

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

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**ON THE FOLLOWING MEASURE:**

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

**BEFORE THE:**

SENATE COMMITTEE ON WAYS AND MEANS

**DATE:** Friday, March 28, 2025

**TIME:** 10:02 a.m.

**LOCATION:** State Capitol, Room 211

**TESTIFIER(S):** **WRITTEN TESTIMONY ONLY.**

(For more information, contact Gurudev D. Allin,  
Deputy Attorney General, at 808-586-0815)

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Chair Dela Cruz and Members of the Committee:

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

The S.D. 1 of this bill substantially changed H.B. No. 126, H.D. 1, by effectively replacing it with S.B. No. 722. The S.D. 1 would restrict civil asset forfeiture to cases where the property owner has been convicted of an underlying felony offense (page 5, line 12, through page 6, line 6). Additionally, it would direct forfeiture proceeds to the general fund (page 10, line 1, through page 11, line 2) and introduce other related amendments to chapter 712A, Hawaii Revised Statutes (HRS).

The civil asset forfeiture program codified in chapter 712A, HRS, was originally enacted in 1988 to take the profit out of crime, deter criminality, and protect the community.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

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

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

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

The Department notes that the amendments in the S.D. 1, particularly the provision restricting asset forfeiture to matters where there is a felony conviction of the property owner together with the directing of forfeiture proceeds to the general fund, are likely to seriously undermine the operation of the State's civil asset forfeiture program. If enacted, this bill would discourage law enforcement agencies from proceeding with asset forfeiture, as doing so would result in operating at a loss due to ongoing expenses such as storage, maintenance, and personnel. The requirement of a felony conviction of the owner prior to forfeiture would add uncertainty and delay in subjecting property to the forfeiture procedure. It would also prevent forfeiture in cases where the owner knowingly allowed the property to be used for criminal activity but did not actively participate and is therefore not charged with a felony. Seized property would need to be stored and maintained for potentially very lengthy periods of time before the conviction of the owner is obtained and possibly even longer pending appeals. This would add

costs to the program and any forfeiture proceeds may not cover the necessary expenses.

If the S.D. 1 were enacted, it is likely that the State's civil asset forfeiture program would become unviable and eventually cease. This would deprive the State of one of the most powerful tools to disrupt and deter criminal enterprises. Law enforcement agencies would likely reduce or eliminate the manpower and resources currently dedicated to civil asset forfeitures. Additionally, this bill would have negative financial repercussions for both law enforcement agencies and prosecutors, particularly at a time when previously stable federal funding for state and county law enforcement has become increasingly uncertain under the new administration.

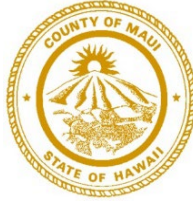
Should this bill become law, additional time would be needed to amend the administrative rules to implement the substantial changes to the civil asset forfeiture program.

For these reasons, the Department strongly opposes this bill in its current form and respectfully requests that the bill be deferred. Thank you for the opportunity to testify.

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

**ANDREW H. MARTIN**  
Prosecuting Attorney

**SHELLY C. MIYASHIRO**  
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TESTIMONY ON  
H.B. 126 HD1 SD1  
RELATING TO PROPERTY FORFEITURE

March 26, 2025

The Honorable Donovan M. Dela Cruz  
Chair  
The Honorable Sharon Y. Moriwaki  
Vice Chair  
and Members of the Committee on Ways and Means

Chair Dela Cruz, Vice Chair Moriwaki, and Members of the Committee:

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

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

Moreover, requiring a criminal conviction has the indirect effect of raising the standard of proof for civil forfeiture cases (a preponderance of the evidence standard) to the criminal standard of beyond a reasonable doubt. The preponderance of the evidence standard has been used for years by Hawai'i courts and government agencies to review matters such as land use

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

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

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

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

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

Finally, Hawai'i's appellate courts continue to be an additional safeguard against

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

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

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

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

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

For these reasons, the Department of the Prosecuting Attorney, County of Maui opposes H.B. 126 HD1 SD1 and requests that it be deferred. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries.

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

# COMMUNITY ALLIANCE ON PRISONS

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*Today's Inmate; Tomorrow's Neighbor*



## COMMITTEE ON WAYS AND MEANS

Senator Donovan DelaCruz, Chair

Senator Sharon Moriwaki, Vice Chair

Friday, March 28, 2025

Room 211 & VIDEOCONFERENCE

10<sup>00</sup> AM

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

Aloha Chair DelaCruz, Vice Chair Moriwaki, and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the 3,720 Hawai'i individuals living behind bars<sup>1</sup> and under the "care and custody" of the Department of Corrections and Rehabilitation as of March 24, 2025. We are always mindful that 936 - 49.5% - of Hawai'i's male prison population (1,890) are serving their sentences abroad -- thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

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

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

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

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<sup>1</sup> DCR Weekly Population Report, March 24, 2025

<https://dcr.hawaii.gov/wp-content/uploads/2025/03/Pop-Reports-Weekly-2025-03-24.pdf>

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

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

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

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

<https://ij.org/press-release/arizona-governor-signs-important-forfeiture-reform-bill/>

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

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

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

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

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

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

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

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

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

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



**HB-126-SD-1**

Submitted on: 3/25/2025 6:36:58 PM

Testimony for WAM on 3/28/2025 10:02:00 AM

Submitted By	Organization	Testifier Position	Testify
Jen	Individual	Oppose	Written Testimony Only

Comments:

Property should never be seized, ever. I oppose this blatantly unconstitutional bill.