

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
Judiciary & Hawaiian Affairs**

March 12, 2021

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

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Office of the Public Defender respectfully supports S.B. No. 294 SD1, 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.

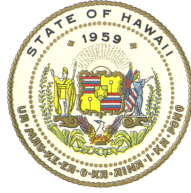
What is appalling is that, according to the State Auditor report on civil forfeiture published in June 2018, in 26% of the asset forfeiture cases, the property was forfeited without a corresponding criminal charge. *See* State of Hawai‘i, Office of the Auditor, [Audit of the Department of the Attorney General’s Asset Forfeiture Program, Report No. 18-09](#) (June 2018). In other words, no criminal charges were filed in 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.

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
JUDICIARY & HAWAIIAN AFFAIRS**

**Friday, March 12, 2021
2:00 PM**

State Capitol, Via Video Conference, Conference Room 325

**In consideration of
SENATE BILL 294 SD 1
RELATING TO PROPERTY FORFEITURE**

Senate Bill 294, Senate 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.

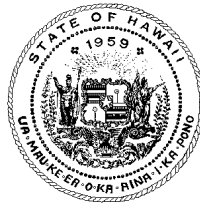
SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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

DAVID Y. IGE
GOVERNOR



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

MAX N. OTANI
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Tommy Johnson
Deputy Director
Corrections

Jordan Lowe
Deputy Director
Law Enforcement

No. _____

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

By
Max N. Otani, Director

House Committee on Judiciary and Hawaiian Affairs
Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair

Friday, March 12, 2021; 2:00 p.m.
Via Videoconference

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

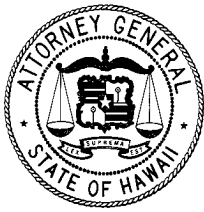
The Department of Public Safety (PSD) offers comments on Senate Bill (SB) 294, Senate Draft (SD) 1, which would limit the use of civil asset forfeitures; and direct proceeds from civil asset forfeitures to be transferred into the General Fund.

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

SB 294, SD 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 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. Retaining 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 that may not be budgeted or that it may be otherwise unable to afford.

Thank you for the opportunity to provide this testimony.



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Friday, March 12, 2021

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325, Via Videoconference

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

Chair Nakashima 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 5, line 19, through page 6, line 7, 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.

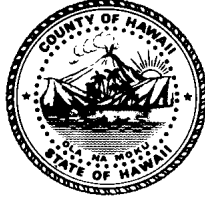
The safeguards that already exist in the law include the fact that the initial seizure must be justified by a showing of probable cause, and not mere suspicion, that the property was involved in criminal activity. Notice of forfeiture must then be given to all persons known to have an interest in the 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.

Mitchell D. Roth
Mayor



Paul K. Ferreira
Police Chief

Kenneth Bugado, Jr.
Deputy Police Chief

County of Hawai`i

POLICE DEPARTMENT

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March 11, 2021

Representative Mark M. Nakashima
Chairperson and Committee Members
Committee on Judiciary & Hawaiian Affairs
415 South Beretania Street, Room 325
Honolulu, Hawai`i 96813

RE : SENATE BILL 294, SD 1, RELATING TO PROPERTY FORFEITURE
HEARING DATE : March 12, 2021
TIME : 2:00 P.M.

Dear Representative Nakashima:

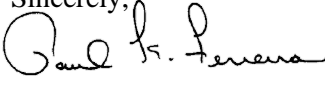
The Hawai`i Police Department opposes Senate Bill 294, SD 1, which seeks to restrict civil asset forfeiture to cases involving the commission of a felony offense where the property owner has been convicted of an underlying felony offense; as well as directing any forfeiture proceeds to the general fund.

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.

