

Testimony on behalf of the  
**Hawai'i State Commission on the Status of Women**  
Khara Jabola-Carolus, Executive Director

Prepared for the S. Cmtee. on WAM

Testimony in Support of HB1433 HD1

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Honorable Members,

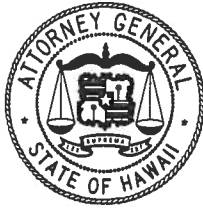
The Hawai'i State Commission on the Status of Women supports HB1433 HD1, which would appropriate funds for two full-time equivalent (2.0 FTE) positions, operating costs, and equipment to support the Attorney General's Hawaii Criminal Justice Data Center in administering the Address Confidentiality Program.

Gender-based violence does not end with immediate escape. The fear of being tracked by an obsessive assailant often haunts victims because most domestic violence, sexual offenses and stalking are committed by intimate partners, family members and acquaintances. Survivors attempting to escape from actual or threatened gender-based violence frequently establish new addresses in order to prevent their assailants from finding them. HB1433 HD1 would enable state and local agencies to respond to requests for public records without disclosing the location of a victim, to enable interagency cooperation with the secretary of state in providing address confidentiality for victims, and to enable state and local agencies to accept a program participant's use of an address designated by the secretary of state as a substitute mailing address.

Accordingly, the Commission requests that the Commission vote to appropriate the funds needed by the Department to implement this important and life-saving program for the 2019 – 2021 fiscal biennium.

Sincerely,

Khara Jabola-Carolus



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2019**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1433, H.D. 1, RELATING TO ADDRESS CONFIDENTIALITY.

**BEFORE THE:**

SENATE COMMITTEE ON WAYS AND MEANS

**DATE:** Thursday, April 04, 2019

**TIME:** 10:35 a.m.

**LOCATION:** State Capitol, Room 211

**TESTIFIER(S):** **WRITTEN TESTIMONY ONLY.**

(For more information, contact Christopher D.W. Young,  
Administrator, Hawaii Criminal Justice Data Center at 587-3110)

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Chair Dela Cruz and Members of the Committee:

The Department of the Attorney General supports this bill.

H.B. No. 1433, H.D.1, is the companion bill to S.B. No.1462, SD. 2. The Senate version of the bill was supported by this Committee on Ways and Means.

On July 5, 2018, Governor David Ige signed Act 115, Session Laws of Hawaii 2018, to establish the Address Confidentiality Program (ACP). No moneys were allocated within the Act. The Act was codified into Hawaii law in chapter 801G, Hawaii Revised Statutes. The ACP provides survivors of domestic violence, sexual offenses, or stalking with a substitute address to be used by state and local government agencies instead of their physical address to protect their physical address from inclusion in public records.

The Hawaii Criminal Justice Data Center (HCJDC) is assigned the responsibility of developing, implementing, and operating the ACP. HCJDC thoroughly reviewed chapter 801G and concluded that there is insufficient funding in HCJDC's current budget to properly implement or operate the ACP. HCJDC has begun developing policies, procedures, and forms using our current resources. Implementation and operation of the ACP is unlikely to occur without the funding provided in this bill.

HCJDC is requesting \$147,500 for two full-time equivalent (2.0 FTE) positions, operating cost, and equipment to support the Hawaii criminal justice data center in administering the ACP.

The Department of the Attorney General respectfully requests the passage of this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE DONOVAN DELA CRUZ, CHAIR  
THE HONORABLE GILBERT S.C. KEITH-AGARAN, VICE CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS  
Thirtieth State Legislature  
Regular Session of 2019  
State of Hawai`i**

April 4, 2019

**RE: H.B. 1433, HD 1; RELATING TO ADDRESS CONFIDENTIALITY.**

Chair Dela Cruz, Vice-Chair Keith-Agaran and members of the Senate Committee on Ways and Means, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of H.B. 1433, HD 1.

The purpose of this bill is to provide funding for two full-time positions, operating costs & equipment to staff the Address Confidentiality Program, housed within the Attorney General's Hawaii Criminal Justice Data Center.

The Department believes the address confidentiality program is consistent with our dedication to assisting and counseling victims of crime, through the course of their involvement in the criminal justice system and beyond—via the Victim/Witness Kokua Services Division—and supports the initiative to provide this program with the funding needed to fulfill its mission. We believe this program could provide a valuable and potentially life-saving service for crime victims, if given the appropriate personnel and resources.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports passage of H.B. 1433, HD 1. Thank you for the opportunity to testify on this matter.

