A BILL FOR AN ACT

RELATING TO PROPERTY FORFEITURE.

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

SECTION 1. The legislature finds that civil asset forfeiture laws are controversial and have been evolving throughout the country over twenty years since Hawaii passed the Omnibus Criminal Forfeiture Act, codified as chapter 712A, Hawaii Revised Statutes, which includes civil asset forfeiture. Hawaii's process allows law enforcement agencies to seize and keep property based on suspicion that the property is connected to criminal activity. Property, such as vehicles, houses, cash, and jewelry, can be taken without the property owner having been convicted of a crime or even being formally accused of one, leaving innocent citizens deprived of personal property.

The legislature further finds that a 2018 state auditor's report found a lack of accountability by the department of the attorney general over the storage, preservation, and disposal of forfeited property. Additionally, the legislature finds that there is great incentive for state and county law enforcement agencies to seize property for forfeiture, as these agencies are...
permitted to retain proceeds from the sale of the property.

Under Hawaii law, one hundred per cent of the proceeds are divided among the state and county law enforcement agencies that were involved in the seizure and forfeiture.

The legislature takes note of the Institute for Justice's D-rating of Hawaii's civil forfeiture laws and the characterization that our laws "are among the nation's worst".

The Institute for Justice, a nonprofit civil liberties law firm, recommends abolishing civil forfeiture entirely as at least three states, Nebraska, North Carolina, and New Mexico, have done. Fifteen states now require a criminal conviction for most or all forfeiture cases.

Additionally, the Institute for Justice recommends other reforms to make the forfeiture process more fair, beginning with eliminating financial incentives for law enforcement to seize and keep forfeited property and instead directing any proceeds to the general revenue fund or another neutral fund. Eight jurisdictions now prohibit law enforcement from keeping the proceeds from forfeited property. A second reform is to adopt a high standard of proof, such as "beyond a reasonable doubt," in order to forfeit property in civil proceedings. Eighteen
jurisdictions have a standard higher than Hawaii's "preponderance of the evidence" standard, and for ten of those jurisdictions it is equivalent to "beyond a reasonable doubt". Third, law enforcement should be required to prove that owners consented to or possessed knowledge of the crime that led to the seizure of their property, restoring the presumption of innocence used in criminal proceedings. Here, again, a number of jurisdictions have already made this reform. The legislature finds that none of these recommendations have been implemented in Hawaii.

Accordingly, the purpose of this Act is to make Hawaii's civil asset forfeiture process more just by:

(1) Restricting asset forfeiture to cases involving the commission of a covered criminal misdemeanor or felony offense;

(2) Requiring seized property to be forfeited only when the property owner has been convicted of an underlying covered criminal misdemeanor or felony offense;

(3) Changing the standard of proof that the State must meet in order for property to be forfeited from...
"preponderance of the evidence" to "beyond a reasonable doubt";

(4) Requiring the State to prove that owners consented to or possessed knowledge of the crime that led to the seizure of their property;

(5) Requiring that the agency seizing the property pay for safe and secure storage of the seized property until the completion of the forfeiture proceeding or final disposition of the property;

(6) Directing any proceeds from a civil forfeiture to the general revenue fund for public education purposes;

and

(7) Repealing administrative forfeiture proceedings, so that any forfeiture proceedings must be brought in court.

SECTION 2. Section 712A-4, Hawaii Revised Statutes, is amended to read as follows:

"§712A-4 Covered offenses. Offenses for which property is subject to forfeiture under this chapter are:

(a) All felony and misdemeanor offenses that specifically authorize forfeiture;
(b) Murder, kidnapping, labor trafficking, gambling, criminal property damage, robbery, bribery, extortion, theft, unauthorized entry into motor vehicle, burglary, money laundering, trademark counterfeiting, insurance fraud, promoting a dangerous, harmful, or detrimental drug, commercial promotion of marijuana, methamphetamine trafficking, manufacturing of a controlled substance with a child present, promoting child abuse, promoting prostitution, sex trafficking, solicitation of a minor for prostitution, habitual solicitation of prostitution, or electronic enticement of a child [that is] when chargeable as a felony offense under state law;

(c) The manufacture, sale, or distribution of a controlled substance in violation of chapter 329, promoting detrimental drugs or intoxicating compounds, promoting pornography, promoting pornography for minors, or solicitation of prostitution near schools or public parks, [which is] when chargeable as a felony or misdemeanor offense, but not as a petty misdemeanor, under state law; and
(d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any felony or misdemeanor offense for which property is subject to forfeiture under this section."