Sincerely,

PAUL K. FERREIRA
POLICE CHIEF

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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STEVEN S. ALM
PROSECUTING ATTORNEY

THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY



THE HONORABLE MARK M. NAKASHIMA, CHAIR
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Thirty-first State Legislature
Regular Session of 2021
State of Hawai`i

March 12, 2021

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

Chair Nakashima, Vice-Chair Matayoshi and members of the House Committee on Judiciary & Hawaiian Affairs, 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.

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.¹ Also, all adjudication hearings held before the Honolulu Liquor Commission are

¹ 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.

Available online at https://files.hawaii.gov/dcca/oah/forms/oah_oah_hearings_rules.pdf; last accessed February 1, 2021.

decided based on preponderance of the evidence.² So too are hearings held before the Land Use Commission,³ the Hawaiian Homes Commission,⁴ and any number of other State bodies and agencies governed by HRS Chapter 91.⁵

Respectfully, the Department urges this Committee to defer S.B. 294, S.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). 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

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 honolulu.gov/rep/site/bfslq/rules/LIQ_Rules_Website_Version_032717.pdf; last accessed February 1, 2021.

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 www.hawaii.gov/hrcurrent/Vol04_Ch201-0257/HRS0205/HRS_0205-0004.htm ; last accessed February 1, 2021.

⁴ 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; last accessed February 1, 2021.

⁵ 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; 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.**

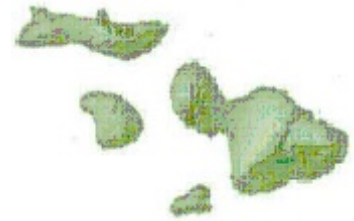
For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes S.B. 294, S.D. 1, and asks that the measure be deferred. Thank for you the opportunity to testify on this matter.

MICHAEL P. VICTORINO
Mayor

ANDREW H. MARTIN
Prosecuting Attorney

MICHAEL S. KAGAMI
First Deputy Prosecuting Attorney

ROBERT D. RIVERA
Second Deputy Prosecuting Attorney



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TESTIMONY
ON
S.B. 294 SD 1- RELATING TO
PROPERTY FORFEITURE

March 11, 2021

The Honorable Mark M. Nakashima
Chair
The Honorable Scot Z. Matayoshi
Vice Chair
and Members of the Committee on Judiciary & Hawaiian Affairs

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments concerning S.B. 294, Relating to Property Forfeiture. Specifically, we would like to express our strong opposition to S.B. 294 SD 1, 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 a number of concerns relating to this bill. First, we share the concerns of the Attorney General regarding the 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 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.



MICHAEL P. VICTORINO
MAYOR

OUR REFERENCE

YOUR REFERENCE

POLICE DEPARTMENT

COUNTY OF MAUI

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TIVOLI S. FAAUMU
CHIEF OF POLICE

DEAN M. RICKARD
DEPUTY CHIEF OF POLICE

March 11, 2021

The Honorable Mark M. Nakashima, Chair
The Honorable Scot Z. Matayoshi, Vice Chair
Committee on Judiciary & Hawaiian Affairs
Thirty-First Legislature 2021
415 South Beretania Street
Honolulu, Hawaii 96813

RE: SENATE BILL 294 RELATING TO PROPERTY FORFEITURE

Dear Chair Nakashima and Committee Members:

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

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

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 is a comingling of 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

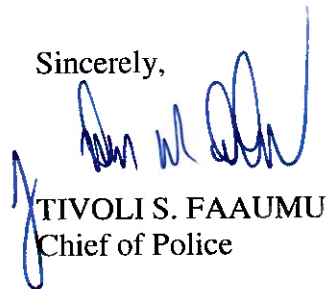
The Honorable Mark M. Nakashima, Chair
The Honorable Scot Z. Matayoshi, Vice Chair
March 11, 2021
Page 2

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 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. Thank you for the opportunity to testify.

