

DAVID Y. IGE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the House Committee on  
FINANCE**

**Wednesday, March 31, 2021  
2:30 PM**

**State Capitol, Via Videoconference, Conference Room 308**

**In consideration of  
SENATE BILL 294, SENATE DRAFT 1, HOUSE DRAFT 1  
RELATING TO PROPERTY FORFEITURE**

Senate Bill 294, Senate Draft 1, House Draft 1 proposes to restrict civil asset forfeiture to cases involving the commission of a felony offense for which the property owner has been convicted, and directs any forfeiture proceeds to the 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

STATE OF HAWAI‘I  
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,  
State of Hawai‘i to the House Committee on Finance**

March 31, 2021

S.B. No. 294 SD1 HD1: RELATING TO PROPERTY FORFEITURE

Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Office of the Public Defender respectfully supports S.B. No. 294 SD1 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 owner is presumed to be guilty until the owner proves that they are innocent and that the seized property therefore should not be forfeited. In other words, the owner must prove (1) that they were not involved in criminal activity and (2) that they either had no knowledge that the property was being used to facilitate the commission of a crime or that they 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, seized property was forfeited without a corresponding criminal charge in 26% of the asset forfeiture cases. *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.

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 S.B. No. 294 SD1 HD1.



**SB294 SD1 HD1**  
RELATING TO PROPERTY FORFEITURE  
Ke Kōmike Hale o ka ‘Oihana ‘Imi Kālā  
House Committee on Finance

Malaki 31, 2021

2:30 p.m.

Lumi 308

The Office of Hawaiian Affairs (OHA) offers **COMMENTS** on SB294 SD1 HD1, which would restrict the use of civil asset forfeiture to cases where the covered offense is chargeable as a felony under state law and the property owner has actually been convicted of the covered offense. This measure may provide a much needed opportunity to address longstanding issues with the administration of Hawai‘i’s civil asset forfeiture laws, including with regards to their potential impact on the Native Hawaiian community.

OHA beneficiaries 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.<sup>1</sup> Meanwhile, OHA’s 2010 report, *The Disparate Treatment of Native Hawaiians in the Criminal Justice System*, notes that Native Hawaiians are convicted for drug-related offenses at much higher rates even though Native Hawaiian drug use is not higher when compared to other ethnic groups.<sup>2</sup> Thus, in addition to bearing a disproportionate burden of the state’s overwhelmingly punitive response to drug use, Native Hawaiians may also be exposed to a much higher risk of drug-related asset seizures and forfeitures.

Accordingly, OHA has a keen interest in ensuring that Hawai‘i’s asset forfeiture laws are administered in a fair, transparent, and accountable manner. OHA is especially concerned in light of a 2018 audit of the Attorney General’s asset forfeiture program, which found significant and longstanding deficiencies with regard to transparency and accountability in the administration of the current asset forfeiture laws. Importantly, the report noted that “[b]ecause the bar to seize and forfeit property is so low... the program [must be managed] with a heightened degree of transparency and accountability.”<sup>3</sup> **Until the state can establish clear mechanisms to ensure fairness, transparency, and accountability in the administration of its asset forfeiture program—especially with regard**

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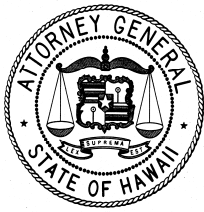
<sup>1</sup> From 2006 to 2015, drug related offenses composed 78 percent of the covered offenses resulting in forfeiture cases. OFFICE OF THE AUDITOR, STATE OF HAWAII, AUDIT OF THE DEPARTMENT OF THE ATTORNEY GENERAL’S ASSET FORFEITURE PROGRAM 14-15 (2018).

<sup>2</sup> 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](http://www.oha.org/wp-content/uploads/2014/12/ir_final_web_rev.pdf).

<sup>3</sup> OFFICE OF THE AUDITOR, STATE OF HAWAII, AUDIT OF THE DEPARTMENT OF THE ATTORNEY GENERAL’S ASSET FORFEITURE PROGRAM 2 (2018).

**to its impact on the Native Hawaiian community—it may be prudent to limit asset forfeiture to cases that are chargeable as a felony and in which the property owner has been convicted of the underlying offense.**

Mahalo piha for the opportunity to testify on this measure.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2021**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 294, S.D. 1, H.D. 1, RELATING TO PROPERTY FORFEITURE.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Wednesday, March 31, 2021                      **TIME:** 2:30 p.m.

**LOCATION:** State Capitol, Room 308, Via Videoconference

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

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Chair Luke and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

The bill proposes changes to the asset forfeiture program by requiring a conviction of a covered criminal felony offense prior to the forfeiture of any property unless the forfeiture is authorized under other chapters and changing the distribution of civil forfeiture proceeds of property and money from state and local governments to the state general fund. The bill, however, keeps intact the Department's responsibilities for receiving forfeited property, selling or destroying the forfeited property, compromising or paying valid claims, and making other dispositions authorized by law.

Section 2 of the bill, at page 6, line 8, through page 7, line 6, would amend section 712A-5(2)(b), Hawaii Revised Statutes (HRS), by requiring a felony conviction of the property owner in order to allow the forfeiture of property. This change would undermine the purposes of chapter 712A, the asset forfeiture law. In 1988, when the forfeiture law was originally passed, the Legislature made it clear that the intent of the law was to take the profit out of crime, deter criminality, and protect the community. It expressly did not require that property owners who knowingly allow their property to be used in criminal activity themselves be the subject of a criminal investigation or ultimately convicted of any crime; the intent was to seize the *property* being used in

criminal activity, even if the property owners who *knowingly* consented to the use of their property were not themselves engaged in the commission of crimes. This change would also contradict judicial and administrative forfeiture proceedings under section 712A-11(6), HRS, which specifically provides that an acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this chapter.