SECTION 3. Section 712A-5, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) Except that:

(a) Real property, or an interest therein, may be forfeited under the provisions of this chapter only in cases in which the covered offense is chargeable as a felony offense under state law;

(b) No property shall be forfeited under this chapter to the extent of an interest of an owner:

(i) By reason of the commission of any covered offense unless:

(A) The covered offense is chargeable as a felony or misdemeanor offense under state law; and

(B) The owner has been convicted of the covered offense by a verdict or plea, including a no
contest plea or a deferred acceptance of

guilty or no contest plea; or

(ii) By reason of any act or omission [established by that] of the owner [to have been] unless the State has proven beyond a reasonable doubt that the act or omission was committed or omitted [without] with the owner's knowledge and consent [of that owner];

provided that nothing in this subsection shall be construed to prevent the seizure of property prior to conviction pursuant to section 712A-6.

(c) No conveyance used by any person as a common carrier in the transaction of a business as a common carrier is subject to forfeiture under this section unless [it appears] the State has proven beyond a reasonable doubt that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(d) No conveyance is subject to forfeiture under this section by reason of any act or omission [established by] of the owner [thereof to have been] unless the
State has proven beyond a reasonable doubt that the act or omission was committed or omitted [without] with the owner's knowledge or consent; [and]

(e) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party [if] unless the State has proven beyond a reasonable doubt that the secured party [neither] had knowledge of [nor] or consented to the act or omission[→]; and

(f) This chapter shall not apply to the forfeiture of an animal prior to disposition of criminal charges pursuant to section 711-1109.2."

SECTION 4. Section 712A-6, Hawaii Revised Statutes, is amended to read as follows:

"§712A-6 Seizure of property. (1) Personal property subject to forfeiture under this chapter may be seized for forfeiture by a law enforcement officer:

(a) On process issued pursuant to the rules of civil procedure or the provisions of this chapter including a seizure warrant;
(b) By making a seizure for forfeiture on property seized on process issued pursuant to law; or

(c) By making a seizure for forfeiture without court process as follows:

(i) The seizure for forfeiture is of property seized incident to an arrest or search;

(ii) The property subject to seizure for forfeiture has been the subject of a prior judgment in favor of the State or any other state or the federal government in forfeiture proceeding;

(iii) The law enforcement officer has probable cause to believe that the property seized for forfeiture is directly or indirectly dangerous to health or safety;

(iv) The law enforcement officer has probable cause to believe that the property is subject to forfeiture; or

(v) The seizure for forfeiture is of perishable natural resources seized and sold, pursuant to section 199-7, prior to forfeiture proceeding.
(2) Real property subject to forfeiture under this chapter may be seized for forfeiture by a law enforcement officer pursuant to court order following a pre-seizure hearing in the circuit court in the circuit in which the property is located with notice of the pre-seizure hearing to be made to the owners and interest-holders pursuant to section 712A-8. The court shall order the real property in question to be seized for forfeiture if it finds probable cause that the real property is subject to forfeiture under any provision of the Hawaii Revised Statutes.

(3) In determining probable cause for seizure, the fact that a firearm, money, or any negotiable instrument was found in proximity to contraband or to instrumentalities of an offense gives rise to an inference that the money or instrument was the proceeds of contraband or that the firearm, money or instrument was used or intended to be used to facilitate commission of the offense.

(4) When a law enforcement officer seizes property that is subject to forfeiture under this chapter, the officer shall provide an itemized receipt to the person possessing the property or, in the absence of a person to whom the receipt
could be given, shall leave the receipt in the place where the
property was found, if possible."

