



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1467, RELATING TO PROPERTY FORFEITURE.

**LATE**

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, February 5, 2019

**TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Room 016

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

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General ("Department") provides comments on this measure. This bill proposes major changes to the asset forfeiture program. One of the significant changes is removing the administrative forfeiture proceedings from the Department to the courts and the distribution of property and money from units of state and local governments to the general fund for public education. The bill, however, keeps intact the Department's responsibilities for receiving forfeited property, selling or destroying the forfeited property, compromising/paying valid claims and make other disposition authorized by law.

With these responsibilities, the bill is unclear as to how or when the Department's costs and expenses will be paid. In Section 11 of the bill, Disposition of property forfeited, money and sale proceeds after payment of administrative expenses shall be distributed to the general fund for public education purposes. The bill, however, also establishes within the Department a revolving fund to be known as a criminal forfeiture fund in which a sufficient amount of portion of sale proceeds be used to cover expenses of administration and sale. The Department is concerned that it may be required to carry out responsibilities under the forfeiture program but lacks funds to fulfill these requirements. We recommend that this measure be held. Thank you for the opportunity to testify.

**Justin F. Kollar**  
Prosecuting Attorney

**Jennifer S. Winn**  
First Deputy



**Rebecca A. Vogt Like**  
Second Deputy

**Diana Gausepohl-White**  
Victim/Witness Program Director

**OFFICE OF THE PROSECUTING ATTORNEY**

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

February 5, 2019

**RE: S.B. 1467: RELATING TO PROPERTY FORFEITURE.**

Chair Rhoads, Vice-Chair Wakai, and members of the Senate Committee on Judiciary, the Office of the Prosecuting Attorney of the County of Kauai, opposes this measure.

This bill, via a variety of substantial measures, will make it substantially more difficult (time consuming and expensive) for law enforcement agencies to seize and forfeit property via civil forfeiture proceedings. For example, the standard of proof in asset forfeiture cases is proposed to increase from a "preponderance of the evidence" to proof "beyond a reasonable doubt."

We urge lawmakers to consider the effect of this bill on our communities and families: where specific drug traffickers are prosecuted, but their property - the tools of the trade - remains available, the opportunity is increased for new people to step into their shoes to keep the drug organization alive and functioning.

We also urge lawmakers to consider which communities will be most affected should this bill pass - poorer communities and families are impacted most when drug organizations are allowed to survive. They live next to the drug houses (with drug patrons arriving at all hours of the night) and have to deal with the negative impacts of drug houses. It's easy to say "let's reform the asset forfeiture chapter and make it substantially harder for law enforcement to prove their asset forfeiture cases" when one does not live in a community where drugs are routinely trafficked.

We also urge lawmakers to consider the national sentiment pushback against asset forfeiture is largely arising in reaction to mainland states and communities where asset forfeiture is used in a discriminatory manner – minorities being targeted for asset forfeiture investigations in much greater proportion than their population proportion to the community at large. This has not been shown to be a problem here in Hawaii.

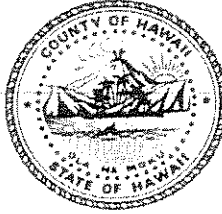
We urge lawmakers to consider the deterrent effect of our current asset forfeiture laws. When a person sells drugs out of their car and is caught, the car is taken out of their possession nearly immediately. The mechanism for their drug sales is immediately taken away. In contrast, the criminal prosecution of the drug case can take years and often in drug cases, persons are released on bail pending trial, so if they have continued use of their vehicles, they can continue to sell drugs.

Finally, an auditor will find problems in almost any organization he or she audits. The June 2018 auditor's report of the Hawaii asset forfeiture program does not justify the fundamental changes to the Hawaii asset forfeiture program (increase in standard of proof, elimination of the administrative process, etc.) proposed in this bill.

Thank you for this opportunity to testify on this bill.

MITCHELL D. ROTH  
PROSECUTING ATTORNEY

DALE A. ROSS  
FIRST DEPUTY  
PROSECUTING ATTORNEY



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## OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN OPPOSITION TO SB1467

A BILL FOR AN ACT RELATING TO CIVIL ASSET  
FOREITURE

COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair  
Senator Glenn Wakai, Vice Chair

Tuesday, February 5, 2019, 9:00 a.m.  
State Capitol, Conference Room 016

Honorable Chair Rhoads, Honorable Vice Chair Wakai, and Members of the Committee on Judiciary, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in **STRONG OPPOSITION** to Senate Bill 1467.

