced with the following wording to include offenses that specifically authorize forfeiture, including some misdemeanor offenses.

“Covered offense is chargeable as a felony offense or any offense that specifically authorizes forfeiture;”

The wording on page 2, lines 11 to 14, should be replaced with the following wording to clarify what is covered under “convicted of the covered offense.”

“Owner has been convicted of the covered offense by a verdict or plea, including a no contest plea, a deferred acceptance of guilty plea or no contest plea, a referral to a diversion program, or other settlement agreement;”

The wording on page 4, lines 16 to 19, should be replaced with the following wording to clarify the scope of costs incurred:

“. . . including any costs incurred by the department of the attorney general related to the seizure, storage, and disposition of seized property, shall be deposited to the credit of the state general fund.”

We respectfully ask that the bill be held.

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
JUDICIARY**

**Tuesday, March 10, 2020
10:00 AM
State Capitol, Conference Room 016**

**In consideration of
HOUSE BILL 2069, HOUSE DRAFT 1
RELATING TO PROPERTY FORFEITURE**

House Bill 2069, House Draft 1 proposes to prohibit civil asset forfeiture unless the covered offense is a felony for which the property owner has been convicted, excludes forfeiture proceedings for an animal pending criminal charges, and requires the Attorney General to deposit the net proceeds of the forfeited property to the credit of the State General Fund. **The Department of Land and Natural Resources (Department) opposes this measure.**

Asset forfeiture is an essential enforcement tool that has been used by the Department to effectively deter and halt criminal activity. The majority of the rules that the Department's Division of Conservation and Resources Enforcement (DOCARE) enforces are misdemeanor or petty misdemeanor offenses. Restricting civil asset forfeiture to felony offenses will effectually eliminate this critical tool from DOCARE's enforcement toolbox. The deterrent effect of civil forfeiture in promoting resource protection will be diminished.

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



HB2069 HD1
RELATING TO PROPERTY FORFEITURE
Senate Committee on Judiciary

March 10, 2020

10:00 a.m.

Room 016

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on HB2069 HD1, which would prohibit the use of civil asset forfeiture unless the covered offense charged is a felony, and the property owner has been convicted of the covered offense.

Native Hawaiians may be disproportionately impacted by civil asset forfeiture, especially as it is applied in drug-related cases. In recent years, drug-related offenses have constituted the majority of the covered offenses that have triggered asset forfeiture.¹ Meanwhile, in its 2010 report on the disparate treatment of Native Hawaiians in the criminal justice system, OHA noted that Native Hawaiians may bear a disproportionate burden of our overwhelmingly punitive response to drug use: although Native Hawaiians do not use drugs at disproportionate rates than other ethnic groups, they are convicted for these offenses at much higher rates.² These data indicate that Native Hawaiians may be disproportionately targeted for drug-related enforcement, and therefore exposed to a much higher risk of drug-related asset seizure and forfeiture.

OHA accordingly does have an interest in ensuring that our asset forfeiture laws are administered in a fair, transparent, and accountable manner, which also considers the laws' potential impacts on the Native Hawaiian community in particular. Unfortunately, there is little evidence as to whether or not this is the case; OHA notes that a 2018 audit of the Attorney General's asset forfeiture program in fact found significant and longstanding deficiencies, including with regards to transparency and accountability, in the administration of our asset forfeiture laws generally. **Therefore, until clearer mechanisms are established to ensure fairness, transparency, and accountability in the administration of our asset forfeiture laws – including with regards to their potential exacerbation of the impacts our criminal justice system has on the Native Hawaiian community – statutory restrictions on the use of asset forfeiture may be a particularly prudent and important step for the legislature to take.**

Mahalo piha for the opportunity to testify on this measure.

¹ From 2006 to 2015, drug related offenses composed 78 percent of the covered offenses resulting in forfeiture cases. OFFICE OF THE AUDITOR, STATE OF HAWAII, AUDIT OF THE DEPARTMENT OF THE ATTORNEY GENERAL'S ASSET FORFEITURE PROGRAM 14-15 (2018).

² THE OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM 45 (2010), available at http://www.oha.org/wp-content/uploads/2014/12/ir_final_web_rev.pdf.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

LATE

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on Judiciary**

March 10, 2020

H.B. No. 2069 HD1: RELATING TO PROPERTY FORFEITURE

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Office of the Public Defender supports H.B. No. 2609 HD1, which seeks to prohibit civil asset forfeiture unless the covered offense is a felony for which the property owner has been convicted.

Property (or asset) forfeiture may have originally been intended to cripple drug trafficking organizations and organized crime; however, in practice, this is hardly the case. Rather, ordinary people, many with little or no connection to criminal activity, are frequently the targets of asset seizures. Most seizures involve small dollar amounts, not huge sums of cash seized from drug traffickers.

In property forfeiture proceedings, the property is presumed to be guilty until the owner proves that he/she is innocent and that the seized property therefore should not be forfeited. In other words, the owner must prove (1) that he/she were not involved in criminal activity and (2) that he/she either had no knowledge that the property was being used to facilitate the commission of a crime or that he/she took every reasonable step under the circumstances to terminate such use. Moreover, the proceedings are not before a neutral judge or arbitrator; forfeiture of personal property worth less than \$100,000, or forfeiture of any vehicle or conveyance, regardless of value is administratively processed. Finally, most forfeitures are unchallenged. Pragmatic property owners, however innocent, may reason that it is simply too cost prohibitive to challenge the seizure (primarily, due to the high cost of hiring an attorney) or that the cost far surpasses the value of the property.