SECTION 5. Section 712A-7, Hawaii Revised Statutes, is
amended as follows:

1. By amending subsection (2) to read:

"(2) If property is seized for forfeiture under section
712A-6 pending forfeiture and final disposition, the seizing
agency, at the agency's expense, shall ensure the safe and
secure storage of the property until the completion of
forfeiture proceedings or other disposition of the property as
provided in this chapter. Consistent with these requirements,
the seizing agency may do any of the following:

(a) Place the property under constructive seizure by
posting notice of seizure for forfeiture on the
property or by filing notice of seizure for forfeiture
or notice of pending forfeiture in any appropriate
public record relating to the property;

(b) Remove the property to a storage area for safekeeping
or, if the property is a negotiable instrument or
money, deposit it in an interest bearing account;
(c) Remove the property to a place designated by the
court; or

(d) Provide for another agency to take custody of the
property and remove it to an appropriate location
within the jurisdiction of the court."

2. By amending subsection (4) to read:

"(4) In the event of a seizure for forfeiture under
section 712A-6, the seizing agency shall send to a prosecuting
attorney a written [request for forfeiture] notice of the
seizure within thirty days, which shall include a statement of
facts and circumstances of the seizure, the appraised or
estimated value of the property, and a summary of the facts
relied on for forfeiture."

SECTION 6. Section 712A-9, Hawaii Revised Statutes, is
amended by amending subsection (1) to read as follows:

"(1) The prosecuting attorney shall determine whether it
is probable that the property is subject to forfeiture and, if
so, shall initiate [administrative—or] judicial proceedings
against the property within forty-five days [of receipt of a
written request for forfeiture from a seizing agency—] after the
owner of property has been convicted of a covered offense as set
forth in section 712A-4 and the property is subject to forfeiture pursuant to section 712A-5. If[,...]:

(a) On inquiry and examination, the prosecuting attorney determines, with sole discretion, that the proceedings probably cannot be sustained or that justice does not require the institution of proceedings[,...]; or

(b) Upon entering of nolle prosequi or a verdict of not guilty for all covered offenses relating to the seizure,

the prosecuting attorney shall notify the seizing agency, and as soon as practicable authorize the release of the seizure for forfeiture on the property or on any specified interest in it.

A determination by the prosecuting attorney to forego initiation of proceedings shall not be a bar to initiation of proceedings against the same property based on the same circumstances at a later time."

SECTION 7. Section 712A-11, Hawaii Revised Statutes, is amended to read as follows:

"§712A-11 Judicial forfeiture proceedings; general. (1) [In any judicial or administrative proceeding] All forfeiture proceedings pursuant to this chapter[,...] shall be conducted
in the circuit court, and no property shall be forfeited except after conviction of a covered offense as provided under section 712A-4 and the property is subject to forfeiture pursuant to section 712A-5. The court, on application of the State, may enter any restraining order or injunction, require the execution of satisfactory performance bonds, create receiverships, appoint conservators, appraisers, accountants or trustees, or take any other action to seize, secure, maintain, or preserve the availability of property subject to forfeiture under this chapter, including a warrant for its seizure, whether before or after the filing of a petition for forfeiture, complaint, or indictment.

(2) If property is seized for forfeiture without a seizure warrant, a prior judicial order of forfeiture, or a hearing pursuant to section 712A-13, a court, on an application filed by an owner or interest-holder within fifteen days after notice of its seizure for forfeiture or actual knowledge of it, whichever is earlier, and complying with the requirements for claims in section 712A-12, may issue an order to show cause to the seizing agency, with thirty days' notice to the prosecuting attorney, for a hearing on the issue of whether probable cause for
forfeiture of the applicant's interest then exists [T] to validate the continued seizure of the property pending the outcome of a judicial forfeiture proceeding; provided that [T] the order to show cause shall be set aside upon the filing of a petition for [either administrative or] judicial forfeiture prior to the hearing, in which event forfeiture proceedings shall be in accordance with this chapter.

(3) [There shall be a rebuttable presumption that any] Any property of a person is subject to forfeiture under this chapter if the State establishes [, by the standard of proof applicable to that proceeding, all of the following:]

(a) That the person has [engaged in] been convicted of criminal conduct for which property is subject to forfeiture [T], and the State establishes beyond a reasonable doubt:

(b) That the property was acquired by the person during the period of the criminal conduct or within a reasonable time after that period; and

(e) That there was no likely source for the property other than the criminal conduct giving rise to forfeiture.
(4) A finding that property is the proceeds of criminal conduct giving rise to forfeiture does not require proof that the property is the proceeds of any particular exchange or transaction.