This measure prohibits civil asset forfeiture by reason of the commission of a covered offense, to the extent of the property owner's interest, unless the covered offense is a felony for which the property owner has been convicted, increases the standard of proof, and directs the proceeds to the general revenue fund.

According to the CDC, in 2017 over 70,000 people died as a result of drug overdose. The Hawai'i's Asset Forfeiture Program is one of the most successful ways to undermine the economic infrastructure of drug traffickers and other criminal enterprises. Criminal enterprises generate a profit from the sale of their "product" or "services" through criminal activity. Asset forfeiture can immediately remove the tools, equipment, cash flow, profit, and sometimes the product itself from the criminals and the criminal organization, rendering the criminal organization powerless to operate.

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

We believe the changes suggested in SB1467 would create a more time consuming, expensive and difficult process, which would weaken the deterrent effect of our current asset forfeiture laws. There needs to be further discussion on the ramifications of reducing law enforcement's ability to deter these criminal enterprises, as well as time to allow for the adoption of the updated Administrative Rules – and the clarity and conformity they will bring – likely resulting in improved outcomes.

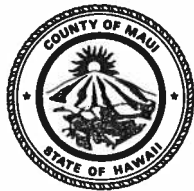
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National pushback against asset forfeiture is largely arising in reaction to mainland states and communities where asset forfeiture has been shown to be used in a discriminatory manner – this has not been shown to be a problem here in Hawaii.

The Office of the Prosecuting Attorney, County of Hawai'i believes that the current asset forfeiture program is not being abused and we remain committed to the cause of ensuring that any property forfeited is within the interest of justice.

For the foregoing reasons, the Office of the Prosecuting Attorney, County of Hawai'i, **STRONGLY OPPOSES** the passage of Senate Bill No. 1467. Thank you for the opportunity to testify on this matter.

MICHAEL P. VICTORINO  
Mayor



JOHN D. KIM  
Acting Prosecuting Attorney

ROBERT D. RIVERA  
Acting First Deputy Prosecuting Attorney

**LATE**

DEPARTMENT OF THE PROSECUTING ATTORNEY  
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CONTACT: PETER A. HANANO  
Deputy Prosecuting Attorney  
Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY  
ON  
SB 1467 - RELATING TO PROPERTY FORFEITURE

February 4, 2019

The Honorable Karl Rhoads  
Chair  
The Honorable Glenn Wakai  
Vice Chair  
and Members  
House Committee on Judiciary

Honorable Chair Rhoads, Vice Chair Wakai and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, STRONGLY OPPOSES SB 1467 - Relating to Property Forfeiture. This bill seeks to drastically overhaul Hawai'i's current laws pertaining to civil asset forfeiture.

The asset forfeiture program is an administrative or civil matter, and does not relate to criminal proceedings by its very nature. The purposes for the asset forfeiture program are to take away the means and profit of criminal activity, and to serve as a deterrent, and is not the criminal process itself.

Additionally, this bill seeks to make the civil forfeiture heavily reliant upon the disposition of the covered offense rather than treat the civil forfeiture as an independent civil or administrative action. This could create problems. For example, it appears that a civil forfeiture proceeding cannot be commenced until the criminal case is final. This will undoubtedly cause statute of limitations issues for the civil forfeiture cases.

Furthermore, the bill does not provide for acquittals that will be appealed by a prosecuting attorney in the intermediate and supreme courts, abandoned property or proceeds

seized in criminal activity where an actual owner can be determined, or possible dismissals of criminal cases based on court rule technicalities. It also fails to consider cases where the property owner has fled the jurisdiction and cannot be located or extradited.

Finally, we believe that the bill will create internal conflicts in Chapter 712A. The bill does not conform other provisions in Chapter 712A, and will create conflicts in the interpretation of laws.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, STRONGLY OPPOSES the passage of this bill. We ask that the committee HOLD SB 1467.

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

**LATE**

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

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KEITH M. KANESHIRO  
PROSECUTING ATTORNEY

ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY



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

February 5, 2019

**RE: S.B. 1467; RELATING TO PROPERTY FORFEITURE.**

Chair Rhoads, Vice-Chair Wakai 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 S.B. 1467.

