



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 1278, RELATING TO FORFEITURE PURSUANT TO SECTION 804-51, HAWAII REVISED STATUTES.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, February 23, 2023 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Steve A. Bumanglag or Gurudev D. Allin, Deputy Attorneys General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General supports this bill.

This bill would close a gap that exists in bail forfeiture notification cases and would also allow the State to appeal an order that sets aside a bail forfeiture without good cause.

Under section 804-51, Hawaii Revised Statutes (HRS), a bail bond company (surety) has thirty days from receiving notice of a bail bond forfeiture, by personal service or certified mail, to locate and surrender the criminal defendant and to file a motion or application to set aside a bail bond forfeiture. This thirty-day limitation period is referred to by the courts as the search period. If the surety is unable to locate the criminal defendant within the search period, the surety must pay the full amount of the bond to the State.

The surety and its insurer (surety insurer) form an agency relationship when the surety registers a bond or recognizance with a court, pursuant to a power of attorney issued by the surety insurer. Based on this agency relationship, the search period should start once either the surety or surety insurer receives notice of a bail bond forfeiture. However, the Hawaii Supreme Court has declined to recognize notices sent to surety insurers as sufficient to start the search period. *See State v. Nelson*, 139 Hawai'i 147, 159, 384 P.3d 923, 935 (2016) (declining to adopt the State's argument

that a letter sent to a surety insurer providing notice of a bond or recognizance forfeiture and demanding payment of the bond or recognizance forfeiture is sufficient notice under section 804-51, HRS).

During the 2022 calendar year, a surety refused to accept several notices that were sent to the surety by certified mail. The result was that the surety was not under any time restriction to locate the criminal defendant, and the surety was able to evade its financial obligation on the bail bond. The surety insurer received the notices for the same cases by certified mail, but this did not start the search period. When bail bond companies evade service in this manner, there is no incentive for them to locate criminal defendants who fail to appear in court and the State is not able to collect the moneys owed under the bonds, which by law are to be deposited into the general fund. The bill amends section 804-51, HRS, to allow the search period to start once either the surety or the surety insurer receives notice of a bail bond forfeiture by certified mail.

The bill also amends section 804-51, HRS, to allow the State to appeal from an order setting aside a bail bond forfeiture. Currently, the appellate courts lack jurisdiction over an appeal by the State from an order granting a motion or application to set aside a bond or recognizance forfeiture. See *State v. Lukela*, No. CAAP-17-0000713, 2018 WL 2479362 (Haw. App. June 4, 2018) (dismissing appeal because section 804-51, HRS, does not provide a basis for the State to appeal).

Good cause for setting aside a bond or recognizance forfeiture is limited to circumstances where the principal is surrendered to the court before the expiration of the thirty-day search period, or the principal provides an explanation to the court's satisfaction that the principal was unable to appear in court due to uncontrollable circumstances. *State v. Camara*, 81 Hawai'i 324, 330-31, 916 P.2d 1225, 1231-32, (1996).

There have been cases where a court has set aside a bail bond forfeiture when the criminal defendant was surrendered after the search period, and the criminal defendant did not have a good explanation for not appearing in court. The State should have the ability to appeal when a bond or recognizance forfeiture is set aside without good cause.

We respectfully ask that this measure be passed. Thank you for the opportunity to testify.



The Judiciary, State of Hawai'i

Testimony to the Thirty-Second State Legislature, 2023 Regular Session

Senate Committee on Judiciary

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Thursday, February 23, 2023, 9:30 a.m.
Conference Room 016 & Via Videoconference

By:

Rodney A. Maile

Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 1278, Relating to Forfeiture Pursuant to Section 804-51, Hawai'i Revised Statutes

Purpose: Allows notice of a bond or recognizance forfeiture required by Hawai'i Revised Statutes § 804-51 to be sent to either the surety or surety's insurer. Effective upon approval.

Judiciary's Position:

The Judiciary is in SUPPORT of this measure.

The Judiciary regularly refers delinquent bail forfeiture judgments to the Department of the Attorney General (AG) for collection. In order to pursue collection, the AG must be provided with the relevant documentary evidence -- copies of the bail bond, bail forfeiture judgment, and notices of bail forfeiture that were sent to the surety (bail agent) and surety's insurer.

The notice of bail forfeiture to the surety is usually sent via certified mail by either the court or by the Department of the Prosecuting Attorney. There have been a number of instances where the surety does not claim the notice and the post office is unable to forward the notice to another address. The unclaimed notice is then returned to the court or the Department of the



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Prosecuting Attorney. Because the current version of Hawai'i Revised Statutes (HRS) § 804-51 requires service of the notice of forfeiture on the surety, there are delays in the collection process when the surety does not claim the mailed notice of forfeiture. Additionally, without documentation showing that the surety was served with the notice, the bail forfeiture judgment cannot be enforced. While HRS § 804-51 authorizes personal service of the notice upon the surety, using personal service for this purpose is time-consuming and takes away resources from more critical needs.

In addition to sending the notice of bail forfeiture to the surety, the courts' regular practice is to mail the notice to the surety's insurer via certified mail. The courts have not experienced issues with unclaimed mail for the notices sent to the surety's insurer. As the surety serves under a power of attorney from the surety's insurer, notice to the surety's insurer should be deemed to be sufficient notice to the surety.

By allowing service of the notice on surety insurers to satisfy the notice requirements of HRS § 804-51, enforcement of bail forfeiture judgments will become more effective and efficient. For these reasons, the Judiciary supports Senate Bill No. 1278.

Thank you for the opportunity to testify on this measure.