**HB-1433-HD-1**

Submitted on: 4/2/2019 8:34:34 PM

Testimony for WAM on 4/4/2019 10:35:00 AM

| <b>Submitted By</b> | <b>Organization</b>           | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|-------------------------------|---------------------------|---------------------------|
| Younghi Overly      | Testifying for aauw of hawaii | Support                   | No                        |

Comments:

Dear Chair Dela Cruz, Vice-Chair Keith-Agaran, and members of the committee,

Thank you for this opportunity to submit a testimony in support of HB1433 HD1 which would appropriate funds for the State Department of the Attorney General to administer the Address Confidentiality program.

Address confidentiality for victims and survivors of domestic violence is a critical aspect of planning for long term safety. Protecting the location of a person who has left a violent relationship will promote long term safety and will likely reduce harassment, stalking attempts, and the day to day anxiety a person who has relocated experiences upon terminating the relationship. Appropriations to make this program a reality would be a gift to survivors of intimate partner violence and stalking and would show a commitment to protect citizens from offenders of violent crime. Hawaii would join the other 36 states that have a program like this in place.

The American Association of University Women (AAUW) of Hawaii is a state-wide organization made up of six branches (Hilo, Honolulu, Kauai, Kona, Maui, and Windward Oahu) and includes just over 450 active members with over 1700 supporters statewide. As advocates for gender equity, AAUW of Hawaii promotes the economic, social, and physical well-being of all persons.

Thank you for your consideration.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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ACTING FIRST DEPUTY  
PROSECUTING ATTORNEY

**THE HONORABLE DONOVAN M. DELA CRUZ, CHAIR**  
**SENATE COMMITTEE ON WAYS AND MEANS**  
**Thirtieth State Legislature**  
**Regular Session of 2019**  
**State of Hawai`i**

April 3, 2019

**RE: H.B. 748, H.D. 2, S.D. 1; RELATING TO PROPERTY FORFEITURE.**

Chair Dela Cruz, Vice-Chair Keith-Agaran and members of the Senate Committee on Ways and Means, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to H.B. 748, H.D. 2, S.D. 1.

The purpose of this bill is to prohibit civil asset forfeiture unless the State proves various matters “beyond a reasonable doubt” (a standard of proof often used in criminal law). While the bill appears to have good intentions, it also appears to be based upon the premise that “everyone is innocent until proven guilty,” which is certainly a true statement, but misses the point of civil asset forfeiture. At its core, civil asset forfeiture is primarily about the “innocence” of the property itself, not the guilt or innocence of its owner. The only time a property owner’s “innocence” is relevant, is to assess the owner’s knowledge and (express or implied) consent to the act or omission (that their property was connected to). For example, if a father allows his drug-dealing daughter to use his car, knowing that the daughter occasionally delivers drugs using his car, then the father’s car could be subject to forfeiture under certain circumstances, even if the father is never charged with a crime.

As clearly stated by our Hawaii Supreme Court in State v. Tuipuapua, “[a] statutory forfeiture ‘is a proceeding *in rem*.’ *It is not a proceeding against any person.*”<sup>1</sup> It has nothing to do with whether a property owner is the one criminally charged with the commission of a crime. Thus, it makes sense that our civil asset forfeiture statutes go into great detail about what property is subject to forfeiture (see HRS §712A-5), based on the property’s connection to an offense, with absolutely no requirement that the property be connected to any particular individual (such as a defendant in a criminal case).<sup>2</sup>

<sup>1</sup> State v. Tuipuapua, 925 P.2d 311, 83 Haw 141 (1996), citing U.S. v. Baird, 63 F.3d 1213, 1219; U.S. v. Arreola-Ramos, 60 F.3d 192-93 (emphasis in original).