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

Current forfeiture laws are used to immediately and effectively disrupt the infrastructure of criminal activity and protect the community. This is a civil legal process that operates independently from any related criminal cases, much like civil lawsuits and criminal charges proceed independently from each other in other circumstances. Via asset forfeiture, the manufacturing, packaging, distribution, and sale of illegal drugs can be immediately thwarted by seizing the materials, tools, equipment, cash, vehicles, and other items related to these enterprises. The changes proposed by S.B. 1467 would significantly compromise law enforcement’s ability to deter this illegal conduct, and in turn the safety of our neighborhoods, by conflating the relevant civil and criminal standards and proceedings and upending a generally well-conceived and well-established program.



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

Before any drastic changes, such as those proposed in S.B. 1467, are made to Hawaii’s forfeiture laws, further discussion and review should take place, at a minimum, to study its impact on law enforcement and the safety of the public. In 2016, the Legislature considered a bill (S.B. 2149) to require that the Department of the Attorney General establish a working group to review and discuss Hawaii’s forfeiture laws and make recommendations to improve these laws, including identifying any areas of concern or abuse. While we firmly believe that Hawaii’s asset forfeiture program is generally well-conceived and well-operated, we understand that “nothing is perfect,” and are open to being part of a process to evaluate all areas of the program.

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

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes S.B. 1467. Thank for you the opportunity to testify on this matter.

**SB-1467**

Submitted on: 2/3/2019 3:53:45 PM

Testimony for JDC on 2/5/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tracy Ryan	Testifying for The Libertarian Party of Hawaii	Support	No

Comments:

The abuse of civil forfeiture laws needs to stop. This has been going on for decades.



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

TO: Senate Committee on Judiciary  
FROM: Carl Bergquist, Executive Director  
HEARING DATE: February 5, 2019, 9AM  
RE: SB1467, Relating to Property Forfeiture, **SUPPORT**

Dear Chair Rhoads, Vice Chair Wakai and Committee Members:

The Drug Policy Forum of Hawai'i (DPFHI) **strongly supports** this measure to thoroughly reform Hawaii's outdated civil asset forfeiture law. That law itself is a relic of the 1980s War on Drugs, and its current language consigns Hawaii to the very bottom of a nationwide ranking of similar laws. In short, it allows for the use of an upside down civil process to seize people's assets after using the low "preponderance of the evidence" standard to establish a connection to an alleged crime. Requiring a conviction related to the property seizure, as SB1467 does, brings a modicum of justice into the process. We also applaud the introduction of the "beyond a reasonable doubt" standard of proof, the termination of the use of administrative proceedings to handle forfeiture cases and the removal of the profit incentive for law enforcement to conduct seizures in the first place.

At the very latest, the revelations in the Auditor's Report "Audit of the Department of the Attorney General's Asset Forfeiture Program" (18-09) amply highlighted the degree to which the forfeiture had been shrouded in a lack of accountability and injustice.<sup>1</sup> There were no administrative rules, no policies or procedures and no responsible manager in place for a program that oversaw the seizure and sale of innocent people's assets. Orwellian is an apt term here. Further, the guidance for property owners to recover property lost was completely insufficient. For many people, one day without a vehicle unjustly seized can mean the lost of a job and devastation for a family. At this point, we must remind ourselves that this program nominally exists to tackle crime and

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

target drug kingpins. The innocent here are not collateral damage of a possibly unconstitutional policy, but of a dereliction of duty of their own highest law enforcement officer, the Department of the Attorney General.

DPFH was recently party to an amicus brief filed in the U.S. Supreme Court in a case involving forfeiture, [Timbs v. Indiana](#).<sup>2</sup> While the case may be narrowly decided to rule that the Excessive Fines Clause of the Eight Amendment of the US Constitution applies to the states, at its heart it involved a forfeiture case of vehicle worth far more than the crime at issue. In the amicus, we ensured that the Hawai'i Auditor's report was referenced, highlighting that a whopping 85% of forfeiture cases were uncontested between 2006 and 2015.<sup>3</sup> In June, the Court appears likely to rule for Mr. Timbs and his vehicle in the aforementioned narrow fashion. One day, however, it is likely to return to the issue of forfeiture laws like Indiana's and strike them down as well. If SB1467 is adopted by the Legislature, we may well have nipped that issue in the bud.

Mahalo for the opportunity to testify.

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

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

**SB-1467**

Submitted on: 2/4/2019 8:52:26 AM

Testimony for JDC on 2/5/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:



Hawai'i

**LATE**

Committee: Senate Committee on Judiciary  
Hearing Date/Time: Tuesday, February 5, 2019, 9:00 a.m.  
Place: Conference Room 16  
Re: Testimony of the ACLU of Hawai'i in Support of S.B. 1467, Relating to Property Forfeiture

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

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes in support of S.B. 1467, which would implement multiple necessary reforms to Hawai'i's civil asset forfeiture law by, prohibiting forfeiture except in cases where the property owner has been convicted of a covered misdemeanor or felony offense, and eliminating the profit incentive to seize property by directing all forfeiture proceeds to the general fund for public education. This measure is timely in light of the recent State Auditor's report, which found that the State uses the asset forfeiture system to deprive individuals of their property without ever having to convict the property owner of a crime.

