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GOVERNOR OF HAWAII



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

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
WAYS & MEANS**

**Tuesday, March 17, 2020
2:17 PM
State Capitol, Conference Room 211**

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

House Bill 2069, House Draft 1, Senate 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



LATE

HB2069 HD1 SD1
RELATING TO PROPERTY FORFEITURE
Senate Committee on Ways and Means

March 17, 2020

2:17 p.m.

Room 211

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on HB2069 HD1 SD1, which would provide specific substantive and procedural safeguards for the state's system of civil asset forfeiture. Specifically, this measure would prohibit asset forfeiture unless a property owner has been convicted of a covered offense; moreover, the instant draft would also raise the standard of proof for forfeiture, to require that property be shown by the state to have been used in a covered crime "beyond a reasonable doubt." In addition, this measure would sever the funding ties between the agencies involved in investigating and prosecuting seizures and forfeitures and the proceeds generated by these forfeitures. **This measure would apply national best practices to our civil asset forfeiture system and, as currently drafted, would provide new, bold protection for Hawai'i's citizens and their property from unnecessary and unjust forfeiture.**

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.

Accordingly, OHA is interested 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

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.

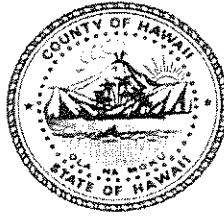
administration of our asset forfeiture laws generally. Without clear assurances that our asset forfeiture laws have been and will be implemented appropriately, greater substantive and procedural statutory safeguards may be both prudent and necessary.

OHA therefore appreciates this measure, as well as the amendments made to strengthen the instant draft, which would address many of the concerns highlighted by the 2018 audit and provide procedural and substantive safeguards for the state's system of asset forfeiture. As drafted, **HB2069 HD1 SD1 proposes a robust new civil asset forfeiture system with clear mechanisms to ensure fairness, transparency, and accountability in the administration of our asset forfeiture laws.**

Mahalo piha for the opportunity to testify on this measure.

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN OPPOSITION TO HOUSE BILL 2069, HD 1, SD 1

A BILL FOR AN ACT RELATING TO PROPERTY FORFEITURE

COMMITTEE ON WAYS AND MEANS
Sen. Donovan Dela Cruz, Chair
Sen. Gilbert S.C. Keith-Agaran, Vice Chair

Tuesday, March 17, 2020, 2:17 p.m.
State Capitol, Conference Room 211

Honorable Chair Dela Cruz, Honorable Vice Chair Keith-Agaran, and Members of the Committee on Ways and Means, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in **STRONG OPPOSITION** to House Bill 2069, HD 1, SD 1.

This measure prohibits civil asset forfeiture unless the covered offense is a felony for which the property owner has been convicted, changes the standard of proof that the State must meet in order for property to be forfeited; requires that the State prove that owner consented to or possessed knowledge of the crime that led to the seizure, and requires the Attorney General to deposit the net proceeds of the forfeited property to the credit of the state general fund

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 of methamphetamine, heroin, cocaine, and/or fentanyl, constitutes the vast majority of the covered offenses that trigger asset forfeiture, and any property is seized pursuant to the strict rules and guidelines already set forth by the Attorney General, which includes the clear and timely process by which an owner of forfeited property can request remission/mitigation from the Attorney General or seek a judicial determination within the Circuit Court.

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, 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, including salaries of program staff, as well as the portion of the fund directed to 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, SD 1. Thank you for the opportunity to testify on this matter.



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

TESTIMONY IN SUPPORT OF HB 2069, HD 1, SD 1

TO: Chair Dela Cruz, Vice Chair Keith-Agaran, and Ways & Means Committee Members

FROM: Nikos Leverenz
DPFH Board President

DATE: March 17, 2020 (2:17 PM)

Drug Policy Forum of Hawai'i (DPFH) **strongly supports** HB 2069, HD 1, SD 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.

TESTIMONY IN SUPPORT OF HB 2069, HD 1, SD 1

TO: Chair Dela Cruz, Vice-Chair Keith-Agaran, and Ways & Means Committee Members

FROM: Nikos Leverenz
Grants, Development & Policy Manager

DATE: March 17, 2020 (2:17 PM)

Hawai'i Health & Harm Reduction Center (HHRC) supports HB 2069, HD 1, SD 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 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.**

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.



March 17, 2020

2:17 p.m.

Hawaii State Capitol

Conference Room 211

To: Senate Committee on Ways and Means

Senator Donovan M. Dela Cruz, Chair

Senator Gilbert S.C. Keith-Agaran, Vice Chair

From: Grassroot Institute of Hawaii

Joe Kent, Executive Vice President

Re: HB2069 HD1, SD1 — RELATING TO PROPERTY FORFEITURE

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on HB 2069, which would significantly reform the practice of asset forfeiture in the state.

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.

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

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>

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>.

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



ADA

HAWAII

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March 16, 2020

TO: Chair Dela Cruz and members of WAM Committee

RE: HB 2069 HD1 SD1 Relating to Property Forfeiture

Support for hearing on March 17

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 2069 HD1 SD1 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

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COMMITTEE ON WAYS AND MEANS

Sen. Donovan Dela Cruz, Chair

Sen. Gilbert Keith-Agaran, Vice Chair

Tuesday, March 17, 2020

2:17 pm – Room 211

STRONG SUPPORT for HB 2069 HD1, SD1 – ASSET FORFEITURE

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran 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 accountability and transparency, Community Alliance on Prisons supports HB 2069 HD1, SD1.

The Attorney General has finally created rules for this rogue program that has earned Hawai'i "D-" scores in both 2010 and 2015 Institute of Justice studies.

John Oliver did a great show looking into civil forfeiture across the U.S. that is worth watching. Here is the link: <https://www.youtube.com/watch?v=3kEpZWGgJks>.

In light of the public embarrassment of the Kealoha-Kaneshiro scandals, Community Alliance on Prisons hopes the government will lean more toward openness, accountability, and transparency with the public. Please be a beacon of hope for us!

Community Alliance on Prisons urges the committee to pass this important measure that will demonstrate to the public that you hear us.

Mahalo for this opportunity to testify.

HB-2069-SD-1

Submitted on: 3/16/2020 2:12:09 PM

Testimony for WAM on 3/17/2020 2:17:00 PM

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

Comments:

To: Chair Dela Cruz, Vice Chair Keith-Agaran and Committee Members

From: Wendy Gibson-Viviani RN

RE: HB2069 (Support)

Aloha Chair Dela Cruz, Vice Chair, Keith-Agarana and Committe Members,

My name is Wendy Gibson and I strongly support HB 2069, HD 1, SD1 which would reform Hawai'i's civil asset forfeiture law, requiring a felony conviction before property is permanently forfeited.

The case is clear that we need to reform this system. In a 2018 report, the Hawai'i State Auditor noted that 26% of persons who had their property seized and forfeited were never charged with a crime. Getting property back is so much of a struggle that about 85% of the forfeiture cases are uncontested. When property is seized, bank accounts are also frozen, making it nearly impossible for the accused to hire an attorney to defend his/herself.

I believe we need to return to the basic premise that a person is innocent until proven guilty—and only then is asset forfeiture possibly warranted. Currently, all that needs to be shown by a preponderance of the evidence is that the property is tied to a crime—and then the property is considered to be “guilty”.

Law enforcement has little incentive to convict an accused person because there is such a large financial gain with forfeiture—millions of dollars each year that are shared by our police, prosecuting attorneys and the Attorney General. We need a better model.

Thank you for your thoughtful consideration of this important issue.

Wendy Gibson-Viviani RN

Palolo