Civil asset forfeiture greatly assists law enforcement's efforts to combat crime by targeting the property used to further criminal activity. Appropriate limitations already exist to safeguard the very interests identified in this bill. For example, property can be seized only if it has a "substantial connection" to serious crimes, such as murder, kidnapping, gambling, drug trafficking, prostitution, and sex trafficking offenses. Examples of property substantially connected to crimes include the proceeds of criminal offenses (such as money from drug sales) or property used to facilitate the crimes (such as cash used to buy drugs, cars used to transport drugs, devices used for gambling, and residences used as drug houses). Because a civil forfeiture action is brought against property, not individuals, it creates a powerful incentive for owners to use prudence to prevent the illicit use of their property.

The safeguards that already exist in the law include the fact that the initial seizure must be justified by a showing of probable cause, and not mere suspicion, that the property was involved in criminal activity. Notice of forfeiture must then be given to all persons known to have an interest in the property. Owners may contest forfeiture and have their claims decided by a court or administrative official. Additionally, owners can seek remission or mitigation to pardon the property, in whole or in part, due to extenuating circumstances. Also, forfeitures cannot be excessive—the value of the property seized may not be grossly disproportionate to the seriousness of the offense.

The State has the burden to prove, by a preponderance of the evidence, the connection between the property and particular crimes. This standard of proof is used in all civil litigation and requires presentation of competent evidence sufficient to persuade a court that something is more likely than not. As noted above, even if the State meets its burden, owners may ask for remission or mitigation.

Importantly, the civil forfeiture laws are designed to deter crime, not to fund the State's general operations. The threat of forfeiture takes the profit out of crime and creates a risk calculus for property owners deciding whether to use their property to commit crimes. While forfeiture proceeds typically are not used directly to compensate crime victims—restitution orders normally accomplish this—they are used to train law enforcement agencies, promote the safety of the community, and provide a disincentive to criminal activity.

The Department respectfully recommends that the Committee hold this measure. Thank you for the opportunity to testify.



DAVID Y. IGE  
GOVERNOR



MAX N. OTANI  
DIRECTOR

Maria C. Cook  
Deputy Director  
Administration

Tommy Johnson  
Deputy Director  
Corrections

Jordan Lowe  
Deputy Director  
Law Enforcement



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

No. \_\_\_\_\_

TESTIMONY ON SENATE BILL 294, SENATE DRAFT 1, HOUSE DRAFT 1  
RELATING TO PROPERTY FORFEITURE.

By  
Max N. Otani, Director

House Committee on Finance  
Representative Sylvia Luke, Chair  
Representative Ty J.K. Cullen, Vice Chair

Wednesday, March 31, 2021; 2:30 p.m.  
Via Videoconference

Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Department of Public Safety (PSD) offers comments on Senate Bill (SB) 294, Senate Draft (SD) 1, House Draft (HD) 1, which would limit the use of civil asset forfeitures and direct proceeds from civil asset forfeitures to be transferred into the General Fund.

The Department is concerned because civil asset forfeiture is a tool that serves to reduce criminal activity by denying offenders the profits from their crimes.

SB 294, SD 1, HD 1 would restrict civil asset forfeiture to cases in which the property owner has been convicted of an underlying felony offense. However, not all arrests or investigations result in criminal convictions, despite overwhelming evidence. Restricting civil asset forfeitures to property of owners who are criminally convicted does not serve justice or the community. This proposal would only mean that the ill-gotten gains of non-convicted narcotics traffickers, sex traffickers, gambling organizations, and other criminal elements will be retained by those property owners and likely continue to fund future criminal activity.

Criminal investigations often incur substantial expenses, such as, in the use of electronic surveillance equipment, the use of confidential informants, and the purchase of evidence. These investigations can be labor intensive and costly. Maintaining the civil asset forfeitures with the investigative agency as enabled by current law will offset some of the costs of investigations, allowing the agency to conduct further criminal investigations stemming from evidence derived from previous investigations that may be unbudgeted or that it may otherwise be unable to afford.

Thank you for the opportunity to provide this testimony.

**Mitchell D. Roth**  
Mayor



**Paul K. Ferreira**  
Police Chief

**Kenneth Bugado, Jr.**  
Deputy Police Chief

## County of Hawai`i

### POLICE DEPARTMENT

349 Kapi`olani Street • Hilo, Hawai`i 96720-3998  
(808) 935-3311 • Fax (808) 961-8865

March 29, 2021

Representative Sylvia Luke  
Chairperson and Committee Members  
Committee on Finance  
415 South Beretania Street, Room 308  
Honolulu, Hawai`i 96813

RE : SENATE BILL 294, SD 1, HD 1, RELATING TO PROPERTY FORFEITURE  
HEARING DATE : March 31, 2021  
TIME : 2:30 P.M.

Dear Representative Luke:

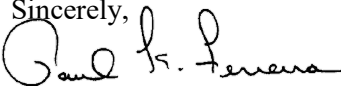
The Hawai`i Police Department **strongly opposes** Senate Bill 294, SD 1, HD 1, which seeks to restrict civil asset forfeiture to cases involving the commission of a felony offense where the property owner has been convicted of an underlying felony offense; as well as directing any forfeiture proceeds to the general fund.

The forfeiture laws are used to ensure those items used to further criminal activity and/or the ill-gotten gains of such activity become items for seizure in accordance with prescribed civil procedures. 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. These prescribed civil procedures are accompanied by attendant ownership rights of appeal.

The changes as proposed by this legislation would significantly compromise law enforcement's ability to combat those who profit from illegal activity through victimization of the community at large. Many of our forfeiture cases are the result of felony drug offenses that cater to those individuals who are involved in fatal traffic collisions, drug overdose deaths, as well as thefts, burglaries, robberies and other crimes in order to afford purchase of illicit narcotics.

It is our position that the current asset forfeiture program in Hawai`i is not being abused and we remain committed to the cause of ensuring that any property forfeited is within the interest of justice. It is for these reasons, we urge this committee to not support this legislation.

Thank you for allowing the Hawai`i Police Department to provide comments relating to Senate Bill 294 SD 1, HD 1.