What is appalling is that, according to the State Auditor report on civil forfeiture published in June 2018, in 26% of the asset forfeiture cases, the property was forfeited without a corresponding criminal charge. *See* 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). In other words, no criminal charges were filed in one-fourth of the property forfeiture cases. SECTION 1 of this measure aptly described the process: “This amounts to government-sponsored theft.”

Prosecuting agencies may assert that this measure would create a time-consuming, expensive and difficult process. However, the process should be difficult when the government is attempting to deprive personal property from its citizens.

Finally, the absurdity of the current state of our asset forfeiture laws in this country, including Hawai'i's law, is brilliantly lampooned in a segment on HBO's Last Week Tonight with John Oliver, which originally aired on October 5, 2014, and which can be viewed at <https://m.youtube.com/watch?v=3kEpZWGgJks> (viewer discretion advised).

Thank you for the opportunity to comment on H.B. No. 2069.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
CLYDE K. HO
DEPUTY CHIEFS

OUR REFERENCE

PJ-LS

March 10, 2020

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. 2069, H.D. 1, Relating to Property Forfeiture

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

The HPD opposes House Bill No. 2069, 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 that we provide to the community.

The HPD urges you to oppose House Bill No. 2069, H.D. 1, Relating to Property Forfeiture, and thanks you for the opportunity to testify.

APPROVED:

Sincerely,

A handwritten signature in cursive script that reads "Susan Ballard".

Susan Ballard
Chief of Police

A handwritten signature in cursive script that reads "Phillip Johnson".

Phillip Johnson, Acting Major
Narcotics/Vice Division



MICHAEL P. VICTORINO
MAYOR

OUR REFERENCE
YOUR REFERENCE

POLICE DEPARTMENT

COUNTY OF MAUI

55 MAHALANI STREET
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TIVOLI S. FAAUMU
CHIEF OF POLICE

DEAN M. RICKARD
DEPUTY CHIEF OF POLICE

March 6, 2020

The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair
and Members of the Committee on Judiciary

The Senate
Hawaii State Capitol
Honolulu, Hawaii 96813

RE: House Bill No. 2069 – Relating To Property Forfeiture

Dear Chair Rhoads and Members of the Committee:

The Maui Police Department strongly OPPOSES the passage of H.B. No. 2069, which would require seized property to be forfeited only when the property owner has been convicted of an underlying covered criminal felony offense.

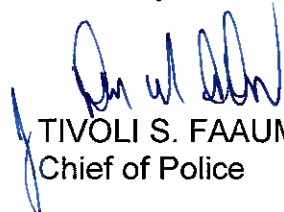
As Law Enforcement, civil asset forfeiture is an invaluable tool in depriving criminals of their illegal gains through seizure. The Maui Police Department uses the forfeited funds for training and equipment to help us better serve our community.

Civil asset forfeiture cases are thoroughly screened on more than one level to meet criteria and to assure that abuse of this invaluable tool does not occur.

The Maui Police Department asks that you strongly OPPOSE the passage of H.B. No. 2069.

Thank you for the opportunity to testify.

Sincerely,


TIVOLI S. FAAUMU
Chief of Police

HB-2069-HD-1

Submitted on: 3/6/2020 8:06:04 AM

Testimony for JDC on 3/10/2020 10:00:00 AM

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

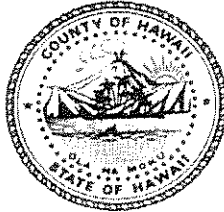
Comments:

MPD opposes House Bill 2069. There are already significant safeguards to protect against what some people described as "government sponsored theft."

In addition, House Bill 2069 will eliminate any forfeited proceeds to be distributed to the investigating local law enforcement agency. Said proceeds are used to fund local law enforcement training and much needed (unbudgeted) equipment.

MITCHELL D. ROTH
PROSECUTING ATTORNEY

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN OPPOSITION TO HOUSE BILL 2069, HD 1

A BILL FOR AN ACT RELATING TO PROPERTY FORFEITURE

COMMITTEE ON JUDICIARY

Sen. Karl Rhoads, Chair

Sen. Jarrett Keohokalole, Vice Chair

Thursday, March 10, 2020, 10:00 a.m.
State Capitol, Conference Room 016

Honorable Chair Rhoads, Honorable Vice Chair Keohokalole, 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 2069, HD 1.

This measure prohibits civil asset forfeiture unless the covered offense is a felony for which the property owner has been convicted and requires the Attorney General to deposit the net proceeds of the forfeited property to the credit of the state general fund.

This bill follows national pushback in reaction to some mainland states and certain communities where asset forfeiture has been shown to be used in a discriminatory manner. Here in Hawai'i, drug addiction is at an all-time high and one of the most prevalent challenges our county faces. Statistically, in Hawai'i County, narcotics trafficking constitutes the vast majority of the covered offenses that trigger asset forfeiture, and any property is seized pursuant to the strict rules and guidelines as set forth by the Attorney General.

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 the product itself from the criminals and criminal organization, rendering them powerless to continue to operate. This bill will effectively eliminate immediate asset forfeiture in these cases, one of the most successful tools law enforcement has to destabilize the economic structure of drug traffickers

Currently, the proceeds from asset forfeiture is directed toward programs which aim to prevent abuse of illegal drugs through education, prevention and rehabilitation. Any re-allocation of the proceeds to the state general fund would ultimately undercut those deterrent efforts, defund program costs, salaries, as well as the portion of the fund used for effective law enforcement equipment and training.

