

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

ON THE FOLLOWING MEASURE:

S.B. NO. 722, RELATING TO PROPERTY FORFEITURE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, January 30, 2025 **TIME:** 9:15 a.m.

LOCATION: State Capitol, Room 016

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

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) respectfully opposes this bill.

This bill would restrict civil asset forfeiture to cases involving a felony offense where the property owner has been convicted of an underlying felony offense and direct forfeiture proceeds to the general fund among other related amendments to chapter 712A, Hawaii Revised Statutes (HRS).

The civil asset forfeiture program codified in chapter 712A, HRS, was originally enacted in 1988 to take the profit out of crime, deter criminality, and protect the community.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.

The current law allows for equitable sharing agreements. If that provision is taken away under the current bill, it would harm joint task force cooperation in the sharing of evidence.

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.

While the expressed intent of this bill is understandable, the Committee should be aware that the provisions in this bill, particularly the provision restricting asset forfeiture to matters where there is a felony conviction of the property owner together with the directing of forfeiture proceeds to the general fund, are likely to undermine the operation of State's civil asset forfeiture program. Law enforcement agencies would be discouraged from proceeding with asset forfeiture under this program if this bill were to be enacted into law because their efforts would result in operating at a loss due to ongoing expenses such as storage, maintenance, and personnel. The requirement of a felony conviction of the owner prior to forfeiture would add uncertainty and delay in subjecting property to the forfeiture procedure. It would also prevent property from being subject to forfeiture where the owner did not actively participate in criminal conduct, and is thus not charged with a felony, but was nevertheless aware that the property was being used for criminal activity and permitted such use. Seized property would need to be stored and maintained for potentially very lengthy periods of time before the conviction of the owner is obtained and possibly even longer pending appeals. This would add costs to the program and any forfeiture proceeds may not cover the necessary expenses.

If this bill were enacted into law, it is probable that the state's civil asset forfeiture program would ultimately cease thereby depriving the government of one of the most powerful tools to stop and deter crime.

The Department respectfully opposes this bill for the reasons stated above.
Thank you for the opportunity to testify.

JON N. IKENAGA
PUBLIC DEFENDER

DEFENDER COUNCIL
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAII 96817

HONOLULU OFFICE
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAII 96817

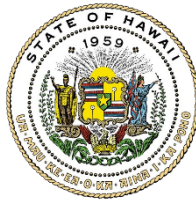
APPELLATE DIVISION
TEL. NO. (808) 586-2080

DISTRICT COURT DIVISION
TEL. NO. (808) 586-2100

FAMILY COURT DIVISION
TEL. NO. (808) 586-2300

FELONY DIVISION
TEL. NO. (808) 586-2200

FACSIMILE
(808) 586-2222



STATE OF HAWAII
OFFICE OF THE PUBLIC DEFENDER

January 29, 2025

HAYLEY Y. C. CHENG
ASSISTANT PUBLIC DEFENDER

HILO OFFICE
275 PONAHAHAWAI STREET
SUITE 201
HILO, HAWAII 96720
TEL. NO. (808) 974-4571
FAX NO. (808) 974-4574

KONA OFFICE
75-1000 HENRY STREET
SUITE #209
KAILUA-KONA HI 96740
TEL. NO. (808) 327-4650
FAX NO. (808) 327-4651

KAUAI OFFICE
3060 EIIWA STREET
SUITE 206
LIHUE, HAWAII 96766
TEL. NO. (808) 241-7128
FAX NO. (808) 274-3422

MAUI OFFICE
81 N. MARKET STREET
WAILUKU, HAWAII 96793
TEL. NO. (808) 984-5018
FAX NO. (808) 984-5022

SB722: RELATING TO PROPERTY FORFEITURE

LATE

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

The Office of the Public Defender (OPD) **supports SB722**. This bill seeks to restrict civil asset forfeiture to only those cases where the property owner has been convicted of an underlying felony offense, disincentivize improper seizure of property by state and county law enforcement agencies, limits the ability of the state and county law enforcement agencies to transfer seized property to a federal agency or intergovernmental task force and increasing the oversight and reporting of asset forfeiture by state and county law enforcement agencies.

The Institute for Justice¹ has graded Hawai'i at a D- for its civil forfeiture laws. The factors supporting this dismal grading are the low bar to forfeit (prosecutors must prove only by a preponderance of the evidence that the property is connected to a crime), poor protections for the innocent (third-party owners must prove their own innocence to recover seized property) and large profit incentive for law enforcement agencies (100% of forfeiture proceeds go to law enforcement). The recommendations for change to improve Hawai'i's civil forfeiture scheme are: to 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 and strengthen transparency and accountability requirements. These recommendations are at the heart of the instant bill.

One of the most disturbing aspects of civil forfeiture is that it is not limited to persons who are charged and convicted with an underlying offense. In her dissenting opinion in Culley v. Marshall, 601 U.S. 377, 144 S.Ct. 1142, 218 L.Ed.2d 372 (2024), Justice Sotomayor (joined by Justices Kagan and Jackson) contrasted civil forfeiture to criminal forfeiture.