Sincerely,  
  
PAUL K. FERREIRA  
POLICE CHIEF



MICHAEL P. VICTORINO  
MAYOR

OUR REFERENCE  
YOUR REFERENCE

# POLICE DEPARTMENT

## COUNTY OF MAUI

55 MAHALANI STREET  
WAILUKU, HAWAII 96793  
(808) 244-6400  
FAX (808) 244-6411  
March 29, 2021



TIVOLI S. FAAUMU  
CHIEF OF POLICE

DEAN M. RICKARD  
DEPUTY CHIEF OF POLICE

Representative Sylvia Luke, Chair  
Representative Ty J.K. Cullen, Vice Chair  
Committee on Finance  
Thirty-First Legislature 2021  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

**RE: SENATE BILL 294 RELATING TO PROPERTY FORFEITURE**

Dear Chair Luke and Committee Members:

The Maui Police Department **OPPOSES** Senate Bill No. 294, SD1, HD1 Relating to Property Forfeiture.

This bill proposes that the State “prove beyond a reasonable doubt” as it related to the forfeiture of assets rather than “a preponderance of evidence.”

The State of Hawaii already has the burden of proof to show that an asset has ties to a covered criminal offense before the asset may be forfeited. The current threshold of “a preponderance of evidence” is the standard in civil proceedings throughout the State. Having to “prove beyond a reasonable doubt” is well beyond the scope of civil proceedings and essentially comingling criminal and civil matters. Taking an asset from an individual or criminal enterprise is a way for law enforcement to go after their asset gained from the covered criminal offense. By having asset forfeiture, it lets the criminal element know that the State can and will go after their assets.

In addition, this bill is introducing the following:

“Restricts civil asset forfeiture to cases involving the commission of a felony offense where the property owner has been convicted of an underlying felony offense. Directs any forfeiture proceeds to the general fund.”

If this bill were to pass, it would severely limit law enforcement’s ability to forfeit property from criminal enterprises and/or individuals who profit from committing crimes. Whenever someone commits a crime, any property or proceeds that were gained or used during the commission of a criminal act is subject to civil forfeiture. Law Enforcement has traditionally used this as a tool to leverage against those who profit from said crimes. In particular, drug trafficking organizations obtain large sums of currency and personal property from distribution of drugs to the general public. By limiting forfeiture to felony offenses with an underlying felony conviction, we are crippling law enforcement in their ability to hurt these organizations (and individuals) on

Representative Sylvia Luke, Chair  
March 29, 2021  
Page 2

a financial level. Many offenders DO NOT have a felony conviction for the same or a multitude of crimes. This is due to cooperation by the offender, a plea deal, conviction of a lesser crime or the statute of limitations have run out. This does not mean the offender did not commit the felony offense, it means they utilized the system to avoid a felony conviction. If this bill were to pass, these individuals or enterprises can and will be able to continue their criminal activities because they have the monetary resources to continue. Asset forfeiture is a way of combating this criminal element by taking away their resources and having them start from ground zero.

Another part of this bill, which would direct ANY forfeiture proceeds to the general fund, would also severely limit law enforcement in their ability to combat crime. Most, if not all County/State and Federal police departments rely on forfeiture funds for training, equipment, overtime, etc., all which help law enforcement in their fight against the criminal element. If not for forfeiture funds, funding would have to come out of their individual County and/or State funding, which puts an unnecessary burden on the budget. In turn, State, County and Federal law enforcement entities would not be able to work at an efficient level after being forced to rely on an already abbreviated budget. In addition, law enforcement is responsible for asset forfeiture in the State of Hawaii. What will happen when our asset forfeiture sections discover their work to seize and forfeit property from criminal elements are going into a general fund and not a percentage back into law enforcement? I foresee the forfeiture statistics going way down across the State of Hawaii.

Accordingly, the Maui Police Department strongly **OPPOSES** Senate Bill No. 294, SD1, HD1.

Thank you for the opportunity to testify.

Sincerely,



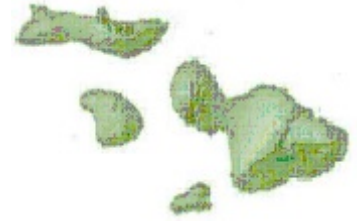
TIVOLI S. FAAUMU  
Chief of Police

**MICHAEL P. VICTORINO**  
Mayor

**ANDREW H. MARTIN**  
Prosecuting Attorney

**MICHAEL S. KAGAMI**  
First Deputy Prosecuting Attorney

**ROBERT D. RIVERA**  
Second Deputy Prosecuting Attorney



**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  
S.B. 294 SD1 HD1- RELATING TO  
PROPERTY FORFEITURE

March 30, 2021

The Honorable Sylvia Luke  
Chair  
The Honorable Ty J.K. Cullen  
Vice Chair  
and Members of the Committee on Finance

Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments concerning S.B. 294 SD1 HD1, Relating to Property Forfeiture. Specifically, we would like to express our strong opposition to S.B. 294 SD1 HD1 in its current form, which directs forfeited property or the 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 two concerns relating to this bill. First, we share the prior concerns of the Attorney General regarding 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 a covered offense, the proposed changes would technically prevent forfeiture. This scenario often arises in gambling cases where no one will admit that they're the owner of a gambling machine, but can also arise in drug trafficking cases where cash is seized and there is insufficient evidence to prove that a particular defendant is the "owner" of the cash despite there being sufficient evidence to show that the cash was the proceeds of drug trafficking.

A related concern is the proposed requirement of a felony conviction before the civil asset forfeiture process can begin. Although Section 2 of the bill 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 long after the forfeiture process has been completed. This bill does not clearly address that scenario.

For these reasons, the Department of the Prosecuting Attorney, County of Maui strongly opposes the passage of S.B. 294 SD1 HD1 and request that it be held. 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.

