

Honolulu, Hawaii

FEB 15 , 2022

RE: H.B. No. 1965
H.D. 1

Honorable Scott K. Saiki
Speaker, House of Representatives
Thirty-First State Legislature
Regular Session of 2022
State of Hawaii

Sir:

Your Committee on Judiciary & Hawaiian Affairs, to which was referred H.B. No. 1965 entitled:

"A BILL FOR AN ACT RELATING TO PROPERTY FORFEITURE,"

begs leave to report as follows:

The purpose of this measure is to make the State's civil asset forfeiture process more just by:

- (1) Restricting civil asset forfeiture to cases involving the commission of a covered offense where the person exercising some degree of control over the property is charged with an offense related to the property;
- (2) Adopting a higher standard of proof for the State to forfeit property;
- (3) Allowing for the transfer of certain property to any local or state government entity, municipality, or law enforcement agency within the State for use for a period of no longer than twelve months, before transferring back to the Attorney General;
- (4) Directing forfeiture proceeds to certain involved state and local governments and to the general fund;



- (5) Amending the allowable expenses for monies in the criminal forfeiture fund;
- (6) Requiring the Attorney General to adopt rules necessary to carry out the purpose of the Hawaii Omnibus Criminal Forfeiture Act; and
- (7) Amending the deadline for the Attorney General to report to the Legislature on the use of the Hawaii Omnibus Criminal Forfeiture Act.

Your Committee received testimony in support of this measure from the Department of the Attorney General, Americans for Democratic Action Hawaii, and Common Cause Hawaii. Your Committee received testimony in opposition to this measure from the Department of Public Safety, Office of the Public Defender, Honolulu Police Department, Office of the Prosecuting Attorney for the County of Kaua'i, Department of the Prosecuting Attorney of the City and County of Honolulu, and Department of the Prosecuting Attorney of the County of Maui. Your Committee received comments on this measure from Grassroot Institute of Hawaii.

Your Committee finds that restricting civil asset forfeiture to cases where the person exercised some degree of control over the property and is charged with an offense related to the property will help ensure that property is not arbitrarily confiscated. Furthermore, elevating the standard of proof for the State to forfeit property from preponderance of the evidence to clear and convincing evidence, which is the highest standard used in civil proceedings, will ensure fairness in the civil asset forfeiture process.

Your Committee also finds that imposing time limitations on the use of forfeited property by local or state government entities, municipalities, or law enforcement agencies and amending the distribution and use of proceeds from the sale of forfeited property will minimize the financial incentive for law enforcement agencies to seize and keep forfeited property.

Your Committee has amended this measure by:

- (1) Changing the effective date to January 1, 2222, to encourage further discussion; and



- (2) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary & Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1965, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1965, H.D. 1, and be referred to your Committee on Finance.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary &
Hawaiian Affairs,



MARK M. NAKASHIMA, Chair



Record of Votes of the Committee on Judiciary & Hawaiian Affairs

Bill/Resolution No.: HB 1965	Committee Referral: JHA, FIN	Date: 2-3-22		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
JHA Members	Ayes	Ayes (WR)	Nays	Excused
1. NAKASHIMA, Mark M. (C)	✓			
2. MATAYOSHI, Scot Z. (VC)	✓			
3. ICHIYAMA, Linda	✓			
4. KOBAYASHI, Dale T.	✓			
5. LoPRESTI, Matthew S.				✓
6. LOWEN, Nicole E.				✓
7. McKELVEY, Angus L.K.	✓			
8. NAKAMURA, Nadine K.			✓	
9. TAKUMI, Roy M.	✓			
10. TODD, Chris			✓	
11. TOKIOKA, James Kunane			✓	
12. WARD, Gene				✓
TOTAL (12)	6	0	3	3
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature:				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				