¹ The Institute for Justice is a non-profit, public interest law firm which seeks to "end widespread abuses of government power and secure the constitutional rights that allow all Americans to pursue their dreams."

Criminal forfeiture is part of a defendant's criminal punishment. The government must therefore proceed against the person (in personam) to obtain someone's property via criminal forfeiture, which generally requires notice of intent to forfeit the property in a criminal indictment and full criminal procedural protections for the defendant. At the outset, the government must typically prove that it has probable cause to seize the person for a specific crime and therefore to hold any property related to that crime. See Gerstein v. Pugh, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975).

* * * *

Civil forfeiture is a hybrid, where prosecutors proceed against any property (in rem) they believe is connected to a crime, even when the owner is innocent. Unlike criminal forfeiture, civil forfeiture proceedings are untethered from any criminal prosecution. In fact, as many as 80% of civil forfeitures are not accompanied by any ultimate criminal conviction. Brief for Buckeye Institute as Amicus Curiae 14. Civil forfeiture is unnecessary where the government pursues criminal forfeiture in an indictment and sustains a conviction. Only if an officer seizes property that he believes is connected to a crime, but does not belong to a defendant charged with that crime, must prosecutors bring civil forfeiture proceedings outside a criminal case. Even when the State abandons the prosecution that formed the basis for the seizure, an innocent property owner can be left in civil forfeiture proceedings trying to get her property back.

Marshall, 601 U.S. at 404-05, 144 S.Ct. at 1159-60 (Sotomayor, J., dissenting).

While Chapter 712A allows owners whose property has been seized to challenge the seizure, owners are not entitled to an attorney to represent them through the convoluted process. In addition, property can be seized without court process if officers alleged probable cause to believe the property is associated with a crime or directly or indirectly dangerous to health or safety. The burden then shifts to the property owner to recover their seized property through a convoluted legal process. Although owners can claim indigency to relieve them from paying fees and posting bonds without the ability to pay for legal representation, the process is especially unfair to marginalized and low income communities. Justice Sotomayor noted:

Moreover, officers have a financial incentive to target marginalized groups, such as low-income communities of color, who are less likely to have the

resources to challenge the forfeiture in court. See A. Crawford, Civil Asset Forfeiture in Massachusetts: A Flawed Incentive Structure and Its Impact on Indigent Property Owners, 35 Boston College J. L. & Soc. Justice 257, 274–277 (2015) (“[O]ne way for law enforcement agencies to generate profits is to target low-income parties who are financially incapable of challenging seizures”). A 2019 study found that “the seizure of nonnarcotic property from black and Hispanic arrestees increases with the size of the [budget] deficit in states where police departments can retain revenue from seized property.” M. Makowsky, T. Stratmann, & A. Tabarrok, To Serve and Collect: The Fiscal and Racial Determinants of Law Enforcement, 48 J. Legal Studies 189, 208–209 (2019).

“[T]hese same groups are often the most burdened by forfeiture,” because “they are more likely to suffer in their daily lives while they litigate for the return of a critical item of property, such as a car.” Leonard v. Texas, 580 U.S. 1178, 1180, 137 S.Ct. 847, 197 L.Ed.2d 474 (2017) (statement of THOMAS, J., respecting denial of certiorari). For many people, loss of access to a car, even temporarily, is significant. Over 85% of Americans drive to work. J. Hirsch & P. Jones, Driver's License Suspension for Unpaid Fines and Fees: The Movement for Reform, 54 U. Mich. J. L. Reform 875, 881 (2020). Unsurprisingly, studies have found a link between the inability to drive and the loss of a job. For example, “[i]n New Jersey, 42% of people lost their jobs after their driver's license was suspended.” Ibid. Loss of a car not only “takes away one's ability to commute” but also imposes a barrier to “buy[ing] necessities, access[ing] healthcare, and visit[ing] family members, pharmacies, grocery stores, hospitals, and other essential services.” Ibid.

Marshall, 601 U.S. at 406-07, 144 S.Ct. at 1160-61. Thus, the supposed “safeguards” in the forfeiture system are not equally available to all persons. As many owners whose property has been forfeited do not have a corresponding charge or conviction, their inability to meaningfully challenge the forfeiture is especially troubling.² The inability to afford legal counsel or understand the civil forfeiture process likely accounts for the extremely low number of claims or petitions for remission or mitigation filed by owners to challenge the forfeiture. In its 2022 report to the Legislature³, the Department of the Attorney General

² A 2018 Report by the Hawai‘i State Office of the Auditor found that property was forfeited without a corresponding criminal charge in 26% of the asset forfeiture cases closed during FY2015. See <https://files.hawaii.gov/auditor/Reports/2018/18-09.pdf>

