



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

ON THE FOLLOWING MEASURE:

H.B. NO. 980, RELATING TO FORFEITURE PURSUANT TO SECTION 804-51,
HAWAII REVISED STATUTES.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 14, 2023

TIME: 9:30 a.m.

LOCATION: State Capitol, Room 016

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

Chair Rhoads and Members of the Committee:

The Department of the Attorney General supports this bill.

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

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

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

and demanding payment of the bond or recognizance forfeiture is sufficient notice under section 804-51, HRS).

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

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

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

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

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