

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 1, 2022

H.B. No. 1965 HD1: RELATING TO PROPERTY FORFEITURE

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

The Office of the Public Defender supports the intent of H.B. No. 1965 HD1, which seeks to attempt to make the State’s asset forfeiture process more just. This measure’s proposed amendments to the civil asset forfeiture law, however, does not go far enough to cure the flaws of our current asset forfeiture law.

Jurisdiction

This measure seeks to restrict civil asset forfeiture to “cases involving the commission of a covered offense where the person exercising some degree of control over the property is charged with an offense related to the property.” A more just process is 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*. What is troubling is that, according to the State Auditor report on civil forfeiture published in June 2018, in **26%** of the asset forfeiture cases, the property was forfeited without a corresponding criminal charge. *See* State of Hawai‘i, Office of the Auditor, Audit of the Department of the Attorney General’s Asset Forfeiture Program, Report No. 18-09 (June 2018). In other words, no criminal charges were filed in more than one-fourth of the property forfeiture cases.

It should be noted that sixteen (16) states now require a conviction in criminal court to forfeit most or all types of property in civil court.¹ Moreover, four states -- North

¹ The sixteen jurisdictions that require a conviction in criminal court are California, Oregon, Arizona, Montana, North Dakota, Minnesota, Iowa, Missouri, Arkansas, Wisconsin, Michigan, Virginia, New Jersey, Connecticut, New Hampshire, Vermont. Institute for Civil Justice, “Civil Forfeiture Reforms on the State Level,” [see https://ij.org/legislative-advocacy/civil-forfeiture-legislative-highlights/](https://ij.org/legislative-advocacy/civil-forfeiture-legislative-highlights/) (last visited, February 26, 2022).

Carolina (1985), New Mexico (2015), Nebraska (2016), and Maine (2021) -- have abolished civil forfeiture entirely and only use criminal law to forfeit property.²

Distribution of proceeds of forfeited property

Put simply, civil forfeiture laws present law enforcement with significant incentives to seize property financial gain. Although the Legislature recognizes that “there is a great incentive for state and county law enforcement agencies to seize property for forfeiture, as these agencies are permitted to retain proceeds from the sale of property,” (*see* page 1, lines 12-14), the measure nevertheless leaves intact the distribution of forfeited property and the sale proceeds to law enforcement:

One quarter is to be distributed to the state of local government whose officers or employees conducted the investigation and caused the arrest of the person whose property was forfeited or seizure of the property for forfeiture, and

One quarter is to be distributed to the prosecuting attorney who instituted the action producing the forfeiture.

True reform of the asset forfeiture law would direct any and all forfeiture proceeds to the State general fund. The Institute for Justice, a nonprofit civil liberties law firm, recommends the elimination of financial incentives for law enforcement to seize and keep forfeited property and, instead, directs any proceeds to either a general revenue fund or other neutral fund. Eight jurisdictions now prohibit law enforcement from keeping proceeds from forfeited property.³ It is unconscionable that a policing agency and a prosecuting agency directly profits from the taking of property. Law enforcement’s only incentive to initiate asset forfeiture proceedings should be for public safety or justice; allowing law enforcement a financial stake in seizures and directing even a portion of the proceeds to law enforcement creates a perverse secondary incentive to seize property -- revenue generation.

² Institute for Civil Justice, “Civil Forfeiture Reforms on the State Level,” *see* <https://ij.org/legislative-advocacy/civil-forfeiture-legislative-highlights/> (last visited, February 26, 2022).

³ As of 2015, the eight jurisdictions that block law enforcement access to forfeiture proceeds are New Mexico, Missouri, Indiana, North Carolina, Maine, Wisconsin, Delaware, and District of Columbia. Dick M. Carpenter II, et al., “[Policing for Profit: The Abuse of Civil Asset Forfeiture, 2nd Edition](#),” Institute for Justice, November 2015.