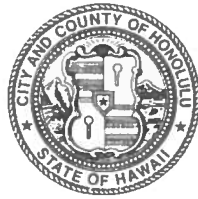
Sincerely,



TIVOLI S. FAAUMU
Chief of Police

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR

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JOHN D. MCCARTHY
AARON TAKASAKI-YOUNG
DEPUTY CHIEFS

OUR REFERENCE PJ-GK

March 12, 2021

The Honorable Mark M. Nakashima, Chair
and Members
Committee on Judiciary
and Hawaiian Affairs
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Nakashima and Members:

SUBJECT: Senate Bill No. 294, S.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, 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, Relating to Property Forfeiture, and thanks you for the opportunity to testify.

APPROVED:

Sincerely,

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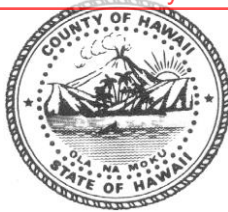
Susan Ballard
Chief of Police

Handwritten signature of Phillip Johnson in cursive script.

Phillip Johnson, Major
Narcotics/Vice Division

KELDEN B.A. WALTJEN
PROSECUTING ATTORNEY

STEPHEN L. FRYE
FIRST DEPUTY
PROSECUTING ATTORNEY



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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN OPPOSITION TO SENATE BILL 294 SD1

A BILL FOR AN ACT RELATING TO PROPERTY FOREITURE

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Rep. Mark Nakashima, Chair
Rep. Scot Matayoshi, Vice Chair

Friday, March 12, 2021, 2:00 p.m.

Via Videoconference & State Capitol, Conference Room 325

Honorable Chair Nakashima, Honorable Vice Chair Matayoshi, and Members of the Committee on Judiciary & Hawaiian Affairs, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in opposition to Senate Bill 294 SD1.

This measure prohibits civil asset forfeiture unless the covered offense is a felony for which the property owner has been convicted and requires the Attorney General to deposit the net proceeds of the forfeited property to the credit of the state general fund.

This bill was drafted with the intention to address instances where asset forfeiture may be used in a discriminatory manner. However, that perceived misuse is a misconception. In Hawai'i County, violent crime trends continue to rise as a result of the influx of illegal narcotics. Thus, narcotics addiction is at an all-time high and one of the most prevalent challenges our community faces. Statistically, in Hawai'i County, narcotics distribution and possession of illegal and prohibited firearms constitutes the overwhelming majority of the offenses which trigger asset forfeiture, and all property is seized pursuant to the strict rules and guidelines as set forth by the Attorney General.

Criminal enterprises generate a profit from the sale of their "product" or "services" through criminal activity. Asset forfeiture can remove the tools, equipment, cash flow, profit, and the product itself from the criminals and criminal organization. This bill will effectively eliminate asset forfeiture in these cases, one of the most successful tools law enforcement has to destabilize the economic structure of narcotics distributors.

Currently, the proceeds from asset forfeiture is directed toward programs which aim to prevent abuse of illegal narcotics through education, prevention and rehabilitation. Any re-allocation of the proceeds to the state general fund would ultimately undercut those deterrent efforts, defund program and prevention efforts, as well as the portion of the fund used directly for the purpose of providing training to community stakeholders and law enforcement.

The Office of the Prosecuting Attorney, County of Hawai'i remains committed to the cause of ensuring that any property forfeited is within the interest of justice and pursuant to the strict rules, timeframes, and guidelines as set forth by the Attorney General.

For the foregoing reasons, the Office of the Prosecuting Attorney, County of Hawai'i, Opposes the passage of Senate Bill No. 294 SD1. Thank you for the opportunity to testify on this matter.



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

March 10, 2021

TO: HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
RE: Testimony in Support of SB294 SD1

Dear Representatives,

Young Progressives Demanding Action **strongly supports** SB294 SD1 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

Hawai'i Association of Criminal Defense Lawyers

Testimony of the Hawai'i Association of Criminal Defense Lawyers to
the Committee on Judiciary and Hawaiian Affairs

March 10, 2021

S. B. No. 294, SD1: RELATING TO PROPERTY FORFEITURE
(Property Forfeiture; Disposition)

Chair Mark M. Nakashima
Vice-Chair Scot Z. Matayoshi
Honorable Committee Members

The Hawai'i Association of Criminal Defense Attorneys (HACDL) is an organization comprised of members of the bar practicing criminal defense in state, federal, and appellate courts throughout the State of Hawai'i. HACDL members include public defenders, private counsel, and other attorneys asserting the rights of the accused in criminal cases.