<sup>2</sup> HRS §712A-5 states in relevant part: (1) The following is subject to forfeiture:

- (a) Property described in a statute authorizing forfeiture;
- (b) Property used or intended for use in the commission of, attempt to commit, or conspiracy to commit a covered offense, or which facilitated or assisted such activity;

While our statutes do not require that the property be connected to a person, they do require that the property be connected to a violation of law, or “covered offense.” Indeed, in State v. Ten Thousand Four Hundred Forty-Seven Dollars in U.S. Currency (\$10,447.00), the Hawaii Supreme Court ordered that a certain portion of monies recovered in connection with an illegal gambling operation be returned to its owner, as “the State must prove the existence of a substantial connection [a.k.a. sufficient nexus] between the currency being forfeited and the illegal activity.”<sup>3</sup> As stated by the Court, “[g]iven that this is an *in rem*...forfeiture proceeding, the State must prove that the defendant—the subject currency, not [the currency’s owner]—was connected to illegal activity.”<sup>4</sup>

Naturally, our courts and statutes recognize that property generally belongs to someone (a person or entity), and thus our statutes also state that property, which would otherwise be subject to forfeiture, cannot actually be forfeited (to the extent of an owner’s property interest) “by reason of any act...committed...without the knowledge and consent of that owner.”<sup>5</sup> To this end, our civil asset forfeiture laws contain extensive procedural mandates, standards and safeguards, to ensure that everyone—including the father in the hypothetical example mentioned previously—is given due process, every step of the way. This includes statutes prohibiting “excessive forfeiture”<sup>6</sup>; consideration of “extenuating circumstances”—such as a language or cultural barrier, or physical or mental abnormalities<sup>7</sup>—and even mechanisms to return all or part of the property (or property value) in question, despite the owner’s knowledge and consent to the act or omission.

As previously stated, we believe that H.B. 748, H.D. 2, S.D. 1, has good intentions, but is based on a misunderstanding of the nature and intent of civil asset forfeiture. Current forfeiture laws are used to immediately and effectively disrupt the infrastructure of criminal activity and protect the community, by removing the property used in the commission of such activity, and/or proceeds gained from such activity. As civil proceedings deal only with the potential loss of property, and not a potential loss of liberty (i.e. incarceration), civil asset forfeiture is intentionally designed to function independently from any criminal proceedings, using civil standards of proof, in much the same way

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- (c) Any firearm which is subject to forfeiture under any other subsection of this section or which is carried during, visible, or used in furtherance of the commission, attempt to commit, or conspiracy to commit a covered offense, or any firearm found in proximity to contraband or to instrumentalities of an offense;
  - (d) Contraband or untaxed cigarettes in violation of chapter 245, shall be seized and summarily forfeited to the State without regard to the procedures set forth in this chapter;
  - (e) Any proceeds or other property acquired, maintained, or produced by means of or as a result of the commission of the covered offense;
  - (f) Any property derived from any proceeds which were obtained directly or indirectly from the commission of a covered offense;
  - (g) Any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise which has been established, participated in, operated, controlled, or conducted in order to commit a covered offense;
  - (h) All books, records, bank statements, accounting records, microfilms, tapes, computer data, or other data which are used, intended for use, or which facilitated or assisted in the commission of a covered offense, or which document the use of the proceeds of a covered offense.

<sup>3</sup> State v. Ten Thousand Four Hundred Forty-Seven Dollars in U.S. Currency (\$10,447.00), 104 Haw 323, 337, 89 P.3d 823, 837 (2004) (regarding money properly seized pursuant to search warrant, but ultimately not subject to forfeiture).

<sup>4</sup> *Id.*, at 336, 836.

<sup>5</sup> See Section 712A-5(2)(b), Hawaii Revised Statutes (“HRS”).

<sup>6</sup> See HRS §712A-5.5. Additionally, we note that the issue of excessive forfeiture was recently discussed in a U.S. Supreme Court case, Timbs v. Indiana, 139 S.Ct 682 (February 20, 2019)—originating from a state that does not have a statute like HRS §712A-5.5—where the Court held that civil asset forfeiture judgements cannot be excessive.

<sup>7</sup> See HRS §712A-10(6).

that a crime victim is permitted to file a lawsuit against their perpetrator—and the perpetrator may be held civilly liable—regardless of whether the perpetrator is ever convicted or even charged in a criminal case.