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

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 768-7400 • FAX: (808) 768-7515

STEVEN S. ALM  
PROSECUTING ATTORNEY

THOMAS J. BRADY  
FIRST DEPUTY  
PROSECUTING ATTORNEY



**THE HONORABLE SYLVIA LUKE, CHAIR**  
**HOUSE COMMITTEE ON FINANCE**  
**Thirty-first State Legislature**  
**Regular Session of 2021**  
**State of Hawai`i**

March 31, 2021

**RE: S.B. 294, S.D. 1, H.D. 1; RELATING TO PROPERTY FORFEITURE.**

Chair Luke, Vice-Chair Cullen and members of the House Committee on Finance, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to S.B. 294, S.D. 1, H.D. 1.

While this bill appears to have good intentions, it attempts to apply criminal standards of proof to civil proceedings, indicating that people should never be penalized if their culpability is only proven by “preponderance of the evidence.” However, this ignores the fact that “preponderance of the evidence” is in fact the prevailing standard of proof and due process used in civil and administrative legal proceedings throughout Hawaii; this standard is actually used every day to decide matters affecting people’s assets, property and livelihoods. For example, the standard used by the Department of Commerce and Consumer Affairs, Commissioner of Securities, Insurance Commissioner, Commissioner of Financial Institutions, and any board or commission attached for administrative purposes to the Department of Commerce and Consumer Affairs with rulemaking, decision making, or adjudicatory powers, is preponderance of the evidence.<sup>1</sup> Also, all adjudication hearings held before the Honolulu Liquor Commission are

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<sup>1</sup> See the definition of “Authority,” under Section 16-201-2, Hawaii Administrative Rules (“HAR”). See also HAR §16-201-21(d), which states:

(d) Except as otherwise provided by law, the burden of proof, including the burden of producing the evidence and the burden of persuasion, shall be upon the party initiating the proceeding. Proof of a matter shall be by a preponderance of the evidence.



decided based on preponderance of the evidence.<sup>2</sup> So too are hearings held before the Land Use Commission,<sup>3</sup> the Hawaiian Homes Commission,<sup>4</sup> and any number of other State bodies and agencies governed by HRS Chapter 91.<sup>5</sup>

Respectfully, the Department urges this Committee to defer S.B. 294, S.D. 1, H.D. 1, based upon recognition that our legal system includes two different tracks—civil and criminal—with two completely different standards of proof, and those tracks often run parallel to one another. This can be true of a liquor license owner who not only stands to lose their liquor license, but could be subject to criminal prosecution; or the drunk driver who loses their driver’s license administratively, is criminally prosecuted, then held civilly liable by a victim’s family, through entirely separate proceedings, based on entirely separate standards of proof. Each set of parallel proceedings could stem from a single wrongful act, which carries separate repercussions, ordered in separate proceedings, based on separate standards of proof.

While we understand a few other states have taken drastic measures to merge their civil and criminal standards of proof in asset forfeiture proceedings, the Department strongly urges the Legislature not to make such far-reaching and premature steps against Hawaii’s well-conceived program, particularly in light of the State Auditor’s recommendations, published June 2018 (available at [files.hawaii.gov/auditor/Reports/2018/18-09.pdf](https://files.hawaii.gov/auditor/Reports/2018/18-09.pdf)). In that report, the Auditor made specific recommendations for Hawaii’s civil asset forfeiture program, nearly all of which have already been (and one of which is in the process of being) implemented by the Department of the Attorney General.

Civil asset 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

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<sup>2</sup> See Section 3-85-91.5(d), Rules of the Liquor Commission, which states:

(d) Except as otherwise provided by law, the burden of proof, including the burden of producing the evidence and the burden of persuasion, shall be upon the party initiating the proceeding. Proof of a matter shall be by a preponderance of the evidence.

Available online at [honolulu.gov/rep/site/bfslq/rules/LIQ\\_Rules\\_Website\\_Version\\_032717.pdf](https://honolulu.gov/rep/site/bfslq/rules/LIQ_Rules_Website_Version_032717.pdf); last accessed February 1, 2021.

<sup>3</sup> See HRS §205-4(h) and (i), which state that all land use boundary decisions by the commission, and upon judicial review, shall be found “upon the clear preponderance of the evidence.” Available online at [www.hawaii.gov/hrcurrent/Vol04\\_Ch201-0257/HRS0205/HRS\\_0205-0004.htm](https://www.hawaii.gov/hrcurrent/Vol04_Ch201-0257/HRS0205/HRS_0205-0004.htm) ; last accessed February 1, 2021.

<sup>4</sup> See *Lui-Dyball v. Hawaiian Homes Commission*, Memorandum Opinion issued May 29, 2015, at page 7, which states in relevant part, “The degree or quantum of proof Section 91-10, HRS, establishes that the burden of proof in matters such as this is ‘by a preponderance of the evidence.’...not ‘beyond a reasonable doubt.’” Available online at [www.courts.state.hi.us/docs/opin\\_ord/ica/2015/May/CAAP-12-0000572mopada.pdf](https://www.courts.state.hi.us/docs/opin_ord/ica/2015/May/CAAP-12-0000572mopada.pdf); last accessed February 1, 2021.

<sup>5</sup> See HRS §91-10(5), which states:

(d) Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing the evidence as well as the burden of persuasion. The degree or quantum of proof shall be by a preponderance of the evidence.

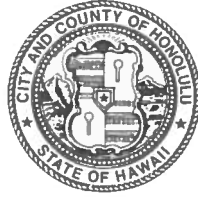
Available online at [www.capitol.hawaii.gov/hrcurrent/Vol01\\_Ch0046-0115/HRS009/HRS\\_0091-0010.htm](https://www.capitol.hawaii.gov/hrcurrent/Vol01_Ch0046-0115/HRS009/HRS_0091-0010.htm); last accessed February 1, 2021.

operates independently from any related criminal cases, in the same way that civil lawsuits, administrative proceedings, and criminal charges can proceed independently from each other in other circumstances. Concerns about “innocent owners” being deprived of their property or “policing for profit” are unfounded, as Hawaii’s forfeiture laws provide due process for the protection of property owners’ rights, and numerous safeguards are already codified in the statute. **If the concern is that the civil asset forfeiture process should be more simple, transparent or accessible for the public or those impacted by its proceedings, that can and should be addressed in other ways.**

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes S.B. 294, S.D. 1, H.D. 1, and asks that the measure be deferred. Thank for you the opportunity to testify on this matter.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org



RICK BLANGIARDI  
MAYOR

SUSAN BALLARD  
CHIEF

JOHN D. McCARTHY  
AARON TAKASAKI-YOUNG  
DEPUTY CHIEFS

OUR REFERENCE PJ-LS

March 31, 2021

The Honorable Sylvia Luke, Chair  
and Members  
Committee on Finance  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street, Room 308  
Honolulu, Hawaii 96813

Dear Chair Luke and Members:

SUBJECT: Senate Bill No. 294, S.D. 1, H.D. 1, Relating to Property Forfeiture

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

The HPD opposes Senate Bill No. 294, S.D. 1, H.D. 1, Relating to Property Forfeiture.

