



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-THIRD LEGISLATURE, 2025**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 126, H.D. 1, PROPOSED S.D. 1, RELATING TO PROPERTY FORFEITURE.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, March 18, 2025

**TIME:** 9:45 a.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Dean A. Soma, Gurudev D. Allin, or Steve A. Bumanglag, Deputy  
Attorneys General

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) strongly opposes this bill as amended in proposed Senate Draft 1 (proposed S.D. 1). Proposed S.D. 1 would severely damage civil asset forfeiture—a valuable law-enforcement tool that transforms money from criminal activity into government funds used to fight crime—and cause state and county law enforcement to lose important resources, ultimately undermining public safety efforts.

The proposed S.D. 1 of this bill would substantially change H.B. No. 126, H.D. 1, by effectively replacing it with S.B. No. 722. The proposed S.D. 1 would restrict civil asset forfeiture to cases where the property owner has been convicted of an underlying felony offense (page 5, line 8, through page 6, line 2). Additionally, it would direct forfeiture proceeds to the general fund (page 9, line 18, through page 10, line 19) and introduce other related amendments to chapter 712A, Hawaii Revised Statutes (HRS).

The civil asset forfeiture program codified in chapter 712A, HRS, was originally enacted in 1988 to take the profit out of crime, deter criminality, and protect the community. Asset forfeiture is a powerful tool used by law enforcement agencies against criminals and criminal organizations through seizure of contraband—property that is simply unlawful to possess, like illegal drugs, gambling machines, smuggled goods, and counterfeit money. Forfeiture is also used to take the instrumentalities of

crime out of circulation. The state also uses forfeiture to take the profit out of crime, as no one has the right to retain the money gained from bribery, extortion, illegal gambling, or drug dealing. Finally, forfeiture undeniably provides both a deterrent against crime and as a measure of punishment for the criminal. Offenses covered by this statute include murder, kidnapping, labor trafficking, gambling, criminal property damage, robbery, bribery, extortion, theft, burglary, money laundering, and the manufacture, sale, or distribution of drugs.

The current law allows for equitable sharing agreements. If that law-enforcement tool is limited as it is under proposed S.D. 1, it will harm joint task force cooperation in the sharing of evidence. This restriction would ultimately make it more difficult to investigate and prosecute serious crimes handled by joint task forces.

There are safeguards under the forfeiture statute. Under the current law, the initial seizure must be justified by probable cause and a showing that the property was involved in criminal activity. Notice of forfeiture is given to all persons known to have an interest in the property. Owners may contest a forfeiture or seek remission or mitigation due to extenuating circumstances. Also, pursuant to section 712A-5.5, HRS, forfeitures cannot be excessive—the value of the property seized may not be grossly disproportionate to the seriousness of the offense.

The Department notes that the amendments in the proposed S.D. 1, particularly the provision restricting asset forfeiture to matters where there is a felony conviction of the property owner together with the directing of forfeiture proceeds to the general fund, are likely to seriously undermine the operation of the State's civil asset forfeiture program. Law enforcement agencies would be discouraged from proceeding with asset forfeiture under this program if the proposed S.D. 1 were to be enacted into law because their efforts would result in operating at a loss due to ongoing expenses such as storage, maintenance, and personnel. The requirement of a felony conviction of the owner prior to forfeiture would add uncertainty and delay in subjecting property to the forfeiture procedure. It would also prevent property from being subject to forfeiture where the owner did not actively participate in criminal conduct, and is thus not charged with a felony, but was nevertheless aware that the property was being used for criminal

activity and permitted such use. Seized property would need to be stored and maintained for potentially very lengthy periods of time before the conviction of the owner is obtained and possibly even longer pending appeals. This would add costs to the program and any forfeiture proceeds may not cover the necessary expenses.

If the proposed S.D. 1 were enacted into law, it is probable that the State's civil asset forfeiture program would ultimately cease, thereby depriving the government of one of the most powerful tools to stop and deter crime. We anticipate law enforcement agencies would also reduce or eliminate the amount of manpower and resources dedicated to civil asset forfeitures. The Department also anticipates that if the proposed S.D. 1 were enacted, law enforcement agencies and prosecutors would suffer negative financial consequences, especially when previously stable federal funding for state and county law enforcement has become increasingly uncertain under the new federal administration.

The Department strongly opposes this bill as amended in the proposed S.D. 1 for the reasons stated above. We respectfully ask for this bill to be deferred. Thank you for the opportunity to testify.

