

State of Hawaii
Department of the Attorney General



ANNUAL REPORT
OF PROCEEDINGS UNDER THE HAWAII
OMNIBUS CRIMINAL FORFEITURE ACT

For Fiscal Year 2007-2008

Submitted to
The Twenty-Fifth State Legislature
Regular Session of 2009

I. INTRODUCTION

In 1988, the Legislature enacted chapter 712A, Hawaii Revised Statutes (HRS), the Hawaii Omnibus Criminal Forfeiture Act (“chapter 712A”). Chapter 712A provides for the forfeiture of property used or acquired in connection with the commission of certain criminal offenses and for the distribution of the property, or its proceeds, to law enforcement agencies for law enforcement purposes. Pursuant to section 712A-10, HRS, the Department of the Attorney General processes petitions for administrative forfeiture of personal property valued at less than \$100,000, or of any vehicle or conveyance regardless of value, but does not handle forfeiture of real property. A prosecuting attorney commences judicial forfeiture proceedings concerning real property or personal property valued in excess of \$100,000 by filing a petition for forfeiture in the circuit court. In a case initiated as an administrative forfeiture, a person who owns or otherwise has a legal interest in seized property can obtain judicial review of a case by timely filing a claim and bond with the Attorney General.

Pursuant to section 712A-16, HRS, the Attorney General distributes administratively or judicially forfeited property, and the sale proceeds thereof, to law enforcement agencies and other local or state government entities for law enforcement purposes. Forfeited currency and the proceeds of sales of forfeited property are distributed according to a specific formula. The agency that seized the property and the prosecutor that filed the petition each receives a 25 percent share. The remaining 50 percent is deposited into the Criminal Forfeiture Fund administered by the Attorney General. The Attorney General expends moneys from the Criminal Forfeiture fund to defray administrative expenses incurred in processing forfeiture cases, to maintain and store property seized, to train law enforcement officers, to provide grants to law enforcement agencies, or to accomplish other purposes more specifically outlined in section 712A-16(4), HRS.

Section 712A-16(6), HRS, requires the Attorney General to report to the Legislature “on the use of the Hawaii omnibus criminal forfeiture act during the fiscal year preceding the legislative session.” Section 712A-16(6) requires the report to include the following information:

- (a) The total amount and type of property seized by law enforcement agencies;
- (b) The total number of administrative and judicial actions filed by prosecuting attorneys and the disposition thereof;
- (c) 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 and the reason for the expenditures.

This report conforms with the above requirements and also explains the use of asset forfeiture as a law enforcement tool. In addition, information regarding fiscal years ending June 30, 2004 through 2007 is presented for comparison purposes.

II. HISTORY OF ASSET FORFEITURE

Forfeiture has been used, literally since ancient times, to take property wrongfully used or acquired. References to forfeiture in the Old Testament, Greek, and Roman law indicate that its purpose was to exact a penalty against property which had been used or acquired in connection with some type of prohibited conduct. In modern times, forfeiture is used to protect the public from harmful products and the property of criminal enterprise.¹

The first statute authorizing civil forfeiture was enacted by Congress in 1789 as a sanction for the use of ships in customs violations.² In 1978, Congress expanded the law to permit forfeiture of all money used in, or acquired from, the illegal drug trade³ and authorized the forfeiture of real property in 1984.⁴

Federal civil and criminal forfeiture statutes now reach substantially the same offenses and type of property. All fifty states and the District of Columbia now have some type of civil and/or criminal forfeiture statute in effect.⁵

As a result, criminals are deprived of their working capital and their profits, thereby preventing them from operating. A secondary benefit of forfeiture laws is that forfeited property, or the proceeds of its sale, has been turned over to law enforcement and is used to fight crime. While the purpose of forfeiture and the evaluation of a forfeiture law or program should never be based solely on the generation of revenue, it is only fitting that forfeited property be used to combat those who seek to profit from crime.

III. ASSET FORFEITURE UNDER STATE LAW

In 1988, a law enforcement coalition, consisting of the Attorney General and the four county prosecutors and police chiefs proposed that a new, uniform forfeiture law be enacted. This effort is now codified as chapter 712A, HRS, and represents a combination of federal forfeiture law, the forfeiture act adopted by the State of Arizona in 1986, and the provisions of Hawaii's various laws relating to forfeiture. The purpose was to create a law that would be both procedurally and substantively comprehensive and, to the extent possible, uniform across the State. Chapter 712A provides for administrative forfeitures and judicial forfeitures against individuals and property. Chapter 712A also provides for forfeitures of substitute assets from convicted criminals where the assets originally subject to forfeiture have been secreted or otherwise dissipated or disposed of.