While waiting for the outcome of a criminal proceeding, this bill causes undue delays for the public, law enforcement agencies, and the defendant themselves from efficiently and effectively adjudicating the case. Tremendous amounts of resources are expended by law enforcement for these investigations. Delaying or eliminating the local investigating law enforcement agency from the proceeds of the forfeited property resulting from illegal activities would have a direct impact on the services that the HPD provides to the community.

The HPD urges you to oppose Senate Bill No. 294, S.D. 1, H.D. 1, Relating to Property Forfeiture, and thanks you for the opportunity to testify.

APPROVED:

Handwritten signature of Susan Ballard in cursive.

Susan Ballard  
Chief of Police

Sincerely,

Handwritten signature of Phillip Johnson in cursive.

Phillip Johnson, Major  
Narcotics/Vice Division



AMERICANS FOR DEMOCRATIC ACTION

---

| OFFICERS                     | DIRECTORS             |              |                  | MAILING ADDRESS |
|------------------------------|-----------------------|--------------|------------------|-----------------|
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| Doug Pyle, Secretary         | Stephanie Fitzpatrick | Dave Nagaji  |                  |                 |

---

March 29, 2021

TO: Chair Luke and members of Finance Committee

RE: SB 294 SD1 HD1 Relating to Property Forfeiture

Support for hearing on March 31

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 SB 294 SD1 HD1 as it would restrict civil asset forfeiture to cases involving the commission of a felony offense where the property owner has been convicted of an underlying felony offense. Seizing assets before a conviction is a violation of basic civil liberties.

Thank you for your favorable consideration.

Sincerely,  
John Bickel, President





Young Progressives Demanding Action  
P.O. Box 11105  
Honolulu, HI 96828

March 29, 2021

**TO: HOUSE COMMITTEE ON FINANCE**  
**RE: Testimony in Support of SB294 SD1 HD1**

Dear Representatives,

Young Progressives Demanding Action **strongly supports** SB294 SD1 HD1 and asks that you pass this bill out of committee. SB294 restricts civil asset forfeiture to cases involving a felony offense, and where the property owner has been convicted of the underlying felony offense. It also directs forfeiture proceeds to the general fund.

This bill facilitates a very important change in state statute. Under existing law, the police can seize (and the state can forfeit) property that is only tenuously connected to a SUSPECTED crime; and a person's property can be auctioned off by the state even if charges are never brought against anyone for any crime relating to that property. We believe this is violation of due process and civil rights.

Additionally, civil asset forfeiture is often called "policing for profit" because, in Hawai'i and in many other jurisdictions, police and prosecutors get to keep a portion of the proceeds. This creates a perverse incentive for law enforcement to over-police communities, often those that are predominantly communities of color. YPDA firmly believes there is no place for profit motive in the public commons, including within our public safety agencies.

According to the most recent AG report on forfeitures for Fiscal Year (FY) 2020, county police departments seized a total of \$535,641 during the last fiscal year. That doesn't include the value of other seized property. The total value of seized property, including currency, vehicles, misc. property and real property for this reporting period was \$963,055—almost a million dollars. Of this amount, the vast majority of both cash and property (valued at \$828,609) was ordered forfeited.

Directing proceeds into the general fund instead of giving the police what amounts to a fairly unrestricted cash flow for their departments is a critical reform to mitigate the profit incentive that police have to seize property even where there is not a clear connection to any underlying crime. The requirement of conviction, meanwhile, protects due process and constitutional rights.

If law enforcement hopes to rebuild trust among the community, it must undergo extensive reforms to transform itself from a predatory force within society to instead be a genuine public service. This is a good step in that direction.

Mahalo for the opportunity to testify,

Will Caron  
Board President & Secretary  
action@ypdahawaii.org

Statement Before The  
**HOUSE COMMITTEE ON FINANCE**  
Wednesday, March 31, 2021  
2:30 PM  
Via Video Conference, Conference Room 308

in consideration of  
**SB 294, SD1, HD1**  
**RELATING TO PROPERTY FORFEITURE.**

Chair LUKE, Vice Chair CULLEN, and Members of the House Finance Committee

Common Cause Hawaii supports SB 294, SD1, HD1, which (1) restricts civil asset forfeiture to cases involving the commission of a felony offense where the property owner has been convicted of the underlying felony offense, subject to certain circumstances, (2) directs any forfeiture proceeds to the general fund, (3) amends the allowable expenses for moneys in the criminal forfeiture fund, and (4) amends the requirements for the attorney general to adopt rules and report on the Hawaii omnibus criminal forfeiture act.

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.

SB 294, SD1, HD1 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. SB 294, SD1, HD1 will hopefully improve the criminal justice system and make it more fair and just and lessen civil asset forfeitures' impacts on persons from minority and low-income communities.

Thank you for the opportunity to testify in support of SB 294, SD1, HD1. If you have further questions of me, please contact me at [sma@commoncause.org](mailto:sma@commoncause.org).

Very respectfully yours,

Sandy Ma  
Executive Director, Common Cause Hawaii

# COMMUNITY ALLIANCE ON PRISONS

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

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



## COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Rep. Ty Cullen, Vice Chair

Wednesday, March 31, 2021

2:30 p.m.