³ See <https://ag.hawaii.gov/afp/files/2023/02/FY-2021-2022-Report-of-the-Proceedings-under-the-Hawaii-Omnibus-Criminal-Forfeiture-Act---2023-Regular-Session.pdf>

reported that a total of \$412,192.64 in assets had been seized by various law enforcement agencies. In fiscal year 2021-22, prosecuting attorneys filed 42 petitions for administrative forfeiture with the Department of the Attorney General. Yet in fiscal year 2021-22 there were no claims seeking judicial review of seizures filed in administrative forfeiture actions and only two petitions for remission or mitigation were filed. Thus, any claim that the safeguards in the process ensure the validity of the seizures ignores the reality that the process to challenge civil forfeitures is underutilized and not realistically accessible to all persons.⁴

While Hawai'i should eventually follow the lead of other states who have abolished civil forfeiture altogether⁵, the safeguards in the instant bill – restricting civil asset forfeiture to cases involving the commission of a felony offense where the owner has been convicted of an underlying felony offense, directing forfeiture proceeds to the general fund rather than to and limiting the allowable expenses for moneys in the criminal forfeiture fund, limiting the transfer of forfeiture property to federal agencies, recording and reporting requirements – will restore some measure of fairness to the civil forfeiture process.

Thank you for the opportunity to comment on this measure.

⁴ Any argument that the appellate court process provides additional safeguards against abuses in the system ignores the fact that the appellate process is costly, time-consuming and lengthy. Even if an owner's challenge is successful, the appellate process can take years and during that lengthy process the owner is deprived of their property.

⁵ Opponents of this bill argue that the proposed restrictions will cause the State's civil asset forfeiture program to cease and deprive the government of one of its most powerful tools to stop and deter crime however, they cite no statistics to prove that civil forfeiture, especially in the case of persons who are not convicted or charged with crimes, serves as a deterrent. Further, as the amount of property seized by the asset forfeiture program is decreasing each year, the affect of further limiting the scope of the program should not significantly affect the law enforcement agencies who claim that the program is necessary as a deterrent and not as an additional source of funding.

Rebecca V. Like
Prosecuting Attorney



Keola Siu
First Deputy
Prosecuting Attorney

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

3990 Ka'ana Street, Suite 210, Līhu'e, Hawai'i 96766
808-241-1888 ~ FAX 808-241-1758
Victim/Witness Program 808-241-1898 or 800-668-5734

Thirty-third State Legislature
Regular session of 2025
State of Hawai'i

Testimony on SB 722, Relating to Property Forfeiture

TO: Honorable Karl Rhoads, Chair
Senate Committee on Judiciary

FROM: Department of the Prosecuting Attorney, County of Kaua'i

Date: January 27, 2025

RE: **Opposition to SB 722, Property Forfeiture**

Civil asset forfeiture is an important law enforcement tool to immediately disrupt a criminal enterprise. If you are fortunate enough not to live or work near a criminal enterprise, it is easy to overlook the community benefit of asset forfeiture laws. Some members of the legislature are concerned about perceived abuses of HRS Chapter 712A, "Hawaii Omnibus Criminal Forfeiture Act," as it authorizes forfeiture of property to law enforcement agencies before a property owner person is charged with or convicted of a crime.

Respectfully:

1. I oppose the proposed requirement of a felony conviction before property may be deemed forfeited. This bill does not address the common occurrence in which a defendant appeals a felony conviction. When a person is convicted of a crime, they have a right to an appeal; and Hawaii's appellate courts generally take 2-5 years to dispose of a criminal appeal. This bill must be amended to address how a criminal appeal will impact the companion forfeiture action.

Even if this bill were amended to condition the forfeiture of property on an affirmed felony conviction (or the passage of time past the deadline

to appeal), this will significantly delay the disposition of civil asset forfeiture cases. This will be cumbersome for law enforcement agencies (which will store the property for years while awaiting the outcome of the criminal appeal) and this delay to finality will likely frustrate the property owners. In the case of seized vehicles, the passage of years will of course lead to deterioration of the vehicles.

An alternative is to condition the forfeiture of property on the filing of a felony charge (which requires a finding of probable cause by a judge or the grand jury).

2. I have no position on the proposal that seizing agencies will not retain any proceeds from forfeited property. I anticipate that if this bill passes, the overall volume of civil asset forfeiture cases in the State will decline, given the lesser incentive to law enforcement agencies to pursue asset forfeiture. Relatedly, I anticipate that if police departments and prosecutors' offices struggle to maintain full staffing, they are likely to reduce the amount of time dedicated to civil asset forfeiture cases, choosing instead to prioritize their resources for criminal cases.

Thank you for the opportunity to comment on this bill.