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 and pursuant to the strict rules, timeframes, and guidelines as set forth by the Attorney General.

For the foregoing reasons, the Office of the Prosecuting Attorney, County of Hawai'i, **STRONGLY OPPOSES** the passage of House Bill No. 2069, HD 1. Thank you for the opportunity to testify on this matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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LYNN B.K. COSTALES
ACTING FIRST DEPUTY
PROSECUTING ATTORNEY

LATE

THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2020
State of Hawai`i

March 10, 2020

RE: H.B. 2069, H.D. 1; RELATING TO PROPERTY FORFEITURE.

Chair Rhoads, Vice Chair Keohokalole, and members of the Senate 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. 2069, H.D. 1.

The purpose of this bill is to 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 also appears to be based upon the premise that “everyone is innocent until proven guilty,” which is certainly a true statement, but misses the point of civil asset forfeiture. At its core, civil asset forfeiture is primarily about the “innocence” of the property itself, not the guilt or innocence of its owner. The only time a property owner’s “innocence” is relevant, is to assess the owner’s knowledge and (express or implied) consent to the act or omission (that their property was connected to). For example, if a father allows his drug-dealing daughter to use his car, knowing that the daughter occasionally delivers drugs using his car, then the father’s car could be subject to forfeiture under certain circumstances, even if the father is never charged with a crime.

As clearly stated by our Hawaii Supreme Court in *State v. Tuipuapua*, “[a] statutory forfeiture ‘is a proceeding *in rem*.’ It is not a proceeding against any person.”¹ It has nothing to do with whether a property owner is the one criminally charged with the commission of a crime. Thus, it makes sense that our civil asset forfeiture statutes go into great detail about what property is subject to forfeiture (see HRS §712A-5), based on the property’s connection to an offense, with absolutely no requirement that the property be connected to any particular individual (such as a defendant in a criminal case).²

¹ *State v. Tuipuapua*, 925 P.2d 311, 83 Haw 141 (1996), citing *U.S. v. Baird*, 63 F.3d 1213, 1219; *U.S. v. Arreola-Ramos*, 60 F.3d 192-93 (emphasis in original).

² HRS §712A-5 states in relevant part: (1) The following is subject to forfeiture:
(a) Property described in a statute authorizing forfeiture;

While our statutes do not require that the property be connected to a person, they do require that the property be connected to a violation of law, or “covered offense.” Indeed, in State v. Ten Thousand Four Hundred Forty-Seven Dollars in U.S. Currency (\$10,447.00), the Hawaii Supreme Court ordered that a certain portion of monies recovered in connection with an illegal gambling operation be returned to its owner, as “the State must prove the existence of a substantial connection [a.k.a. sufficient nexus] between the currency being forfeited and the illegal activity.”³ As stated by the Court, “[g]iven that this is an *in rem*...forfeiture proceeding, the State must prove that the defendant—the subject currency, not [the currency’s owner]—was connected to illegal activity.”⁴

Naturally, our courts and statutes recognize that property generally belongs to someone (a person or entity), and thus our statutes also state that property, which would otherwise be subject to forfeiture, cannot actually be forfeited (to the extent of an owner’s property interest) “by reason of any act...committed...without the knowledge and consent of that owner.”⁵ To this end, our civil asset forfeiture laws contain **extensive procedural mandates, standards and safeguards**, to ensure that everyone—including the father in the hypothetical example mentioned previously—is given due process, every step of the way. This includes statutes prohibiting “excessive forfeiture”—and our statutes appear to be ahead of the curve in this regard, as indicated by a **recent U.S. Supreme Court case**⁶—consideration of “extenuating circumstances,” such as a language barrier or physical/mental abnormalities⁷; and mechanisms to return all or part of the property (or property value) in question, even if the owner knew of and consented to the illegal activity.

As previously stated, we believe that H.B. 2069, H.D. 1 has good intentions, but is based on a misunderstanding of the nature and intent of civil asset forfeiture. Current forfeiture laws are used to immediately and effectively disrupt the infrastructure of criminal activity and protect the community, by removing the property used in the commission of such activity, and/or proceeds gained from such activity. As civil proceedings deal only with the potential loss of property, and not a potential loss of liberty (i.e. incarceration), civil asset forfeiture is intentionally designed to

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- (b) Property used or intended for use in the commission of, attempt to commit, or conspiracy to commit a covered offense, or which facilitated or assisted such activity;
 - (c) Any firearm which is subject to forfeiture under any other subsection of this section or which is carried during, visible, or used in furtherance of the commission, attempt to commit, or conspiracy to commit a covered offense, or any firearm found in proximity to contraband or to instrumentalities of an offense;
 - (d) Contraband or untaxed cigarettes in violation of chapter 245, shall be seized and summarily forfeited to the State without regard to the procedures set forth in this chapter;
 - (e) Any proceeds or other property acquired, maintained, or produced by means of or as a result of the commission of the covered offense;
 - (f) Any property derived from any proceeds which were obtained directly or indirectly from the commission of a covered offense;
 - (g) Any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise which has been established, participated in, operated, controlled, or conducted in order to commit a covered offense;
 - (h) All books, records, bank statements, accounting records, microfilms, tapes, computer data, or other data which are used, intended for use, or which facilitated or assisted in the commission of a covered offense, or which document the use of the proceeds of a covered offense.

