



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

ON THE FOLLOWING MEASURE:

H.B. NO. 126, RELATING TO PROPERTY FORFEITURE.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

DATE: Wednesday, February 5, 2025 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

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

Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department) respectfully offers the following comments on this bill.

This bill would add record keeping and transparency requirements for agencies seizing property for civil asset forfeiture, clarify what property is subject to forfeiture, amend the authorized disposition of forfeited property, and repeal the provision requiring chapter 712A, Hawaii Revised Statutes (HRS), be construed liberally.

The Civil Asset Forfeiture Program codified in chapter 712A, HRS, was originally enacted in 1988 to take the profit out of crime, deter criminality, and protect the community.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.

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.

This bill makes several updates to the existing statutes. First, it adds a section in chapter 712A, HRS, relating to recordkeeping requirements to ensure that the public is informed about which properties have been subjected to civil asset forfeiture proceedings and the basis for law enforcement seizing such property for forfeiture (page 1, line 13, through page 2, line 10). Second the bill amends section 712A-16, HRS, concerning distribution of proceeds from forfeited property by repealing the provision that allows seizing agencies to retain forfeited property instead of disposing of it through public sale (page 6, lines 3-8). It also amends section 712A-16(4), HRS, by setting a \$1,000,000 annual cap on the Criminal Forfeiture Fund and directing that any excess proceeds be distributed to the general fund (page 11, lines 1-4).

While the Department maintains that existing law adequately protects the rights of affected property owners, the changes proposed in this bill are meaningful in increasing transparency around the Civil Asset Forfeiture Program, but do not significantly compromise its effectiveness as a law enforcement tool. We also note, however, that any testimony of law enforcement agencies or prosecutors should be carefully considered to ensure that the Civil Asset Forfeiture Program will continue to serve its valuable purposes in the interest of justice.

Thank you for the opportunity to testify.

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February 4, 2025

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HB126: RELATING TO PROPERTY FORFEITURE

Chair Tarnas, Vice-Chair Poepoe, and Members of the Committee on Judiciary and Hawaiian Affairs:

The Office of the Public Defender (OPD) **supports HB126**. This bill seeks to increase transparency and accountability in the property forfeiture process and to clarify and amend the State's forfeiture process by (1) requiring seizing departments or agencies to keep detailed records of the property seized, (2) clarifying what property is subject to forfeiture, (3) putting a cap of \$1,000,000 annual cap on the Criminal Forfeiture Fund and requiring that any amount in excess of the cap be distributed to the general fund, and (4) deleting the liberal construction standard from the chapter.

The State's dismal grade of D- for its civil forfeiture laws¹ confirms the need for increased transparency and accountability in the process. Unlike criminal forfeiture, the owner whose property is subject to property does not need to be charged with or convicted of a crime. Further, the subjects of civil forfeiture proceedings are not entitled to an attorney and very few owners have the means or ability to challenge the forfeiture.²

¹ The D- grade Hawai'i received was based on factors set forth by the Institute for Justice (a non-profit public interest law firm) which cited the low bar to forfeit, poor protections for the innocent and large profit incentive for law enforcement (100% of forfeiture proceeds go to law enforcement).

² In its 2022 report to the Legislature, the Department of the Attorney General reported that a total of \$412,129.64 in assets had been seized by various law enforcement agencies. In 2021-22, prosecuting attorneys filed 42 petitions for administrative forfeiture with the attorney general's office, yet there were no claims seeking judicial review of seizures filed in administrative forfeiture actions and only two petitions for remission or mitigation were filed.

While the total amount of civil forfeitures in Hawai‘i has been decreasing, this may be attributed to a trend under which law enforcement agencies target low-dollar seizures that are not worth challenging in court.

One example of the lucrative nature of civil forfeiture by law enforcement and the abuse of the process by law enforcement was discussed by the Institute for Justice.

In 2019, nursing student and single mother Stephanie Wilson had not one, but two cars seized by the Detroit Police Department, losing the first one forever. That same year, the U.S. Drug Enforcement Administration and the Transportation Security Administration seized retiree Terry Rolin’s life savings of \$82,373 from his daughter as she passed through Pittsburgh International Airport on her way to open a joint bank account for him. Three years earlier and about 1,000 miles away, a sheriff’s deputy in rural Muskogee, Oklahoma, seized more than \$53,000 from Eh Wah, the tour manager for a Burmese Christian musical act, during a routine traffic stop; the funds were concert proceeds and donations intended to support Burmese Christian refugees and Thai orphans. None of these victims were convicted of any crime.