/s/ Rebecca V. Like
Prosecuting Attorney
County of Kaua'i

KELDEN B.A. WALTJEN
PROSECUTING ATTORNEY

STEPHEN L. FRYE
FIRST DEPUTY
PROSECUTING ATTORNEY



655 KĪLAUEA AVENUE
HILO, HAWAII 96720
PH: (808) 961-0466
FAX: (808) 961-8908

64-1067 MAMALAHOA HWY
KAMUELA, HAWAII 96743
PH: (808) 887-3017
FAX: (808) 887-3016

74-675 KEALAKEHE PARKWAY
KAILUA-KONA, HAWAII 96740
PH: (808) 322-2552
FAX: (808) 322-6584

OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN OPPOSITION TO SENATE BILL NO. 722

A BILL FOR AN ACT RELATING TO PROPERTY FORFEITURE

COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Thursday, January 30, 2025 at 9:15 a.m.
Via Videoconference and
State Capitol Conference Room 016
415 South Beretania Street

LATE

Honorable Chair Rhoads, Vice-Chair Gabbard, and Members of the Committee on Judiciary. The County of Hawai'i, Office of the Prosecuting Attorney submits the following testimony in opposition to Senate Bill No. 3274 with comments.

This bill was drafted with the intention to prohibit civil asset forfeiture to cases involving the commission of a felony offense where the property owner has been convicted of an underlying felony offense, directs forfeiture proceeds to the general fund, amends the allowable expenses for moneys in the Criminal Forfeiture Fund, requires the Attorney General to adopt rules necessary to carry out the purpose of the Hawai'i Omnibus Criminal Forfeiture Act, amends the deadline for the Attorney General to report to the Legislature on the use of the Hawai'i Omnibus Criminal Forfeiture Act, limits the transfer of certain forfeiture property to federal agencies, and establishes records requirements.

In Hawai'i County, violent crime trends continue to rise as a result of the influx of illegal narcotics. Thus, narcotics addiction, including the use of methamphetamine, heroin, and fentanyl, is at an all-time high and one of the most prevalent challenges our community faces. Statistically, narcotics distribution and possession of illegal and prohibited firearms offenses constitutes the overwhelming majority of the offenses which trigger asset forfeiture in Hawai'i County and all property is seized pursuant to the strict rules and guidelines as set forth by the Attorney General.

As exhibited in the Preamble, the estimated value of property seized by Hawai'i State law enforcement has been in a steep decline over the last few years. Law enforcement agencies seized \$1,050,463 in fiscal year 2018-2019, \$963,055 in fiscal year 2019-2020, \$483,506 in fiscal year 2020-2021 and only \$412,192 in fiscal year 2021-2022. As a result, a legislative

amendment does not seem to be necessary at this time and any notion of “policing for profit” or a profit incentive appears misguided and misplaced.

Criminal enterprises generate a profit from the sale of their “product” or “services” through criminal activity. It is widely accepted and acknowledged that asset forfeiture can remove the tools, equipment, cash flow, profit, and the product itself from the criminals and criminal organizations.

Currently, proceeds from asset forfeiture are required to be used for law enforcement purposes. One suggestion would be to also incorporate the use of property and money seized for crime prevention purposes.

Our Office is unique in that we are the only county prosecutor’s office in the State, and one of a few in the country, that has its own dedicated Crime Prevention Unit (“CPU”). Our CPU is comprised of three full-time employees, a program manager and two special projects coordinators. One of the special projects coordinators has defined roles and responsibilities related to substance misuse prevention, supporting treatment services, community stakeholder collaboration, criminal justice system drug diversion, impaired driving, and promoting awareness. CPU also facilitates juvenile justice initiatives on Hawai‘i Island, which include career planning, mentoring, capacity building, and positive youth development. CPU enacts positive changes in our community by collaborating with different community leaders, stakeholders, and agencies. If funds and property seized by civil asset forfeiture were dedicated to crime prevention efforts, like CPU, they could additionally be directed toward programs which aim to prevent abuse of illegal narcotics through education, prevention, rehabilitation, and reintegration. Any re-allocation of the proceeds to the state general fund would ultimately undercut these types of deterrent efforts, defund programs and prevention priorities, as well as the portion of the funds used directly for the purpose of providing training to community stakeholders and law enforcement.

Our Office proposes to amend Hawaii Revised Statutes Section 712A-16(3) as follows, “Property and money distributed to units of state and local government shall be used for law enforcement **and/or crime prevention** purposes, and shall complement but not supplant the funds regularly appropriated for such purposes.”

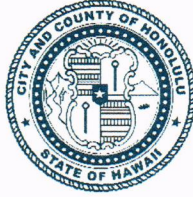
The Office of the Prosecuting Attorney, County of Hawai‘i remains committed to the cause of ensuring that any property forfeited is within the interest of justice and pursuant to the strict rules, timeframes, and guidelines as set forth by the Attorney General. Nevertheless, our Office is more than willing to participate in discussions to address any concerns related to our current civil asset forfeiture process.

For the foregoing reasons, the Office of the Prosecuting Attorney, County of Hawai‘i, opposes Senate Bill No. 722 and submits the aforementioned comments for the Committee’s consideration. Thank you for the opportunity to testify on this matter.