Chapter 712A also significantly expands the number and kinds of offenses which give

¹ U.S. Department of Justice, Drug Enforcement Administration, Drug Agents Guide to Forfeiture of Assets 3 (1987 Revision and Supp. 1990).

² Act of July 31, 1789, sections 12, 36; 1 Stat. 39, 47.

³ 21 U.S.C. section 881(a)(6).

⁴ 21 U.S.C. section 853.

⁵ National Criminal Justice Association, Asset Seizure & Forfeiture: Developing and Maintaining A State Capability, App. A (1988).

rise to forfeiture. At the same time, it provides explicit procedural and substantive rights to claimants, especially innocent owners. The Legislature also placed a ceiling of \$3,000,000 per year on the amount of forfeited property, which could be retained by law enforcement, with any excess going into the state general fund. Distribution of forfeited property up to the ceiling is administered by the Attorney General according to the specific criteria of section 712A-16, HRS. In 1990, the Legislature amended chapter 712A to require an annual report on its use and the disposition of property forfeited pursuant to it. In 1996, the Legislature amended chapter 712A through Act 104, Session Laws of Hawaii 1996, to make the state forfeiture law permanent.

IV. ADMINISTRATIVE FORFEITURE

Perhaps the most important advantage afforded by chapter 712A is a provision by which forfeiture of personal property worth less than \$100,000, or forfeiture of any vehicle or conveyance, regardless of value, is administratively processed. Previously, all forfeitures were handled through judicial proceedings, resulting in the consumption of judicial resources even where the forfeiture was uncontested.

Under section 712A-10, HRS, a prosecuting attorney files a petition for administrative forfeiture of seized property with the Department of the Attorney General. Persons who own or otherwise have an interest in seized property (“claimants”), have thirty days to respond from the date they receive notice of the pending forfeiture by publication, personal service, or mail, whichever occurs first. Claimants may file a Petition for Remission or Mitigation of Forfeiture, which does not challenge the sufficiency of evidence supporting the forfeiture or the actions of any government official. Instead, the petitioner asks the Attorney General to invoke the executive power to “pardon” the property, in whole or in part, because of extenuating or mitigating circumstances not otherwise amounting to a legal defense to forfeiture. Depending on the circumstances, the Attorney General may pardon the property in its entirety and “remit” (return) it to the claimants or “mitigate” the forfeiture by returning the property on payment of a fine.

Alternatively, the claimant can file a claim which asserts under oath that the property is not subject to forfeiture and which requests that the forfeiture be removed to court for judicial review. Except for persons who are indigent, claimants must also post a cost bond equal to 10 percent of the estimated value of the seized property or \$2,500, whichever is greater. The purpose of the cost bond is to ensure that, if the claimant frivolously removes the forfeiture action to court, expenses incurred by the State in judicially prosecuting the forfeiture will be borne by the claimant, with the bond serving as security.

Finally, the claimant may do nothing, in which case forfeiture is ordered after expiration of thirty days.

By these means, forfeiture proceedings can be disposed of administratively without unnecessary consumption of valuable judicial resources while still providing those who want their “day in court” the opportunity to challenge the forfeiture.

V. DISTRIBUTION OF PROCEEDS

Once property has been forfeited to the State through administrative or judicial proceedings, the Attorney General is charged with disposing of it pursuant to section 712A-16, HRS. Pursuant to section 712A-16(1), HRS, the Attorney General may transfer forfeited property, such as automobiles, to State and county agencies; may sell property by public sale; may pay valid claims against forfeited property, and, may destroy contraband or raw materials or equipment used to manufacture controlled substances.

Pursuant to section 712A-16(2), HRS, all forfeited property and the sale proceeds of forfeited property up to a maximum of three million dollars per year are distributed after payment of expenses of administration and sale among the Attorney General, the agency that seized the property, and the prosecuting attorney that initiated the administrative or judicial forfeiture proceeding. The statute requires the Attorney General to distribute a 25 percent share of forfeited currency and sale proceeds of forfeited property, if any, to both the agency that seized the property and the prosecuting attorney which initiated the administrative or judicial forfeiture proceeding. The remaining 50 percent of the forfeited currency, or sale proceeds, if any, is deposited into the Criminal Forfeiture Fund, which is administered by the Attorney General. Pursuant to section 712A-16(4), HRS, the Department of the Attorney General distributes money from the Criminal Forfeiture Fund to law enforcement agencies and prosecuting attorneys as requests are made.