### **STRONG SUPPORT FOR SB 294 SD1 HD1 REFORMING PROPERTY FORFEITURE**

Aloha Chair Luke, Vice Chair Cullen, 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 4,100 Hawai`i individuals living behind bars or under the “care and custody” of the Department of Public Safety on any given day. We are always mindful that 1,075 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 Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons is in strong support of SB 294 SD1 HD1. In 2015, property was forfeited without a criminal charge in 26% of the asset forfeiture cases in Hawai`i.

A report released in February 2021<sup>1</sup> used a set of forfeiture data from five states that **use forfeiture extensively** – Arizona, **Hawaii**, Iowa, Michigan and Minnesota – as well as detailed state and local crime, drug use and economic data. The results show:

- *More forfeiture proceeds do not help police solve more crimes – and they may, perversely, make police less effective at solving violent crimes.*
- *More forfeiture proceeds do not lead to less drug use, even though forfeiture proponents have long cited fighting the illicit drug trade – and the reduction of drug use – as a primary purpose of forfeiture.*
- *When local budgets are squeezed, police respond by increasing their reliance on forfeiture. A one percentage point increase in unemployment – a common measure of economic health – was associated with an 11% to 12% increase in forfeiture activity.*

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<sup>1</sup> Does Forfeiture Work? Evidence from the States, Institute for Justice, By Brian D. Kelly, Ph.D. February 2021.

<https://ij.org/report/does-forfeiture-work/>



*In other words, this study finds **no material support for the claims that forfeiture fights crime**, either by enabling police to solve more crimes or by reducing drug use. It does, however, find economic conditions have a large and statistically significant effect on forfeiture activity, suggesting that at least some forfeiture activity is motivated by a desire for revenue.*

*These results, like those from earlier studies, are particularly salient now, when local government budgets are suffering due to the COVID-19 pandemic. **The data suggest that during economic times like these police may pursue more forfeiture.** This report adds to mounting evidence that **forfeiture fails to serve the public good, all while violating basic rights to property and due process**, thus demonstrating the pressing need for forfeiture reform. The report concludes:*

*These findings that forfeiture is not meeting its policy goals would be of considerable concern even if forfeiture were harmless.*

***But forfeiture is not harmless. It is a serious intrusion on civil liberties***

*An article about the study<sup>2</sup> Asset Forfeiture: Report shows the high cost of innocence in Hawaii describes Hawaii's forfeiture laws:*

*The moneymaking scheme, which operates with few checks in Hawaii, allows the government to seize and take title to cars, cash and other valuables without ever convicting anyone of a crime. Some forfeiture targets never even face arrest.*

*The law does not care. **Civil forfeiture puts property on trial, not people.** Prosecutors in Hawaii merely must prove by a "preponderance of the evidence" that assets are associated with criminal conduct. The language sounds fancy, but it basically means a coin flip. The government barely must show a 50% likelihood that the evidence weighs in its favor.*

*Once agencies transfer ownership to themselves, they do not have to share the windfall with anyone. Hawaii allows police, prosecutors and the attorney general to split 100% of the proceeds among themselves—up to \$3 million per year. The result is a system of perverse incentives, which invites cash-strapped agencies to confiscate as much property as possible and then overwhelm people who dare to resist in a costly and confusing maze of bureaucracy.*

Community Alliance on Prisons appreciates the opportunity to testify on this much-needed reform and we urge the committee to pass this important measure in the interest of justice. Mahalo for this opportunity to testify.

*When the rights of the innocent can be so easily violated, no one's rights are safe.*

*Republican Party Platform, 2016*

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<sup>2</sup> **Asset Forfeiture: Report shows the high cost of innocence in Hawaii**, by Daryl James, [Institute for Justice](#)



March 31, 2021

2:30 p.m.

Via Videoconference

Conference Room 308

**To: House Committee on Finance**

**Rep. Sylvia Luke, Chair**

**Rep. Ty J.K. Cullen, Vice Chair**

**From: Grassroot Institute of Hawaii**

**Joe Kent, Executive Vice President**

Re: SB294 SD1 HD1 — RELATING TO PROPERTY FORFEITURE

***Comments Only***

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on [SB294](#), which would significantly reform the practice of asset forfeiture in the state.

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 survey of civil asset forfeiture nationwide by the Institute of Justice, Hawaii earned a D- and the dubious distinction of having some of the worst forfeiture laws in the country.<sup>1</sup>

Singled out for criticism was the state's low standard of proof for showing how the property is tied to a crime.

In addition, Hawaii places the burden on innocent owners to prove they weren't tied to the crime resulting in the forfeiture.

The result is a state forfeiture program open to abuse and able to prey on innocent property owners.

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<sup>1</sup> Dick M. Carpenter II, et al., "[Policing for Profit: The Abuse of Civil Asset Forfeiture, 2nd Edition.](#)" Institute for Justice, November 2015.

As the Hawaii state auditor wrote in a June 2018 report, Hawaii’s asset-forfeiture program lacks clear rules and procedures, inadequately manages funds and is badly in need of greater transparency.<sup>2</sup>

The audit found that in 26% of asset forfeiture cases closed during fiscal 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 might 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 would take 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 seeking to eliminate incentives that can arise from the practice of asset forfeiture. By directing the proceeds from the forfeiture program to the general fund, this bill would prevent any agency or group from having a financial interest in asset forfeiture.

Finally, the requirement that the attorney general submit a report to the Legislature on the use of the state forfeiture act is a praiseworthy addition that would help improve transparency and accountability within the program. This, in turn, would help improve public trust in government.

Thank you for the opportunity to submit our testimony.

Sincerely,

Joe Kent  
Executive Vice President  
Grassroot Institute of Hawaii

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<sup>2</sup> [“Audit of the Department of the Attorney General’s Asset Forfeiture Program,”](#) Office of the Auditor, State of Hawaii, June 2018.