HACDL strongly **SUPPORTS** S.B. No. 294, SD1. Civil asset forfeiture proceedings in Hawai'i are often initiated prior to any conviction in a criminal case. This means that even though a person has been arrested and accused, but not found guilty by a jury or a judge, the government is permitted to seize their property. Challenging forfeiture proceedings requires posting a bond in many cases and is often out of the range for many clients who cannot afford a lawyer. To make things worse, the Office of the Public Defender does not represent claimants in forfeiture proceedings because they are noncriminal proceedings. They are often left unrepresented and without the means to claim property that may have little to no nexus to a crime. In fact, because proceedings are initiated prior to conviction, there may *never* be a crime before vehicles, money, or in some instances, real property, is seized by the government and sold off to raise revenue for the State.

S. B. No. 294, SD1 is long overdue and should be passed.

Thank you for this opportunity to comment on this bill.



HAWAII

AMERICANS FOR DEMOCRATIC ACTION

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P.O. Box 23404
Honolulu
Hawai'i 96823

March 10, 2021

TO: Chair Nakashima and members of JHA Committee

RE: SB 294 SD1 Relating to Property Forfeiture

Support for hearing on March 12

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 SD11 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



COMMUNITY ALLIANCE ON PRISONS

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

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



COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

Rep. Mark Nakashima, Chair

Rep. Scot Matayoshi, Vice Chair

Friday, March 12, 2021

2:00 PM

STRONG SUPPORT FOR SB 294 SD1 REFORMING PROPERTY FORFEITURE

Aloha Chair Nakashima, Vice Chair Matayoshi, 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 more than 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 more than 1,000 of Hawai`i’s imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

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

A report released in February 2021¹ 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.*

*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,*

¹ 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/>

*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 study² 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 and we urge the committee to pass this important reform.

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

Republican Party Platform, 2016

² **Asset Forfeiture: Report shows the high cost of innocence in Hawaii**, by Daryl James, Institute for Justice

Statement Before The
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Friday, March 12, 2021
2:00 PM
Via Video Conference, Conference Room 325

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

Chair NAKASHIMA, Vice Chair MATAYOSHI, and Members of the Judiciary & Hawaiian Affair Committee

Common Cause Hawaii supports SB 294, SD1, which (1) 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, (2) specifies that civil asset forfeiture restrictions do not apply to forfeitures authorized under other chapters of the Hawaii Revised Statutes, and (3) directs any forfeiture proceeds to the general fund.

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 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 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. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii

SB-294-SD-1

Submitted on: 3/11/2021 8:55:53 AM

Testimony for JHA on 3/12/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	LGBT Caucus of the Democratic Party of Hawaii	Support	No

Comments:

Aloha Representatives,

The LGBT Caucus of the Democratic Party of Hawai'i, Hawaii's oldest and largest policy and political LGBTQIA+ focused organization, supports Senate Bill 294 SD1.

Mahalo nui loa for your time and consideration,

Michael Golojuch, Jr.

Chair

LGBT Caucus of the Democratic Party of Hawai'i



March 12, 2021

2:00 p.m.

Via Videoconference

Conference Room 325

To: House Committee on Judiciary and Hawaiian Affairs

Rep. Mark M. Nakashima, Chair

Rep. Scot Z. Matayoshi, Vice Chair

From: Grassroot Institute of Hawaii

Joe Kent, Executive Vice President

Re: SB294 SD1 — 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-minus 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 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, there is one more reform that could improve the state asset forfeiture program. In order to maintain transparency and boost public confidence, we suggest that the bill include language that would require more detailed reporting on the forfeiture program, especially regarding financial management and case data for specific property dispositions.