Their stories illustrate a nationwide problem: civil forfeiture. Civil forfeiture allows police to seize property on the mere suspicion that it is involved in criminal activity. Prosecutors can then forfeit, or permanently keep, the property without ever charging its owner with a crime. By contrast, criminal forfeiture requires prosecutors to prove beyond a reasonable doubt that an owner is guilty of a crime and then, in the same proceeding, prove the property is connected to the crime.

Civil forfeiture laws generally make it easy for governments to forfeit property—and hard for people to fight. As this report documents, these laws typically set low standards of proof, which is the evidentiary burden prosecutors must meet to connect property to a crime. And they provide weak protections for innocent owners whose property is caught up in forfeiture but who have done nothing wrong. Most forfeiture laws also make seizing and forfeiting people’s property lucrative for law enforcement. In most states and under federal law, some or all of the proceeds from forfeiture go to law enforcement coffers.

Thus, Wayne County law enforcement, federal law enforcement and Muskogee County law enforcement stood to benefit financially from forfeiting Stephanie’s cars and Terry’s and Eh Wah’s cash. Giving law

enforcement this financial stake in forfeiture can distort priorities, encouraging agencies to pursue financial gain over public safety or justice, cash over crime or contraband. Together, civil forfeiture's ease and financial rewards drive its use nationwide.

Despite the billions generated, our data indicate the typical individual cash forfeiture is relatively small—only a few hundred or a few thousand dollars. This suggests that, aside from a few high-profile cases, forfeiture often does not target drug kingpins or big-time financial fraudsters. More than that, the data show why it often makes little economic sense for property owners to fight. The cost of hiring an attorney—a virtual necessity in navigating complex civil forfeiture processes, where there is generally no right to counsel—often outweighs the value of seized property. This is why Stephanie abandoned her first car. Still, many small forfeitures such as hers can make a great deal of economic sense for law enforcement.^[3]

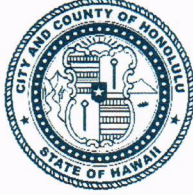
This bill does not eliminate the civil forfeiture process as a tool for law enforcement, it ensures that the process is fair and transparent and increases accountability.

Thank you for the opportunity to comment on this measure.

³ “Policing for Profit: The Abuse of Civil Asset Forfeiture,” (3rd ed. 12/14/20), Institute for Justice (<https://ij.org/report/policing-for-profit-3/>)

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HOPE LUNA NUI MĀKA'I

OUR REFERENCE JP-HR

February 5, 2025

The Honorable David A. Tarnas, Chair
and Members
Committee on Judiciary and Hawaiian Affairs
House of Representatives
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Tarnas and Members:

SUBJECT: House Bill No. 126, Relating to Property Forfeiture

I am Jerome Pacarro, Captain of the Narcotics/Vice Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes House Bill No. 126, Relating to Property Forfeiture.

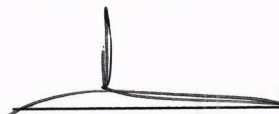
Asset forfeiture is an essential tool law enforcement uses to take the profit out of crime. It has also served as a deterrent against future illegal activity involving forfeited assets. Proposed changes by this legislation would significantly compromise and affect law enforcement's ability to combat those who profit from illegal activity that victimizes our community. Delaying or eliminating the local investigating law enforcement agency from the proceeds of property forfeited from illegal activities will directly impact our ability to serve our community.


The HPD urges you to oppose House Bill No. 126, Relating to Property Forfeiture.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


Arthur J. Logan
Chief of Police


Jerome Pacarro, Captain
Narcotics/Vice Division

COMMUNITY ALLIANCE ON PRISONS

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Today's Inmate; Tomorrow's Neighbor



COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Representative David Tarnas, Chair

Representative Mahina Poepoe, Vice Chair

Wednesday, February 5, 2025

Room 325 & VIDEOCONFERENCE

2:00 PM

STRONG SUPPORT FOR HB 126 - PROPERTY FORFEITURE

Aloha Chair Tarnas, Vice Chair Poepoe 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 3,697 Hawai'i individuals living behind bars¹ and under the "care and custody" of the Department of Corrections and Rehabilitation on any given day. We are always mindful that 937 - 49% - of Hawai'i's imprisoned male population 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 express our **strong support for HB 126** that increases transparency and accountability surrounding property forfeiture by clarifying which property is subject to forfeiture and amending the authorized disposition of forfeited property and the proceeds thereof.

A 2020 article² from ProPublica cited an Institute for Justice study³ (Policing for Profit) revealed that...

¹ **DCR Weekly Population Report, January 20, 2025**

<https://dcr.hawaii.gov/wp-content/uploads/2025/01/Pop-Reports-Weekly-2025-01-20.pdf>

² **Police Say Seizing Property Without Trial Helps Keep Crime Down. A New Study Shows They're Wrong.**

Ian MacDougall for ProPublica, December 14, 2020.

<https://www.propublica.org/article/police-say-seizing-property-without-trial-helps-keep-crime-down-a-new-study-shows-theyre-wrong>

³ **POLICING FOR PROFIT The Abuse of Civil Asset Forfeiture, 3rd Edition**, December 14, 2020.

<https://ij.org/report/policing-for-profit-3/>

- half of all cash seizures fell below \$1,000,
- the median forfeiture averaged \$1,276 across the 21 states where usable data was obtainable,
- in most states, half of all cash seizures fell below \$1,000,
- in Michigan, half of all civil forfeitures of currency were worth less than \$423, and
- in Pennsylvania the median value was \$369.

One incentive for police to target lower-dollar seizures is that they are not worth challenging in court. The cost of hiring a lawyer – and sometimes even the court filing fee – may well exceed the amount of money at issue. The Institute for Justice found that in the 4 states that track such data, 1/5th or fewer of the people involved sought return of their property. In Colorado, only 1% of forfeitures were challenged.

Here is the Hawai'i page from Policing for Profit

Hawaii

Hawaii earns a D- for its civil forfeiture laws.

Standard of Proof

Low bar to forfeit: Prosecutors must prove by preponderance of the evidence that property is connected to a crime.

Innocent Owner Burden

Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.

Financial Incentive

Large profit incentive: 100% of forfeiture proceeds go to law enforcement (up to a maximum of \$3 million per year, 25% to police, 25% to prosecutors and 50% to the attorney general for law enforcement projects).

The letter grade reflects the state's forfeiture laws as of December 2020. When we become aware of relevant reforms, we are updating the standard of proof, innocent owner burden and financial incentive language above, but we are not updating the letter grade.

Recent Reforms

- None.

Recommendations

- End civil forfeiture
- Direct all forfeiture proceeds to a non-law enforcement fund
- Strengthen protections for innocent third-party owners
- Close the equitable sharing loophole
- Strengthen transparency and accountability requirements

The *Washington Post* has [this new editorial](#)⁴ advocating for federal legislative forfeiture reform headlined "*The DEA shows why officers cannot police themselves when seizing assets: A DOJ inspector general report underscores the need for reforming civil forfeiture practices.*" Here is the last part of the editorial:

"The inspector general also found that the DEA often failed to document its encounters with passengers, as its policies require. In one incident captured on video, the DEA detained the bag of a passenger who refused to consent to a search, resulting in him missing his flight. No paperwork was prepared for that encounter until months later — after the video was made public.

This is not merely an issue of poor recordkeeping. Since 2015, the IG has pressured the DEA to document its encounters due to accusations of racial profiling. Determining whether those claims are valid is impossible if the agency fails to document its interactions with the public.

A spokesperson for the DEA says the agency is reviewing its practices and is "committed to executing our mission with integrity and professionalism." Given the agency's past resistance to inspector general recommendations, how it proceeds deserves scrutiny from the Justice Department. But it's unclear whether this will be a priority under President-elect Donald Trump, who rolled back forfeiture reforms in his first term.

This only heightens the need for legislative solutions. On both the state and federal levels, forfeiture provides a perverse incentive for officers to conduct searches without compelling evidence of a crime — and to pressure people to give up property, because police departments and other agencies get to keep a cut of the seized property. As the Institute for Justice has documented, state and federal law enforcement agencies seize billions of dollars in assets every year, most of which they keep to fund their own operations. Among those forfeitures are countless stories of innocent people who lost their hard-earned money and spent years fighting to win it back — often unsuccessfully.

"Unsurprisingly, the practice has earned bipartisan outrage. [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. That legislation would also eliminate "equitable sharing," which allows state and local police to sidestep state limits on civil forfeitures by working with federal agencies, which then share a portion of any seized assets. Frustratingly, that bill never made it to a floor vote.

The purpose of such reforms is not to eradicate the practice; it is to ensure that officers see it as a tool to get the bad guys, not as a way to pad their budgets. By

⁴ **The DEA shows why officers cannot police themselves when seizing assets**

A DOJ inspector general report underscores the need for reforming civil forfeiture practices.

December 26, 2024 at 7:30 a.m.

<https://www.washingtonpost.com/opinions/2024/12/26/dea-civil-asset-forfeiture-inspector-general-report/>

taking away the profit motive, agencies such as the DEA might finally exercise their forfeiture powers with due caution.”

It is time to abandon racial profiling in Hawai`i. We are a multi-cultural society and targeting people because of their ethnicity, their race, their appearance, or their perceived economic status is wrong. Education and sensitivity training is the only way to increase the empathy of law enforcement and to reform our shameful forfeiture laws that have wreaked havoc in some of our most challenged communities.

From the ProPublica article cited in Footnote 2...

“...the Institute for Justice found that the U.S. Justice Department spends less than a third of what it brings in from civil forfeiture on compensating victims and other third parties. Some states mandate spending on victim compensation. But in at least six of the 15 states that disclose data on how forfeiture funds are spent — including Florida, Illinois, Oregon and Utah — none of the money obtained by civil asset forfeiture went toward paying back victims of crime for what they lost. The other nine states either use negligible amounts to compensate victims or do not specify whether any money goes to victims.

Instead, law enforcement directed the money mostly toward salaries, equipment and other operational expenses. For some law enforcement agencies, forfeiture funds [have accounted for](#) as much as 20% of their budgets, and are sometimes used for seemingly nonessential purchases. A police department in Georgia, for example, once spent \$227,000 on an armored personnel carrier, and a sheriff in New Mexico splashed out \$4,600 for an awards banquet. In [one recent case](#), a suburban Atlanta sheriff spent \$70,000 in forfeiture funds on a muscle car, a Dodge Charger Hellcat, that he uses solely to drive to and from work. The U.S. Justice Department called that purchase “extravagant.

The U.S. Supreme Court has shown an interest in civil asset forfeiture in recent years. In 2017, Justice Clarence Thomas expressed doubts about whether civil forfeiture practices “can be squared with the Due Process Clause and our Nation’s history.” The following year, in a case litigated by the Institute for Justice, the high court ruled that the prohibition on excessive fines enumerated in the Eighth Amendment to the U.S. Constitution applies to state-level civil asset forfeiture procedures. ...”.

Community Alliance on Prisons hopes that the committee will move this bill forward to continue the discussion of how we create a more diverse, equitable, and inclusive Hawai`i honoring ***pilina*** – our love for Hawai`i nei that binds us together.

Mahalo nui!

Feb. 5, 2025, 2 p.m.
Hawaii State Capitol
Conference Room 325 and Videoconference

To: House Committee on Judiciary & Hawaiian Affairs
Rep. David A. Tarnas, Chair
Rep. Mahina Poepoe, Vice-Chair

From: Grassroot Institute of Hawaii
Ted Kefalas, Director of Strategic Campaigns

RE: COMMENTS IN SUPPORT OF HB126 — RELATING TO PROPERTY FORFEITURE

Aloha Chair Tarnas, Vice-Chair Poepoe and other members of the Committee,

The Grassroot Institute of Hawaii would like to offer its comments in **support** of [HB126](#), which would increase transparency and accountability regarding asset forfeiture in Hawaii.

We commend this Committee for considering this issue, which has been the subject of growing national concern and criticism.

In 2020, a report card of civil asset forfeiture practices nationwide by the Institute of Justice gave Hawaii a D- and the dubious distinction of having some of the worst forfeiture laws in the country.¹

Singled out for criticism was the state's low standard of proof for showing how the property is tied to a crime.

In addition, Hawaii places the burden on innocent owners to prove they weren't tied to the crime resulting in the forfeiture.

The result is a state forfeiture program open to abuse and able to prey on innocent property owners.

As the Hawaii state auditor wrote in a June 2018 report, Hawaii's asset-forfeiture program lacks clear rules and procedures, inadequately manages funds and is badly in need of greater transparency.²

¹ Lisa Knepper, Jennifer McDonald, Kathy Sanchez, Elyse Smith Pohl, "[Policing for Profit: The Abuse of Civil Asset Forfeiture, 3rd Edition](#)," Institute for Justice, December 2020.

² "[Audit of the Department of the Attorney General's Asset Forfeiture Program](#)," Hawaii Office of the Auditor, June 2018, p. 1.

That 2018 report found that:

>> In 26% of asset forfeiture cases closed during fiscal 2015, property was forfeited without a corresponding criminal charge.³

>> In 4% of the cases, the property was forfeited even though the charge was dismissed.⁴ Of those whose property was forfeited, very few petitioned for remission or mitigation. The state auditor speculated that most people might not know that being able to petition is an option because of the lack of transparency surrounding the forfeiture program.

A follow-up report in 2021 by the state Office of the Auditor found that the state Department of the Attorney General had implemented only two of its 2018 recommendations, with two partially implemented and two not implemented at all.⁵

Among the recommendations that were ignored was that the AG department develop policies and procedures “to ensure that petitions for administrative forfeiture are processed timely and consistently; that forfeited property and program funds are appropriately managed; and that proceeds from the sale of forfeited property are used for purposes intended by the Legislature.”

The other unimplemented recommendation concerned the lack of a strict accounting and valuation system for forfeited property.

In fiscal 2022, the Department of the Attorney General reported that there were 58 cases of forfeiture, 56 of which were uncontested. There were no claims for judicial review, and only two petitions for remission or mitigation.⁶

Rather than attest to the efficacy of the program, the lack of petitions and other claims suggests that the state auditor’s conclusions still hold: that there is too little transparency around the program and most people are unaware of their rights regarding forfeiture.

This bill's improved reporting requirements would improve the transparency of the state’s forfeiture program. However, the bill does little to address the deeper issues surrounding asset forfeiture in Hawaii, especially the fact that property can be taken without conviction for the underlying offense and the fact that the proceeds of forfeitures can benefit the agencies that pursue forfeiture.

³ [Ibid](#), p. 3.

⁴ [Ibid](#), p. 3.

⁵ [“Follow-Up on Recommendations from Report No. 18-09, Audit of the Department of the Attorney General’s Asset Forfeiture Program,”](#) Hawaii Office of the Auditor, July 2021, p. 3.

⁶ [“Report on Proceedings under the Hawaii Omnibus Criminal Forfeiture Act,”](#) Hawaii Department of the Attorney General, Nov. 23, 2022, p. 8.

It is shocking that Hawaii residents can lose their property without being convicted of a crime. Given that many of those subject to forfeiture lack the knowledge, assets or ability to challenge the seizures, this makes the forfeiture program especially threatening to vulnerable populations.

We recommend limiting forfeiture to those situations where the property owner has been convicted of a felony. This would address the auditor's concerns while strengthening protections for innocent third-parties who can get swept up in a forfeiture case.

Effective reform of Hawaii's forfeiture law should also eliminate the monetary incentives that can arise from the practice of asset forfeiture. We recommend amending the section on disposition of forfeited property in order to direct the proceeds from the forfeiture program to the general fund. This change would prevent any agency or group from having a financial interest in asset forfeiture.

Finally, the bill should also include a provision limiting the transfer of forfeiture property to federal agencies, a technique that has been used elsewhere to circumvent state restrictions on forfeiture.

To sum up, Hawaii continues to be among the worst states for property forfeiture. It is clear that reform is overdue.

This bill, HB126, would improve the transparency of the state's forfeiture program, but we urge the Committee to go even further in reforming Hawaii's currently woeful asset forfeiture laws.

Thank you for the opportunity to testify.

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii

HB-126

Submitted on: 2/5/2025 2:23:08 AM

Testimony for JHA on 2/5/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Nikos Leverenz	Drug Policy Forum of Hawaii	Support	Remotely Via Zoom

Comments:

Chair Tarnas, Vice Chair Poepoe, and Committee Members:

On behalf of Drug Policy Forum of Hawai‘i, I am writing in strong support of this bill.

Policymakers and the public should have access to the case-specific data called for in this bill as a matter of course.

The limitation set forth regarding the amount that can be retained in the criminal forfeiture fund is also a salutary improvement over current practice.

Mahalo for the opportunity to provide testimony.