



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2016

ON THE FOLLOWING MEASURE:

S.B. NO. 2149, S.D. 1, RELATING TO FORFEITURE.

BEFORE THE:

SENATE COMMITTEES ON JUDICIARY AND LABOR AND ON WAYS AND MEANS

DATE: Wednesday, February 24, 2016 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 211

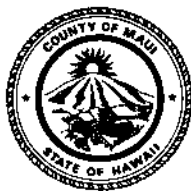
TESTIFIER(S): Douglas S. Chin, Attorney General, or Michael S. Vincent, or
Gary K. Senaga, Deputy Attorneys General

Chairs Keith-Agaran and Tokuda and Members of the Committees:

The Department of the Attorney General (“Department”) supports this bill. The purpose of this bill is to establish a working group to review and discuss Hawaii’s asset forfeiture laws and make recommendations to improve these laws to ensure that the asset forfeiture program and its funds are used for their intended purpose. The Department is aware that there are a number of bills that have been introduced this legislative session calling for substantive and procedural changes which, if enacted, may create legal inconsistencies in existing forfeiture laws, present logistical challenges, and increase the costs of the program.

We respectfully recommend that a working group tasked to review, study, and analyze Hawaii’s forfeiture laws and make recommendations for change is more efficient than making individual changes that could present multiple legal challenges.

We respectfully request that you pass this measure.



DEPARTMENT OF THE PROSECUTING ATTORNEY
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CONTACT: RICHARD. K. MINATOYA
Deputy Prosecuting Attorney
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY
ON
SB 2149, SD 1 - RELATING TO FORFEITURE

February 24, 2016

The Honorable Gilbert S.C. Keith-Agaran
Chair
The Honorable Maile S.L. Shimabukuro
Vice Chair
and Members
Senate Committee on Judiciary and Labor

The Honorable Jill N. Tokuda
Chair
The Honorable Donovan M. Dela Cruz
Vice Chair
and Members
Senate Committee on Ways and Means

Chairs Keith-Agaran and Tokuda, Vice Chairs Shimabukuro and Dela Cruz and Members of the Committees:

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS SB 2149, SD 1 - Relating to Forfeiture. SB 2149, SD 1 will require the Department of the Attorney General to establish a working group to review and discuss Hawaii's forfeiture laws and make recommendations to improve these laws.

With news stories from mainland states concerning potential asset forfeiture abuse, concerns are raised by lawmakers nationwide. Although proponents for an overhaul of asset forfeiture laws in Hawaii cannot identify any cases of abuse of the forfeiture process, SB 2149,

SD 1 provides a smart and effective means to review the current forfeiture laws. This will avoid ineffective and inefficient piecemeal reactionary legislation.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, SUPPORTS the passage of this bill. We ask that the committees PASS SB 2149, SD 1.

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

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**THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR**

**THE HONORABLE JILL N. TOKUDA, CHAIR
SENATE COMMITTEE ON WAYS AND MEANS**

**Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawai'i**

February 24, 2016

RE: S.B. 2149, S.D. 1; RELATING TO FORFEITURE.

Chair Keith-Agaran, Chair Tokuda, Vice Chair Shimabukuro, Vice Chair Dela Cruz, members of the Senate Committee on Judiciary and Labor, and members of the Senate Committee on Ways and Means, the Department of the Prosecuting Attorney, City and County of Honolulu ("Department"), hereby submits testimony in support of S.B. 2149, with amendments.

The purpose of S.B. 2149 is to form a working group to examine the current effectiveness and efficiency of Hawai'i's asset forfeiture laws, and make recommendations to ensure that our forfeiture laws are used for their intended purpose. As the basis for forming this working group, S.B. 2149 cites to a 2010 report published by an organization in Virginia, which raised concerns about the use of asset forfeiture laws nationwide.

Asset forfeiture is a highly specialized mechanism that is completely grounded in civil law, but closely connected to criminal law. It is only used in a very limited number of cases, and generally serves to remove the products and/or proceeds of crime from the community (in those limited cases), while also depriving owners of such products and/or proceeds if they knew that the products/proceeds were so connected to criminal activity.