JON N. IKENAGA  
PUBLIC DEFENDER

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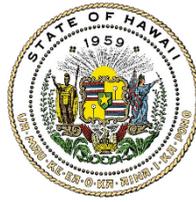
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March 17, 2025

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## **HB126, HD 1: RELATING TO PROPERTY FORFEITURE**

### **Chair Rhoad, Vice-Chair Gabbard, and Members of the Committee on Judiciary:**

The Office of the Public Defender (OPD) **supports HB126**. This bill seeks to increase transparency and accountability in the property forfeiture process and to clarify and amend the State's forfeiture process by (1) requiring seizing departments or agencies to keep detailed records of the property seized, (2) clarifying what property is subject to forfeiture, (3) putting a cap of \$1,000,000 annual cap on the Criminal Forfeiture Fund and requiring that any amount in excess of the cap be distributed to the general fund, and (4) deleting the liberal construction standard from the chapter.

The State's dismal grade of D- for its civil forfeiture laws<sup>1</sup> confirms the need for increased transparency and accountability in the process. Unlike criminal forfeiture, the owner whose property is subject to property does not need to be charged with or convicted of a crime. Further, the subjects of civil forfeiture proceedings are not entitled to an attorney and very few owners have the means or ability to challenge the forfeiture.<sup>2</sup>

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<sup>1</sup> The D- grade Hawai'i received was based on factors set forth by the Institute for Justice (a non-profit public interest law firm) which cited the low bar to forfeit, poor protections for the innocent and large profit incentive for law enforcement (100% of forfeiture proceeds go to law enforcement).

<sup>2</sup> In its 2022 report to the Legislature, the Department of the Attorney General reported that a total of \$412,129.64 in assets had been seized by various law enforcement agencies. In 2021-22, prosecuting attorneys filed 42 petitions for administrative forfeiture with the attorney general's office, yet there were no claims seeking judicial review of seizures filed in administrative forfeiture actions and only two petitions for remission or mitigation were filed.

While the total amount of civil forfeitures in Hawai‘i has been decreasing, this may be attributed to a trend under which law enforcement agencies target low-dollar seizures that are not worth challenging in court.

One example of the lucrative nature of civil forfeiture by law enforcement and the abuse of the process by law enforcement was discussed by the Institute for Justice.

In 2019, nursing student and single mother Stephanie Wilson had not one, but two cars seized by the Detroit Police Department, losing the first one forever. That same year, the U.S. Drug Enforcement Administration and the Transportation Security Administration seized retiree Terry Rolin’s life savings of \$82,373 from his daughter as she passed through Pittsburgh International Airport on her way to open a joint bank account for him. Three years earlier and about 1,000 miles away, a sheriff’s deputy in rural Muskogee, Oklahoma, seized more than \$53,000 from Eh Wah, the tour manager for a Burmese Christian musical act, during a routine traffic stop; the funds were concert proceeds and donations intended to support Burmese Christian refugees and Thai orphans. None of these victims were convicted of any crime.

Their stories illustrate a nationwide problem: civil forfeiture. Civil forfeiture allows police to seize property on the mere suspicion that it is involved in criminal activity. Prosecutors can then forfeit, or permanently keep, the property without ever charging its owner with a crime. By contrast, criminal forfeiture requires prosecutors to prove beyond a reasonable doubt that an owner is guilty of a crime and then, in the same proceeding, prove the property is connected to the crime.

Civil forfeiture laws generally make it easy for governments to forfeit property—and hard for people to fight. As this report documents, these laws typically set low standards of proof, which is the evidentiary burden prosecutors must meet to connect property to a crime. And they provide weak protections for innocent owners whose property is caught up in forfeiture but who have done nothing wrong. Most forfeiture laws also make seizing and forfeiting people’s property lucrative for law enforcement. In most states and under federal law, some or all of the proceeds from forfeiture go to law enforcement coffers.

Thus, Wayne County law enforcement, federal law enforcement and Muskogee County law enforcement stood to benefit financially from forfeiting Stephanie’s cars and Terry’s and Eh Wah’s cash. Giving law enforcement this financial stake in forfeiture can distort priorities,

encouraging agencies to pursue financial gain over public safety or justice, cash over crime or contraband. Together, civil forfeiture's ease and financial rewards drive its use nationwide.

Despite the billions generated, our data indicate the typical individual cash forfeiture is relatively small—only a few hundred or a few thousand dollars. This suggests that, aside from a few high-profile cases, forfeiture often does not target drug kingpins or big-time financial fraudsters. More than that, the data show why it often makes little economic sense for property owners to fight. The cost of hiring an attorney—a virtual necessity in navigating complex civil forfeiture processes, where there is generally no right to counsel—often outweighs the value of seized property. This is why Stephanie abandoned her first car. Still, many small forfeitures such as hers can make a great deal of economic sense for law enforcement.<sup>[3]</sup>

This bill does not eliminate the civil forfeiture process as a tool for law enforcement, it ensures that the process is fair and transparent and increases accountability.

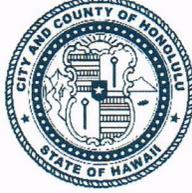
Thank you for the opportunity to comment on this measure.