Property and money distributed pursuant to section 712A-16, HRS, must be used for law enforcement purposes and may be used to supplement, but not supplant, funds regularly appropriated to law enforcement agencies. For example, the strong emphasis has been placed on spending money from the Criminal Forfeiture Fund to meet the training and education needs of law enforcement personnel. In fiscal year 2007-2008, \$88,819.97 was earmarked from the Criminal Forfeiture Fund to fund eight requests for training, \$39,361.27 to fund four requests for equipment, and \$2,440.99 to fund three requests for mailing expenses incurred in servicing asset forfeiture documents for a total of \$130,622.23 in approved requests.

VI. ASSET FORFEITURE: FISCAL YEAR 2007-2008

A. Total Seizures

“Total seizures” in fiscal year 2007-2008 were valued at an estimated \$1,505,093.⁶ All forfeited property, including contraband, is given an estimated value by the seizing agency. The actual value is the sales proceeds of a particular forfeited property. The estimated value of total seizures for forfeiture includes contraband and property found to be unsafe or in poor condition that are eventually destroyed. Contraband includes untaxed tobacco, firearms, and gambling machines.

The type and amount of property compromising this total are listed by the seizing agency in the following table:

TOTAL SEIZURES BY SEIZING AGENCY

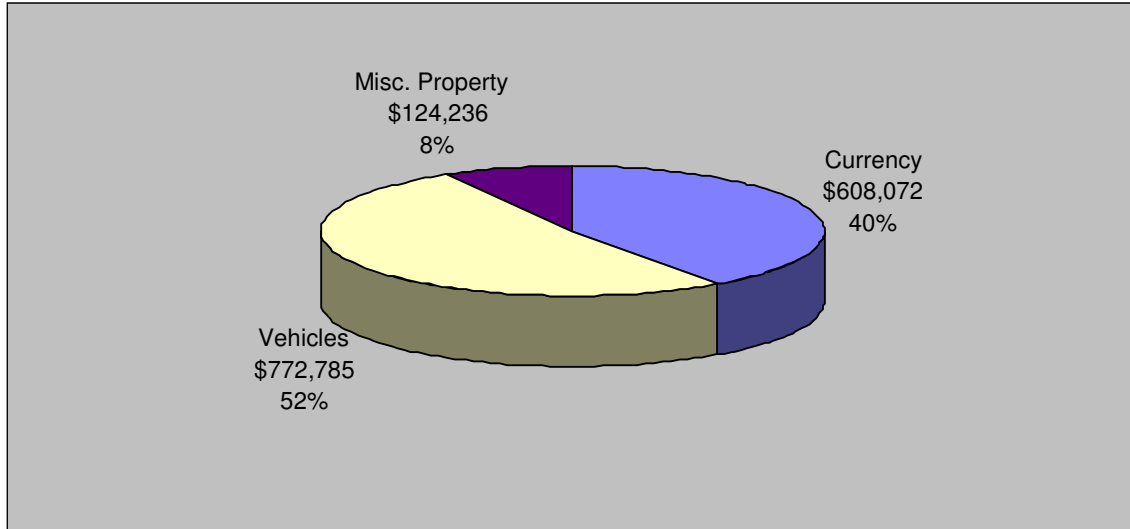
Fiscal Year 2007-2008 (Estimated Values)

Seizing Agency	<u>Currency</u>	<u>Vehicles</u>	<u>Misc. Property</u>	<u>Total</u>
Honolulu Police Dept.	\$147,568	\$272,000	\$15,335	\$434,903
Hawaii County Police Dept.	236,236	373,550	97,523	707,309
Kauai Police Dept.	18,788	36,575	6,478	61,841
Maui Police Dept.	175,933	64,475	0	240,408
Narcotics Enforcement	26,111	20,285	4,900	51,296
Dept. of Land & Natural Res.	<u>3,436</u>	<u>5,900</u>	<u>0</u>	<u>9,336</u>
Total	<u><u>\$608,072</u></u>	<u><u>\$772,785</u></u>	<u><u>\$124,236</u></u>	<u><u>\$1,505,093</u></u>

⁶ In this context, “total seizures” is taken to mean “total seizures for forfeiture,” as distinguished from seizure for evidentiary purposes. “Seizure for forfeiture” means “seizure of property by a law enforcement officer coupled with an assertion by the seizing agency or by a prosecuting attorney that the property is subject to forfeiture,” as defined in section 712A-1, HRS. Because the prosecuting attorney may elect not to initiate forfeiture proceedings against property seized for evidentiary purposes, total seizures as used in this effort means total seizures in a given year for which forfeiture proceedings were undertaken.