(5) A defendant convicted in any criminal proceeding shall be precluded from subsequently denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding pursuant to this chapter. For the purposes of this chapter, a conviction may result from a verdict or plea, including a no contest plea, deferred acceptance of guilty plea, or deferred acceptance of no contest plea.

(6) An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this chapter.

(7) In any judicial forfeiture proceeding pursuant to this chapter, if a defense is based on an exemption provided for in this chapter, the burden of proving the existence of the exemption is on the claimant or party raising the defense, and it is not necessary to negate the exemption in any petition, application, complaint, or indictment.

(8) For good cause shown, on motion by the prosecuting attorney, the court may stay discovery against the
State in civil forfeiture proceedings prior to trial on a
criminal complaint or indictment arising from the same conduct
and against a claimant who is a defendant in the criminal
proceeding after making provision to prevent loss to any party
resulting from the delay. The stay provided by this subsection
shall not be available pending appeal of any order or judgment
in the criminal proceeding.

[49+] (8) The court shall receive and consider, at any
hearing held pursuant to this chapter, except the hearing on
claims pursuant to sections 712A-12(4) through (8) and
712A-13(7), evidence and information which would be admissible
under the rules of penal procedure relating to preliminary
hearings.

[410+] (9) All property, including all interest in such
property, declared forfeited under this chapter vests in this
State on the commission of the act or omission giving rise to
forfeiture under this chapter together with the proceeds of the
property after the act or omission. Any property or proceeds
transferred to any person after the act or omission are subject
to forfeiture and thereafter shall be ordered forfeited [unless
the transferee claims and establishes in a hearing pursuant to]
this chapter] if the State has proven beyond a reasonable doubt
the showings set out in section 712A-5(2)."

SECTION 8. Section 712A-12, Hawaii Revised Statutes, is
amended as follows:

1. By amending subsections (1) and (2) to read:

"(1) In rem forfeiture proceedings are not permitted
except when the owner of the property has died without
successors in interest, cannot be located, or has abandoned
claims of ownership, and when the owner was deemed convicted of
a covered offense, as provided in section 712A-4 and the
property is subject to forfeiture under section 712A-5 or when
the State claims that the owner would have been deemed convicted
if the owner had not died or disappeared. If a forfeiture is
authorized by law, it shall be ordered by a court on an action
in rem brought by the prosecuting attorney on a verified
petition for forfeiture filed in the criminal or civil division
of the circuit court.

(2) A civil in rem action may be brought in addition to or
in lieu of the civil and criminal in personam forfeiture
procedures set forth in sections 712A-13 and 712A-14 [or the
administrative forfeiture as set forth in section 712A-10].
Judicial in rem forfeiture proceedings are in the nature of an action in rem and are governed by the rules of civil procedure whether brought in the criminal or civil division of the circuit court, unless a different procedure is provided by law."

2. By amending subsections (8) and (9) to read:

"(8) The State has the [initial] burden of [showing by a preponderance of the evidence] proving beyond a reasonable doubt that the claimant's interest in the property is subject to forfeiture. On such a showing by the State, the claimant has the burden [of showing by a preponderance of the evidence that the claimant's interest in the property is not subject to forfeiture.] to show that the claimant holds a legal right, title, or interest in the property seized and that the claimant held an ownership interest in the seized property at the time the illegal conduct that gave rise to the seizure of the property occurred.

(9) In accordance with its findings at the hearing, the court shall order an interest in property immediately returned or conveyed to the claimant, if any, [who has established by a preponderance of the evidence that the] where the State has failed to prove beyond a reasonable doubt that:
(a) The claimant had actual knowledge of the underlying crime giving rise to the forfeiture; or

(b) The claimant's interest is [net] subject to forfeiture pursuant to section 712A-5.

The court shall order all other property, including all interests in the property, forfeited to the State and proceed pursuant to sections 712A-15 and 712A-16.

