

STAND. COM. REP. NO.

147

Honolulu, Hawaii

FEB 10 2023

RE: S.B. No. 400
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-Second State Legislature
Regular Session of 2023
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 400 entitled:

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

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) 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;
- (2) Direct forfeiture proceeds to the general fund;
- (3) Amend the allowable expenses for moneys in the Criminal Forfeiture Fund;
- (4) Require the Attorney General to adopt rules necessary to carry out the purpose of the Hawaii Omnibus Criminal Forfeiture Act;
- (5) Amend the deadline for the Attorney General to report to the Legislature on the use of the Hawaii Omnibus Criminal Forfeiture Act;
- (6) Limit the transfer of certain forfeiture property to federal agencies; and



(7) Establish records requirements.

Your Committee received testimony in support of this measure from the Office of the Public Defender, Americans for Democratic Action Hawai'i, Community Alliance on Prisons, Hawaii Health & Harm Reduction Center, Drug Policy Forum of Hawai'i, and four individuals. Your Committee received testimony in opposition to this measure from the Department of the Prosecuting Attorney of the City and County of Honolulu, Honolulu Police Department, Hawai'i Police Department, Office of the Prosecuting Attorney of the County of Hawai'i, Office of the Prosecuting Attorney of the County of Kaua'i, and one individual. Your Committee received comments on this measure from the Grassroot Institute of Hawaii.

Your Committee finds that Hawaii's civil asset forfeiture process allows law enforcement agencies to seize and keep property based on suspicion that the property is connected to criminal activity. Property, such as vehicles, houses, cash, and jewelry, can be taken without the property owner having been convicted of a crime or even being formally accused of one, and the burden of proof is shifted from the State to the property owner. Your Committee further finds that there is a potential incentive to improperly seize property for forfeiture, as state and county law enforcement agencies are permitted to retain all proceeds from the sale of the seized property if it is later forfeited. This measure will limit the ability of law enforcement to forfeit seized property and will direct any proceeds to the general fund.

Your Committee has amended this measure by:

- (1) Removing the first sentence from the findings section; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 400, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 400, S.D. 1, and be referred to your Committee on Ways and Means.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary,



KARL RHOADS, Chair