HONOLULU POLICE DEPARTMENT
KA 'OIHANA MĀKA'I O HONOLULU
CITY AND COUNTY OF HONOLULU
801 SOUTH BERETANIA STREET • HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 • WEBSITE: www.honolulupd.org

LATE

RICK BLANGIARDI
MAYOR
MEI'A



ARTHUR J. LOGAN
CHIEF
KAHU MĀKA'I

KEITH K. HORIKAWA
RADE K. VANIC
DEPUTY CHIEFS
HOPE LUNA NUI MĀKA'I

OUR REFERENCE ML-HR

January 30, 2025

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State Senate
415 South Beretania Street, Room 016
Honolulu, Hawai'i 96813

Dear Chair Rhoads and Members:

SUBJECT: Senate Bill No. 722, Relating to Property Forfeiture

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

The HPD opposes Senate Bill No. 722, Relating to Property Forfeiture.

This bill proposes to change the requirements of civil forfeiture. It states that forfeiture can only proceed in cases involving chargeable felonies. Additionally, it requires that the property owner must have been convicted of an underlying felony. This requirement could create complications if the suspect pleads guilty to a lesser misdemeanor charge in court.

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 Senate Bill No. 722, Relating to Property Forfeiture.

Thank you for the opportunity to testify.

APPROVED:


Arthur J. Logan
Chief of Police

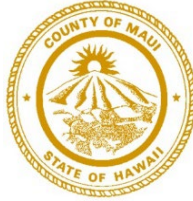
Sincerely,


Mike Lambert, Major
Narcotics/Vice Division

RICHARD T. BISSEN, JR.
Mayor

ANDREW H. MARTIN
Prosecuting Attorney

SHELLY C. MIYASHIRO
First Deputy Prosecuting Attorney



DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
PHONE (808) 270-7777 • FAX (808) 270-7625

TESTIMONY ON
S.B. 722
RELATING TO PROPERTY FORFEITURE

January 29, 2025

The Honorable Karl Rhoads
Chair
The Honorable Mike Gabbard
Vice Chair
and Members of the Committee on Judiciary

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

Thank you for the opportunity to testify in **OPPOSITION** to SB 722 and request that it be deferred. Although we appreciate the legislature's efforts to address the issue of civil asset forfeiture reform, the bill in its current form unnecessarily hinders our efforts to reduce crime by removing incentives for engaging in criminal behavior. We oppose this measure for the following reasons:

1. This bill appears to prohibit forfeiture for any property unless the property owner has been convicted of a covered felony offense. The change would link initiation of a civil asset forfeiture action to a conviction in a felony criminal case. In theory, this would create an incentive for the State to ensure that defendants are convicted of felony offenses¹.

Moreover, requiring a criminal conviction has the indirect effect of raising the standard of proof for civil forfeiture cases (a preponderance of the evidence standard) to the criminal standard of beyond a reasonable doubt. The preponderance of the evidence standard has been used for years by Hawai'i courts and government agencies to review matters such as land use

¹In saying this, we want to make it clear that prosecutorial ethics bar us from initiating criminal cases as a means to pursue asset forfeiture proceedings and vice versa. Preventing this conflict is part of the reason why the two proceedings are initiated independently.

boundary amendments², domestic abuse protective orders³, and traffic/emergency period infractions⁴. It is also used in scenarios where civil and criminal cases arise from the same set of facts, such as the 1994 stabbing deaths of Nicole Brown Simpson and Ron Goldman where O. J. Simpson was acquitted of the two murders but found civilly liable for wrongful death (the civil court equivalent of a criminal murder charge).

Finally, the bill does not take into account the criminal appellate process or how forfeited funds are treated when a criminal conviction is vacated. Whether via direct appeal or the Hawai'i Rules of Penal Procedure Rule 40 post-conviction relief process, a criminal conviction can be vacated months, years or decades after the civil asset forfeiture process has been completed. Without the separation between criminal offense and civil asset forfeiture cases provided by the current HRS 712A process, litigation to return funds or real property may arise well after the property is no longer in the government's possession.

2. As part of our mission to seek justice, our Department shares the Legislature's interest in ensuring that the civil asset forfeiture process is not used to seize property from innocent owners. However, HRS Chapter 712A's existing safeguards contain significant protections for innocent property owners.

The initial seizure must be justified by a showing of probable cause that the property was involved in criminal activity. If we are unable to meet this burden of proof, the property cannot be forfeited regardless of whether the property owner is convicted in a related criminal case. Notice of forfeiture must then be given to everyone known to have an interest in the property. Owners have the right to contest a forfeiture, present evidence in support of their claim and have their claims decided by a court or administrative official. Chapter 712A already provides an "innocent owner" defense, preventing forfeiture of property used criminally if the owner did not know of or consent to the criminal use. Per HRS § 712A-5.5⁵, forfeitures cannot be excessive: the effect of the forfeiture cannot be grossly disproportionate to the seriousness of the offense.