Standard of Proof

This measure recognizes that the current standard of proof is too low and raises the standard to “clear and convincing.” The standard, however, should be equivalent to “beyond a reasonable doubt.” As stated above, four states have abolished civil forfeiture and proceed via criminal forfeiture, where loss of property is part of a criminal sentence following a successful prosecution.⁴ Florida requires the prosecutor to prove beyond a reasonable doubt that the property at stake is connected to a crime.⁵ And as stated previously, sixteen states have some form of conviction provision.⁶

Conclusion

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.

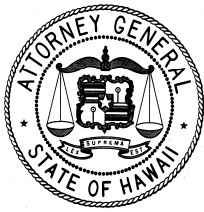
Finally, the absurdity of the current state of our asset forfeiture laws in this country, including Hawai’i’s law, is brilliantly lampooned in a segment on HBO’s Last Week Tonight with John Oliver, which originally aired on October 5, 2014, and which can be viewed at <https://m.youtube.com/watch?v=3kEpZWGgJks>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

Thank you for the opportunity to comment on this measure.

⁴ See footnote 2, *supra*.

⁵ Institute for Civil Justice, “Florida profile at Policing for Profit: The Abuse of Civil Asset Forfeiture.” December 2020. See <https://ij.org/report/policing-for-profit-3/?state=FL> (last visited, February 26, 2022).

⁶ See footnote 1, *supra*.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

H.B. NO. 1965, H.D. 1, RELATING TO PROPERTY FORFEITURE.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Tuesday, March 1, 2022 **TIME:** 11:00 a.m.

LOCATION: State Capitol, Room 308, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General,
Michael S. Vincent, Deputy Attorney General, or
Steve A. Bumanglag, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General (Department) supports the intent of this bill and provides suggested amendments to provide clarity.

The bill allows property to be subject to forfeiture only in circumstances where the person who committed the covered offense exercised some degree of control over the property, and the person is charged with a crime related to the offense. The bill also raises the standard of proof in judicial forfeiture proceedings from a preponderance of the evidence to clear and convincing evidence. The bill further allows for the transfer of certain property to certain government entities for use for a period of no longer than twelve months, before transferring it back to the Attorney General; directs forfeiture proceeds to certain state and local governments and to the general fund; and amends the allowable expenses for moneys in the criminal forfeiture fund. It also requires the Attorney General to adopt rules, and amends the deadline for the Attorney General to report to the Legislature on the use of the Hawaii Omnibus Criminal Forfeiture Act, chapter 712A, Hawaii Revised Statutes (HRS).

The Department agrees that property should be forfeitable only in circumstances where the person who committed the covered offense exercised some degree of control over the property and is charged with a crime related to the property. We also agree that a clear and convincing standard of proof is reasonable since it is the highest

standard of proof used in civil proceedings. However, the Department recommends language to clarify ambiguities in the bill.

The amendment to section 712A-5(2)(b), HRS, in section 2 of the bill on page 5, lines 9-18, creates an ambiguity as to whether a conviction is first required before property may be seized for forfeiture. To prevent any misinterpretation, we propose deleting the wording "before conviction" at page 5, line 18, and adding the wording "before the filing of a criminal charge" at the end of page 5, line 18 before the semi-colon. Paragraph (b) at page 5, lines 9-18, would read as follows:

"(b) No property shall be forfeited under this chapter to the extent of an interest of an owner[;] by reason of [~~any act or omission established by that owner to have been committed or omitted without the knowledge and consent of that owner;~~] the commission of any covered offense unless a person exercising some degree of control over the property is charged with an offense related to the property; provided that nothing in this paragraph shall be construed to prevent the seizure of property [~~before conviction~~]¹ pursuant to section 712A-6 before the filing of the criminal charge;"

The Department recognizes the bill's intent to raise the State's standard of proof to clear and convincing evidence. However, as written, the clear and convincing standard only applies to judicial forfeitures. To remedy this issue, we propose an additional amendment to the administrative forfeiture provisions in section 712A-10(11), HRS, set forth in section 3 of the bill on page 15, lines 10-15, as follows:

"In the event a claim and bond has not been filed in substantial compliance with this section, or if the attorney general, with sole discretion, determines that remission or mitigation is not warranted, the attorney general, upon a finding that the State has established by clear and convincing evidence that the property seized for forfeiture is subject to forfeiture, shall order forfeited all property seized for forfeiture."