Thank you for the opportunity to submit our testimony.

Sincerely,

Joe Kent
Executive Vice President
Grassroot Institute of Hawaii

² “Audit of the Department of the Attorney General’s Asset Forfeiture Program,” Office of the Auditor, State of Hawaii, June 2018, <http://files.hawaii.gov/auditor/Reports/2018/18-09.pdf>.



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

TESTIMONY IN SUPPORT OF SB 294, SD 1

TO: Chair Nakashima, Vice Chair Matayoshi & Members of the House Committee on Judiciary & Hawaiian Affairs

FROM: Nikos Leverenz
DPFH Board President

DATE: March 12, 2021 (2:00 PM)

Drug Policy Forum of Hawai'i (DPFH) **strongly supports** SB 294, SD 1, which would reform Hawai'i's civil asset forfeiture law to require a felony conviction before a person's property is permanently forfeited, among other safeguards.

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.

Beyond the lack of administrative oversight, Hawai'i law and current practices do not adequately protect the rights of innocent owners to be secure in their property. Institute for Justice (IJ), a national non-profit public interest law firm, [calls Hawai'i's civil forfeiture laws "among the nation's](#)

[worst” in assigning it a grade of “D-.”](#) IJ also noted the wide disparity between the standard of proof required of state actors and that required of private individuals:

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

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

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

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

Defendants should be charged with the crimes they commit. Charge someone with drug dealing if it can be proved, but don’t invent a second offense of “money laundering” to use as a backup or a pretext to seize cash. Valid, time-tested methods exist to allow law enforcement to seize contraband, profits and instrumentalities via legitimate criminal prosecution.

Since 2014, 34 states and the District of Columbia have reformed their civil forfeiture laws. 16 states require a conviction in criminal court to forfeit most or all types of property in civil court, and three states (New Mexico, Nebraska, and North Carolina) have abolished civil forfeiture entirely.

Hawai’i should join them.

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

SB294 SD1
RELATING TO PROPERTY FORFEITURE
Ke Kōmike Hale o ka Ho‘okolokolo a me ke Kuleana Hawai‘i
House Committee on Judiciary & Hawaiian Affairs

Malaki 12, 2021

2:00 p.m.

Lumi 325

The Office of Hawaiian Affairs offers the following **COMMENTS** on SB294 SD1, which would prohibit the use of civil asset forfeiture unless the covered offense charged is a felony, and the property owner has been convicted of the covered offense.

Native Hawaiians may be disproportionately impacted by civil asset forfeiture, especially as it is applied in drug-related cases. In recent years, drug-related offenses have constituted the majority of the covered offenses that have triggered asset forfeiture.¹ Meanwhile, in its 2010 report on the disparate treatment of Native Hawaiians in the criminal justice system, OHA noted that Native Hawaiians may bear a disproportionate burden of our overwhelmingly punitive response to drug use: although Native Hawaiians do not use drugs at disproportionate rates than other ethnic groups, they are convicted for these offenses at much higher rates.² These data indicate that Native Hawaiians may be disproportionately targeted for drug-related enforcement, and therefore exposed to a much higher risk of drug-related asset seizure and forfeiture.

OHA accordingly does have an interest in ensuring that our asset forfeiture laws are administered in a fair, transparent, and accountable manner, which also considers the laws’ potential impacts on the Native Hawaiian community in particular. Unfortunately, there is little evidence as to whether or not this is the case; OHA notes that a 2018 audit of the Attorney General’s asset forfeiture program in fact found significant and longstanding deficiencies, including with regards to transparency and accountability, in the administration of our asset forfeiture laws generally. **Therefore, until clearer mechanisms are established to ensure fairness, transparency, and accountability in the administration of our asset forfeiture laws – including with regards to their potential exacerbation of the impacts our criminal justice system has on the Native Hawaiian community – statutory restrictions on the use of asset forfeiture may be a particularly prudent and important step for the legislature to take.**

Mahalo piha for the opportunity to testify on this measure.

