



Committee: Committee on Ways and Means
Hearing Date/Time: Thursday, April 21, 2016, 9:00 a.m.
Place: Conference Room 211
Re: Testimony of the ACLU of Hawaii in Support of H.C.R. 4, Requesting the Auditor to Audit the Asset Forfeiture Program of the Department of the Attorney General

Dear Chair Tokuda, Vice Chair Dela Cruz and Committee Members:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of H.C.R. 4. Hawaii’s current civil asset forfeiture law is based on the legal fiction that property can be “guilty,” and allows law enforcement to profit from seized property where there has been no conviction for the underlying offense.

Although this practice is often justified as a way to cripple large-scale criminal operations, it has been used to create revenue for law enforcement with little restriction or accountability. This practice harms property owners, who, due to inadequate state law, often cannot afford to challenge invalid forfeitures. It comes as no surprise that Hawaii’s civil asset forfeiture law is regarded among the worst in the nation, receiving a grade of D- by the Institute for Justice. See <http://ij.org/pfp-state-pages/pfp-Hawaii/>. The ACLU therefore supports an audit of the Asset Forfeiture Program, which may pave the way for future reform.

Thank you for the opportunity to testify.

Sincerely,

Mandy Finlay
Advocacy Coordinator
ACLU of Hawaii

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.

American Civil Liberties Union of Hawaii
P.O. Box 3410
Honolulu, Hawaii 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158
Phone/email: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON WAYS AND MEANS

Senator Jill Tokuda, Chair

Senator Donovan Dela Cruz, Vice Chair

Thursday, April 21, 2016

9:00 a.m.

Room 211

STRONG SUPPORT FOR HCR 4 – AUDIT OF AG’S ASSET FORFEITURE FUND

Aloha Chair Tokuda, Vice Chair Dela Cruz 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

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.

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>

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	<u>\$368,889</u>	<u>\$356,176</u>	<u>\$143,311</u>	<u>\$868,376</u>
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.

It's hard to believe that the government is doing this at such a scale and going practically unnoticed by the people, but it's easy to understand. This is exactly what happens when the government writes laws like the Patriot Act and wages the War on Drugs. Both of those are a war on the people and a war on our freedom, and this is part of how they're financed.²

We encourage to watch the John Oliver³ show for a real look at civil asset forfeiture. We find it ironic that one of the best pieces done to illustrate the injustice of asset forfeiture appeared on The Comedy Channel.

In the interest of transparency and accountability, we respectfully ask the committee to pass HCR4.

Mahalo for this opportunity to testify.

² This Is How Bad Civil Asset Forfeiture Has Gotten - <http://alibertarianfuture.com/big-government/police-state/this-is-how-bad-civil-asset-forfeiture-has-gotten/#sthash.v3o4wsVa.iPopJKkB.dpuf>

³ Last Week Tonight with John Oliver, Civil Asset Forfeiture, October 5, 2015. <https://www.youtube.com/watch?v=3kEpZWGgJks>



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

TO: SENATE COMMITTEE ON WAYS & MEANS

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

DATE: APRIL 21, 2016, 9 a.m., Room 211

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 Tokuda, Vice Chair Dela Cruz, 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 scheduling this important resolution today. We urge you to pass it out to the full Senate.



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

TO: Senate Committee on Ways & Means
FROM: Carl Bergquist, Executive Director
HEARING DATE: 21 April 2016, 9AM
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 Tokuda, Vice Chair Dela Cruz 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, the full Senate has 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
To: [WAM Testimony](#)
Cc: leilani.maxera@gmail.com
Subject: *Submitted testimony for HCR4 on Apr 21, 2016 09:00AM*
Date: Tuesday, April 19, 2016 4:06:20 PM

HCR4

Submitted on: 4/19/2016

Testimony for WAM on Apr 21, 2016 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Leilani Maxera	The CHOW Project	Support	No

Comments:

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Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for HCR4 on Apr 21, 2016 09:00AM*
Date: Tuesday, April 19, 2016 4:30:56 PM

HCR4

Submitted on: 4/19/2016

Testimony for WAM on Apr 21, 2016 09:00AM in Conference Room 211

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

Comments:

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Cc: tabraham08@gmail.com
Subject: Submitted testimony for HCR4 on Apr 21, 2016 09:00AM
Date: Tuesday, April 19, 2016 5:58:47 PM

HCR4

Submitted on: 4/19/2016

Testimony for WAM on Apr 21, 2016 09:00AM in Conference Room 211

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

Comments: Nobody deserves to forfeit anything without any lawful or legal document.

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