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<sup>3</sup> “Policing for Profit: The Abuse of Civil Asset Forfeiture,” (3<sup>rd</sup> ed. 12/14/20), Institute for Justice (<https://ij.org/report/policing-for-profit-3/>)

HONOLULU POLICE DEPARTMENT  
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DEPUTY CHIEFS  
HOPE LUNA NUI MĀKA'I

OUR REFERENCE JP-HR

March 18, 2025

The Honorable Karl Rhoads, Chair  
and Members  
Committee on Judiciary  
State Senate  
415 South Beretania Street, Room 016  
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: House Bill No. 126, H.D. 1, Relating to Property Forfeiture

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

The HPD opposes House Bill No. 126, H.D. 1, Relating to Property Forfeiture.

Asset forfeiture is an essential tool that law enforcement uses to take the profit out of crime. It has also serves as a deterrent against future illegal activity involving forfeited assets. Proposed changes by this legislation would significantly compromise and affect law enforcement's ability to combat those who profit from illegal activity that victimizes our community. Delaying or eliminating the local investigating law enforcement agency from the proceeds of property forfeited from illegal activities will directly impact our ability to serve our community.

The HPD urges you to oppose House Bill No. 126, H.D. 1, Relating to Property Forfeiture.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

  
Arthur J. Logan  
Chief of Police

  
Domingo Manog, Acting Captain  
Narcotics/Vice Division

Rebecca V. Like  
Prosecuting Attorney



Keola Siu  
First Deputy  
Prosecuting Attorney

**OFFICE OF THE PROSECUTING ATTORNEY**

**County of Kaua'i, State of Hawai'i**

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The Honorable Karl Rhoads, Chair  
Senate Committee on Judiciary  
Thirty-third Legislature  
Regular session of 2025  
State of Hawai'i

March 14, 2025

Re: Testimony on HB126, HD1, SD1 (Proposed), Relating to Property Forfeiture

Dear Chair Rhoads and Honorable Senate Judiciary Committee Members:

**I write in opposition to this bill.**

Some members of the legislature are concerned about perceived abuses of HRS Chapter 712A, "Hawaii Omnibus Criminal Forfeiture Act," as it authorizes the forfeiture of property to law enforcement agencies before a property owner is charged with or convicted of a crime. Those who are fortunate enough not to live or work near a criminal enterprise (drug houses, game rooms, chicken fight derbies, for example) may easily overlook the community benefit of our current asset forfeiture laws. Civil asset forfeiture is an important law enforcement tool to immediately disrupt a criminal enterprise.

Respectfully:

1. I oppose the proposed requirement of a felony conviction before property may be forfeited. This bill does not address the common occurrence in which a defendant appeals a felony conviction. When a person is convicted of a crime, they have a right to an appeal; and Hawaii's appellate courts generally take 2-5 years to dispose of a criminal appeal. (At a minimum, this bill must be amended to address how a criminal appeal will impact a corresponding forfeiture case.)

If this bill is amended to condition the forfeiture of property on an affirmed felony conviction (or the passage of time past the deadline to appeal), this will significantly delay the disposition of civil asset forfeiture cases. This delay will be cumbersome for law enforcement agencies (which will store the property for years while awaiting the outcome of the criminal appeal) and will likely frustrate the property owners. In the case of seized vehicles, the passage of years will of course lead to deterioration of the vehicles.

*An alternative is to condition the forfeiture of property on the filing of a felony charge (which requires a finding of probable cause by a judge or the grand jury).*

2. I have no position on the proposal that seizing agencies will not retain any net proceeds from the sale of forfeited property. I anticipate that if this bill passes, the overall volume of civil asset forfeiture cases in the State will decline, given the reduced incentive to law enforcement agencies to pursue asset forfeiture. Relatedly, I anticipate that if police departments and prosecutors' offices struggle to maintain full staffing, they are likely to reduce the amount of time dedicated to civil asset forfeiture cases, choosing instead to prioritize resources for criminal cases.

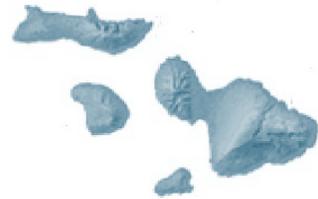
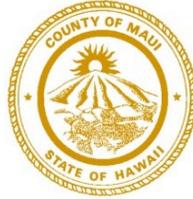
Thank you for the opportunity to comment on this bill.

