

JAN 20 2017

A BILL FOR AN ACT

RELATING TO FORFEITURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that forfeiture is used
2 to protect the public from harmful products and the property of
3 criminal enterprise. As a result, criminals are deprived of
4 their working capital and their profits. A secondary benefit of
5 forfeiture laws is that forfeited property, or the proceeds of
6 its sale, is turned over to law enforcement and used to fight
7 crime.

8 In 2010, the Institute for Justice published a report
9 titled, *Policing for Profit: The Abuse of Civil Asset*
10 *Forfeiture*. This report examined the use and abuse of civil
11 asset forfeiture and graded the civil forfeiture laws of all
12 fifty states and the federal government. The report found that
13 under most state and federal laws, law enforcement keeps some or
14 all proceeds from civil forfeitures, which may encourage
15 policing for profit when law enforcement agencies pursue
16 forfeitures to boost their budgets at the expense of other law
17 enforcement priorities. Furthermore, the report criticized the



1 lower standard of proof the government is required to use in
2 civil forfeiture proceedings to establish that the forfeited
3 property is connected to the alleged criminal activity and
4 criticized the burden that is placed on the forfeited property
5 owner to prove that the forfeited property was used illegally
6 without the owner's knowledge or consent. Lastly, the report
7 found that there was limited oversight and accountability of
8 money raised and spent through civil forfeiture actions. Hawaii
9 received a D grade.

10 Chapter 712A, Hawaii Revised Statutes, provides for
11 forfeiture of property used or acquired in connection with the
12 commission of certain criminal offenses and for the distribution
13 of property, or its proceeds, to law enforcement agencies for
14 law enforcement purposes. The department of the attorney
15 general distributes administratively or judicially forfeited
16 property, and the sale proceeds thereof, to law enforcement
17 agencies. The department of the attorney general processes
18 petitions for administrative forfeiture of personal property
19 valued at less than \$100,000 or of any vehicle or conveyance
20 regardless of value, but not real property. In a case initiated
21 as an administrative forfeiture proceeding, a person may



1 petition for remission or mitigation upon showing that the
2 person is the owner of the property, had no knowledge that the
3 property was or would be involved in any violation of the law,
4 had no knowledge of the particular violation that subjected the
5 property to seizure and forfeiture, and had no knowledge that
6 the user of the property had any record for the violation that
7 subjected the property to seizure and forfeiture. A prosecuting
8 attorney commences judicial forfeiture proceedings concerning
9 real property or personal property valued at \$100,000 or more by
10 filing a petition for forfeiture in the circuit court.

11 The legislature further finds that House Concurrent
12 Resolution No. 4, which was adopted during the Regular Session
13 of 2016, requests the auditor to conduct a management audit of
14 the asset forfeiture program of the department of the attorney
15 general to, among other tasks, evaluate the efficiency and
16 effectiveness of the asset forfeiture program, determine whether
17 the program uses moneys for the purposes intended pursuant to
18 chapter 712A, Hawaii Revised Statutes, and provide a
19 comprehensive accounting of money and property seized and
20 disposed of through asset forfeitures. Auditor Report No.



1 reports the auditor's findings and recommendations pursuant to
2 House Concurrent Resolution No. 4, Regular Session of 2016.

3 The purpose of this Act is to establish a working group to
4 review and discuss Hawaii's forfeiture laws and make
5 recommendations to improve these laws to ensure that forfeiture
6 is used for its intended purposes rather than to create an
7 incentive for law enforcement agencies to generate revenue
8 through forfeiture.

9 SECTION 2. (a) The department of the attorney general
10 shall establish a working group to review and discuss Hawaii's
11 forfeiture laws and make recommendations to improve these laws.
12 The working group shall include the following members:

- 13 (1) The attorney general or the attorney general's
14 designee;
- 15 (2) The chief justice or the chief justice's designee;
- 16 (3) One representative of the prosecuting attorney from
17 each of the four counties;
- 18 (4) One representative of the police chief from each of
19 the four counties;
- 20 (5) The chairperson of the Hawaii access to justice
21 commission or the chairperson's designee;



1 (6) The president of the Hawaii State Bar Association or
2 the president's designee;

3 (7) One representative of the American Civil Liberties
4 Union;

5 (8) One representative of the Drug Policy Forum of Hawaii;
6 and

7 (9) One representative of the office of the public
8 defender.

9 (b) The working group shall examine and evaluate Hawaii's
10 forfeiture laws by:

11 (1) Determining the effectiveness and efficiency of such
12 laws by examining:

13 (A) The total amount and type of property seized by
14 law enforcement agencies;

15 (B) The total number of administrative and judicial
16 actions filed by prosecuting attorneys and the
17 disposition of these actions;

18 (C) The total number of claims or petitions for
19 remission or mitigation filed in administrative
20 actions and the disposition of these actions;



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- 1 (D) The total amount and type of property forfeited
2 and the sale proceeds thereof; and
- 3 (E) The total amount and type of property distributed
4 to units of state and local government;
- 5 (2) Examining the different forfeiture laws of other
6 jurisdictions to determine whether these statutory
7 schemes may serve as a model for Hawaii's forfeiture
8 laws;
- 9 (3) Identifying any possible areas for abuse or concern
10 regarding Hawaii's forfeiture laws, including any
11 impediments that innocent owners of forfeited property
12 face when petitioning for remission or mitigation;
- 13 (4) Examining and considering the findings and
14 recommendations under Auditor Report No. relating
15 to the management audit of the asset forfeiture
16 program of the department of the attorney general
17 pursuant to House Concurrent Resolution No. 4, Regular
18 Session of 2016; and
- 19 (5) Developing solutions to address problem areas or
20 impediments and to streamline the forfeiture process.



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1 (c) The working group shall submit a written report of its
 2 findings and recommendations, including any proposed
 3 legislation, to the legislature no later than twenty days prior
 4 to the convening of the regular session of 2018.

5 (d) The working group shall cease to exist on June 30,
 6 2018.

7 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:

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Report Title:

Forfeiture; Working Group; Department of the Attorney General

Description:

Requires the department of the attorney general to establish a working group to review and discuss Hawaii's asset forfeiture laws and make recommendations to improve these laws.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