Finally, Hawai'i's appellate courts continue to be an additional safeguard against

²HRS §205-4(h) ("No amendment of a land use district boundary shall be approved unless the commission finds upon the clear preponderance of the evidence that the proposed boundary is reasonable, not violative of section 205-2 and part III of this chapter, and consistent with the policies and criteria established pursuant to sections 205-16 and 205-17.")

³JD v. PD, 149 Hawai'i 92, 101, 482 P.3d 555, 564 (Ct. App. 2021) (The "preponderance of the evidence" standard is constitutional when applied in cases involving a protection order under HRS Chapter 586).

⁴HRS § 291D-8(a)(3) ("The standard of proof to be applied by the court shall be whether, by a preponderance of the evidence, the court finds that the traffic infraction or emergency period infraction was committed").

⁵ HRS § 712A-5.5 ("The court shall limit the scope of a forfeiture judgment issued pursuant to section [712A-5(1)(b)] to the extent the court finds the effect of the forfeiture is grossly disproportionate to the nature and severity of the owner's conduct").

government overreach. For example, in Alm v. Eleven Products, 150 Hawai'i 329, 501 P.3d 298 (2021), the Hawai'i Supreme Court ruled that law enforcement personnel must follow stricter standards when retaining property for a future forfeiture action that was initially seized in a criminal case.

For these reasons, the Department of the Prosecuting Attorney, County of Maui opposes the passage of SB 722 and requests that it be deferred. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries.

Thank you very much for the opportunity to provide testimony on this bill.

COMMUNITY ALLIANCE ON PRISONS

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

Phone/E-Mail: [\(808\) 927-1214](tel:(808)927-1214) / kat.caphi@gmail.com

Today's Inmate; Tomorrow's Neighbor



COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Tuesday, January 28, 2025

9:15 AM

Room 016 & VIDEOCONFERENCE

STRONG SUPPORT FOR SB 722 - PROPERTY FORFEITURE

Aloha Chair Rhoads, Vice Chair Gabbard 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 3,717 Hawai'i individuals living behind bars¹ and under the "care and custody" of the Department of Corrections and Rehabilitation on January 20, 2025. We are always mindful that 928 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 strongly support SB 722 that restricts civil asset forfeiture to cases involving the commission of a felony offense where the property owner has been convicted of an underlying felony offense and directs forfeiture proceeds to the general fund. It also amends the allowable expenses for moneys in the Criminal Forfeiture Fund, requires the Attorney General to adopt rules necessary to carry out the purpose of the Hawai'i Omnibus Criminal Forfeiture Act and amends the deadline for the Attorney

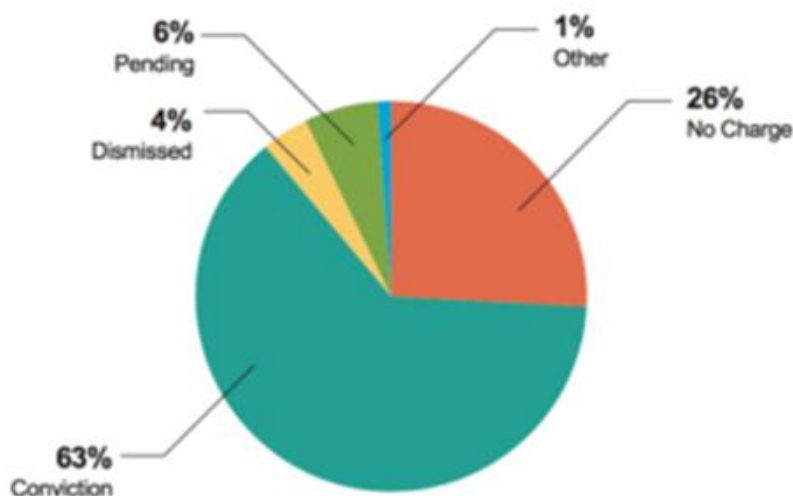
¹ DCR Weekly Population Report, January 20, 2025

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

General to report to the Legislature on the use of the Hawai'i Omnibus Criminal Forfeiture Act as well as limiting the transfer of certain forfeiture property to federal agencies and establishes records requirements.

In 2010, Hawai'i received a grade of D- for Forfeiture Law; C for State Law and an overall grade of D²; showing that things have gotten worse. As part of the Cooperative Congressional Election Study National Survey, the Institute for Justice asked a random sample of 1,000 participants nationwide whether they agree or disagree with various features of modern civil forfeiture laws. The results show that the public overwhelmingly favors greater protections for property owners and removing financial incentives that encourage civil forfeiture.

After this pitiful history, 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 Office of the Attorney General.



Source: Office of the Auditor

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

² Institute for Justice, March 2010. <https://ij.org/report/policing-for-profit-first-edition/part-ii-grading-the-states/hawaii/>

The scathing Hawai'i auditor's report³ 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 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 has again introduced this bill and urges the committee to pass this important reform to restore faith in Hawai'i's system of justice.