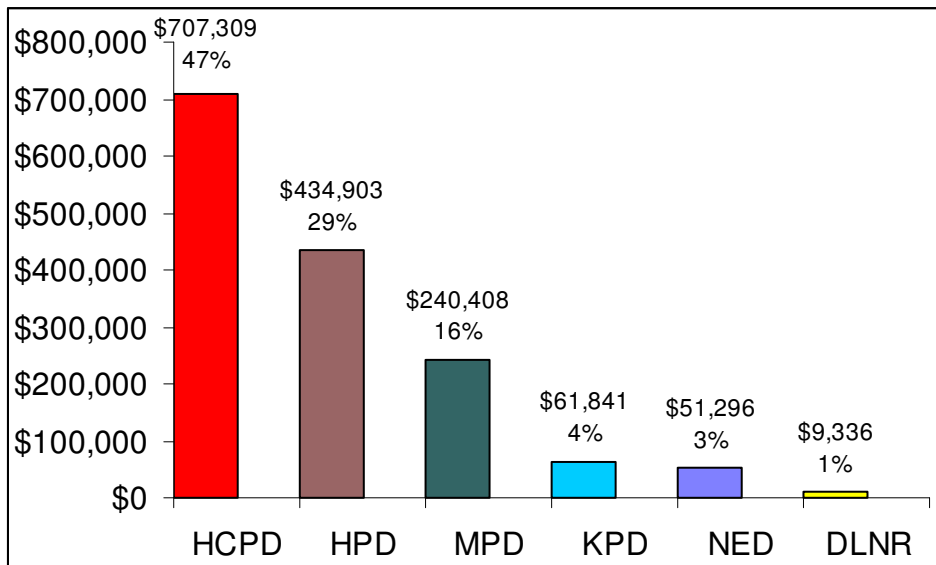
The total amount of seized property is broken down by type of property and is reflected in the following table:

**PERCENTAGE OF TOTAL PROPERTY SEIZED
REPRESENTED BY TYPE OF PROPERTY**
Fiscal Year 2007-2008 (Estimated Values)



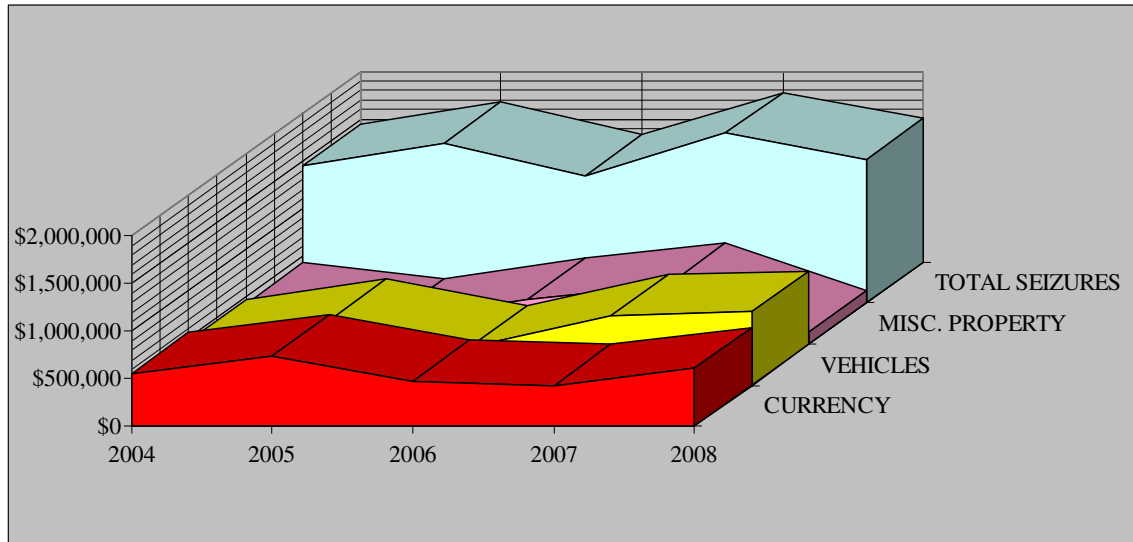
The total amount of seized property is broken down by seizing agency in the following table:

**PERCENTAGE OF TOTAL PROPERTY SEIZED
REPRESENTED BY THE RESPECTIVE AGENCIES**
Fiscal Year 2007-2008 (Estimated Values)



The following table compares seizures by type of property, in fiscal years 2003-2004 through 2007-2008:

TOTAL SEIZURES: PROPERTY TYPE
Fiscal years ending June 30, 2004 through 2008 (Estimated Values)



	<u>6/30/2004</u>	<u>6/30/2005</u>	<u>6/30/2006</u>	<u>6/30/2007</u>	<u>6/30/2008</u>
CURRENCY	\$555,125	\$745,983	\$471,706	\$426,342	\$608,072
VEHICLES	\$461,947	\$682,180	\$401,720	\$728,045	\$772,785
MISC. PROPERTY	\$429,066	\$252,816	\$465,685	\$629,220	\$124,236
TOTAL SEIZURES	<u>\$1,446,138</u>	<u>\$1,680,979</u>	<u>\$1,339,111</u>	<u>\$1,783,607</u>	<u>\$1,505,093</u>

B. Forfeiture Actions Filed

In fiscal year 2007-2008, 251 Petitions for Administrative Forfeiture were filed by the prosecuting attorneys with the Department of the Attorney General. In fiscal year 2007-2008, 212 cases were disposed. Of the 212 disposed cases, 84 were filed and disposed within fiscal year 2007-2008, and the other 128 were pending cases from previous fiscal years. Of the 212 cases, 172 involved uncontested forfeiture; persons with an interest in the property did not respond to the notice of pending forfeiture. Petitions for Remission or Mitigation were involved in 20 of the 212 processed cases; 13 cases involved judicial proceedings; and 7 cases were voluntarily withdrawn by the prosecutor.

C. Total Number of Claims and Petitions for Remission or Mitigation

In fiscal year 2007-2008, 12 claims seeking judicial review were filed in administrative forfeiture actions. These claims were referred to the respective prosecuting attorneys to determine whether, pursuant to section 712A-10(9), HRS, the claim should be honored or the forfeiture action should be brought to court for judicial resolution. At the close of the fiscal year 2007-2008, 5 of these claims had been settled with the approval of the court and/or the Attorney General, or voluntarily withdrawn by the prosecuting attorney, and 7 were still in litigation.

In fiscal year 2007-2008, 34 Petitions for Remission or Mitigation were filed. At the close of fiscal year 2007-2008, 16 of these Petitions for Remission or Mitigation had been resolved and 18 were still pending inquiry by the Department of the Attorney General pursuant to section 712A-10(6) and (7), HRS.

D. Property Forfeited

The estimated value of all property forfeited in fiscal year 2007-2008 was \$1,473,667 including \$492,398 in currency. A portion of the forfeited vehicles and miscellaneous property were sold at public auctions held on August 25, 2007; December 1, 2007; February 23, 2008; and May 3, 2008. The net proceeds from the auctions were \$85,500.00; \$33,599.12; \$43,702.00; and \$28,661.50, respectively.

Contraband, which includes untaxed tobacco, firearms, and gambling machines, were destroyed and not auctioned. Firearms forfeited to the State are not auctioned as a matter of policy, primarily for public safety considerations. To reintroduce forfeited firearms into general circulation would be inimical to public safety and the law enforcement objectives promoted by section 134-12.5, HRS. Forfeited property may be destroyed if found to be unsafe or in poor condition.