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

² THE OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM 45 (2010), available at http://www.oha.org/wp-content/uploads/2014/12/ir_final_web_rev.pdf.



Hawai'i

Committee: Committee on Judiciary & Hawaiian Affairs
Hearing Date/Time: Friday, March 12, 2021, 2:00 p.m.
Place: Via Videoconference
Re: Testimony of the ACLU of Hawai'i in Support of S.B. 294, S.D. 1, Relating to Property Forfeiture

Dear Chair Nakashima, Vice Chair Matayoshi, 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, 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 2018.¹ 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

¹ 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
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.² 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.

² 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-SD-1

Submitted on: 3/10/2021 10:12:23 PM

Testimony for JHA on 3/12/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Thaddeus Pham	Individual	Support	No

Comments:

Aloha JHA Committee,

As a public health professional and concerned citizen, I am writing in **STRONG SUPPORT** of SB294, which would ensure that people who have not been convicted of crime are not unduly penalized. With current conversations on law enforcement overreach, this bill is an important step in rebuilding accountability with our local communities and rebuild trust.

Please pass SB294!

Mahalo,

Thaddeus Pham (he/him)

SB-294-SD-1

Submitted on: 3/11/2021 6:32:38 AM

Testimony for JHA on 3/12/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
David Anderson	Individual	Support	No

Comments:

SB 294, SD1 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 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 submit testimony in support of this bill.

SB-294-SD-1

Submitted on: 3/11/2021 7:03:04 AM

Testimony for JHA on 3/12/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
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-SD-1

Submitted on: 3/11/2021 12:20:46 PM

Testimony for JHA on 3/12/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Edward B Hanel Jr	Individual	Support	No

Comments:

This bill ensures that due process has been used to determine a forfeiture is an appropriate action to hold state employees accountable for their improper and illegal performance. It will not justify a forfeiture from an employee who has not been accused nor found guilty of illegal conduct. As such, it is entirely different from the overly broad forfeiture statutes now being rightly scrutinized in other states, It is a punishment matched and linked to an employee's actions.

Concur with Common Cause Hawaii comments and support enacting Sb 294 into law.

SB-294-SD-1

Submitted on: 3/11/2021 12:30:40 PM

Testimony for JHA on 3/12/2021 2:00:00 PM

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

Comments:

Thank you for hearing this important bill. I doubt that Forfeiture laws constrain criminal behavior, more than they encourage it, by encouraging perpetrator to use property they do not own. thus increasing crime. It is also subject to capricious use by the police, adding to general distrust of the police department and undermining their ability to do their job..

But perhaps most importantly, asset forfeiture forces people whose property has been confiscated to prove their innocence, while our country's legal system is based on the assumption that a person is innocent until proven guilty. Prosecutors and judges determine guilt--it should not be the purview of the police to do so.

This bill cleans up many of the problems with our current asset forfeiture laws, by applying it only to felons, and only when the accused is found guilty. It is also important, for the sake of public trust in police, that they should not be allowed to profit by asset forfeiture.

I believe there are still some problems with the laws, but **I urge you to pass SB294SD1** as a major step toward greater integrity in our justice system.

To: COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
From: Wendy Gibson-Viviani RN
RE: SB294 SD1 (In Support)

Aloha Rep. Mark M. Nakashima, Chair, Rep. Scot Z. Matayoshi, Vice Chair, and
Committee Members

My name is Wendy Gibson-Viviani and I strongly support SB294 SD1 which would reform Hawai'i's civil asset forfeiture law, requiring a felony conviction before property is permanently forfeited.

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

It is a system that unfairly punishes people of color (think War on Drugs) and is riddled with conflict of interest for prosecutors, other law enforcers and the Attorney General.