SECTION 9. Section 712A-13, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (1) to read:

"(1) If a forfeiture is authorized by law, it shall be ordered by a court on a petition for forfeiture filed by the prosecuting attorney in an in personam civil or criminal action. In any civil in personam action brought under this section, the owner or interest-holder may testify, present evidence and witnesses on the owner or interest-holder's behalf, and cross-examine witnesses who appear at the hearing. The State may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. The State has the [initial] burden of [showing by a preponderance of the evidence] proving beyond a reasonable
doubt that the owner or interest-holder's interest in the
property is subject to forfeiture pursuant to section 712A-5. [7]
[On such a showing by the State, the owner or interest-holder
has the burden of showing by a preponderance of the evidence
that the owner or interest-holder's interest in the property is
not subject to forfeiture.]

2. By amending subsection (7) to read:

"(7) Procedures subsequent to the verdict or finding of
liability and order of forfeiture shall be as follows:

(a) Following the entry of an order of forfeiture, the
clerk of the court shall give notice of pending
forfeiture to owners and interest-holders who have not
previously been given notice, if any, in the manner
provided in section 712A-8;

(b) Any owner or interest-holder, other than a party or a
defendant in the underlying in personam action,
asserting an interest in property that has been
ordered forfeited pursuant to such action, within
thirty days after initial notice of pending forfeiture
or after notice under paragraph (a) of this
subsection, whichever is earlier, may file a claim as
described in section 712A-12(5), in the court for a
hearing to adjudicate the validity of the person's
claimed interest in the property;
(c) The hearing on the claim, to the extent practicable
and consistent with the interest of justice, shall be
held within sixty days after the order of forfeiture.
The court may consolidate the hearing on the claim
with a hearing on any other claim filed by a person
other than a party or defendant in the underlying
action and concerning the same property;
(d) The hearing shall be conducted in the manner provided
for in rem judicial forfeiture actions including the
provisions of section 712A-12(7) and (8). In addition
to testimony and evidence presented at the hearing,
the court shall consider the relevant portions of the
record of the underlying civil or criminal action that
resulted in the order of forfeiture; and
(e) In accordance with its findings at the hearing, the
court may amend the order of forfeiture if it
determines that any claimant has [established by a
preponderance of the evidence that] met the burden of
showing that the claimant has a legal interest in the property, and the State has failed to prove beyond a reasonable doubt that the claimant's interest is subject to forfeiture pursuant to section 712A-5."

SECTION 10. Section 712A-15, Hawaii Revised Statutes, is amended by amending subsections (4) and (5) to read as follows:

"(4) Upon entry of judgment for a claimant or claimants in any proceeding to forfeit property under this chapter the property or interest in property shall be immediately returned or conveyed to the claimant or claimants designated by the court. If it appears that there was reasonable cause for the seizure for forfeiture or the filing of the complaint, the court may cause a finding to be entered, and the claimant is not, in such case, entitled to costs or damages. Nor, in such case, is the person or seizing agency, or its agents, who made the seizure, or the prosecuting attorney or the attorney general liable to suit or judgment on account of the seizure, suit, or prosecution.

(5) The court may order any claimant who fails to establish that the claimant's entire interest is exempt from
forfeiture under section 712A-5 to pay the costs of any claimant
who establishes that the entire interest is exempt from
forfeiture under section 712A-5, and the State's costs and
expenses of the investigation and prosecution of the matter,
including reasonable attorney fees."

SECTION 11. Section 712A-16, Hawaii Revised Statutes, is
amended to read as follows:

"§712A-16 Disposition of property forfeited. (1) All
property forfeited to the State under this chapter shall be
transferred to the attorney general, who:

[(a) May transfer property, other than currency, which
shall be distributed in accordance with subsection (2)
to any local or state government entity, municipality,
or law enforcement agency within the State;

(b) (a) May sell forfeited property to the public by
public sale; provided that for leasehold real
property:

(i) The attorney general shall first offer the holder
of the immediate reversionary interest the right
to acquire the leasehold interest and any
improvements built or paid for by the lessee for
the fair market value of the leasehold interest and improvements. The holder of the immediate reversionary interest shall have thirty days after receiving written notice within which to accept or reject the offer in writing; provided that the offer shall be deemed to be rejected if the holder of the immediate reversionary interest has not communicated acceptance to the attorney general within the thirty-day period. The holder of the immediate reversionary interest shall have thirty days after acceptance to tender to the attorney general the purchase price for the leasehold interest and any improvements, upon which tender the leasehold interest and improvements shall be conveyed to the holder of the immediate reversionary interest. If the holder of the immediate reversionary interest fails to exercise the right of first refusal provided in subparagraph (i), the attorney general may proceed to sell the

