



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

ON THE FOLLOWING MEASURE:

H.C.R. NO. 4, RELATING TO AUDIT OF THE ASSET FORFEITURE PROGRAM.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Monday, April 18, 2016 **TIME:** 2:30 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Steve A. Bumanglag, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General does not oppose this concurrent resolution. The purpose of this concurrent resolution is to request the Auditor to audit the asset forfeiture program of the Department of the Attorney General. The Department is committed to transparency and will cooperate with the Auditor in any management audit of the asset forfeiture program.

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/email: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON JUDICIARY AND LABOR

Senator Gil Keith-Agaran, Chair

Senator Maile Shimabukuro, Vice Chair

Monday, April 18, 2016

2:30 p.m.

Room 325

STRONG SUPPORT FOR HCR 4 - AUDIT OF AG'S ASSET FORFEITURE FUND

Aloha Chair Keith-Agaran, Vice Chair Shimabukuro 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 almost two decades. This testimony is respectfully offered on behalf of the 6,000 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety. We are always mindful that approximately 1,400 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

Community Alliance on Prisons supports HCR4 that requests the auditor to audit the asset forfeiture program of the Department of the Attorney General.

A 2016 report¹ from the Institute for Justice opens with this paragraph:

Civil forfeiture threatens the constitutional rights of all Americans. Using civil forfeiture, the government can take your home, business, cash, car or other property on the mere suspicion that it is somehow connected to criminal activity – and without ever convicting or even charging you with a crime. Most people unfamiliar with this process would find it hard to believe that such a power exists in a country that is supposed to recognize and hold dear rights to private property and due process of law.

Hawai'i was downgraded from a "D" in 2010 to a "D-" in 2016. Pages 68-69 of the report highlight Hawai'i's law:

Hawaii earns a D- for its civil forfeiture laws:

- Low bar to forfeit and no conviction required
- Poor protections for innocent third-party property owners
- 100% of forfeiture proceeds go to law enforcement

¹ POLICING FOR PROFIT – The Abuse of Civil Asset Forfeiture, 2nd Edition.

<http://ij.org/wp-content/uploads/2015/11/policing-for-profit-2nd-edition.pdf>

Hawaii's civil forfeiture laws are among the nation's worst, earning a D-. State law has a low standard of proof, requiring only that the government show by a preponderance of the evidence that property is tied to a crime. Furthermore, innocent owners bear the burden of proving that they had nothing to do with the alleged crime giving rise to the forfeiture. Most troubling, law enforcement has a large financial stake in forfeiture, receiving 100 percent of civil forfeiture proceeds: 25 percent goes to police, 25 percent to prosecuting attorneys and 50 percent to the attorney general.

According to fiscal-year reports of police departments' forfeiture proceeds, presented in annual reports available on the website of the Hawai'i Department of the Attorney General, the state has reported forfeiture proceeds as over \$17 million from 2000-2013.

Reported Forfeiture Proceeds

Year	Currency	Vehicles	Other	Total
2000	\$555,715	\$343,550	\$224,071	\$1,123,336
2001	\$450,945	\$536,040	\$207,033	\$1,194,018
2002	\$503,762	\$564,173	\$547,110	\$1,615,045
2003	\$561,015	\$194,600	\$194,262	\$949,877
2004	\$737,668	\$457,792	\$461,625	\$1,657,085
2005	\$414,395	\$332,230	\$316,627	\$1,063,252
2006	\$698,035	\$460,855	\$334,709	\$1,493,599
2007	\$636,598	\$468,290	\$300,396	\$1,405,284
2008	\$492,398	\$353,907	\$627,362	\$1,473,667
2009	\$636,598	\$468,290	\$300,396	\$1,405,284
2010	\$622,497	\$441,865	\$733,513	\$1,797,875
2011	\$309,095	\$331,375	\$21,150	\$661,620
2012	\$131,127	\$273,555	\$131,129	\$535,811
2013	\$368,889	\$356,176	\$143,311	\$868,376
Total	\$7,118,737	\$5,582,698	\$4,542,694	\$17,244,129
Average per year	\$508,481	\$398,764	\$324,478	\$1,231,724

Source: Fiscal-year reports of police departments' forfeiture proceeds, presented in annual reports available on the website of the Hawaii Office of the Attorney General.

In the interest of transparency and accountability, we respectfully ask the committee to pass HCR4. Mahalo for this opportunity to testify.



Hawaii's Voice for Sensible, Compassionate, and Just Drug Policy

TO: SENATE COMMITTEE ON JUDICIARY & LABOR

FROM: PAMELA LICHTY, M.P.H., PRESIDENT

DATE: APRIL 18, 2016, 2:30 p.m., ROOM 325

RE: H.C.R. 4 REQUESTING THE AUDITOR TO AUDIT THE ASSET FORFEITURE PROGRAM OF THE DEPARTMENT OF THE ATTORNEY GENERAL – **STRONG SUPPORT**

Good afternoon, Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the Committee. My name is Pam Lichty and I'm President of the Drug Policy Action Group (DPAG), the government affairs arm of the Drug Policy Forum of Hawaii.