## Hawai'i

Committee: Committee on Finance  
Hearing Date/Time: Wednesday, March 31, 2021, 2:30 p.m.  
Place: Via Videoconference  
Re: Testimony of the ACLU of Hawai'i in Support of S.B. 294, S.D. 1, H.D. 1, Relating to Property Forfeiture

Dear Chair Luke, Vice Chair Cullen, and members of the Committee:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes in support of S.B. 294, S.D. 1, H.D. 1, which would reform Hawai'i's civil asset forfeiture law by prohibiting forfeiture except in cases where the property owner has been convicted of a covered felony offense, and by reducing the profit incentive to seize property by directing net forfeiture proceeds to the general fund.

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

**Hawai'i's law enforcement is abusing the current system.** The Hawai'i State Auditor conducted a study of civil asset forfeiture in Hawai'i, which was published in June 2018.<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

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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  
P.O. Box 3410  
Honolulu, Hawai'i 96801  
T: 808.522-5900  
F: 808.522-5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)  
[www.acluhawaii.org](http://www.acluhawaii.org)

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

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>2</sup> 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.*

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<sup>2</sup> Institute for Justice, *Policing for Profit: The Abuse of Civil Asset Forfeiture*, 3rd Edition (December 2020) available at <https://ij.org/wp-content/themes/ijorg/images/pfp3/policing-for-profit-3-web.pdf>.

**SB-294-HD-1**

Submitted on: 3/31/2021 12:03:47 AM

Testimony for FIN on 3/31/2021 2:30:00 PM

| Submitted By  | Organization              | Testifier Position | Present at Hearing |
|---------------|---------------------------|--------------------|--------------------|
| Thomas Brandt | Foresight/Policy Analysis | Support            | No                 |

Comments:

Chair Luke, Vice Chair Cullen, and members of the House Committee on Finance:

***I strongly support this bill to reform "civil asset forfeiture"***

***which will also benefit Hawaii taxpayers.***

***AS CURRENTLY STRUCTURED,***

***CIVIL ASSET FORFEITURE IS A LEGALIZED FORM OF GOVERNMENT THEFT, IMO,***

***MORE APPROPRIATE FOR A POLICE STATE***

***THAN WHAT REMAINS OF OUR OSTENSIBLY "CONSTITUTIONAL REPUBLIC"***

***OSTENSIBLY BASED ON DUE PROCESS AND EQUAL JUSTICE UNDER THE RULE OF LAW.***

***Currently, police can seize, and the state government can forfeit, property that is only tenuously connected to a suspected crime; and***

***a person's property can be auctioned off by the state even if charges are never brought against anyone for any crime relating to that property.***

***This is--or should be--a violation of due process and civil rights.***

***Civil asset forfeiture is often called "policing for profit" because, in Hawai'i and in many other jurisdictions, police and prosecutors get to keep a portion of the proceeds.***

***This creates a perverse incentive for law enforcement to over-police communities, often those that are predominantly communities of color.***

***Directing proceeds into the State's general fund--***

*instead of giving the police an unrestricted cash flow for their departments--*

***is a critical reform necessary to REDUCE the profit incentive of civil asset forfeiture,***

*while the bill's requirement of conviction--rather than mere accusation of probable cause--protects due process and constitutional rights.*

*Thank you for the opportunity to offer these comments.*

*Thomas Brandt*

*Foresight/Policy Analysis*

**SB-294-HD-1**

Submitted on: 3/29/2021 2:32:48 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Carla Allison       | Individual          | Support                   | No                        |

Comments:

My name is Carla Allison and I strongly support SB294 It is time to bring integrity to asset forfeiture by ensuring protection for the innocent, removing the large profit incentives for law enforcement and stop the current mismanagement of these funds. Please support SB294. Thank you.



**SB-294-HD-1**

Submitted on: 3/29/2021 2:46:53 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Carolyn Eaton       | Individual          | Support                   | No                        |

Comments:

Aloha, my name is Carolyn Eaton, and I am an Oahu voter. I'm in strong support of this measure, which will remove the jeopardy of property forfeiture for individuals charged at any level below felony. At present, there are poor protections for the innocent--forfeiture is set in motion prior to conviction in our State. Let us improve our rating from the Institute of Justice in 2021 and become a State conforming with more progressive standards.

Thank you for your consideration of my views.

**SB-294-HD-1**

Submitted on: 3/29/2021 6:44:25 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

| Submitted By         | Organization | Testifier Position | Present at Hearing |
|----------------------|--------------|--------------------|--------------------|
| Courtney Mrowczynski | Individual   | Support            | No                 |

Comments:

I strongly **SUPPORT** SB294 SD1 HD1 for the following reasons:

- Hawai'i has earned a D- again from the Institute of Justice's 2020 report because of:
  - Low bar to forfeit
  - Poor protections for the innocent
  - Large profit incentive
- In 2015, "property was forfeited without a corresponding criminal charge in 26% of the asset forfeiture cases."
- To understand more about this issue, John Oliver did a great show:
  - <https://www.youtube.com/watch?v=3kEpZWGgJks>

**SB-294-HD-1**

Submitted on: 3/29/2021 10:52:10 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Nanea Lo            | Individual          | Support                   | No                        |

Comments:

Hello,

My name is Nanea Lo. I come from Papakāleia, O‘ahu and currently residing in my ancestral homelands. I'm writing in support of SB294.

This bill facilitates a very important change in state statute. Under existing law, the police can seize (and the state can forfeit) property that is only tenuously connected to a SUSPECTED crime; and a person’s property can be auctioned off by the state even if charges are never brought against anyone for any crime relating to that property. We believe this is violation of due process and civil rights.

Additionally, civil asset forfeiture is often called “policing for profit” because, in Hawai‘i and in many other jurisdictions, police and prosecutors get to keep a portion of the proceeds. This creates a perverse incentive for law enforcement to over-police communities, often those that are predominantly communities of color.

Directing proceeds into the general fund instead of giving the police what amounts to a fairly unrestricted cash flow for their departments is a critical reform to mitigate the profit incentive that police have to seize property even where there is not a clear connection to any underlying crime. The requirement of conviction, meanwhile, protects due process and constitutional rights.