Mahalo nui!

³ 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>

LATE



Committee: Judiciary
Hearing Date/Time: Thursday, January 30, 2025 at 9:15am
Place: Conference Room 016 & Via Videoconference
Re: **Testimony of the ACLU of Hawai'i in SUPPORT of SB722**
Relating to Property Forfeiture

Dear Chair Rhoads, Vice Chair Gabbard and Members of the Committee:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") **supports SB722** Relating to Property Forfeiture, which restricts civil asset forfeiture to cases involving the commission of a felony offense where the property owner has been convicted of an underlying felony offense and directs forfeiture proceeds to the general fund. It also amends the allowable expenses for moneys in the Criminal Forfeiture Fund and requires the Attorney General to adopt rules necessary to carry out the purpose of the Hawaii Omnibus Criminal Forfeiture Act. Finally, the bill amends the deadline for the Attorney General to report to the Legislature on the use of the Hawaii Omnibus Forfeiture Act, limits the transfer of certain forfeiture property to federal agencies, and establishes records requirements.

The Origins of Civil Asset Forfeiture.

Asset forfeiture is a law based on the idea that property can be charged with a crime independently of its owner. Administered in Hawai'i by the Department of the Attorney General, funds are generated when law enforcement agencies seize a person's property and sell it – often without a criminal conviction or even a criminal charge.

Although SB722 doesn't stop law enforcement from initially seizing property, it will require a felony conviction before property is forfeited to the government. Moreover, it will dilute the "policing for profit" incentive for law enforcement by directing proceeds to the state's general fund instead of earmarking funds back to the police and prosecutors.

Hawaii's law enforcement is abusing the current system.

In 2018, the Hawaii State Auditor conducted a study of civil asset forfeiture in Hawai'i.¹ The report found that in fiscal year 2015, **"property was forfeited without a corresponding criminal charge in 26 percent of the asset forfeiture cases."** This means during that period, in more than a quarter of all civil property forfeiture cases, not only was there no conviction, but no criminal charges were even filed.

¹ State of Hawaii, Office of the Auditor, Audit of the Department of the Attorney General's Asset Forfeiture Program, Report No. 18-09 (June 2018): <https://files.hawaii.gov/auditor/Reports/2018/18-09.pdf>

Hawaii's civil asset forfeiture law is regarded among the worst in the nation. The Institute for Justice awarded Hawai'i a grade of D-.² A low standard of proof means that property can be seized when it only has a tenuous connection to the alleged underlying offense, and property may be forfeited even when there have been no criminal charges filed. This is often a substantial burden on the property owner, who may lose their job or home because the State seized their means of transportation or money needed to pay rent. **While the law contains a provision intended to protect innocent property owners, this provision is inadequate. The burden placed on the property owners seeking to challenge a forfeiture makes it nearly impossible in most cases for innocent people to recover their property.**

This legislation is necessary to rectify the harms done by our current system and to prevent its continued abuse. SB722 limits civil asset forfeiture to felony cases in which the property owner has been convicted and redirects all proceeds into the General Fund, thereby eliminating any profit incentive there may be from law enforcement.

For the above reasons, we urge the Committee to support this measure. Thank you for the opportunity to testify.

Sincerely,

Carrie Ann Shiota

Carrie Ann Shiota

Policy Director

ACLU of Hawai'i

cshiota@acluhawaii.org

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i 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 Hawai'i has been serving Hawai'i since 1965. .

² Institute for Justice, Policing for Profit: The Abuse of Civil Asset Forfeiture, 3rd Edition (December 2020): <https://ij.org/wp-content/uploads/2020/12/policing-for-profit-3-web.pdf>

Jan. 30, 2025, 9:15 a.m.
Hawaii State Capitol
Conference Room 016 and Videoconference

LATE

To: Senate Committee on Judiciary
Sen. Karl Rhoads, Chair
Sen. Mike Gabbard, Vice-Chair

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

RE: COMMENTS IN SUPPORT OF SB722 — RELATING TO PROPERTY FORFEITURE

Aloha Chair Rhoads, Vice-Chair Gabbard and Committee Members,

The Grassroot Institute of Hawaii would like to offer its comments in **support** of [SB722](#), which would substantially reform the practice of civil asset forfeiture in Hawaii by restricting the practice to only those cases where the property owner has been convicted of an underlying felony offense.

In addition, the bill would remove the incentive for the agencies involved to benefit from forfeitures by directing forfeiture revenues to the general fund and by limiting the ability of an agency or prosecutor to transfer seized property to a federal agency or intergovernmental task force.

Moreover, SB722 would greatly strengthen oversight and reporting of the practice of asset forfeiture in the state.

We commend the Legislature for focusing on 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

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.

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

That 2018 report found that:

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

>> In 4% of cases, the property was forfeited even though the charge was dismissed. 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.

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.³

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.⁴

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

³ ["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.