¹ For purposes of describing the suggested change, the words "before conviction" are shown bracketed and stricken through. But as they are not part of the current wording of the statute, they should be omitted from a revised draft of the bill, if the suggestion is adopted.

The Department is also concerned that, in judicial proceedings, after the State has proven that the claimant's interest in the property is subject to forfeiture by a clear and convincing standard of proof, the claimant may disprove the State's case with the lower burden of preponderance of the evidence. The suggested remedy is to have both the State and the claimant have the same burden of proof, either clear and convincing evidence or preponderance of the evidence.

If the Committee decides to pass this bill, we recommend that it make the suggested changes. Thank you for the opportunity to testify.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
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MAX N. OTANI
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Tommy Johnson
Deputy Director
Corrections

Jordan Lowe
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON HOUSE BILL HB 1965, HOUSE DRAFT 1
RELATING TO PROPERTY FORFEITURE.

By

Max N. Otani, Director
Department of Public Safety

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Kyle T. Yamashita, Vice Chair

Tuesday, March 1, 2022; 11:00 a.m.
Via Videoconference

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

The Department of Public Safety (PSD) opposes House Bill (HB) 1965, 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.

PSD is concerned because civil asset forfeiture is a tool that serves to reduce criminal activity by denying offenders the profits from their crimes. HB 1965, HD 1 would restrict civil asset forfeiture to cases in which the person exercising a degree of control over the property has been charged with the underlying covered offense, however, not all arrests or investigations result in criminal charges or convictions, despite overwhelming evidence. Restricting civil asset forfeitures to property of owners who are criminally charged or convicted does not serve justice or the community. This proposal would only mean that the ill-gotten gains of non-convicted narcotic traffickers, sex traffickers, gambling organizations, and other criminal elements will be retained by those property owners and likely be a source of funding for 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 are also labor intensive and costly.

Maintaining the retention of civil asset forfeitures with the investigative agencies enabled by current law will offset some of the costs of investigations, allowing the agency to conduct further criminal investigations that may not be budgeted or that it may be otherwise unable to afford. It is further impractical to restrict the use of certain forfeited property for a limited time.

Thank you for the opportunity to provide this testimony.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THOMAS J. BRADY
FIRST DEPUTY
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**THE HONORABLE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE
Thirty-first State Legislature
Regular Session of 2022
State of Hawai`i**

March 1, 2022

RE: H.B. 1965, H.D. 1; RELATING TO PROPERTY FORFEITURE.

Chair Luke, Vice-Chair Yamashita, and members of the House Committee on Finance, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony, **expressing concerns** regarding H.B. 1965, H.D. 1. The Department is concerned that H.B. 1965, H.D. 1, would blur the lines between civil and criminal proceedings, by making civil asset forfeiture reliant upon the filing of criminal charges. That said, the Department does appreciate the more tempered approach of H.B. 1965, H.D. 1—and efforts made to address the Department's concerns—over comparable bills heard in the 2021 legislative session, which would have made the civil asset forfeiture process completely reliant upon criminal proceedings.

Currently, Hawaii's 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 operates independently from any related criminal cases, in the same way that civil lawsuits, administrative proceedings, and criminal charges proceed independently from each other in other circumstances. Unlike some civil asset forfeiture programs on the Continental U.S., made infamous for abuse, Hawaii's forfeiture laws provide due process for the protection of property owners' rights, and ample statutory safeguards, to prevent such abuses from occurring here.

This bill's application of criminal standards of proof to civil asset forfeiture conflates the distinct legal paths and standards that currently separate civil and criminal proceedings. Limiting forfeiture to those cases in which "a person exercising some degree of control over the property is charged with an [criminal] offense related to the property" (see page 5, lines 9-18) would inherently impose criminal legal standards on these cases that are intended to be civil in nature.