Support SB294.

me ke aloha ‘Āina,

Nanea Lo

**SB-294-HD-1**

Submitted on: 3/30/2021 9:04:57 AM

Testimony for FIN on 3/31/2021 2:30:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| lynne matusow       | Individual          | Support                   | No                        |

Comments:

The program needs a major overhaul. Often property is confiscated, the person who lost the property is not convicted of a crime, and there is no recourse to get the seized property back. This is totally unfair and not pono.

**SB-294-HD-1**

Submitted on: 3/30/2021 1:42:20 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Kristen Young       | Individual          | Support                   | No                        |

Comments:

I support SB294 as it facilitates a very important change in state statute. Currently, the police can seize (and the state can forfeit) property that is only tenuously connected to a SUSPECTED crime; and a person's property can be auctioned off by the state even if charges are never brought against anyone for any crime relating to that property. I believe this is a violation of due process and civil rights.

Additionally, civil asset forfeiture is often called "policing for profit" because, in Hawai'i and in many other jurisdictions, police and prosecutors get to keep a portion of the proceeds. This creates a perverse incentive for law enforcement to over-police communities, often those that are predominantly communities of color.

Directing proceeds into the general fund instead of giving the police what amounts to a fairly unrestricted cash flow for their departments is a critical reform to mitigate the profit incentive that police have to seize property even where there is not a clear connection to any underlying crime. The requirement of conviction, meanwhile, protects due process and constitutional rights.

Thank you for the opportunity to submit testimony on this matter.

**SB-294-HD-1**

Submitted on: 3/30/2021 1:43:24 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Alejandro Balandran | Individual          | Support                   | No                        |

Comments:

Chair Luke, Vice Chair Cullen, and Members of the Committee:

I **support** S.B. 1260 SD 1 HD 1. This measure eliminates the use of money bail for low level, non-violent offenses and should be implemented as soon as possible. Mahalo for the opportunity to testify on this measure.

**SB-294-HD-1**

Submitted on: 3/30/2021 1:49:58 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Brittany Horn       | Individual          | Support                   | No                        |

Comments:

I support SB 294 for the following reasons:

- Currently, police can seize, and the state can forfeit, property that is only tenuously connected to a *suspected* crime; and a person's property can be auctioned off by the state even if charges are never brought against anyone for any crime relating to that property. We believe this is violation of due process and civil rights.
- Civil asset forfeiture is often called "policing for profit" because, in Hawai'i and in many other jurisdictions, police and prosecutors get to keep a portion of the proceeds. This creates a perverse incentive for law enforcement to over-police communities, often those that are predominantly communities of color.
- Directing proceeds into the general fund instead of giving the police an unrestricted cash flow for their departments is a critical reform to mitigate the profit incentive. The bill's requirement of conviction, meanwhile, protects due process and constitutional rights.

**SB-294-HD-1**

Submitted on: 3/30/2021 2:27:22 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

| <b>Submitted By</b>     | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|-------------------------|---------------------|---------------------------|---------------------------|
| Raelyn Reyno<br>Yeomans | Individual          | Support                   | No                        |

Comments:

Strong support.



**SB-294-HD-1**

Submitted on: 3/30/2021 2:30:36 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

**LATE**

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Natasha White       | Individual          | Support                   | No                        |

Comments:

Thank you for the opportunity to testify in support of SB294.

Civil asset forfeiture, in absense of an actual conviction, is a violation of due process, and is predatory policing. We must abolish the ability to auction assets from those who have not been convicted, and therefore are, according to our justice system, presumed **innocent**. Additionally, we must remove any financial incentive for the police to seize assets.

Mahalo,  
Natasha White

**SB-294-HD-1**

Submitted on: 3/30/2021 7:02:21 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Lucie Schrager      | Individual          | Support                   | No                        |

Comments:

Aloha Members of the Finance Committee,

I am writing to you today in support of SB294 to reform civil asset forfeiture. The practice of civil asset forfeiture incentivizes the over-policing of communities, predominantly communities of color. The ability of police to seize any property which is believed to be linked to a crime as well as the ability to auction off this property is a violation of due process and civil rights. The fact that law enforcement is able to keep portions of the proceeds of civil asset forfeiture auctioneering, only incentivizes over-policing as mentioned earlier. The practice of directing proceeds into the general fund instead of directly giving the police an unrestricted cash flow for their departments is a critical reform to mitigate this incentivization. The bill's requirement of conviction, meanwhile, protects due process and constitutional rights.

I urge you to support SB294. It along with other bills being introduced today, such as SB1260, are big steps in the right direction in terms of justice system reform.

Mahalo for your time and consideration,

Lucie Schrager

**SB-294-HD-1**

Submitted on: 3/30/2021 10:51:32 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Carrie Ann Shirota  | Individual          | Support                   | No                        |

Comments:

Hawai'i has earned the dubious distinction of having some of the worst civil forfeiture laws in the United States. Please pass SB 294 SD1 HD1 to address these unfair laws.

**SB-294-HD-1**

Submitted on: 3/31/2021 12:33:48 AM

Testimony for FIN on 3/31/2021 2:30:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Barryn Chun         | Individual          | Support                   | No                        |

Comments:

I support SB294 as it closes a massive moral loophole-- asset forfeiture without conviction-- which I do not want to see here in Hawai`i.

As it stands, it appears that a police officer could make up some kind of arbitrary excuse, confiscate anything I have on me, and sell it. Zero due process. While this may sound silly, you have to think of what this means for someone who is homeless. Is homelessness a crime? Is existing in an area due to homelessness a crime? From what I can tell, the few belongings that the homeless person has is currently free for the taking by a police officer if the officer comes up with some kind of excuse. This is absolutely disgusting, to the extent that I'd want to know the names of any public official that opposes this change, and why. I hope that everyone handling SB294 has the conscience to do the right thing, and support it/forward it through the legislative process.

**SB-294-HD-1**

Submitted on: 3/31/2021 9:57:05 AM

Testimony for FIN on 3/31/2021 2:30:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Zack Stoddard       | Individual          | Support                   | No                        |

Comments:

Please reform this very problematic policy! Thank you.