/s/ Rebecca V. Like  
Prosecuting Attorney  
County of Kaua'i

**RICHARD T. BISSEN, JR.**  
Mayor

**ANDREW H. MARTIN**  
Prosecuting Attorney

**SHELLY C. MIYASHIRO**  
First Deputy Prosecuting Attorney



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TESTIMONY ON  
H.B. 126 HD1  
RELATING TO PROPERTY FORFEITURE

March 15, 2025

The Honorable Karl Rhoads  
Chair  
The Honorable Mike Gabbard  
Vice Chair  
and Members of the Committee on Judiciary

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

Thank you for the opportunity to testify **in OPPOSITION to the proposed SD1 version of H.B. 126 HD1** and request that it be deferred. Although we appreciate the legislature's efforts to address the issue of civil asset forfeiture reform, **the proposed SD1 version of H.B. 126 HD1** would unnecessarily hinder our efforts to reduce crime by removing incentives for engaging in criminal behavior. We oppose this measure for the following reasons:

1. The proposed SD1 version of this bill appears to prohibit forfeiture for any property unless the property owner has been convicted of a covered felony offense. The change would link initiation of a civil asset forfeiture action to a conviction in a felony criminal case. In theory, this would create an incentive for the State to ensure that defendants are convicted of felony offenses<sup>1</sup>.

Moreover, requiring a criminal conviction has the indirect effect of raising the standard of proof for civil forfeiture cases (a preponderance of the evidence standard) to the criminal standard of beyond a reasonable doubt. The preponderance of the evidence standard has been

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<sup>1</sup>In saying this, we want to make it clear that prosecutorial ethics bar us from initiating criminal cases as a means to pursue asset forfeiture proceedings and vice versa. Preventing this conflict is part of the reason why the two proceedings are initiated independently.

used for years by Hawai'i courts and government agencies to review matters such as land use boundary amendments<sup>2</sup>, domestic abuse protective orders<sup>3</sup>, and traffic/emergency period infractions<sup>4</sup>. It is also used in scenarios where civil and criminal cases arise from the same set of facts, such as the 1994 stabbing deaths of Nicole Brown Simpson and Ron Goldman where O. J. Simpson was acquitted of the two murders but found civilly liable for wrongful death (the civil court equivalent of a criminal murder charge).

Finally, the bill does not take into account the criminal appellate process or how forfeited funds are treated when a criminal conviction is vacated. Whether via direct appeal or the Hawai'i Rules of Penal Procedure Rule 40 post-conviction relief process, a criminal conviction can be vacated months, years or decades after the civil asset forfeiture process has been completed. Without the separation between criminal offense and civil asset forfeiture cases provided by the current HRS 712A process, litigation to return funds or real property may arise well after the property is no longer in the government's possession.

2. As part of our mission to seek justice, our Department shares the Legislature's interest in ensuring that the civil asset forfeiture process is not used to seize property from innocent owners. However, HRS Chapter 712A's existing safeguards contain significant protections for innocent property owners.

The initial seizure must be justified by a showing of probable cause that the property was involved in criminal activity. If we are unable to meet this burden of proof, the property cannot be forfeited regardless of whether the property owner is convicted in a related criminal case. Notice of forfeiture must then be given to everyone known to have an interest in the property. Owners have the right to contest a forfeiture, present evidence in support of their claim and have their claims decided by a court or administrative official. Chapter 712A already provides an "innocent owner" defense, preventing forfeiture of property used criminally if the owner did not know of or consent to the criminal use. Per HRS § 712A-5.5<sup>5</sup>, forfeitures cannot be excessive: the effect of the forfeiture cannot be grossly disproportionate to the seriousness of the offense.

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<sup>2</sup>HRS §205-4(h) ("No amendment of a land use district boundary shall be approved unless the commission finds upon the clear preponderance of the evidence that the proposed boundary is reasonable, not violative of section 205-2 and part III of this chapter, and consistent with the policies and criteria established pursuant to sections 205-16 and 205-17.")

<sup>3</sup>JD v. PD, 149 Hawai'i 92, 101, 482 P.3d 555, 564 (Ct. App. 2021) (The "preponderance of the evidence" standard is constitutional when applied in cases involving a protection order under HRS Chapter 586).

<sup>4</sup>HRS § 291D-8(a)(3) ("The standard of proof to be applied by the court shall be whether, by a preponderance of the evidence, the court finds that the traffic infraction or emergency period infraction was committed").

<sup>5</sup> HRS § 712A-5.5 ("The court shall limit the scope of a forfeiture judgment issued pursuant to section [712A-5(1)(b)] to the extent the court finds the effect of the forfeiture is grossly disproportionate to the nature and severity of the owner's conduct").

Finally, Hawai`i's appellate courts continue to be an additional safeguard against government overreach. For example, in Alm v. Eleven Products, 150 Hawai`i 329, 501 P.3d 298 (2021), the Hawai`i Supreme Court ruled that law enforcement personnel must follow stricter standards when retaining property for a future forfeiture action that was initially seized in a criminal case.

For these reasons, the Department of the Prosecuting Attorney, County of Maui opposes the proposed SD1 version of H.B. 126 HD1 and requests that it be deferred. 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.