Regarding the increase in the standard of proof, from preponderance of the evidence to clear and convincing evidence, the Department acknowledges that it is within the Legislature’s purview to establish a specific civil standard of proof for any given civil proceeding. Nevertheless, the Department urges the Committee to maintain “preponderance of the evidence” as the relevant standard, as this is the prevailing standard of proof used in civil and administrative legal proceedings throughout Hawaii. Preponderance of the evidence is actually used every day to decide matters affecting people’s assets, property and livelihood, by such decision-making bodies as the Department of Commerce and Consumer Affairs, Commissioner of Securities, Insurance Commissioner,¹ Honolulu Liquor Commission,² Land Use Commission,³ and any number of other State bodies and agencies governed by HRS Chapter 91.⁴

Should the Committee choose to continue on the course currently set by H.B. 1965, H.D. 1, the Department respectfully asks the Committee to adopt the proposed language submitted by the Department of the Prosecuting Attorney of the County of Kauai. Those proposed amendments would clarify certain ambiguities currently contained in the bill, and would make the intended state of mind (i.e. clear and convincing evidence) consistent across the entire program.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **expresses concerns** regarding H.B. 1965, H.D. 1. Thank for you the opportunity to testify on this matter.

¹ See 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.

Available online at: https://www.capitol.hawaii.gov/hrscurrent/Vol04_Ch0201-0257/HRS0205/HRS_0205-0004.htm; last accessed February 26, 2022.

² 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 https://www.honolulu.gov/rep/site/bfslq/bfslq_docs/LIQ_Rule_Book_Rev_03-2018_Print_11-2018.pdf; last accessed February 26, 2022.

³ 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 https://www.capitol.hawaii.gov/hrscurrent/Vol04_Ch0201-0257/HRS0205/HRS_0205-0004.htm; last accessed February 26, 2022.

⁴ 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 https://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0091/HRS_0091-0010.htm; last accessed February 26, 2022.

Rebecca Like
Acting Prosecuting Attorney

Jennifer S. Winn
Acting First Deputy

Leon J. C. Davenport, III
Acting Second Deputy



Diana Gausepohl-White
Victim/Witness Program Director

Theresa Koki
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February 28, 2022

**The Honorable Sylvia Luke, Chair
HOUSE COMMITTEE ON FINANCE**

RE: H.B. 1965, H.D.1; RELATING TO PROPERTY FORFEITURE.

Dear Chair Luke and Members of the Committee on Finance:

The Office of the Prosecuting Attorney for the County of Kaua'i submits the following testimony **expressing concerns regarding H.B. 1965, H.D.1.** Thank you for the opportunity to be heard on this matter.

OPA Kaua'i acknowledges that some legislators strongly support asset forfeiture reform. If reform is to be had this legislative session via H.B. 1965, H.D.1, OPA Kaua'i suggests important amendments to this bill.

1. On page 5, lines 17-18, the proposed amendment to HRS §712A-5(2)(b) is very confusing. It could be read to prohibit the initial seizure of property before a charge is filed (the bill seems intended to require the filing of a charge before entry of a final order for forfeiture of property, rather than requiring a charge before property is initially seized for forfeiture). The bill should be clarified to provide it does not prevent the seizure of property before *the filing of a charge*.

2. OPA Kaua'i would like the State to have the option to seize property from a confidential informant who has not been charged with an offense. The current version of the bill, which seeks to require a filed charge before property is forfeited, in effect, forecloses the possibility that the State can forfeit property from a person who has cooperated with law enforcement as a confidential informant.

3. We think that in the situation where the police department cannot identify the property owners, the State should not be prohibited from proceeding with an otherwise viable forfeiture action.

So, for our first three (3) points above, we suggest:

Amend section 712A-5(2)(b), page 5, line 9-18:

712A-5(2)(b)

No property shall be forfeited under this chapter to the extent of an interest of an owner [;] by reason of [~~any act or omission established by that owner to have been committed or omitted without the knowledge and consent of that owner;~~] the commission of any covered offense unless a person exercising some degree of control over the property is charged with an offense related to the property; provided that nothing in this paragraph shall be construed to prevent the seizure of property before conviction pursuant to section 712A-6;