³ State v. Ten Thousand Four Hundred Forty-Seven Dollars in U.S. Currency (\$10,447.00), 104 Haw 323, 337, 89 P.3d 823, 837 (2004) (regarding money properly seized pursuant to search warrant, but ultimately not subject to forfeiture).

⁴ *Id.*, at 336, 836.

⁵ See Section 712A-5(2)(b), Hawaii Revised Statutes (“HRS”).

⁶ See Timbs v. Indiana, 139 S.Ct 682 (February 20, 2019)—which originated from a state that does not have a statute like HRS §712A-5.5—where the U.S. Supreme Court held that civil asset forfeiture judgments shall not be excessive.

⁷ See HRS §712A-10(6).

function independently from any criminal proceedings, using civil standards of proof, in much the same way that a crime victim is permitted to file a lawsuit against their perpetrator—and the perpetrator may be held civilly liable—regardless of whether the perpetrator is ever convicted or even charged in a criminal case.

While civil asset forfeiture inherently involves the forfeiture of property, which most likely belongs to someone, this is completely separate and apart from any criminal proceedings; there is no requirement that the property owner committed a crime for the property to be forfeited, and forfeiture is not a criminal punishment.⁸ Indeed, the Court in Tuipupua noted that civil asset forfeiture “serves important nonpunitive goals...[such as encouraging] property owners ‘to take care in managing their property’ and tends to ensure ‘that they will not permit that property to be used for illegal purposes.’”⁹

To the extent the Legislature is concerned that civil asset forfeiture is being abused by the administering agencies, as a means of generating inappropriate revenue, the Department can only speak for itself in stating that it has never viewed civil asset forfeiture in such a light, has never gotten the impression that any other administering agencies in Hawaii view it in such a light. The Department greatly appreciates the valuable training that its deputies have received for drug-related cases, as provided by the civil asset forfeiture fund, but understands that it is within the purview of the Legislature to establish where and how the proceeds of this or any other state-mandated program are utilized. We do note, however, that it makes sense for the proceeds from civil asset forfeiture to at least cover the full administrative costs of the program, before it is distributed elsewhere.

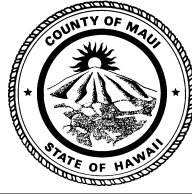
To the extent that the Legislature is alarmed by complaints that a certain amount of property is never returned to owners—even when criminal charges are never brought against the owner—the Department would reiterate its earlier example of the father who continues to allow his drug-dealing daughter to borrow his car, but is never prosecuted criminally. Moreover, please keep in mind that any “illegal” items seized by law enforcement—such as illicit drugs, illicit drug-manufacturing equipment, gambling devices, and so forth—are never be returned to people, as a matter of public policy, so retention of such items may also skew “statistics” in a confusing manner.

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 in June 2018 (available at files.hawaii.gov/auditor/Reports/2018/18-09.pdf), which are already in the process of being implemented. If the Legislature truly believes that change are needed to this program, 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.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of H.B. 2069, H.D. 1. Thank for you the opportunity to testify on this matter.

⁸ Tuipupua at 323, 153.

⁹ *Id.*



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

TESTIMONY
ON
H.B. 2069 - RELATING TO
PROPERTY FORFEITURE

March 9, 2020

The Honorable Karl Rhoads
Chair
The Honorable Jarrett Keohokalole
Vice Chair
and Members of the Committee on Judiciary

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments concerning H.B. 2069 H.D.1, Relating to Property Forfeiture. Specifically, we would like to express our strong opposition to H.B. 2069 H.D. 1 in its current form, which redirects sale proceeds of forfeited property to the state general fund, and prohibits civil asset forfeiture pursuant to H.R.S. Chapter 712A unless the covered offense is chargeable as a felony and the owner of the property has been convicted of the covered offense.

We have a number of concerns relating to this bill. Our first concern is that the forfeiture statutes in H.R.S. Chapter 712 contain specific provisions that create a process by which individuals or entities are allowed to contest the forfeiture action, including notice of the action, an opportunity to contest it, and an appeals process for an adverse decision. We are concerned that there may be insufficient data supporting the allegations that innocent citizens in Hawai'i were deprived of personal property without being charged or convicted of crime, and believe that further investigation would be necessary to determine whether the individuals in question followed the procedures to contest the action.

Our second concern is that the new administrative rules affecting the asset forfeiture process have been in effect for less than 90 days, which in our view is not enough time to assess their full effect on the administration of justice and the concerns raised by this bill. Notably, the new rules adopt the National Code of Professional Conduct for Asset Forfeiture, which set forth policies that maintain the integrity of the forfeiture process, and contain provisions and forms that clearly address the process by which a property owner can contest or attempt to mitigate

property forfeiture.

Our third concern is the proposed requirement of a felony conviction before the civil asset forfeiture process can begin. Although the proposed bill contains language that attempts to address common scenarios such as no contest pleas and deferred pleas, the bill's plain language still requires a conviction. In scenarios involving deferred pleas, Drug Court-related dismissals and other such dispositions, no actual conviction occurs because all charges are dismissed once the requisite conditions are met. Thus, there will be no conviction in that scenario that would allow for civil asset forfeiture to occur. Furthermore, in the common scenario where a defendant appeals their conviction, the appellate process can take months to years to complete and there is a possibility that a conviction for a covered offense is reversed and remanded for a new trial after a forfeiture has occurred, while this bill does not address that scenario. There are also scenarios where the owner of property subject to forfeiture is completely unknown, and thus a criminal felony conviction is impossible to obtain.

Our fourth concern involves the redirection of forfeiture funds solely to the general fund, with a cost reimbursement allowed only for department of the attorney general relating to seizure and storage of the property. Our Department would still be responsible for administering the program, but without any reimbursement for costs incurred. Furthermore, the law enforcement agencies involved would not be reimbursed for their costs either.

Our fifth concern involves the bill's elimination of the ability for property to be forfeited without the owner of the property first having been convicted of a covered offense. In scenarios where a property owner has knowingly allowed someone to use the property for criminal activity, but is not actually involved to an extent that they could be criminally prosecuted for said activity, the proposed changes would technically prevent forfeiture despite the fact that the owner knowingly allowed the property's criminal usage.

For these reasons, the Department of the Prosecuting Attorney, County of Maui strongly opposes the passage of H.B. 2069 H.D. 1 in its current form. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries.

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

TESTIMONY IN SUPPORT OF HB 2069, HD 1

TO: Chair Rhoads, Vice-Chair Keohokalole, and Members of the Judiciary Committee

FROM: Nikos Leverenz
Grants, Development & Policy Manager

DATE: March 10, 2020 (10:00 AM)

Hawaii Health & Harm Reduction Center (HHRC) supports HB 2069, 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. Requiring a conviction before property is permanently seized and forfeited and channeling proceeds to the General Fund represent a significant improvement over existing law and practices in Hawaii.

In 2018 [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." The rules promulgated by the Attorney General earlier this year are a pro forma declaration of administrative procedures and are not responsive to the auditor's findings or last year's legislative deliberations.

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 misuse and underlying mental health conditions. **Current law governing asset forfeiture harms innocent property owners who do not have the economic means to post bond or hire an attorney to secure their property; they are effectively left without meaningful legal recourse. Those with little or no economic means should have adequate access to equal justice under law.** This measure helps to ensure that due process of law, undermined by current asset forfeiture practices, is provided to those who would not otherwise be afforded such when their property is seized and permanently forfeited.

Thank you for the opportunity to provide testimony on this important measure.



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

TESTIMONY IN SUPPORT OF HB 2069, HD 1

TO: Chair Rhoads, Vice Chair Keohokalole & Members of the Judiciary Committee

FROM: Nikos Leverenz
DPFH Board President

DATE: March 10, 2020 (10:00 AM)

Drug Policy Forum of Hawai'i (DPFH) **strongly supports** HB 2069, HD 1, which would reform Hawai'i's civil asset forfeiture law to require a conviction before property is permanently forfeited.

As evinced by legislative efforts and significant media coverage of this issue last year, the need for reform is clear to most everyone but those executive agencies who have effectively operated without meaningful legislative oversight, clear operational parameters, or any detailed reporting requirements for over three decades.

A [2018 report by the Hawai'i State Auditor](#) noted that about 85% of administrative forfeiture cases went uncontested during FY2006-FY2015 and that **26% of persons who had their property seized and forfeited were never even charged with a crime**. Current state law erects high barriers for an innocent owner to recoup their seized property, including the requirement to post bond. The auditor further noted that transparency and accountability have been lacking:

The Attorney General [has] 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.

Beyond the lack of administrative oversight, Hawai'i law and current practices do not adequately protect the rights of innocent owners to be secure in their property. Institute for Justice (IJ), a national non-profit public interest law firm, [calls Hawai'i's civil forfeiture laws "among the nation's worst" in assigning it a grade of "D-."](#) IJ also noted the wide disparity between the standard of proof required of state actors and that required of private individuals:

State law has a low standard of proof, requiring only that the government show by a preponderance of the evidence that property is tied to a crime. Furthermore, innocent owners bear the burden of proving that they had nothing to do with the alleged crime giving rise to the forfeiture. ***Most troubling, law enforcement has a large financial stake in forfeiture, receiving 100 percent of civil forfeiture proceeds: 25 percent goes to police, 25 percent to prosecuting attorneys and 50 percent to the attorney general.*** (emphasis added)

When I served as an advocate to help reform California's civil asset forfeiture law in 2015, it was my pleasure to facilitate meetings between Senate Republican members, IJ Staff Attorney Lee McGrath, and Brad Cates, Director of the Justice Department's Asset Forfeiture Office from 1985 to 1989. Their message and their presence were very well-received, even among those conservative Republicans who were not typically inclined to support reforms to the criminal legal system.

Cates, who spearheaded successful efforts in New Mexico to abolish civil asset forfeiture entirely with a Republican governor and Republican majorities in both houses, [wrote a penetrating opinion editorial in *The Washington Post*](#) with his immediate predecessor John Yoder calling for its national abolition. They noted the how the practice of asset forfeiture turns the law on its head:

In America, it is often said that it is better that nine guilty people go free than one innocent person be wrongly convicted. But our forfeiture laws turn our traditional concept of guilt upside down. Civil forfeiture laws presume someone's personal property to be tainted, placing the burden of proving it "innocent" on the owner. What of the Fourth Amendment requirement that a warrant to seize or search requires the showing of probable cause of a specific violation?

Defendants should be charged with the crimes they commit. Charge someone with drug dealing if it can be proved, but don't invent a second offense of "money laundering" to use as a backup or a pretext to seize cash. Valid, time-tested methods exist to allow law enforcement to seize contraband, profits and instrumentalities via legitimate criminal prosecution.

Since 2014, 34 states and the District of Columbia have reformed their civil forfeiture laws. 16 states require a conviction in criminal court to forfeit most or all types of property in civil court, and three states (New Mexico, Nebraska, and North Carolina) have abolished civil forfeiture entirely.

Hawai'i should join them.

Thank you for the opportunity to testify on this critical reform measure.

Statement Before The
SENATE COMMITTEE ON JUDICIARY
Tuesday, March 10, 2020
10:00 AM
State Capitol, Conference Room 016

in consideration of
HB 2069, HD1
RELATING TO PROPERTY FORFEITURE.

Chair RHOADS, Vice Chair KEOHOKALOLE, and Members of the Senate Judiciary Committee

Common Cause Hawaii supports HB 2069, HD1, which (1) prohibits civil asset forfeiture unless the covered offense is a felony for which the property owner has been convicted, (2) excludes the forfeiture proceedings for an animal pending criminal charges, and (3) requires the Attorney General to deposit the net proceeds of the forfeited property to the credit of the state general fund.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to strengthening our democracy. A strong democracy requires protecting everyone's constitutional rights and ensuring equal access to our courts and judicial system. The ability to access our courts and judicial system is one of the foundations of democracy.

HB 2069, HD 1 will permit civil asset forfeiture only after the property owner has been convicted of a felony. This will allow an individual, presumably, a full and fair day in court prior to forfeiture of assets. HB 2069, HD 1 will hopefully improve the criminal justice system and make it more fair and just and lessen civil asset forfeitures' impacts on persons from minorities and low-income communities.

Thank you for the opportunity to testify in support of HB 2738, HD1. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii



AMERICANS FOR DEMOCRATIC ACTION

OFFICERS	DIRECTORS			MAILING ADDRESS
John Bickel, President	Melodie Aduja	Chuck Huxel	Stephen O'Harrow	P.O. Box 23404
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Doug Pyle, Secretary	Stephanie Fitzpatrick	Dave Nagaji		

March 6, 2020

TO: Chair Rhoads and members of Judiciary Committee

RE: HB 2069 HD 1 Relating to Property Forfeiture

Support for hearing on March 10

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support HB 2748 HD 1 as it would prohibit civil asset forfeiture unless the covered offense is a felony for which the property owner has been convicted. Seizing assets before a conviction is a violation of basic civil liberties.

Thank you for your favorable consideration.

Sincerely,
John Bickel, President



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

Sen. Karl Rhoads, Chair

Sen. Jarrett Keohokalole, Vice Chair

Tuesday, March 10, 2020

10 am – Room 016

STRONG SUPPORT for HB 2069 – ASSET FORFEITURE

Aloha Chair Rhoads, Vice Chair Keohokalole 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 **JAMES BORLING SALAS, ASHLEY GREY, DAISY KASITATI, JOEY O`MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE “CARE AND CUSTODY” OF THE STATE**, including the eleven (11) people that we know of, who have died in the last six (6) months. We also remind the committee of the approximately 5,200 Hawai`i individuals living behind bars or under the “care and custody” of the Department of Public Safety on any given day, and we are always mindful that more than 1,200 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 2069!

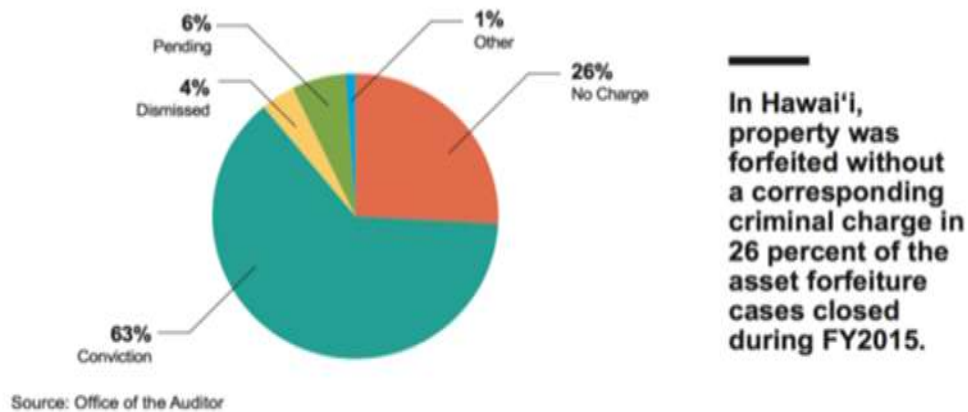
In 2015, the Institute of Justice graded states on their programs: **Hawaii** earns a **D-** for its civil forfeiture laws¹ because of 1) the low bar to forfeit and no conviction required; 2) the poor protections for innocent third-party property owners; and 3) the fact that 100% of forfeiture proceeds 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 D²; 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.

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/>

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.



The scathing Hawai'i auditor's report³ 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 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.

³ 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>



March 10, 2020
10:00 a.m.
Hawaii State Capitol
Conference Room 016

To: Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

From: Grassroot Institute of Hawaii
Joe Kent, Executive Vice President

Re: HB2069 HD1 — RELATING TO PROPERTY FORFEITURE

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on House Bill 2069, which would prohibit civil asset forfeiture unless the covered offense is a felony for which the property owner has been convicted.

The state of civil asset forfeiture in Hawaii has been the subject of criticism and concern. Thus, we commend the legislature for continuing to address these problems and pressing for much needed reforms.