C. Kimo Alameda, Ph.D.  
*Mayor*



Benjamin T. Moszkowicz  
*Police Chief*

William V. Brillhante Jr.  
*Managing Director*

Reed K. Mahuna  
*Deputy Police Chief*

## County of Hawai`i

### POLICE DEPARTMENT

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March 12, 2025

Senator Karl Rhoads, Chair, and Members  
Committee on Judiciary  
State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

Dear Senator Rhoads:

RE: HOUSE BILL 126, HD1, PROPOSED SD1  
DATE: MARCH 18, 2025  
TIME: 9:45 A.M.  
PLACE: CONFERENCE ROOM 016 & VIDEOCONFERENCE

The Hawai'i Police Department respectfully submits testimony in **opposition** of House Bill 126, HD1, Proposed SD1. While we recognize the intent to clarify asset forfeiture practices, this bill introduces several consequences that may ultimately undermine law enforcement efforts and interagency cooperation, compromising public safety.

This proposed Bill restricts the transfer of seized property to federal agencies unless the seized property includes in excess of \$100,000 US currency. This limitation could severely impact multi-agency investigations and joint task forces. Many high-impact cases, especially those targeting organized crime and drug operations, involve assets that fall below this threshold. Federal agencies often possess the resources, jurisdiction, and investigative reach that state and local agencies lack, making such partnerships essential. This bill may discourage federal partners from adopting cases, potentially reducing their willingness to collaborate with local law enforcement.

The Bill's restrictions may also lead to a restructuring or reduction in participation from federal law enforcement partners. When cases are expected to result in forfeitures that meet federal standards but conflict with state thresholds, our federal counterparts may be forced to deprioritize these cases or shift resources elsewhere. This outcome would weaken ongoing investigations and limit our ability to dismantle sophisticated criminal networks that span multiple jurisdictions.

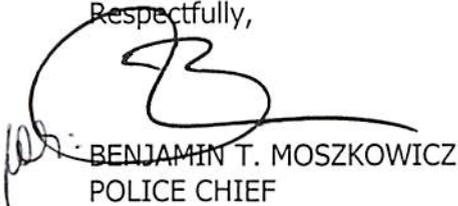
HOUSE BILL 126, HD1, PROPOSED SD1  
DATE: MARCH 18, 2025  
TIME: 9:45 A.M.  
PLACE: CONFERENCE ROOM 016 & VIDEOCONFERENCE  
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Requiring a felony conviction before forfeiture can proceed creates significant logistical and financial burdens on seizing agencies. Criminal cases can take months, if not years, to reach a verdict. During this time, the agency must maintain custody of the seized property, often at great expense. Vehicles, boats, electronics, and even real estate must be securely stored, maintained, and safeguarded. This ties up valuable resources that could otherwise support frontline operations. Moreover, the delay in obtaining a judicial ruling on forfeiture may allow criminals to exploit the system, further prolonging proceedings.

Asset forfeiture remains a vital tool in disrupting criminal enterprises by depriving them of the proceeds and instrumentalities of their illegal activities. By imposing these new restrictions, HB126, HD1, Proposed SD1, may unintentionally empower criminals who rely on such assets to fund operations. The deterrent effect of asset forfeiture will be diminished, potentially emboldening offenders.

For these reasons, the Hawaii Police Department urges the committee to **oppose** House Bill 126, HD1, Proposed SD1.

Respectfully,



BENJAMIN T. MOSZKOWICZ  
POLICE CHIEF

**DEPARTMENT OF THE PROSECUTING ATTORNEY  
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**THE HONORABLE KARL RHOADS, CHAIR  
SENATE COMMITTEE ON JUDICIARY  
Thirty-Third State Legislature  
Regular Session of 2025  
State of Hawai'i**

March 17, 2025

**RE: H.B. 126 S.D. 1 (PROPOSED); RELATING TO PROPERTY FORFEITURE.**

Chair Rhoads, Vice Chair Gabbard, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney for the City and County of Honolulu submits the following testimony in **opposition** to H.B. 126 S.D. 1 (Proposed).

The Department supported the House version of this bill. We have no quarrel with accountability, transparency, and oversight for the asset forfeiture. Unfortunately, we cannot support the proposed Senate draft, which requires criminal conviction for asset forfeiture. This will significantly impede law enforcement efforts against crime—especially organized crime. Three examples best illustrate the problem.

First, if the defendant dies during a pending prosecution, the State cannot forfeit the proceeds of criminal activity. This may include cases where a jury has already issued a guilty verdict, but the sentence has not yet been delivered. The recent case of Mr. Miske in federal court should be familiar to members of the Committee.

Second, if the defendant flees the jurisdiction, the State cannot forfeit the proceeds of criminal activity. This gives fugitive criminals continued access to money and other assets that may prolong their evasion of justice. It will introduce a system where sufficiently wealthy criminals can act with complete impunity.

Third, if the identity of the specific owner cannot be determined, the State cannot forfeit the proceeds of criminal activity. Consider the example of a murder in an illegal game room, where patrons and employees flee the scene. Surveillance video may clearly establish that currency left at the scene derives from illegal gambling. Yet even with public notice, no one steps forward to claim the cash. In these cases, the State cannot forfeit the proceeds of criminal activity.