- (i) a person exercising some degree of control over the property was charged with an offense related to the property prior to the forfeiture of the property interest;
- (ii) all of the property owners are unknown or cannot be clearly identified; or
- (iii) the owner has provided a law enforcement officer with assistance in a related criminal investigation and the property is otherwise subject to forfeiture pursuant to this chapter;

provided that nothing in this section shall be construed to prevent the seizure of property pursuant to section 712A-6 before filing of the criminal charge;

4. While OPA Kaua'i is generally opposed to raising the standard of proof applicable to judicial and administrative forfeiture proceedings, OPA Kaua'i believes it is the intent of the bill drafters to adopt the "clear and convincing" standard of proof for judicial and administrative forfeiture petitions. The current version of the bill adopts the clear and convincing standard for judicial petitions only.

So, for this point #4, we suggest:

Amend section 712A-10(11), page 15-16, line 10-21, 1-2:

712A-10(11)

In the event a claim and bond has not been filed in substantial compliance with this section, or if the attorney general, with sole discretion, determines that remission or mitigation is not warranted, the attorney general, upon a finding that the State has established by clear and convincing evidence

that the property seized for forfeiture is subject to forfeiture, shall order forfeited ~~[all]~~ said property ~~[seized for forfeiture]~~. In the event the attorney general, with sole discretion, determines that remission or mitigation is warranted, the attorney general shall notify the seizing agency and the prosecuting attorney and order the release of seizure for forfeiture on the property or on any specified interest in it. There shall be no appeal from the attorney general's decision or order of forfeiture or remission or mitigation.

5. If the legislature were to adopt the clear and convincing standard for the State to prove the bases for its forfeiture petitions, it is only fair that the claimant's standard to prove that the property is not subject to forfeiture – is also clear and convincing.

So, for this point #5, we suggest:

Amend section 712A-10(10), page 15, lines 5-9:

712A-10(10)

On such a showing by the State, the claimant has the burden of showing by ~~[a preponderance of the]~~ clear and convincing evidence that the claimant's interest in the property is not subject to forfeiture[-];

Amend section 712A-12(8), page 16, lines 13-15:

712A-12(8)

On such a showing by the State, the claimant has the burden of showing by ~~[a preponderance of the]~~ clear and convincing evidence that the claimant's interest in the property is not subject to forfeiture.

For the foregoing reasons, as well as the reasons stated in our February 2, 2022 written testimony to HB 1965, the Office of the Prosecuting Attorney for the County of Kaua'i expresses concern about the passage of H.B. 1965, H.D.1; and suggests the aforementioned amendments to this bill. Thank you for the opportunity to testify on this matter.

MICHAEL P. VICTORINO
Mayor

ANDREW H. MARTIN
Prosecuting Attorney

MICHAEL S. KAGAMI
First Deputy Prosecuting Attorney



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TESTIMONY
ON
H.B. 1965 H.D. 1 RELATING TO
PROPERTY FORFEITURE

February 28, 2022

The Honorable Sylvia Luke
Chair
The Honorable Kyle T. Yamashita
Vice Chair
and Members of the Committee on Finance

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

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments concerning H.B. 1965 H.D. 1, Relating to Property Forfeiture. Specifically, we would like to express our concerns about the bill in its current form, although we do appreciate the legislature's efforts to address the issue of asset forfeiture reform.

We generally share the concerns raised by the Department of the Attorney General and the Department of the Prosecuting Attorney for the County of Kaua'i and City and County of Honolulu regarding the effects of this bill in its current form. Furthermore, this bill appears to prohibit forfeiture for any property unless a covered offense is charged first, the person charged with the covered offense has exercised some degree of control over the property, and the charge is related to the property. The change would link initiation of a forfeiture action to the initiation of a related criminal case, which in theory would create more, not less, of an incentive for criminal charges to be filed¹.

Should the Committee decide that it wishes to adopt the amendments proposed by HB 1965 H.D. 1, we respectfully request that the Committee also adopt the amendments submitted by the Department of the Attorney General and the Department of the Prosecuting Attorney of the County of Kauai and the City and County of Honolulu in their testimony for this hearing.