We're very pleased to offer our strong support of HCR 4. Since it has been over a decade since this program was last audited and since the Institute of Justice "awarded" Hawaii a D- grade for its performance in 2014, it seems long overdue.

The very concept and design of civil asset forfeiture programs sets them up for self-serving behavior on the part of law enforcement and thus undermines their role and image as trustworthy guardians of both public safety and of private property.

As others I'm certain have testified, states such as Florida and many smaller jurisdictions are overhauling or even eliminating their programs. The first step in any such amendments is examine the data from the program's last several years.

The audit called for in this resolution will give this body the baseline data it needs to determine whether changes to Hawaii's civil asset forfeiture programs are warranted.

Mahalo for hearing this important resolution today and for giving us the opportunity to testify.



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

TO: Senate Committee on Judiciary and Labor
FROM: Carl Bergquist, Executive Director
HEARING DATE: 18 April 2016, 2:30PM
RE: HCR4, Measure Title: “REQUESTING THE AUDITOR TO AUDIT THE ASSET FORFEITURE PROGRAM OF THE DEPARTMENT OF THE ATTORNEY GENERAL”
IN STRONG SUPPORT

Dear Chair Keith-Agaran, Vice Chair Shimabukuro and Committee Members:

The Drug Policy Forum of Hawai'i (DPFHI) **strongly supports** this resolution requesting that the Auditor evaluate the efficiency, effectiveness and fairness of the Asset Forfeiture Program of the Department of the Attorney General. It has been 27 years since the last management audit of the program, and 21 since the last evaluation by the Auditor. In other words, an audit is long overdue.

An audit is necessary for several reasons. **First**, this program provides monetized incentives for law enforcement to seize a person's property, which can then be sold for profit without any related criminal charges being filed or convictions being obtained. **Second**, the due process for the property owner to retrieve their property is flipped on its head, with the presumed guilty property having to be proved innocent and unrelated to any criminal activity. **Third**, the [fundamental problems of civil asset forfeiture](#) are being recognized around the country: [Montana and New Mexico have eliminated similar programs](#); just this past Saturday, [Governor Scott of Florida signed a bi-partisan bill requiring convictions](#) before property seizure; and at the federal level, [former Attorney General Eric Holder began reforms of the federal program](#) before leaving office.

In the aforementioned prior audits of Hawaii's own program, the Auditor recognized that the potential for abuse existed, but many of its recommendations were unfortunately ignored. This is why, e.g., in 2011, [Marilou Chin of Pearl City saw her livelihood destroyed](#), when her specially outfitted van that she used to transport disabled clients to doctor appointments and to run other errands, was seized and sold by police. Her son had borrowed it without her permission, and

used it for some questionable activity. Importantly, he was never convicted of anything, much less charged with a crime. Regardless, Ms. Chin was out \$8,000, and had to use her own funds, now in excess of \$14,000, to get a new van. Even if this incident was an anomaly, which data from elsewhere suggests it is unlikely to be, there is simply no justification for having a law on the book that legalizes this type of behavior.

As for related reform efforts during the 2016 legislative session, your committee and the full Senate have unanimously already passed [SB2149 SD2 HD1](#), which would create a working group to examine and propose broader reforms of Hawaii's civil asset forfeiture program. DPFHI would have been part of this working group along with law enforcement, the Judiciary and others, but it unfortunately died in the House. Still, the spirit of that bill resides in the type of audit proposed by this resolution.

Civil asset forfeiture, which has no proven deterrent effect on crime, drives a greater wedge between police and the public, [particularly in disparately impacted low-income communities of color](#), it is meant to serve and protect. This audit can be a first step in restoring that trust.

Mahalo for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, April 16, 2016 8:09 AM
To: JDCTestimony
Cc:
Subject: *Submitted testimony for HCR4 on Apr 18, 2016 14:30PM*

HCR4

Submitted on: 4/16/2016

Testimony for JDL on Apr 18, 2016 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Delano	Individual	Support	No

Comments:

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, April 17, 2016 4:38 PM
To: JDCTestimony
Cc:
Subject: *Submitted testimony for HCR4 on Apr 18, 2016 14:30PM*

HCR4

Submitted on: 4/17/2016

Testimony for JDL on Apr 18, 2016 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, April 16, 2016 2:41 PM
To: JDLTestimony
Cc:
Subject: Submitted testimony for HCR4 on Apr 18, 2016 14:30PM

HCR4

Submitted on: 4/16/2016

Testimony for JDL on Apr 18, 2016 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
E. Ileina Funakoshi	Individual	Support	No

Comments: It's been almost 30 yrs since the last audit. So, please pass HCR 4. Mahalo.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Friday, April 15, 2016 7:02 PM
To: JDLTestimony
Cc:
Subject: Submitted testimony for HCR4 on Apr 18, 2016 14:30PM

HCR4

Submitted on: 4/15/2016

Testimony for JDL on Apr 18, 2016 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Elijah Ariel	Individual	Comments Only	No