Hawai'i's asset forfeiture laws carefully balance due process with judicial economy and efficiency, providing a quick mechanism for owners to contest forfeiture—even if they do not have what would amount to a "legal defense" in criminal court—and taking the ultimate decision out of the hands of prosecutors or police. If the Legislature has concerns about the state of Hawaii's forfeiture laws, the Department is willing to participate in a working group to assess the efficacy of these laws, including its impact on law enforcement and public safety. However, to make any changes to Hawai'i's asset forfeiture laws without thorough and careful

consideration—and proper vetting—could have a significantly negative impact on our court system and/or defeat the important purposes served by having these laws in the first place.

With regards to the S.D. 1 version of this bill, we understand that representatives from American Civil Liberties Union, Office of the Public Defender, and Drug Policy Forum of Hawaii were added to the proposed working group. However, because asset forfeiture is a civil—not criminal—procedure, we do not believe it is fitting for the working group to include a representative from the Office of the Public Defender, as they are not involved in these types of civil proceedings. Similarly, or perhaps even moreso, there does not appear to be any relevance or standing for Drug Policy Forum of Hawaii to be part of the working group, despite their apparent interest. As such, we would ask that those two positions be removed.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of S.B. 2149, S.D. 1, with the requested amendments noted. Thank for you the opportunity to testify on this bill.

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

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TESTIMONY IN SUPPORT OF SENATE BILL 2149, SD 1

A BILL FOR AN ACT RELATING TO PROPERTY
FORFEITURE

SENATE COMMITTEE ON JUDICIARY AND LABOR
The Honorable Gilbert S.C. Keith-Agaran, Chair

SENATE COMMITTEE ON WAYS AND MEANS
The Honorable Jill N. Tokuda, Chair

Wednesday, February 24, 2016, 10:00 AM
State Capitol, Conference Room 211

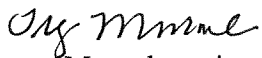
Honorable Chair Keith-Agaran and Chair Tokuda, and Members of the Senate Committees on Judiciary and Labor, and Ways and Means, the Office of the Prosecuting Attorney, County of Kaua'i, submits the following testimony in SUPPORT OF Senate Bill No. 2149, SD 1.

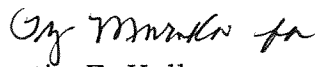
This measure would establish a working group to review Hawaii's forfeiture laws and make recommendations to the legislature to improve these laws.

A variety of bills this session propose substantial changes to Hawaii's forfeiture laws. See House Bill No. 1559, for example. Those of us who regularly use these laws as part of our work see the danger of enacting substantial changes, without adequate review of the current laws. Hawaii's forfeiture laws are contained in Chapter 712A, Hawaii Revised Statutes. The chapter provides both administrative and judicial forfeiture processes. Without a comprehensive review of Chapter 712A, any amendments are at great risk of creating internal inconsistencies within the chapter, resulting in confusion among practitioners, lay persons, and the judiciary.

Therefore, the Department of the Prosecuting Attorney, County of Kaua'i, SUPPORTS the passage of Senate Bill 2149, and requests that the committees pass SB 2149, SD 1.

Thank you for your consideration,


Tracy Murakami
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Prosecuting Attorney

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF SENATE BILL 2149, SD1

A BILL FOR AN ACT RELATING TO FORFEITURE

COMMITTEE ON JUDICIARY AND LABOR

Sen. Gilbert S.C. Keith-Agaran, Chair
Sen. Maile S.L. Shimabukuro, Vice Chair

COMMITTEE ON WAYS AND MEANS

Sen. Gilbert Jill N. Tokuda, Chair
Sen. Donovan M. Dela Cruz, Vice Chair

Wednesday, February 24, 2016, 10:00 AM
State Capitol, Conference Room 211

Honorable Chairs, Keith-Agaran and Tokuda, Honorable Vice-Chairs Shimabukuro and Dela Cruz, and members of the Committees on Judiciary and Labor, and Ways and Means, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of Senate Bill No. 2149, SD1.

This measure requires the Department of the Attorney General to establish a working group to review and discuss Hawai'i's forfeiture laws and make recommendations to improve these laws.

Hawai'i's Asset Forfeiture Program is used to undermine the economic infrastructure of criminal enterprises. 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, sometimes, the product itself, from the criminals and the criminal organizations, rendering them powerless to operate.