This is not an exhaustive list because criminals have bottomless creativity, and income from crime gives them the ready means to act. Criminal proceeds can fund efforts to obstruct justice, such as bribing or intimidating witnesses. Transfers may be structured to preserve monetary flows for organized criminal activity, so that the enterprise survives the conviction of an individual. Asset forfeiture is a powerful and necessary tool to combat crime. This bill significantly weakens its effectiveness.

The Department supported the House version of this bill. It cannot support this revision.

Thank you for the opportunity to testify.



# COMMUNITY ALLIANCE ON PRISONS

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*Today's Inmate; Tomorrow's Neighbor*



## COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Tuesday, March 18, 2025

Room 016 & VIDEOCONFERENCE

9:45 AM

## STRONG SUPPORT FOR HB 126 HD1, SD1 - PROPERTY FORFEITURE

Aloha Chair Rhoads, Vice Chair Gabbard, 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 3,720 Hawai`i individuals living behind bars<sup>1</sup> and under the “care and custody” of the Department of Corrections and Rehabilitation as of March 10, 2025. We are always mindful that 936 – 49.3% - of Hawai`i’s male prison population (1,895) are serving their sentences abroad -- thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons appreciates this opportunity to share our mana`o and strong support for the proposed SD1 version of HB 126 that focuses on transparency and accountability.

A new report from the Institute for Justice in January 2025<sup>2</sup> analyzed forfeiture in Arizona and their 2021 sweeping forfeiture reforms that went into effect at the end of September of that year.<sup>3</sup> Among other things, the reforms created a strong conviction prerequisite requiring the conviction of a property owner with limited exceptions, improved protections for innocent owners, established prompt post-seizure hearings, and eliminated non-judicial “uncontested forfeitures.”<sup>4</sup> The reforms, and previous reform attempts, were motivated by a desire to protect Arizonans’ “property rights, their civil rights, and the[ir] due process rights.”

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<sup>1</sup> **DCR Weekly Population Report, March 10, 2025**

<https://dcr.hawaii.gov/wp-content/uploads/2025/03/Pop-Reports-Weekly-2025-03-10.pdf>

<sup>2</sup> **Forfeiture in Arizona Before Reform, Why Concerns About Abuse Were Justified**, Institute for Justice, By Matthew P. West, Ph.D. Senior Research Analyst, 22 pages, January 2025.

[https://ij.org/wp-content/uploads/2025/01/AZ-white-paper\\_FINAL.pdf](https://ij.org/wp-content/uploads/2025/01/AZ-white-paper_FINAL.pdf)

<sup>3</sup> H.B. 2810. 55th Leg., 1st Reg. Sess. (Ariz. 2021).

<sup>4</sup> Wimer, A. (2021, May 5). **Arizona governor signs important forfeiture reform bill** [Press release]. Institute for Justice. <https://ij.org/press-release/arizona-governor-signs-important-forfeiture-reform-bill/>

In the discussion and recommendation section (page 21), the report states:

*“Our analyses reinforce the concerns that led to the 2021 reforms, but they also point to improvements that could increase transparency around forfeiture activity in the state. Arizona has the best forfeiture reporting laws in the country. However, the state’s forfeiture data are not as useful as they could be due to inconsistencies in how information about seizures and forfeitures is reported across agencies and time.*

*One practical, and very achievable, way Arizona could improve transparency is by **adopting a standardized reporting process to ensure the same information is reported in the same way across agencies and time***

*Even better, Arizona could **create a dynamic database system for reporting**. In addition to having the same benefits as a standard form, a database would make it easier to track seized properties throughout the forfeiture process—particularly if Arizona assigned each property a unique ID. (see Arizona Police Department - Police Data Initiative.<sup>5</sup>)”*

The community in Hawai`i has been pushing for forfeiture reform for decades and the 2018 scathing report from the Hawai`i Office of the Attorney General confirmed what communities across Hawai`i nei have been saying. Hawai`i auditor’s report<sup>6</sup> Audit of the Department of the Attorney General’s Asset Forfeiture Program, A Report to the Governor and the Legislature of the State of Hawai`i, Report No. 18-09, June 2018 concluded:

*“Hawai`i’s asset forfeiture program is controversial, attracting criticism from lawmakers, the public, and the media. The statute gives the Attorney General broad power to take personal property from individuals without judicial oversight based on a relatively low standard of proof. Given the high profile of the program and the power bestowed on the Attorney General to administer it, it is crucial that the department manage the program with the highest degree of transparency and accountability. We found that is not the case. The department has failed to adopt administrative rules as required by statute, establish formal Report No. 18-09 / June 2018 17 management policies and procedures, and implement strong internal controls.”*

It is time for Hawai`i to reform this practice that has hurt our people and increased mistrust in our law enforcement practices. Community Alliance on Prisons thanks the committee for hearing the proposed SD1 version of this bill and for hearing the testimony of our concerned community!