⁴ ["Report on Proceedings under the Hawaii Omnibus Criminal Forfeiture Act,"](#) Hawaii Department of the Attorney General, Nov. 23, 2022.

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.

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.

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

This bill also deserves praise for seeking to eliminate the monetary incentives that can arise from the practice of asset forfeiture. By directing the proceeds from the forfeiture program to the general fund and limiting the allowable expenses for monies in the criminal forfeiture fund, this bill would prevent any agency or group from having a financial interest in asset forfeiture.

Similarly, SB722 should be praised for limiting the transfer of forfeiture property to federal agencies, a technique that has been used elsewhere to circumvent state restrictions on forfeiture.

Finally, the recording and reporting requirements included in the bill would help improve transparency and accountability within the program. This, in turn, would help improve public trust in government.

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

By introducing a higher standard for forfeiture, this bill would represent a giant leap forward in improving Hawaii's forfeiture laws.

Thank you for the opportunity to testify.

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii



LATE

INSTITUTE FOR JUSTICE

January 30, 2025

Senate Committee on Judiciary
Hawai'i State Legislature
415 South Beretania Street, Conference Room 16
Honolulu, Hawai'i

Re: Letter in support of SB 722

Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

Thank you for the opportunity to submit this letter in support of SB 722. My name is Alasdair Whitney, and I am legislative counsel at the Institute for Justice (IJ). For more than 30 years, IJ has worked nationwide to protect private property rights. As part of this work, we have advocated for the repeal of civil asset forfeiture laws and passage of legislation that would lend transparency to the seizure and forfeiture process.

IJ urges the committee to support this bill, which would (1) place meaningful restrictions on local and state law enforcement participation in the federal government's equitable sharing program, (2) require a conviction to forfeit property, (3) provide innocent owner protections, and (4) limit the incentives law enforcement might have to "police for profit."

As noted by IJ's research, Hawai'i's civil asset forfeiture processes are ranked among the worst in the nation. Very little protection is accorded to property owners facing the forfeiture of their property; indeed, prosecuting authorities need only prove by a low "preponderance of the evidence" standard that property is connected to a crime. This is an easy standard to satisfy, particularly if low-income individuals try to represent themselves in complicated forfeiture proceedings. Further, state law requires innocent property to establish their innocence at forfeiture proceedings rather than requiring prosecutors to prove that the property owner knew their property was connected to criminal activity. This turns the presumption of innocence underpinning our criminal justice system on its head. And, when property is forfeited, police can capture up to 100% of proceeds. This system is fundamentally unfair and hurts the most vulnerable Hawai'ians.

This bill, while not a silver bullet, is a welcome step in the right direction. It prioritizes the primacy of Hawai'i's state sovereignty and laws, offers protections for property owners, and provides some much-needed transparency into forfeiture proceedings. Importantly, it reduces any incentive law enforcement might have to "police for profit," or seize and forfeit property that would ultimately be directed back to the seizing agency. To be clear, this is not an anti-law enforcement bill; it is instead a bill that is pro-property owner, and IJ supports it for this reason alone. Crime should pay, but only after a court determines a crime occurred.

Thank you for your time and thoughtful consideration of this issue.

Sincerely,

Alasdair Whitney
Institute for Justice
awhitney@ij.org
www.ij.org

SB-722

Submitted on: 1/27/2025 10:21:35 AM

Testimony for JDC on 1/30/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Support	Written Testimony Only

Comments:

This overturns a great injustice. Property should be returned to the owner unless that person is convicted. Period.

SB-722

Submitted on: 1/27/2025 10:39:35 AM

Testimony for JDC on 1/30/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Marion K A Kapuniai	Individual	Oppose	Written Testimony Only

Comments:

This is more than overreaching.

Just punishment for crime conducted has already been established and shall not include forfeiture of personal property, accept for monetary funds to be repaid.

Personal Property shall be available only to the felon's posterity..

Thank you,

Marion K A Kapuniai

SB-722

Submitted on: 1/27/2025 4:06:41 PM

Testimony for JDC on 1/30/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Michael Olderr	Individual	Support	Written Testimony Only

Comments:

I support this bill.

SB-722

Submitted on: 1/28/2025 12:41:01 PM

Testimony for JDC on 1/30/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Stephen Munkelt	Individual	Support	Written Testimony Only

Comments:

SB 722 is a reasonable and moderate reform of the forfeiture laws. The abuses which have been noted in the bill have been so widespread that a line of US Supreme Court decisions has determined that both civil and criminal forfeitures may violate the Eighth Amendment as excessive fines or penalties. As an attorney in criminal law and forfeitures for 46 years I personally observed many situations where people suffered tremendous financial losses over minor conduct, or just because law enforcement assumed there had been some unlawful conduct and had the opportunity to seize cash or valuables.

By requiring a felony conviction before allowing forfeiture, removing the financial incentives to law enforcement when allowed to keep the proceeds of a seizure, and other modest changes, this bill would promote justice and a fair determination of when assets are actually subject to forfeiture.