(i)
leasehold interest and any improvements by public
sale; and

(iii) Any dispute between the attorney general and the
holder of the immediate reversionary interest as
to the fair market value of the leasehold
interest and improvements shall be settled by
arbitration pursuant to chapter 658A;

(b) May sell or destroy all raw materials, products,
and equipment of any kind used or intended for use in
manufacturing, compounding, or processing a controlled
substance or any untaxed cigarettes in violation of
chapter 245;

(c) May compromise and pay valid claims against
property forfeited pursuant to this chapter; or

(d) May make any other disposition of forfeited
property authorized by law.

(2) All forfeited property and the sale proceeds thereof[7
up to a maximum of three million dollars per year, not
previously transferred pursuant to [subsection] (1)(a) of this
section, shall], after payment of expenses of administration and
sale, shall be [distributed as follows:}
(a) One-quarter shall be distributed to the unit or units of state or local government [whose] officers or employees conducted the investigation and caused the arrest of the person whose property was forfeited or seizure of the property for forfeiture;

(b) One-quarter shall be distributed to the prosecuting attorney who instituted the action producing the forfeiture; and

(c) One half shall be deposited into the criminal forfeiture fund established by this chapter.

(3) Property and money distributed to units of state and local government shall be used for law enforcement purposes, transferred to the general fund for public education purposes consistent with article X, section 1, of the state constitution, and shall complement but not supplant the funds regularly appropriated for [such] these purposes.

(4) There is established in the department of the attorney general a revolving fund to be known as the criminal forfeiture fund, hereinafter referred to as the "fund" in which shall be deposited [one-half of the proceeds of a forfeiture and any penalties paid pursuant to section 712A-10(6)], a portion of
the proceeds of each sale made pursuant to this section that is
sufficient to cover expenses of administration and sale. All
moneys in the fund shall be expended by the attorney general and
are appropriated for [the following purposes:]

(a) The payment of any expenses necessary to seize,
detain, appraise, inventory, safeguard, maintain,
advertise, or sell property seized, detained, or
forfeited pursuant to this chapter or of any other
necessary expenses incident to the seizure, detention,
or forfeiture of [such] the property and [such] the
contract services and payments to reimburse any
federal, state, or county agency for any expenditures
made to perform the foregoing functions;

(b) The payment of awards for information or assistance
leading to a civil or criminal proceeding;

(c) The payment of supplemental sums to state and county
agencies for law enforcement purposes;

(d) The payment of expenses arising in connection with
programs for training and education of law enforcement
officers;
(e) The payment of expenses arising in connection with enforcement pursuant to the drug nuisance abatement unit in the department of the attorney general, and

(f) The payment of expenses arising in connection with the law enforcement officer independent review board in the department of the attorney general.

[(5)] (4) The attorney general [may, without regard to the requirements of chapter 91, promulgate] shall adopt rules [and regulations] necessary to carry out the purposes of this chapter, including rules concerning the disposition of property, the use of the fund, and compromising and paying valid claims against property forfeited [pursuant to this chapter].

[(6)] (5) Not less than twenty days prior to the convening of each regular session, the attorney general shall provide to the legislature a report on the use of the Hawaii omnibus criminal forfeiture act during the fiscal year preceding the legislative session. The report shall include:

(a) The total amount and type of property seized by law enforcement agencies;
(b) The total number of [administrative and judicial] forfeiture actions filed by prosecuting attorneys and the disposition thereof;

(e) The total number of claims or petitions for remission or mitigation filed in administrative actions and the dispositions thereof;

(d) The total amount and type of property forfeited and the sale proceeds thereof;

(e) The total amount and type of property distributed to units of state and local government;

(f) The amount of money deposited into the criminal forfeiture fund; and

(g) The amount of money expended by the attorney general from the criminal forfeiture fund under subsection (5) and the reason for the expenditures."