[Thirty-seven states and D.C. have already passed legislation](#) to reform their own forfeiture laws, and last year the House Judiciary Committee [unanimously voted](#) to advance a bill that would direct revenue from forfeitures to the federal government’s general fund rather than to law enforcement agencies.<sup>7</sup>

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<sup>5</sup> See <https://www.policedatainitiative.org/participating-agencies/>

<sup>6</sup> Audit of the Department of the Attorney General’s Asset Forfeiture Program, A Report to the Governor and the Legislature of the State of Hawai`i, Report No. 18-09, June 2018. <http://files.hawaii.gov/auditor/Reports/2018/18-09.pdf>

<sup>7</sup> **Making the case for a new push for federal forfeiture reforms**, Washington Post Editorial, December 26, 2024. [Sentencing Law and Policy: Making the case for a new push for federal forfeiture reforms](#)



March 18, 2025, 9:45 a.m.  
Hawaii State Capitol  
Conference Room 016 and Videoconference

**To: Senate Committee on Judiciary**  
**Sen. Karl Rhoads, Chair**  
**Sen. Mike Gabbard, Vice-Chair**

**From: Grassroot Institute of Hawaii**  
**Ted Kefalas, Director of Strategic Campaigns**

RE: COMMENTS IN SUPPORT OF HB126 HD1 PROPOSED SD1 — RELATING TO PROPERTY FORFEITURE

Aloha Chair Rhoads, Vice-Chair Gabbard and other members of the Committee,

The Grassroot Institute of Hawaii would like to offer its comments in **support** of the proposed SD1 for [HB126 HD1](#), which would substantially reform the practice of civil asset forfeiture in Hawaii by restricting the practice to only those cases where the property owner has been convicted of an underlying felony offense.

In addition, the bill would remove the incentive for the agencies involved to benefit from forfeitures by directing forfeiture revenues to the general fund and by limiting the ability of an agency or prosecutor to transfer seized property to a federal agency or intergovernmental task force.

Moreover, HB126 SD1 would greatly strengthen oversight and reporting of the practice of asset forfeiture in the state.

We commend the Legislature for focusing on this issue, which has been the subject of growing national concern and criticism.

In 2020, a report card of civil asset forfeiture practices nationwide by the Institute of Justice gave Hawaii a D- and the dubious distinction of having some of the worst forfeiture laws in the country.<sup>1</sup>

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<sup>1</sup> Lisa Knepper, Jennifer McDonald, Kathy Sanchez, Elyse Smith Pohl, "[Policing for Profit: The Abuse of Civil Asset Forfeiture, 3rd Edition](#)," Institute for Justice, December 2020.

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.

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>

That 2018 report found that:

>> 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 that being able to petition is an option because of the lack of transparency surrounding the forfeiture program.

A follow-up report in 2021 by the state Office of the Auditor found that the state Department of the Attorney General had implemented only two of its 2018 recommendations, with two partially implemented and two not implemented at all.

Among the recommendations that were ignored was that the AG department develop policies and procedures "to ensure that petitions for administrative forfeiture are processed timely and consistently; that forfeited property and program funds are appropriately managed; and that proceeds from the sale of forfeited property are used for purposes intended by the Legislature."

The other unimplemented recommendation concerned the lack of a strict accounting and valuation system for forfeited property.<sup>3</sup>

In fiscal 2022, the Department of the Attorney General reported that there were 58 cases of forfeiture, 56 of which were uncontested. There were no claims for judicial review, and only two petitions for remission or mitigation.<sup>4</sup>

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

<sup>3</sup> ["Follow-Up on Recommendations from Report No. 18-09, Audit of the Department of the Attorney General's Asset Forfeiture Program,"](#) Hawaii Office of the Auditor, July 2021.

<sup>4</sup> ["Report on Proceedings under the Hawaii Omnibus Criminal Forfeiture Act,"](#) Hawaii Department of the Attorney General, Nov. 23, 2022.

Rather than attest to the efficacy of the program, the lack of petitions and other claims suggests that the state auditor's conclusions still hold — that there is too little transparency around the program and most people are unaware of their rights regarding 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 seizures, this makes the forfeiture program especially threatening to vulnerable populations.

By limiting forfeiture to those situations where the property owner has been convicted of a felony, the proposed SD1 would address the auditor's concerns while strengthening protections for innocent third-parties who can get swept up in a forfeiture case.

This bill also deserves praise for seeking to eliminate the monetary incentives that can arise from the practice of asset forfeiture. By directing the proceeds from the forfeiture program to the general fund and limiting the allowable expenses for monies in the criminal forfeiture fund, this bill would prevent any agency or group from having a financial interest in asset forfeiture.

Similarly, the proposed SD1 should be praised for limiting the transfer of forfeiture property to federal agencies, a technique that has been used elsewhere to circumvent state restrictions on forfeiture.