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

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

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

American Civil Liberties Union of Hawai'i  
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Chair Rhoads and Members of the Committee on Judiciary  
February 5, 2019  
Page 2 of 2

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

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

Each provision of this legislation is necessary to rectify the harms caused by our current system and to prevent its continued abuse. We therefore urge the Committee to pass this measure as written.

Thank you for the opportunity to testify.

Sincerely,



Mandy Fernandes  
Policy Director  
ACLU of Hawai'i

*The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for 50 years.*

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

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

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**SB-1467**

Submitted on: 1/31/2019 5:50:28 PM

Testimony for JDC on 2/5/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Victor K. Ramos	Individual	Oppose	No

Comments:



**SB-1467**

Submitted on: 1/31/2019 9:45:57 PM

Testimony for JDC on 2/5/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joseph Brown III	Individual	Support	No

Comments:

Aloha Chair Rhoads, Vice Chair Wakai, and Members,

I strongly SUPPORT this bill. Civil asset forfeiture in its current state is unjust, and is one symptom of the larger problem that is our criminal justice system. Due process is a cornerstone of our free and democratic society, and this bill would strengthen it. Please vote YES.

Mahalo,

Joey Brown, Kailua, HI

**SB-1467**

Submitted on: 2/4/2019 8:28:32 AM

Testimony for JDC on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Polk	Individual	Support	No

Comments:

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

I STRONGLY SUPPORT SB 1467 that would restrict asset forfeiture to criminal cases in which the property owner has been **convicted** of a misdemeanor or felony and also changes the standard of proof in cases in which the owner of the property is charged with having had knowledge of or consented to the crime. Asset forfeiture currently allows a substantial miscarriage of justice by allowing seizure of property on "suspicion" of a crime or of consent to a crime, even when no crime is charged or adjudicated. It has also resulted in ludicrous court proceedings with such as, "The State of Hawaii vs. Honda Civic automobile License number XYZ###."

I expect that, for monetary reasons, there will be substantial opposition to this bill from entities that have profited from it. However, in the interests of justice, no program, person or department should be funded by an unjust procedure, and that is especially true for the various parts of the justice system itself.

This bill is long overdue and I urge you to pass it.

Thank you,

Barbara Polk

**SB-1467**

Submitted on: 2/4/2019 11:40:18 AM

Testimony for JDC on 2/5/2019 9:00:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Destiny Brown	Individual	Support	No

Comments:

Aloha Committe Chair and Members,

I am writing in support of SB1467.

Thank you,

Destiny Brown

Constituent Senate District 25

Constituent House Distrct 13

Student Hawaii Pacific University

**LATE**

**SB-1467**

Submitted on: 2/4/2019 4:34:08 PM  
Testimony for JDC on 2/5/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Heather Lusk	Individual	Support	No

Comments:

**LATE**

# the Drug Policy Action Group

A sister organization of the Drug Policy Forum of Hawai'i

*Dedicated to safe, responsible, humane and effective drug policies*

**TO:** Senate Committee on Judiciary  
**FROM:** Nikos Leverenz, Board President  
**DATE:** February 5, 2019  
**RE:** **SB 1467 -- RELATING TO FORFEITURE -- SUPPORT**

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Chair Rhoads, Vice Chair Wakai, & Committee Members:

Drug Policy Action Group (DPAG) **strongly supports** SB 1467, which would substantially reform this state's civil asset forfeiture program to help protect the rights of innocent property owners and assert legislative control over a program that has been marked by a long record of executive mismanagement.

Hawai'i's asset forfeiture practices have received national attention for not adequately protecting individual property rights against seizure and forfeiture. Last June, the Hawai'i State Auditor found significant administrative deficiencies that have been :

*"Our audit found that, even after nearly 30 years since the program's inception, the department has not yet adopted administrative rules describing procedures and practice requirements for asset forfeiture. Without these rules, the program provides only informal, piecemeal guidance to law enforcement agencies and the public. We also found that the asset forfeiture program lacks policies and procedures, and has a program manager who did not guide and oversee day-to-day activities and financial management....*

*"[W]ithout policies, procedures, and a manager to guide and oversee day-to-day activities and financial management, 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."*

(Hawai'i State Auditor, "[Audit of the Department of the Attorney General's Asset Forfeiture Program](#)," June 2018.)