SECTION 12. Section 712A-10, Hawaii Revised Statutes, is repealed.

"§712A-10 Administrative forfeiture. The prosecuting attorney may initiate administrative forfeiture of property other than real property, the estimated value of which is less than $100,000, or of any vehicle or conveyance, regardless of
value. Administrative forfeiture shall be processed in the following manner:

{1} The prosecuting attorney shall file a petition with the attorney general, pursuant to rules adopted by the attorney general.

{2} The prosecuting attorney shall give notice of pending forfeiture by making reasonable efforts to serve a copy of the petition in a manner provided in section 712A-8(a) or 712A-8(b) on all persons known to have an interest in the property, together with instructions for filing a claim and cost or in pauperis bond, or a petition for remission or mitigation.

{3} The attorney general shall give notice of intention to forfeit the property administratively by publication in the manner provided in section 712A-8(c). Notice by publication shall include:

(a) A description of the property;
(b) The estimated value of the property;
(c) The date and place of the seizure;
(d) The offense for which the property is subject to forfeiture;
(c) Instructions for filing a claim and cost or in pauperis bond, or a petition for remission or mitigation; and

(f) Notice that the property will be forfeited to the State if a claim and cost or in pauperis bond or petition for remission or mitigation is not filed in substantial compliance with this section.

(4) Persons claiming an interest in the property may file either a petition for remission or mitigation of forfeiture, or a claim and cost or in pauperis bond, but not both, with the attorney general, within thirty days of notice by publication or receipt of written notice, whichever is earlier. Notwithstanding section 1-29, the thirty-day time period prescribed herein is computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or holiday and then it is also excluded, and the thirty-day time period runs until the end of the next day which is not a Saturday, Sunday, or a holiday. "Holiday" includes any day designated as a holiday pursuant to section 8-1.
Any person claiming seized property may seek remission or mitigation of the forfeiture by timely filing a petition with the attorney general. A petition for remission or mitigation shall not be used to challenge the sufficiency of the evidence to support the forfeiture or the actions of any government official but shall presume a valid forfeiture and ask the attorney general to invoke the executive power to pardon the property, in whole or in part. The petition shall be signed by the petitioner and sworn on oath before a notary public and shall contain the following:

(a) A reasonably complete description of the property;

(b) A statement of the interest of the petitioner in the property, as owner or interest holder which may be supported by bills of sale, contracts, or mortgages, or other documentary evidence; and

(c) Facts and circumstances sufficient to show whether the petitioner:
(i) Owns or holds an interest in the seized property as defined by section 712A-1;
(ii) Had any knowledge that the property was or would be involved in any violation of the law;
(iii) Had any knowledge of the particular violation which subjected the property to seizure and forfeiture;
(iv) Had any knowledge that the user of the property had any record, including arrests, except when the person was acquitted or the charges dismissed due to lack of evidence, for the violation which subjected the property to seizure and forfeiture or for any crime which is similar in nature.

Any subsequent pleadings or written communications alleging matters pertaining to [subparagraph] (b) or (c) of this [paragraph] must also be signed by the petitioner and sworn on oath before a notary public.

(6) If the attorney general, with sole discretion,

determines that remission is not warranted, the
attorney general may discretionarily mitigate the
forfeiture where the petition has not met the
minimum requirements for remission but where there are
present other extenuating circumstances indicating
that some relief should be granted to avoid extreme
hardship. Mitigation may also be granted where the
minimum requirements for remission have been met but
the overall circumstances are such that the attorney
general determines that complete relief is not
warranted. Mitigation shall take the form of a money
penalty imposed upon the petitioner which shall be
deposited into the criminal forfeiture fund
established under section 712A-16. Extenuating
circumstances include:
(a) Language or culture barrier;
(b) Humanitarian factors such as youth or extreme
age;
(c) Presence of physical or mental disease, disorder,
or defect;
(d) Limited or peripheral criminal culpability;
(c) Cooperation with the seizing agency or the prosecuting attorney; and

(f) Any contributory error on the part of government officials.

(7) It shall be the duty of the attorney general to inquire into the facts and circumstances alleged in a petition for remission or mitigation of forfeiture. However, no petitioner is entitled to a hearing on the petition for remission or mitigation. Hearings, if any, shall be held at the discretion of the attorney general.