Finally, the recording and reporting requirements included in the bill would help improve transparency and accountability within the program. This, in turn, would help improve public trust in government.

To sum up, Hawaii continues to be among the worst states for property forfeiture. It is clear that reform is overdue.

By introducing a higher standard for forfeiture, this bill would represent a giant leap forward in improving Hawaii's forfeiture laws.

Thank you for the opportunity to testify.

Ted Kefalas  
Director of Strategic Campaigns  
Grassroot Institute of Hawaii

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

## TESTIMONY IN SUPPORT OF HB 126, HD 1 (PROPOSED SD 1)

TO: Chair Rhoads, Vice Chair Gabbard, and Senate Judiciary Committee Members

FROM: Nikos Leverenz  
DPFH Board President

DATE: March 18, 2025 (9:45 AM)

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Drug Policy Forum of Hawai'i (DPFH) **strongly supports** the proposed SD 1 of HB 126, HD 1, which would restrict Hawai'i's civil asset forfeiture law to those cases involving the commission of a felony offense where the property owner has been convicted of an underlying felony offense, among other safeguards, and directs the bulk of forfeiture proceeds to the state's general fund.

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

A [2018 report by the Hawai'i State Auditor](#) noted that about 85 percent of administrative forfeiture cases went uncontested during FY2006-FY2015. Current state law erects high barriers for an innocent owner to recoup their seized property, including the requirement to post bond. The auditor further noted that transparency and accountability have been lacking:

The Attorney General [has] broad power to take personal property from individuals without judicial oversight based on a relatively low standard of proof. Given the high profile of the program and the power bestowed on the Attorney General to administer it, it is crucial that the department manage the program with the highest degree of transparency and accountability.

[As I noted in a 2018 Honolulu Star-Advertiser op-ed I co-authored with Jennifer McDonald of the Institute for Justice](#) (IJ), a national non-profit public interest law firm, the Auditor's report

found that the state AG's Office "consistently failed to comply with a state law requiring it to use 20 percent of its share of forfeiture proceeds for drug prevention programs. While the office should have allocated more than \$2 million in forfeiture revenue to such programs over the past 13 years, the audit could identify no such spending. Yet during that time, over \$2.6 million in forfeiture revenue was spent on salaries."

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

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

When I served as an advocate to help reform California's civil asset forfeiture law in 2015, it was my pleasure to facilitate meetings between Senate Republican members, IJ Staff Attorney Lee McGrath, and Brad Cates, Director of the Justice Department's Asset Forfeiture Office from 1985 to 1989. Their message and their presence were very well-received, even among those conservative Republicans who were not typically inclined to support reforms to the criminal legal system. Ultimately, Governor Jerry Brown signed the measure, [SB 443](#), into law in 2016.

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

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

violation?... Valid, time-tested methods exist to allow law enforcement to seize contraband, profits and instrumentalities via legitimate criminal prosecution.

Since 2014, [at least 37 states and the District of Columbia have reformed their civil forfeiture laws](#). 16 states require a conviction in criminal court to forfeit most or all types of property in civil court, and four states (Maine, New Mexico, Nebraska, and North Carolina) have abolished civil forfeiture entirely. 27 states and the District of Columbia have instituted new reporting requirements for seizure and forfeiture activity.

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

**HB-126-HD-1**

Submitted on: 3/12/2025 4:45:53 PM

Testimony for JDC on 3/18/2025 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Frank Schultz	Individual	Support	Written Testimony Only

Comments:

I support this initiative.

**HB-126-HD-1**

Submitted on: 3/13/2025 10:58:50 AM

Testimony for JDC on 3/18/2025 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Michael Olderr	Individual	Support	Remotely Via Zoom

Comments:

Civil forfeiture is an act of legal theft and a tool of corruption. However, in this case, since this bill allows for fundamental transparency and limitations of the use of Civil Forfeiture, I think that it's better than what we have in place currently, so I am in support of this bill with the added note that I hope that its a stepping stone for the eventual dismantling of the practice entirely.

**HB-126-HD-1**

Submitted on: 3/16/2025 3:05:47 PM

Testimony for JDC on 3/18/2025 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Carla Allison	Individual	Support	Written Testimony Only

Comments:

I strongly support the proposed SD1 version of HB 126.

**HB-126-HD-1**

Submitted on: 3/16/2025 3:34:49 PM

Testimony for JDC on 3/18/2025 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Thaddeus Pham	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Rhoads, Vice Chair Gabbard, and JDC Committee Members,

As a citizen deeply concerned with governmental transparency, I write in strong support of HB126 HD1, which would increase accountability in property forfeiture.

This bill authorizes that asset forfeiture funds be deposited in the general fund, after relevant expenses. The current mechanism for tracking forfeiture funds may lead to misappropriation and erode community trust in our state's programs.

Please help use ensure accountability and promote trust in our local government.

With thanks,

Thaddeus Pham (he/him)

Makiki, HI