Importantly, this bill specifically directs that the proceeds of asset forfeiture be redirected from law enforcement channels to the state's general fund for the purpose of education. This helps ensure that those who are enforcing Hawai'i state law are doing so on behalf of the state of Hawai'i and not to augment their departmental salaries, as the State Auditor found in its report. This practice runs afoul of clear statutory direction. As this bill moves forward, legislators may wish to dedicate asset forfeiture proceeds to the general fund without restriction so that it may be dedicated to their year-to-year budgetary priorities.

One other amendment worthy of consideration would be to preclude the adoption of forfeiture actions by the federal government under its equitable sharing program. This would help ensure that state and local law enforcement does not have a financial incentive to circumvent the prospective heightened protections of state law for innocent property owners and the intent of the legislature to dedicate asset forfeiture proceeds to the general fund.

Thank you for the opportunity to testify on this important reform measure to ensure that Hawai'i government with fairness, transparency, and regard for due process of law.

Below I have attached the text of a published opinion-editorial I co-authored with Jennifer McDonald of the Institute for Justice last year. ("[Civil Forfeiture Law Needs Reform](#)," *Honolulu Star-Advertiser*, June 27, 2018.)

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Hawaii's auditor made headlines this month when it published a scathing audit of the state attorney general's asset forfeiture program. The long-delayed report, requested in 2016 by state Rep. Joy San Buenaventura of Puna, is the first on the issue in over two decades.

Under civil forfeiture, police and prosecutors can take and permanently keep a person's cash, car or other property without ever charging them with a crime. In 2015, the audit found, more than 1 in 4 forfeiture cases involved no corresponding criminal charges.

Making matters worse, Hawaii law allows police, prosecutors and the attorney general to keep and split 100 percent of forfeiture proceeds between them. This gives agencies an enormous incentive to forfeit property and spend the proceeds on virtually whatever they want, without traditional budgeting controls. As the audit notes, state forfeiture proceeds totaled around \$11.6 million between 2006 and 2015.

Yet for over three decades, Hawaii's attorney general has failed to govern the forfeiture program reliably, leading to mismanagement of forfeiture cases and seized property. In one of the audit's more shocking findings, the state AG's Office consistently failed to comply with a state law requiring it to use 20 percent of its share of forfeiture proceeds for drug

prevention programs. While the office should have allocated more than \$2 million in forfeiture revenue to such programs over the past 13 years, the audit could identify no such spending.

Yet during that time, over \$2.6 million in forfeiture revenue was spent on salaries. It shouldn't take an audit and 13 years to learn that millions were funneled into executive branch salaries while legislators and the public are left in the dark.

The results are a wake-up call for lawmakers and the governor. It is time to overhaul civil forfeiture in Hawaii.

First, the state needs to strengthen safeguards for innocent property owners. Hawaii should follow the lead of Nebraska and New Mexico and abolish civil forfeiture outright and replace it with criminal forfeiture. In those states, property is forfeited as part of a criminal proceeding and only after a conviction or plea deal.

Short of abolition, lawmakers can make it easier for property owners to fight back. Hawaii is one of only three states that require owners to post a bond before they can challenge forfeiture of their own property in court.

As a 2016 investigation by the Honolulu Star-Advertiser showed, innocent property owners have little incentive to assert their rights when seized property is less than the cost of the bond, much less the cost of legal counsel. The audit found that 85 percent of forfeiture cases went uncontested. The state should repeal its obstructive bond requirement.

In addition, Hawaii should follow Arizona and Colorado and adopt robust transparency laws that hold agencies accountable for their forfeiture activity and spending. Currently, public oversight is minimal in Hawaii. The state requires law enforcement agencies to report only the most basic details about the value and type of property they seize and forfeit for inclusion in the attorney general's annual forfeiture reports. Moreover, those reports provide only the attorney general's topline expenditures and are silent about how individual agencies spend their share.

Forfeiture accounts should also be subject to routine oversight, including annual independent audits, so that problems can be easily identified and quickly corrected. The public has a right to know immediately about any improper forfeiture spending.

As long as Hawaii allows law enforcement agencies to forfeit property and spend the proceeds with little public accountability, similar behavior will continue. Meaningful forfeiture reform is critical to protect the property rights and civil liberties of innocent property owners.