(8) The attorney general shall provide the seizing agency and the petitioner a written decision on each petition for remission or mitigation within sixty days of receipt of the petition unless the circumstances of the case require additional time, in which case the attorney general shall notify the petitioner in writing and with specificity within the sixty-day period that the circumstances of the case require additional time and further notify the petitioner of the expected decision date.
(9) Any person claiming seized property may seek judicial review of the seizure and proposed forfeiture by timely filing with the attorney general a claim and bond to the State in the amount of ten percent of the estimated value of the property or in the sum of $2,500, whichever is greater, with sureties to be approved by the attorney general, upon condition that if the claimant fails to prove that claimant's interest is exempt from forfeiture under section 712A-5, the claimant shall pay the State's costs and expenses, including reasonable attorneys' fees incurred in connection with a judicial proceeding. In lieu of a cost bond, a claimant may file an in pauperis bond sworn on oath before a notary public. An in pauperis bond shall be in the form set out in the appendix to the rules of penal procedure. The claim shall be signed by the claimant and sworn on oath before a notary public and shall comply with the requirements of section 712A-12(5). Upon receipt of the claim and bond, the attorney general shall notify the prosecuting attorney who may discretionarily continue
to seek forfeiture by petitioning the circuit court
for forfeiture of the property within forty-five days
of receipt of notice that a proper claim and bond has
been filed. The prosecuting attorney may also elect
to honor the claim in which case the prosecuting
attorney shall notify the seizing agency and authorize
the release of the seizure for forfeiture on the
property or on any specified interest in it.

(10) If a judicial forfeiture proceeding is instituted
subsequent to notice of administrative forfeiture
pursuant to paragraph (9), no duplicate or repetitive
notice shall be required. The judicial proceeding, if
any, shall adjudicate all timely filed claims. At the
judicial proceeding, the claimant may testify, present
evidence and witnesses on the claimant's behalf, and
cross-examine witnesses who appear at the hearing.
The State may present evidence and witnesses in
rebuttal and in defense of its claim to the property
and cross-examine witnesses who appear at the hearing.
The State has the initial burden of showing by a
preponderance of the evidence that the claimant's
interest in the property is subject to forfeiture. On such a showing by the State, the claimant has the burden of showing by a preponderance of the evidence that the claimant's interest in the property is not subject to forfeiture.

(11) In the event a claim and bond has not been filed in substantial compliance with this section, or if the attorney general, with sole discretion, determines that remission or mitigation is not warranted, the attorney general shall order forfeited all property seized for forfeiture. In the event the attorney general, with sole discretion, determines that remission or mitigation is warranted, the attorney general shall notify the seizing agency and the prosecuting attorney and order the release of the seizure for forfeiture on the property or on any specified interest in it. There shall be no appeal from the attorney general’s decision or order of forfeiture or remission or mitigation.

(12) Administrative proceedings and the adoption of rules under this section are exempt from the requirements of
chapter 91, the Hawaii administrative procedure act, and are adjudicatory functions for the purposes of applicable sections of the Hawaii Revised Statutes."

SECTION 13. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect on December 31, 2020; provided that the amendments made to section 712A-16, Hawaii Revised Statutes, by section 11 of this Act shall not be repealed when that section is reenacted on June 30, 2022, pursuant to section 7(3) of Act 161, Session Laws of Hawaii 2016.
Report Title:
Attorney General; Penal Code; Forfeiture; Civil Assets

Description:
Restricts asset forfeiture to cases involving the commission of a covered criminal misdemeanor or felony offense. Requires seized property to be forfeited only when the property owner has been convicted of an underlying covered criminal misdemeanor or felony offense. Changes the standard of proof that the State must meet in order for property to be forfeited from "preponderance of the evidence" to "beyond a reasonable doubt". Requires the State to prove that owners consented to or possessed knowledge of the crime that led to the seizure of their property. Requires that the agency seizing the property pay for safe and secure storage of the seized property until the completion of the forfeiture proceeding or final disposition of the property. Directs any proceeds from a civil forfeiture to the general revenue fund for public education purposes. Repeals administrative forfeiture proceedings. (SD1)

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