SB 2149, SD1 will ensure that asset forfeiture is used for its intended purposes, rather than to create an incentive for law enforcement agencies to generate revenue through forfeiture. The working group would examine the different forfeiture laws of other jurisdictions, and identify any possible areas for abuse or concerns, including any impediments that innocent owners of forfeited property face when petitioning for remission or mitigation. This working group would submit a written report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2017.

We believe that Hawai‘i County law enforcement entities are not abusing the asset forfeiture laws; and will continue to ensure that any property forfeited furthers the interests of justice. By allowing the working group to be established, the legislature would have all the information needed to make an informed decision on the future of Hawai‘i’s Asset Forfeiture Program.

For the foregoing reasons, the Office of the Prosecuting Attorney, County of Hawai‘i supports the passage of Senate Bill No. 2149, SD1. Thank you for the opportunity to testify on this matter.



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

TO: Senate Committees on Judiciary and Labor, Ways and Means
FROM: Carl Bergquist, Executive Director
HEARING DATE: 24 February 2016, 10AM
RE: SB2149, Relating to Forfeiture, **COMMENTS**

Dear Chairs Keith-Agaran & Tokuda, Vice Chairs Shimabukuro & Dela Cruz, Committee Members:

The Drug Policy Forum of Hawai'i (DPFHI) continues to believe that the proposed working group is unnecessary for one simple reason: the civil asset forfeiture tool is in and of itself wrong. We truly do not need a working group to determine what we already know is unjust: seizing a person's assets and property without any related conviction, turning the burden of proof onto that property owner to prove that the property is innocent, and lastly, funneling these assets into the coffers of self-interested parties: the arresting agency, the prosecutors and the Attorney General.

A better path forward would be to follow HB1559 that was voted out of the House Committee on Judiciary on 9 February. It proposes modest improvements, e.g. requiring a conviction, to the current forfeiture statute that would make it more just. That being said, we note that in SD1 of SB2149, three additional working group members, including DPFHI, have been added. We welcome this change, and strongly believe that we would bring balance and perspective to this type of working group together with the other, new proposed members, Office of the Public Defender and the ACLU of Hawai'i,

Finally, **our state law is actually worse than stated in the findings of the bill. The cited Institute for Justice has a new 2015 study of all states, and Hawaii has gone from a "D" in 2010 (as stated in the findings) to a "D-" (D minus) in 2015. I would suggest updating that finding.**

Mahalo for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for SB2149 on Feb 24, 2016 10:00AM
Date: Tuesday, February 23, 2016 10:12:59 AM

SB2149

Submitted on: 2/23/2016

Testimony for JDL/WAM on Feb 24, 2016 10:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Wendy Gibson	Individual	Oppose	No

Comments: To: Senate Committees on JDL/WAM From: Wendy Gibson R.N.
Decision-Making Date: Feb 24, 2016 at 10:00 a.m. (Room 211) RE: SB2149,
Relating to Forfeiture—in OPPOSITION Dear Chairs and Committee Members: I am
opposed to SB2149 because the practice of civil asset forfeiture is unjust. We do not
need a working group to tell us that. What happened to a presumption of innocence
until proven guilty? Although supporters of this bill say that this practice is limited to a
small number of cases, Civil Beat reported that this practice generates about 3
million dollars a year (JANUARY 8, 2016). That doesn't seem to be a very small
number of cases. This practice allows law enforcement to seize property (including
money) without the requirement of criminal charges or convictions. The owners must
then prove the innocence of the property without any assets (including money) to do
so. This has mutated our justice system and does not need a working group to make
the conclusion that we need to reform these laws by either removing them or
requiring that charges be filed before assets may be seized. With our current civil
asset forfeiture laws the net intended to catch criminals seems to have collected a
fair amount of by-catch—but no records are kept of whether or not the seized assets
were ever tied to subsequent convictions or criminal charges. Please oppose this bill
as it only delays discovery of what we can already surmise: that civil asset forfeiture
is an unjust practice. Thank you for your consideration, Wendy Gibson
Wendygibson9@gmail.com

Please note that testimony submitted less than 24 hours prior to the hearing,
improperly identified, or directed to the incorrect office, may not be posted online or
distributed to the committee prior to the convening of the public hearing.

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