In a recent survey of civil asset forfeiture nationwide by the Institute of Justice,¹ Hawaii earned a D-minus and the dubious distinction of having some of the worst forfeiture laws in the country. Singled out for criticism was the low standard of proof required for the government to show the property is tied to a crime. In addition, the burden is placed on innocent owners to prove they weren't tied to the crime resulting in the forfeiture.

The result of these laws is a state forfeiture program open to abuse.

¹ Dick M. Carpenter II, et al. "Policing for Profit: The Abuse of Civil Asset Forfeiture, 2nd Edition," Institute for Justice, November 2015. <https://ij.org/wp-content/uploads/2015/11/policing-for-profit-2nd-edition.pdf>

As the Hawaii state auditor wrote in a June 2018 report on the asset forfeiture program,² the program lacks clear rules and procedures, inadequately manages funds and is badly in need of greater transparency. More important, it is reasonable to believe that the current system preys on innocent property owners.

The audit found that in 26% of asset forfeiture cases closed during fiscal year 2015, property was forfeited without a corresponding criminal charge. In another 4% of cases, the property was forfeited even though the charge was dismissed. Of those whose property was forfeited, very few petitioned for remission or mitigation. The state auditor speculated that most people may not know petition is an option because of the lack of transparency surrounding the forfeiture program.

By introducing a higher standard for forfeiture, this bill takes an important step in addressing many of the concerns raised in the audit. It is shocking that citizens can lose their property without being convicted — or even charged with a crime.

This bill also deserves praise for eliminating incentives that can arise from the practice of asset forfeiture. By directing the proceeds from the forfeiture program to the general fund, this bill prevents any agency or group to have a financial interest in asset forfeiture.

Finally, there is one more reform that could improve the state asset forfeiture program. In order to maintain the transparency of the program and boost public confidence, we suggest that the bill include language that would require more detailed reporting on the forfeiture program, especially regarding financial management and case data for specific property dispositions.

Thank you for the opportunity to submit our testimony.

Sincerely,

Joe Kent
Executive Vice President
Grassroot Institute of Hawaii

² “Audit of the Department of the Attorney General’s Asset Forfeiture Program,” Office of the Auditor, State of Hawaii, June 2018, <http://files.hawaii.gov/auditor/Reports/2018/18-09.pdf>.



Hawai'i

LATE

Committee: Committee on Judiciary
Hearing Date/Time: Tuesday, March 10, 2020, 10:00 a.m.
Place: Conference Room 016
Re: Testimony of the ACLU of Hawai'i in Support of H.B. 2069, H.D. 1, Relating to Property Forfeiture

Dear Chair Rhoads, Vice Chair Keohokalole, and members of the Committee:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes in support of H.B. 2069, H.D. 1, which would reform Hawaii'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 net forfeiture proceeds to the general fund.

Hawaii'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 Hawaii'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.

Hawaii'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


Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee on Judiciary
March 10, 2020
Page 2 of 2

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 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.**

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 over 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>.

American Civil Liberties Union of Hawai'i
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HB-2069-HD-1

Submitted on: 3/7/2020 5:29:59 PM

Testimony for JDC on 3/10/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Thaddeus Pham	Individual	Support	No

Comments:

Aloha Committee Chairs,

As a public health professional and concerned community member, I strongly support HB 2069, HD 1, which would reform Hawai'i's civil asset forfeiture law to require a conviction before property is permanently forfeited.

The current asset forfeiture laws reinforce inequities among our communities in Hawaii that have long-term economic, social, and therefore health implications.

- The 2018 report by the Hawai'i State Auditor noted that about 85% of administrative forfeiture cases went uncontested during FY2006-FY2015 and that 26% of persons who had their property seized and forfeited were never even charged with a crime.
- Institute for Justice (IJ), a national non-profit public interest law firm, calls Hawai'i's civil forfeiture laws "among the nation's worst" in assigning it a grade of "D-." Hawai'i law and current practices do not adequately protect the rights of innocent owners to be secure in their property.

I urge to help ensure that our communities in Hawaii are protected from undue and unnecessary harms.

Mahalo,

Thaddeus Pham

HB-2069-HD-1

Submitted on: 3/6/2020 3:34:08 PM

Testimony for JDC on 3/10/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Steven Costa	Individual	Support	No

Comments:

HB-2069-HD-1

Submitted on: 3/5/2020 8:12:54 PM

Testimony for JDC on 3/10/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerard Silva	Individual	Oppose	No

Comments:

HB-2069-HD-1

Submitted on: 3/8/2020 4:18:22 PM

Testimony for JDC on 3/10/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Wendy Gibson	Individual	Support	No

Comments:

TO: Chair Rhoads, Vice-Chair Keohokalole and Members of the Judiciary Committee

Please support HB 2069 so that Hawaii's unconstitutional civil asset forfeiture laws can be reformed. Allowing asset forfeiture before a person has been charged with a crime violates the "Innocent until proven guilty" rule.

And, given that 26% of the persons who have had property seized and forfeited were never charged with a crime, something needs to change soon. There must be some standard of proof before property can be seized.

Thank you for your consideration.

Wendy Gibson-Viviani RN

Palolo

HB-2069-HD-1

Submitted on: 3/8/2020 4:45:37 PM

Testimony for JDC on 3/10/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
donn viviani	Individual	Support	No

Comments:

HB 2069 Testimony March 8 2020

TO: Chair Rhoads, Vice-Chair Keohokalole and Members of the Judiciary Committee

Please support HB 2069 so that Hawaii's unconstitutional civil asset forfeiture laws can be reformed.