In addition to those amendments, our Department would further suggest the following

¹In saying this, we want to make it very clear that prosecutorial ethics bar us from initiating criminal cases as a means to pursue asset forfeiture proceedings. It is our understanding that preventing this conflict is part of the reason why the two proceedings are initiated independently of each other.

amendments to address scenarios involving abandoned property and confidential informants:

1. Amend section 712A-5(2)(b), page 5, line 9-18:

~~No property shall be forfeited under this chapter to the extent of an interest of an owner [;] by reason of [any act or omission established by that owner to have been committed or omitted without the knowledge and consent of that owner;] the commission of any covered offense unless a person exercising some degree of control over the property is charged with an offense related to the property; provided that nothing in this paragraph shall be construed to prevent the seizure of property before conviction pursuant to section 712A-6;~~

(i) a person exercising some degree of control over the property was charged with an offense related to the property prior to the forfeiture of the property interest;

(ii) all of the property owners are unknown or cannot be clearly identified; or

(iii) the owner has provided a law enforcement officer with assistance in a related criminal investigation and the property is otherwise subject to forfeiture pursuant to this chapter;

provided that nothing in this section shall be construed to prevent the seizure of property pursuant to section 712A-6 before filing of the criminal charge;

Subsection (ii) would allow forfeiture in cases where there is insufficient evidence to charge a particular person criminally, but there is clear and convincing evidence that the property was the proceeds of criminal activity (e.g. \$5,240.00 in cash found in an abandoned backpack with drug sale notes and substantial amounts of drugs packaged for street sale, where the amount of cash recovered matches the amounts listed in the drug sale notes).

Subsection (iii) would allow forfeiture in scenarios where the property is otherwise subject to forfeiture, but the property owner has acted as a confidential informant in a related criminal investigation and will not be charged with a crime related to the property. Concerns about a completely innocent owner's property being forfeited using this amended language are already addressed by existing language in HRS § 712A-5.5 that limits excessive forfeitures, as both the nature and extent of an owner's culpability and their efforts to prevent conduct or assisting in prosecution are factors in determining whether a forfeiture is grossly disproportionate to the nature and severity of the owner's conduct. Since a completely innocent owner who cooperates will have no culpability and will have assisted with a prosecution, any attempt to forfeit their interest in the property can be denied as grossly disproportionate under HRS § 712A-5.5.

For these reasons, the Department of the Prosecuting Attorney, County of Maui has concerns about H.B. 1965 H.D. 1 in its current form and suggests that the amendments proposed by the Department of the Attorney General, our Department and the Department of the Prosecuting Attorney of the County of Kauai and City and County of Honolulu be adopted. 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.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR

RADE K. VANIC
INTERIM CHIEF

OUR REFERENCE TN-GK

March 1, 2022

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: House Bill No. 1965, H.D. 1, Relating to Property Forfeiture

I am Captain Tate Nojima of the Narcotics/Vice Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes House Bill No. 1965, H.D. 1, Relating to Property Forfeiture.

Asset forfeiture is an essential enforcement tool used by the HPD to take the profit out of crime, deter criminality, and protect the community. The restrictions created by this bill will greatly diminish the criminal deterrent of civil asset forfeiture. In addition, while waiting for adjudication of a criminal case, this bill causes undue delays for the public, law enforcement agencies, as well as the criminal defendant. Lastly, a tremendous amount of resources are utilized by law enforcement for these investigations. Delaying or eliminating the local investigating law enforcement agency from the proceeds of property forfeited from illegal activities will have a direct impact on the services that the HPD provides to the community.

The HPD urges you to oppose House Bill No. 1965, H.D. 1, Relating to Property Forfeiture, and thanks you for the opportunity to testify.

APPROVED:

A handwritten signature in black ink, appearing to read "Rade K. Vanic", is written over a horizontal line.

Rade K. Vanic
Interim Chief of Police

Sincerely,

A handwritten signature in black ink, appearing to read "Tate Nojima", is written in a cursive style.