Comments: I'm over 60 years old and I would deeply appreciate it if you do not do things that make it more difficult for me to get my medicine. Please stop enacting laws that you would not want to be used against YOU!!!! It's a simple thing: don't support any laws that you know in your hearts are UNFAIR. There are more than enough problems in the world. Thanks

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Friday, April 15, 2016 4:50 PM
To: JDLTestimony
Cc:
Subject: *Submitted testimony for HCR4 on Apr 18, 2016 14:30PM*

HCR4

Submitted on: 4/15/2016

Testimony for JDL on Apr 18, 2016 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Gladys Coelho Baisa	Individual	Support	No

Comments:

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, April 17, 2016 12:28 PM
To: JDCTestimony
Cc:
Subject: *Submitted testimony for HCR4 on Apr 18, 2016 14:30PM*

HCR4

Submitted on: 4/17/2016

Testimony for JDL on Apr 18, 2016 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Friday, April 15, 2016 6:39 PM
To: JDLEstimony
Cc:
Subject: *Submitted testimony for HCR4 on Apr 18, 2016 14:30PM*

HCR4

Submitted on: 4/15/2016

Testimony for JDL on Apr 18, 2016 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph A. Bobich	Individual	Support	No

Comments:

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, April 16, 2016 6:29 AM
To: JDCTestimony
Cc:
Subject: *Submitted testimony for HCR4 on Apr 18, 2016 14:30PM*

HCR4

Submitted on: 4/16/2016

Testimony for JDL on Apr 18, 2016 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Katarina Culina	Individual	Support	No

Comments:

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

April 15, 2016

Sirs and Madams

The so called War on Drugs is the worst mistake in American history. It is often compared to Prohibition, but because it has been in place so long, its harm has been more pervasive. Its tentacles now reach into every phase of human activity and almost always the cure is worse than the disease. Prohibition, of alcohol that is, was enacted swiftly, the dire consequences appeared swiftly, the mistake was painfully obvious, and the remedy readily available. The 21st amendment repealed the 18th only 14 years intervened. The War on Drugs however snuck up on us. Anti-drug laws were passed one ethnicity, therefore one drug at a time. That's right, most were aimed at a particular ethnicity beginning with anti-Chinese opium drug laws in San Francisco in 1875. Most recent drug laws have biased against Black Americans drugs of choice.

The **War on Drugs** has corrupted every phase of law enforcement, and been responsible for massive invasion of our God given rights, as enumerated in the Bill of Rights. Every right from Free Speech (first amendment) to state's rights (the tenth) is bypassed in its zeal.

One of the most egregious is so called Civil Forfeiture. Any Police agency can impound and keep any property that they suspect is drug involved, and keep it. The owner must sue to recover the property, and the burden of proof is on him, not the police; so much for due process. This turns our concept of innocent until proven guilty on its head and substitutes the fascist concept of guilty until proven innocent in it's place.

Amendment 5 - Trial and Punishment, Compensation for Takings. Ratified 12/15/1791. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law**; nor shall private property be taken for public use, without just compensation.

Please take this step to help end the misguided war.

Ken Obenski

Kaohe

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, April 17, 2016 1:42 PM
To: JDCTestimony
Cc:
Subject: *Submitted testimony for HCR4 on Apr 18, 2016 14:30PM*

HCR4

Submitted on: 4/17/2016

Testimony for JDL on Apr 18, 2016 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Luana Jones	Individual	Support	No

Comments:

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, April 16, 2016 7:20 AM
To: JDLTestimony
Cc:
Subject: Submitted testimony for HCR4 on Apr 18, 2016 14:30PM

HCR4

Submitted on: 4/16/2016

Testimony for JDL on Apr 18, 2016 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Matt Binder	Individual	Support	No

Comments: Asset forfeiture is a disgrace to our criminal justice system - all processes to ensure fairness and justice are thrown out the window. The proceeds of these seizures seem to disappear down a rabbit hole in the very police departments that make the seizures - a conflict of interest of massive proportions. Now is the time to assess the depths of this problem and begin to dismantle this over-reach by the government.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

[COMMITTEE ON JUDICIARY AND LABOR](#)

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

DATE: Monday, April 18, 2016

TIME: 2:30 p.m.

PLACE: Conference Room 325

Subject: HCR4 (Audit of Attorney General's Asset Forfeiture Program)

Aloha, Chair, Vice Chair and members of the committee!

I am writing to ask you to PLEASE stop condoning and supporting cops as criminals. Talk about a mixed message. Asset forfeiture is taking someone's property when they have not and maybe will not be charged with anything. It is THEFT, pure and simple.

Please support the END of asset forfeiture as a matter of course and seizure of assets without due process.

Mahalo ahead of time for helping to fix a very REAL WRONG!

Teri Heede

92-994 Kanehoa Loop

Kapolei 96707

From: mailinglist@capitol.hawaii.gov
Sent: Friday, April 15, 2016 9:32 AM
To: JDLTestimony
Cc:
Subject: *Submitted testimony for HCR4 on Apr 18, 2016 14:30PM*

HCR4

Submitted on: 4/15/2016

Testimony for JDL on Apr 18, 2016 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Troy Abraham	Individual	Support	No

Comments:

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov