



**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, H.D. 1, RELATING TO PROPERTY FORFEITURE.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Tuesday, February 25, 2025 **TIME:** 12:00 p.m.

LOCATION: State Capitol, Room 308

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

Chair Yamashita 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The Civil Asset Forfeiture Program codified in chapter 712A, HRS, was originally enacted in 1988 to take the profit out of crime, deter criminality, and protect the community.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 9). Second, the bill amends section 712A-16(1), 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 5, line 21, through page 6, line 5). 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 10, lines 18-21).

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 24, 2025

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HB126, HD 1: RELATING TO PROPERTY FORFEITURE

Chair Yamashita, Vice-Chair Takenouchi, and Members of the Committee on Finance:

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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**THE HONORABLE KYLE T. YAMASHITA, CHAIR
HOUSE COMMITTEE ON FINANCE
Thirty-Third State Legislature
Regular Session of 2025
State of Hawai'i**

February 25, 2025

RE: H.B. 126, H.D. 1; RELATING TO PROPERTY FORFEITURE

Chair Yamashita, Vice Chair Takenouchi, and members of the House Committee on Finance, the Department of the Prosecuting Attorney, City and County of Honolulu ("Department") submits the following testimony with comments for H.B. 126, H.D. 1.

The Department agrees with not amending the language of §712A-5 (a)(2)(a) as was contemplated in S.B. 722, which required an additional requirement that the owner of the property be convicted of a felony. Adding in a requirement such as this would cause unnecessary delay to forfeiting the seized property until the owner is convicted, which in felony cases can take years. Property forfeiture is a valuable law enforcement tool as it effectively deters, disrupts, and halts criminal activity. By doing so, property forfeiture protects our community by removing the proceeds from criminal activity. No one should be allowed to profit from crime.

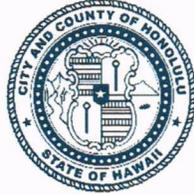
This is also a civil legal process that operates independently from any related criminal cases, in the same way that civil lawsuits, administrative proceedings, and criminal charges can proceed independently from each other in other circumstances. Concerns about "innocent owners" being deprived of their property or "policing for profit" are unfounded, as Hawaii's forfeiture laws provide due process for the protection of property owners' rights, and numerous safeguards are already codified in the statute.

For the above reasons, the Department of the Prosecuting Attorney for the City and County of Honolulu agrees with this bill and specifically not requiring a felony conviction prior to the forfeiture of seized property. Thank you for the opportunity to testify on this matter.

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.

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DEPUTY CHIEFS
HOPE LUNA NUI MĀKA'I

OUR REFERENCE RI-HR

February 25, 2025

The Honorable Kyle T. Yamashita, Chair
and Members
Committee on Finance
House of Representatives
415 South Beretania Street, Room 308
Honolulu, Hawai'i 96813

Dear Chair Yamashita and Members:

SUBJECT: House Bill No. 126, H.D. 1, Relating to Property Forfeiture

I am Raynor M. Ikehara, Major of the Narcotics/Vice Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes House Bill No. 126, H.D. 1, Relating to Property Forfeiture.

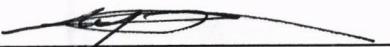
Asset forfeiture is an essential tool that law enforcement uses to take the profit out of crime. It also serves as a deterrent against future illegal activity involving forfeited assets. Proposed changes by this legislation would significantly compromise and affect law enforcement's ability to combat 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, H.D. 1, Relating to Property Forfeiture.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


Arthur J. Logan
Chief of Police


Raynor M. Ikehara, Major
Narcotics/Vice Division

COMMUNITY ALLIANCE ON PRISONS

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Today's Inmate; Tomorrow's Neighbor



COMMITTEE ON FINANCE

Rep. Kyle Yamashita, Chair

Rep. Jenna Takenouchi, Vice Chair

Tuesday, February 25, 2025

Room 308 & VIDEOCONFERENCE

12:00 NOON

STRONG SUPPORT FOR HB 126 HD1 - REFORMING PROPERTY FORFEITURE

Aloha Chair Yamashita, Vice Chair Takenouchi and Members of the Committee!

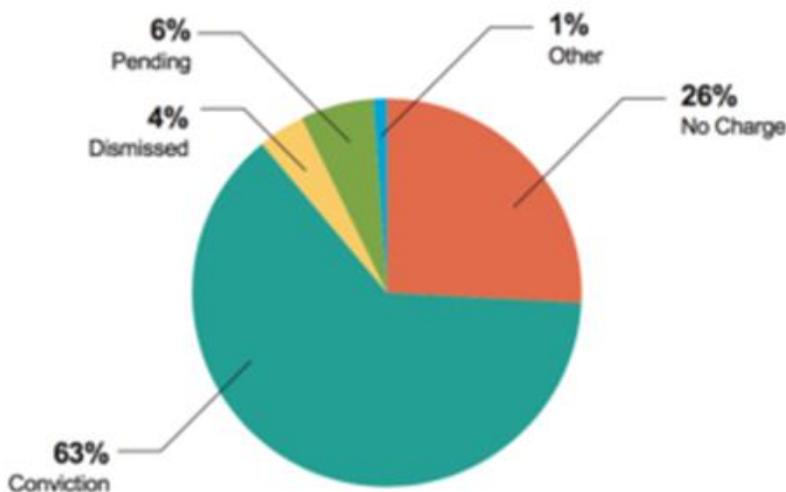
My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for more than two decades. This testimony is respectfully offered on behalf of the 3,700 Hawai`i individuals living behind bars¹ and under the “care and custody” of the Department of Corrections and Rehabilitation as of February 17, 2025. We are always mindful that 936 – 49.6% of Hawai`i’s male prison 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 the opportunity to **strongly support HB 126 HD1** that clarifies the types of property subject to forfeiture, adjusts the disposition of forfeited assets, mandates public record – keeping, and removes provisions that allowed for overly broad interpretations of the law.

¹ DCR Weekly Population Report, February 17, 2025

<https://dcr.hawaii.gov/wp-content/uploads/2025/01/Pop-Reports-Weekly-2025-02-17.pdf>

In 2018 the long-awaited audit of the Forfeiture program was released by the Hawai'i Attorney General and it highlighted the mismanagement of the program by the former Office of the Attorney General.



In Hawai'i, property was forfeited without a corresponding criminal charge in 26 percent of the asset forfeiture cases closed during FY2015.

Source: Office of the Auditor

The scathing Hawai'i auditor's report² *Audit of the Department of the Attorney General's Asset Forfeiture Program, A Report to the Governor and the Legislature of the State of Hawai'i, Report No. 18-09, June 2018* concluded: *"Hawai'i's asset forfeiture program is controversial, attracting criticism from lawmakers, the public, and the media. The statute gives the Attorney General broad power to take personal property from individuals without judicial oversight based on a relatively low standard of proof. Given the high profile of the program and the power bestowed on the Attorney General to administer it, it is crucial that the department manage the program with the highest degree of transparency and accountability. We found that is not the case. The department has failed to adopt administrative rules as required by statute, establish formal Report No. 18-09 / June 2018 17 management policies and procedures, and implement strong internal controls."*

On February 20, 2019, in an opinion delivered by Justice Ruth Bader Ginsberg, the U.S. Supreme Court ruled that the Eighth Amendment's ban on

² *Audit of the Department of the Attorney General's Asset Forfeiture Program, A Report to the Governor and the Legislature of the State of Hawai'i, Report No. 18-09, June 2018.*
<http://files.hawaii.gov/auditor/Reports/2018/18-09.pdf>

excessive fines applies to the states. The decision is a victory for an Indiana man whose luxury SUV was seized after he pleaded guilty to selling heroin. It is also a blow to state and local governments, for whom fines and forfeitures have become an important source of funds.

The question presented: Is the Eighth Amendment's Excessive Fines Clause an "incorporated" protection applicable to the States under the Fourteenth Amendment's Due Process Clause? Like the Eighth Amendment's proscriptions of "cruel and unusual punishment" and "[e]xcessive bail," the protection against excessive fines guards against abuses of government's punitive or criminal law-enforcement authority. **This safeguard, we hold, is "fundamental to our scheme of ordered liberty," with "dee[p] root[s] in [our] history and tradition."** *McDonald v. Chicago*, 561 U. S. 742, 767 (2010) (internal quotation marks omitted; emphasis deleted). The Excessive Fines Clause is therefore incorporated by the Due Process Clause of the Fourteenth Amendment.

Community Alliance on Prisons is grateful that the committee is hearing this bill and urges the committee to pass this important reform to restore faith in Hawai'i's system of justice.

Mahalo nui!

Feb. 25, 2025, 10 a.m.
Hawaii State Capitol
Conference Room 308 and Videoconference

To: House Committee on Finance
Rep. Kyle T. Yamashita, Chair
Rep. Jenna Takenouchi, Vice-Chair

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

RE: COMMENTS IN SUPPORT OF HB126 HD1 — RELATING TO PROPERTY FORFEITURE

Aloha Chair Yamashita, Vice-Chair Takenouchi and other members of the Committee,

The Grassroot Institute of Hawaii would like to offer its comments in **support** of [HB126 HD1](#), 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 HD1, 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-HD-1

Submitted on: 2/23/2025 7:57:42 PM

Testimony for FIN on 2/25/2025 12:00:00 PM

Submitted By	Organization	Testifier Position	Testify
karin omahony	Individual	Support	Written Testimony Only

Comments:

This reform is needed

HB-126-HD-1

Submitted on: 2/24/2025 8:19:24 AM

Testimony for FIN on 2/25/2025 12:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Carolyn Eaton	Individual	Support	Written Testimony Only

Comments:

Aloha, Chair Yamashita, Vice Chair Takenouchi, a Members of the Committee,

My name is Carolyn Eaton. I am a resident of Makiki and I strongly support this bill, HB126 HD1, reforming property forfeiture. Without strictures such as these to protect the public, our State Department of the Attorney General over-stepped a boundary of fairness, and was found to have abused its power in matters of asset forfeiture, in a 2018 report by our State Auditor.

The current measure mandates public record-keeping and clarifies the types of property subject to forfeiture. In adjusting the disposition of forfeited assets, it removes all incentive to profit from the particular department of government enacting the forfeiture.

Public faith in the legal system is the outcome for which we should always aim, the all-important "bottom line."

Mahalo for your hard work and providing, to the best of your ability, open government for Hawai'i's people.

and will justify renewed faith in our legal system