Tate Nojima, Captain
Narcotics/Vice Division



AMERICANS FOR DEMOCRATIC ACTION

OFFICERS

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February 27, 2022

TO: Chair Luke and Members of the Finance Committee

RE: HB 1965 HD1 Relating to Property Forfeiture

Support for hearing on March 1

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 this bill as it would restrict civil asset forfeiture to cases involving the commission of a covered offense where the person exercising some degree of control over the property is charged with an offense related to the property and would raise the State's standard for forfeiture to clear and convincing evidence. Seizing assets before a conviction is a violation of basic civil liberties.

Thank you for your favorable consideration.

Sincerely,

John Bickel, President

Statement Before The
HOUSE COMMITTEE ON FINANCETuesday, March 1, 2022
11:00 AMVia Video Conference and Conference Room 308
in consideration of**HB 1965, HD1**
RELATING TO PROPERTY FORFEITURE.

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

Common Cause Hawaii supports HB 1965, HD1 which (1) restricts civil asset forfeiture to cases involving the commission of a covered offense where the person exercising some degree of control over the property is charged with an offense related to the property, (2) raises the State's standard for forfeiture to clear and convincing evidence, (3) authorizes the use of certain forfeited property by local or state agencies for a limited time, (4) directs forfeiture proceeds to certain involved state and local governments and to the general fund, (5) amends the allowable expenses for moneys in the criminal forfeiture fund, and (6) 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 representative democracy. A strong democracy requires protecting everyone's constitutional rights and ensuring equal access to our courts and judicial system. The ability to access our courts and judicial system is one of the foundations of democracy.

HB 1965, HD1 will permit civil asset forfeiture only in cases in which the covered offense is chargeable as a felony offense under state law and no property may be forfeited unless a person has some degree of control over the property is charged with an offense related to the property. HB 1965, 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 HB 1965, HD1. If you have questions for me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii



March 1, 2022

11 a.m.

Via Videoconference

Conference Room 308

To: House Committee on Finance

Rep. Sylvia Luke, Chair

Rep. Kyle T. Yamashita, Vice Chair

From: Grassroot Institute of Hawaii

Ted Kefalas, Director of Strategic Campaigns

Re: HB1965 HD1 — RELATING TO PROPERTY FORFEITURE

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on [HB1965 HD1](#), which would reform the practice of civil asset forfeiture in the state.

Civil asset forfeiture in Hawaii has been the subject of criticism and concern. Thus, we commend the Legislature for focusing on this issue.

In 2015, a report card of civil asset forfeiture practices 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.¹

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.

¹ 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.²

The state audit found:

>> In 26% of asset forfeiture cases closed during fiscal 2015, property was forfeited without a corresponding criminal charge.

>> In 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.

This bill would raise the standard of proof required for forfeiture from a “preponderance of the evidence” to “clear and convincing evidence.” This would be an improvement, but the intent to help protect innocent owners is undermined by the fact that the bill would allow for forfeiture when a person is charged with an offense related to the property — not when that person is convicted.

Without the requirement of conviction, innocent owners would remain subject to the threat of an unjust forfeiture.

It is shocking that Hawaii residents can lose their property without being convicted of a crime. Given that many of those subject to forfeiture lack the knowledge, assets or ability to challenge the seizure, this makes the forfeiture program especially threatening to vulnerable populations.

There is one additional concern that should be addressed to mitigate the flaws of Hawaii’s forfeiture program: It allows a portion of the forfeiture proceeds to go to the agencies that initiated the forfeiture. This gives the local agencies a perverse financial incentive to pursue asset forfeiture.

We suggest amending the bill so that all forfeiture proceeds go to the general fund, thereby eliminating economic incentives associated with pursuing forfeiture.

This bill, if enacted, would be a step in the right direction, but it does not go far enough to raise Hawaii’s dismal grade for unjust forfeiture laws. With a few changes, we could become a nationwide model for forfeiture reform.

Thank you for the opportunity to submit our testimony.

Sincerely,

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii

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

HB-1965-HD-1

Submitted on: 2/27/2022 7:50:55 PM

Testimony for FIN on 3/1/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Gerard Silva	Individual	Oppose	No

Comments:

Sounds more like Comunist Control some thing that should not be in America.The person the wrote this should face criminal charges!!