Given the recent (2019) Supreme Court decision saying civil forfeiture may constitute excessive fines by the states banned under the 8th amendment to the Constitution; Hawaii may be forced to pay a heavy financial cost if it continues to unreasonably seize property, i.e., in the form of back interest.

In *Timbs v Indiana* the Supreme Court upheld (9-0) a broad constitutional protection of property rights. The majority opinion incorporated the Eighth Amendment through the 14th Amendment's due process clause, which states that "nor shall any state deprive any person of life, liberty, or property, without due process of law." In addition Justices Gorsuch and Thomas argued that the ban on excessive fines should be incorporated through the privileges or immunities clause, which states, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

There have been recent cases, where after an expensive lengthy court battle States have been forced to return property WITH INTEREST.

But overriding any future financial hardship on the State, the financial hardship on Hawaiian citizens is immediate, real, onerous... and just unfair

Dr Donn J. Viviani
Palolo Oahu

HB-2069-HD-1

Submitted on: 3/9/2020 8:43:13 AM

Testimony for JDC on 3/10/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
D. Choy	Individual	Support	No

Comments:

Law enforcement across the country has grown to rely upon the income provided by civil asset forfeiture, to the point where policing for profit has become the norm. As a society we would not stand for any other branch of government having the power to confiscate assets on mere suspicion without any input from the voters for financing. Imagine the President by decree confiscating assets from private citizens they deem criminals to fund programs they wanted.

Right now, politicians quietly discussing possible tax increases generates massive outrage. Red flag laws have resulted in huge rallies. So why would we tolerate the abuse, both real and hypothetical that civil asset forfeiture presents when we will not tolerate that anywhere else? Underfunded policing is an issue, but relying upon civil asset forfeiture, which appears to be heavily arbitrary, not transparent, and without due process is not the solution to plugging the financial gap.

I strongly recommend that legislators read the auditor's report on the asset forfeiture program to see just how broken the program has become. The audit already has uncovered that in at least 26% of the cases, that Hawaii's civil asset forfeiture laws have been wildly abused, seizing assets from people who were never charged. Another 4% were forfeited after the charge was dismissed. A disturbing lack of rules and internal controls, poor tracking of assets and petitions, failure to allocate money as required by law to drug prevention, and lack of financial reporting plague this program. Civil asset forfeiture is often one of the first programs cited as government out of control. Pass this bill to bring it back under control.

TO: The Honorable Representative Chris Lee
Chair Senate Committee on Judiciary

The Honorable Joy A. San Buenaventura,
Vice Chair Senate Committee on Judiciary

Hearing: Tuesday, March 10 @ 10:00 am Room 016

From: David Shaku

Strong Support for HB 2069

Dear Chair Chris Lee, Vice Chair Joy A. San Buenaventura, and members of the committee:

The current procedure of civil asset forfeiture is blatantly unconstitutional and has been proven similar in scope with practices already ruled as such by the U.S. Supreme Court.

U.S. Constitution, Amendment VIII:

“Excessive bail shall not be required, **nor excessive fines imposed**, nor cruel and unusual punishments inflicted”.

U.S. Constitution, Amendment XIV, Section 1:

“All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. **No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”**

On February 20th, 2019, the United States Supreme Court heard the case of Tyson Limbs from Indiana. After Mr. Limbs was caught selling heroin to an undercover police officer for \$400, he was arrested and his Land Rover, estimated at \$42,000, was seized. In a surprise decision, the U.S. Supreme court ruled in Mr. Limbs favor, citing the value of the Land Rover as a fine excessive and disproportionate to the crime.

Furthermore, our law enforcement officers deserve to be able to sustain themselves without resorting to criminal shakedowns. If they are dependent on civil asset forfeiture to fund their basic functions, we should be asking ourselves why we as a community are not supporting them by funding them properly.

Our law enforcement agencies have enough work on their plate that they should not have to sing for their supper.

Thank you for the opportunity to testify.

LATE

HB-2069-HD-1

Submitted on: 3/9/2020 10:09:29 AM

Testimony for JDC on 3/10/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Teri Heede	Individual	Support	No

Comments:

LATE

HB-2069-HD-1

Submitted on: 3/9/2020 2:39:13 PM

Testimony for JDC on 3/10/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Staley	Individual	Support	No

Comments:

LATE

HB-2069-HD-1

Submitted on: 3/9/2020 3:51:50 PM

Testimony for JDC on 3/10/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Heather Lusk	Individual	Support	No

Comments:

I strongly support HB 2069, 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. Requiring a conviction before property is permanently seized and forfeited and channeling proceeds to the General Fund represent a significant improvement over existing law and practices in Hawai'i.

In 2018 [the Hawai'i 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." The rules promulgated by the Attorney General earlier this year are a pro forma declaration of administrative procedures and are not responsive to the auditor's findings or last year's legislative deliberations.

HHHRC 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 misuse and underlying mental health conditions. Current law governing asset forfeiture harms innocent property owners who do not have the economic means to post bond or hire an attorney to secure their property; they are effectively left without legal recourse. *Those with little or no economic means should have adequate access to equal justice under law.* This measure helps to ensure that due process of law, undermined by current asset forfeiture practices, is provided to those who would not otherwise be afforded such when their property is seized and permanently forfeited.