The Institute for Justice-- Five-state Study which included data from Hawaii concluded that: "Policing for profit" does not work as advertised. They assert that forfeiture does NOT work to combat crime but is used to raise revenue. Reports from IJ <https://ij.org/press-release/new-report-forfeiture-doesnt-work-to-combat-crime-but-is-used-to-raise-revenue/>
And, a related Report <https://ij.org/report/does-forfeiture-work/>

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

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

Thank you for your thoughtful consideration of this important issue.

Wendy Gibson-Viviani RN
Kailua Resident—30 year Oahu Resident.

SB-294-SD-1

Submitted on: 3/11/2021 1:28:03 PM

Testimony for JHA on 3/12/2021 2:00:00 PM

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

Comments:

- SB 294, SD1 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 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.

SB-294-SD-1

Submitted on: 3/11/2021 4:29:05 PM

Testimony for JHA on 3/12/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Kunitake	Individual	Support	No

Comments:

Dear Chair Nakashima, Vice Chair Matayoshi, and Committee on Judiciary and Hawaiian Affairs,

Please support SB294 SD1.

- SB 294, SD1 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 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.

It's not right to take personal property away from someone unless they have been convicted. What if the defendant is "not guilty?" If law enforcement is authorized to take the property without beginning criminal proceedings against a defendant, the public will distrust law enforcement.

Thank you for taking time to review this issue. I appreciate the opportunity to provide testimony in support of SB294 SD1.

Mahalo,

Caroline Kunitake

SB-294-SD-1

Submitted on: 3/11/2021 8:26:55 PM

Testimony for JHA on 3/12/2021 2:00:00 PM

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

Comments:

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

- There was a scathing report done in 2018 by the Hawaii State Auditor’s Office which revealed: a lack of policies and procedures, a lack of guidance to law enforcement agencies and the public, a program manager who did not guide and oversee day-to-day activities, rules have not yet been enacted after 30 years since implementation, the program cannot fully account for the property it has obtained by forfeiture, the program is unable to adequately manage its funds, **the department has not allocated \$2 million for drug prevention efforts (as required by law)**, the program does not review or reconcile forfeiture case data, and the program lacks a system to properly account for refiled forfeiture cases.
- A 2020 report by the *Institute of Justice* gave Hawai`i a **D-** in their overall grade (<https://ij.org/report/policing-for-profit-3/pfp3content/civil-forfeiture-laws-fail-to-protect-property-owners/2020-civil-forfeiture-law-grades/>) and exposed many critical flaws in the program.
- Another report by the *Institute of Justice*, in February 2021 (<https://ij.org/wp-content/uploads/2021/02/does-forfeiture-work-web.pdf>), used a set of forfeiture data from 5 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.
 - *“Like Arizona’s civil forfeiture laws, Hawaii’s are among the nation’s most permissive for law enforcement. To forfeit property, the government must tie property to a crime by the low standard of a preponderance of the evidence. Innocent owners also bear the burden of proving they had nothing to do with the alleged crime for which the government is pursuing forfeiture. And under Hawaii law, law enforcement receives 100% of*

forfeiture proceeds: 25% of funds generated through forfeiture go to police, 25% to prosecuting attorneys and 50% to the attorney general (pg. 13)."

SB-294-SD-1

Submitted on: 3/11/2021 9:43:18 PM

Testimony for JHA on 3/12/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Diana Bethel	Individual	Support	No

Comments:

I am writing in strong support of SB294 SD1 which provides that civil asset forfeiture be allowed only in cases where there is a felony conviction. SB294 also stipulates that any proceeds from the sale of the asset be directed to the general fund.

This would avoid the appearance of legalized theft by the State perpetrated by the Attorney General's office and law enforcement. SB294 SD1 would help restore trust in law enforcement. Please pass SB294.

Mahalo,

Diana Bethel, Honolulu