
HOUSE CONCURRENT RESOLUTION

REQUESTING THE AUDITOR TO AUDIT THE ASSET FORFEITURE PROGRAM OF
THE DEPARTMENT OF THE ATTORNEY GENERAL.

1 WHEREAS, in 1988 the Legislature enacted the Hawaii Omnibus
2 Criminal Forfeiture Act, codified in Chapter 712A, Hawaii
3 Revised Statutes, to provide for the forfeiture of property used
4 or acquired in connection with the commission of certain
5 criminal offenses and for the distribution of the property, or
6 its proceeds, to law enforcement agencies for law enforcement
7 purposes; and

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9 WHEREAS, a law enforcement coalition consisting of the
10 Attorney General and the four county prosecutors and police
11 chiefs had proposed the Asset Forfeiture Program to establish a
12 mechanism to enable law enforcement to take away the means by
13 which criminals engage in their unlawful activities and the
14 benefits derived from those activities; and

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16 WHEREAS, the Asset Forfeiture Unit of the Department of the
17 Attorney General was part of the department's Criminal Justice
18 Division and is now part of its Civil Recoveries Division and is
19 responsible for operating the Asset Forfeiture Program to
20 administratively process forfeitures of personal property worth
21 less than \$100,000, or forfeitures of any vehicle or conveyance,
22 regardless of value, but not the forfeiture of real property,
23 pursuant to Section 712A-10, Hawaii Revised Statutes; and

24
25 WHEREAS, the Attorney General is charged with disposing of
26 property forfeited to the State through administrative or
27 judicial proceedings pursuant to Section 712A-16(1), Hawaii
28 Revised Statutes, and may transfer forfeited property, such as
29 automobiles, to state and county agencies, sell property by
30 public sale, pay valid claims against forfeited property, and



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1 destroy contraband or raw materials or equipment used to
2 manufacture controlled substances; and

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4 WHEREAS, the Attorney General distributes a twenty-five
5 percent share of forfeited currency and sale proceeds of
6 forfeited property, if any, to both the agency that seized the
7 property and the prosecuting attorney that initiated the
8 administrative or judicial forfeiture proceeding; and fifty
9 percent of the forfeited currency, or sale proceeds, if any, is
10 deposited in the Criminal Forfeiture Fund established pursuant
11 to Section 712A-16(4), Hawaii Revised Statutes; and

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13 WHEREAS, property and money distributed pursuant to Section
14 712A-16, Hawaii Revised Statutes, must be used for law
15 enforcement purposes and may be used to supplement, but not
16 supplant, funds regularly appropriated to law enforcement
17 agencies; and

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19 WHEREAS, despite the noble intentions of allowing civil
20 asset forfeitures, many accounts of abuses demonstrate that the
21 pendulum has swung too far in favor of law enforcement and that
22 civil asset forfeitures should be refocused on their original
23 purpose of penalizing those who seek to profit from illegal
24 activities; and

25
26 WHEREAS, the last audit of the Asset Forfeiture Program,
27 performed over two decades ago in 1989, Auditor's Report No. 90-
28 6, Management Audit of the Narcotics Enforcement Division and
29 the Investigation Division of the Department of the Attorney
30 General, found that the Department of the Attorney General had
31 not adequately planned or developed the forfeiture program and
32 recommended the development of formal policies and procedures
33 for the timely retrieval and deposit of forfeited cash, a
34 control list of cash, a formal accounting period and financial
35 statements for the Criminal Forfeiture Fund, procedures and
36 timetables for auctioning or otherwise disposing of forfeited
37 non-cash assets, and procedures for depositing forfeited cash
38 into bank accounts; and

39
40 WHEREAS, a sunset evaluation of the forfeiture program in
41 1995, Auditor's Report No. 95-22, Sunset Evaluation of the
42 Forfeiture Program, was inconclusive as to whether the



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1 forfeiture program deters crime and recommended amendments to
2 improve fairness, based on the Uniform Controlled Substances Act
3 (1994), which included provisions regarding forfeitures and was
4 issued by the National Conference of Commissioners on Uniform
5 State Laws as a model for states to consider; and

6
7 WHEREAS, Auditor's Report No. 95-22 also recommended repeal
8 of the Criminal Forfeiture Fund so that some forfeiture proceeds
9 can be deposited into the state general fund for legislative
10 appropriation; now, therefore,

11
12 BE IT RESOLVED by the House of Representatives of the
13 Twenty-eighth Legislature of the State of Hawaii, Regular
14 Session of 2016, the Senate concurring, that the Auditor is
15 requested to conduct a management audit of the Asset Forfeiture
16 Program of the Department of the Attorney General to:

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18 (1) Evaluate the efficiency and effectiveness of the Asset
19 Forfeiture Program;
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21 (2) Determine whether the program uses moneys for the
22 purposes intended, pursuant to Chapter 712A, Hawaii
23 Revised Statutes;
24
25 (3) Provide a comprehensive accounting of money and
26 property seized and disposed of through asset
27 forfeitures;
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29 (4) Determine how many asset forfeitures occurred in
30 connection with cases that did not result in criminal
31 convictions;
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33 (5) Provide an assessment of the socioeconomic status of
34 individuals whose assets have been forfeited; and
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36 (6) Follow up on recommendations made in Auditor's Report
37 No. 95-22; and
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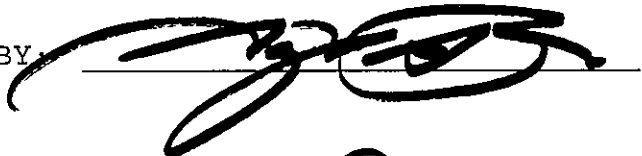
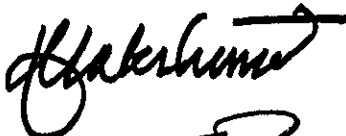

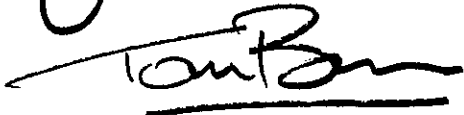
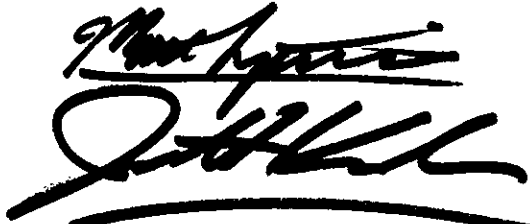
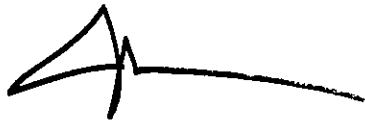

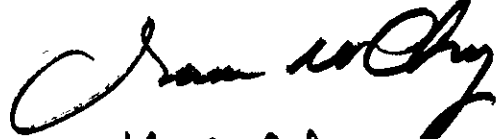
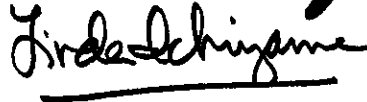
39 BE IT FURTHER RESOLVED that the Auditor is requested to
40 submit findings and recommendations, including any proposed
41 legislation, to the Legislature no later than twenty days prior
42 to the convening of the Regular Session of 2017; and



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 2 BE IT FURTHER RESOLVED that certified copies of this
 3 Concurrent Resolution be transmitted to the Auditor and the
 4 Attorney General.
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OFFERED BY:

JAN 20 2016