While civil asset forfeiture inherently involves the forfeiture of property, which most likely belongs to someone, this is completely separate and apart from any criminal proceedings; there is no requirement that the property owner committed a crime for the property to be forfeited, and forfeiture is not a criminal punishment.<sup>8</sup> Indeed, the Court in Tuipupua noted that civil asset forfeiture “serves important nonpunitive goals...[such as encouraging] property owners ‘to take care in managing their property’ and tends to ensure ‘that they will not permit that property to be used for illegal purposes.’”<sup>9</sup>

To the extent the Legislature is concerned that civil asset forfeiture is being abused by the administering agencies, as a means of generating inappropriate revenue, the Department can only speak for itself in stating that it has never viewed civil asset forfeiture in such a light, has never gotten the impression that any other administering agencies in Hawaii view it in such a light. The Department greatly appreciates the valuable training that its deputies have received for drug-related cases, as provided by the civil asset forfeiture fund, but understands that it is within the purview of the Legislature to establish where and how the proceeds of this or any other state-mandated program are utilized. We do note, however, that it makes sense for the proceeds from civil asset forfeiture to at least cover the full administrative costs of the program, before it is distributed elsewhere.

To the extent that the Legislature is alarmed by complaints that a certain amount of property is never returned to owners—even when criminal charges are never brought against the owner—the Department would reiterate its earlier example of the father who continues to allow his drug-dealing daughter to borrow his car, but is never prosecuted criminally. Moreover, please keep in mind that any “illegal” items seized by law enforcement—such as illicit drugs, illicit drug-manufacturing equipment, gambling devices, and so forth—are never be returned to people, as a matter of public policy, so retention of such items may also skew “statistics” in a confusing manner.

Rather than forcing such a far-reaching and premature overhaul of Hawaii’s well-conceived program, the Department urges the Legislature to consider the State Auditor’s recommendations, published in June 2018 (available at [files.hawaii.gov/auditor/Reports/2018/18-09.pdf](https://files.hawaii.gov/auditor/Reports/2018/18-09.pdf)), which are already in the process of being implemented. If the Legislature truly believes that change are needed to this program, further discussion and review should take place, at a minimum, to study its impact on law enforcement and the safety of the public. In 2016, the Legislature considered a bill (S.B. 2149) to require that the Department of the Attorney General establish a working group to review and discuss Hawaii's forfeiture laws and make recommendations to improve these laws, including identifying any areas of concern or abuse. While we firmly believe that Hawaii’s asset forfeiture program is generally well-conceived and well-operated, we understand that “nothing is perfect,” and are open to being part of a process to evaluate all areas of the program.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of H.B. 748, H.D. 2, S.D. 1. Thank for you the opportunity to testify on this matter.

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<sup>8</sup> Tuipupua at 323, 153.

<sup>9</sup> *Id.*



Executive Director  
Adriana Ramelli

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Date: April 4, 2019

To: The Honorable Donovan M. Dela Cruz, Chair  
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair  
Senate Committee on Ways and Means

From: Justin Murakami, Manager, Prevention Education and Public Policy  
The Sex Abuse Treatment Center  
A Program of Kapi'olani Medical Center for Women & Children

RE: Testimony in Support of H.B. 1433 H.D. 1  
Relating to Address Confidentiality

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The Sex Abuse Treatment Center (SATC) supports H.B. 1433 H.D. 1.

Most sexual assaults are not committed by strangers, but by intimate partners, family members, and acquaintances. Moreover, sexual assault often does not occur in isolation, but can be one feature of a pattern of violence and intimidation between non-strangers that also includes physical abuse and stalking. In order to ensure their own safety and the safety of loved ones, survivors are sometimes forced to relocate in order to avoid further actual or threatened violence.

Unfortunately, search technologies and access to public records make it easy for perpetrators to find survivors' new addresses. This places survivors in harm's way and can complicate the difficult task of recovering from the trauma of sexual assault.

Address confidentiality programs enhance survivors' safety and privacy, providing them the means to shield their actual locations through the use of substitute addresses, and penalizing unauthorized disclosures of actual address information. According to the National Center for Victims of Crime, 36 other states have, to date, successfully implemented Address Confidentiality programs.

During the 2018 Legislative Session, Hawaii passed Act 115 which statutorily established an Address Confidentiality program in the Department of the Attorney General. However, funds were not allocated to support the program at that time. Without this financial support, it is our understanding that the Department will be unable to implement the Program or conduct its day-to-day operations.

By appropriating the funds needed by the Department to implement this important and life-saving program for the 2019 – 2021 fiscal biennium, passing H.B. 1433 H.D. 1 will help to ensure that survivors of sexual assault who are forced to relocate in order to escape their attackers are able to meaningfully recover their security and peace of mind.