The type and amount of property forfeited in fiscal year 2007-2008 are listed by jurisdiction in the following table:

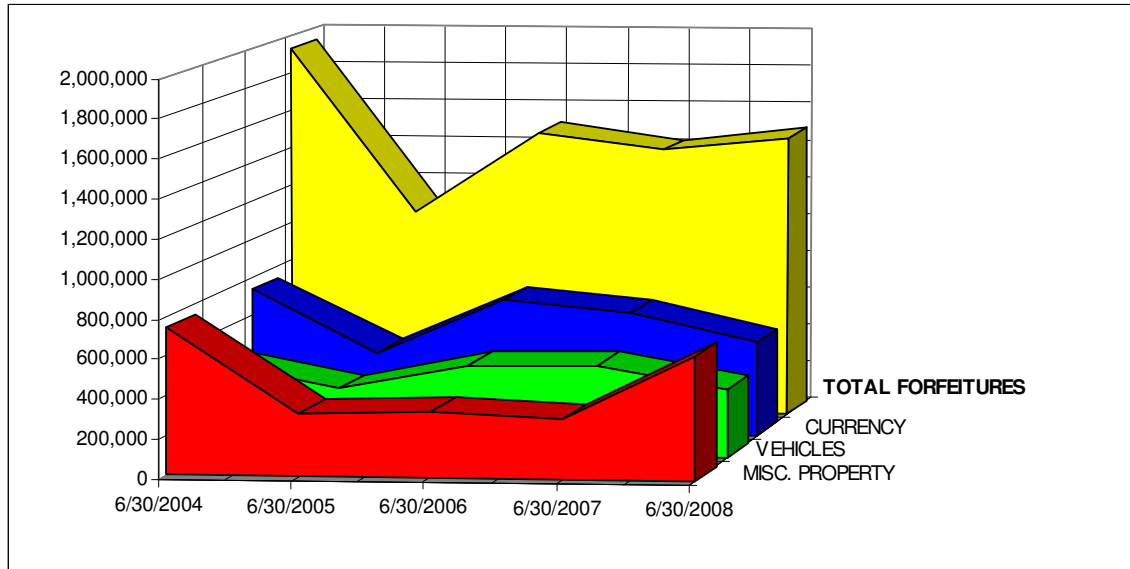
TOTAL FORFEITURES BY JURISDICTION
Fiscal Year Ending 6/30/08 (Estimated Values)

<u>Jurisdiction</u>	<u>Currency</u>	<u>Vehicles</u>	<u>Misc. Property</u>	<u>Total</u>
City & County of Honolulu	\$ 147,692	\$ 231,275	\$ 15,282	\$ 394,249
Hawaii County	103,414	48,167	609,140*	760,721
Kauai County	50,430	45,045	2,810	98,285
Maui County	187,549	26,190	0	213,739
Narcotics Enforcement	3,313	0	0	3,313
Dept. of Land & Natural Res.	0	3,230	130	3,360
Total	\$ 492,398	\$ 353,907	\$ 627,362	\$ 1,473,667

* This amount includes \$500,000 in real property that was forfeited in the Farrar case (A.G. No. 07-14201).

The following table compares total forfeitures, by type of property, in fiscal years 2003-2004 through 2007-2008:

TOTAL FORFEITURES: PROPERTY TYPE
Fiscal years ending June 30, 2004 through 2008 (Estimated Values)



E. Property Distributed

In fiscal year 2007-2008, a total of \$807,441.49 in forfeited currency and auction proceeds was distributed to the police departments and prosecuting attorneys of the City and County of Honolulu, and to the counties of Hawaii, Maui, and Kauai, as well as to the Narcotics Enforcement Division of the Department of Public Safety, and the Conservation and Resources Enforcement Division of the Department of Land and Natural Resources, pursuant to section 712A-16(2), HRS.

In fiscal year 2007-2008, forfeited property other than currency, including vehicles and a TV, with a total estimated value of \$69,100 was transferred to the Honolulu Police and Hawaii County Police departments pursuant to section 712A-16(2), HRS.

F. Criminal Forfeiture Fund

In fiscal year 2007-2008, \$1,403,221.97 was deposited into the Criminal Forfeiture Fund. As explained above, law enforcement agencies received a total of \$807,441.49 in forfeited currency and auction proceeds pursuant to section 712A-16(2) and (4), HRS. As explained below, \$348,508.07 was expended for training of law enforcement personnel and law enforcement equipment costs, as well as operation of the forfeiture program pursuant to section 712A-16(4), HRS.

G. Criminal Forfeiture Fund Expenditures

In fiscal year 2007-2008, the Department of the Attorney General expended \$348,507.07 from the Criminal Forfeiture Fund. The type, amount, and explanation for the expenditure are listed below:

Purpose	Amount	Explanatory Notes
Training	\$ 66,162.73*	<ul style="list-style-type: none"> ● Reid Technique of Interviewing and Interrogation Training ● Statewide Sexual Assault Multi-Disciplinary training ● 8th Annual Inter-County Detectives Conference & Training Seminar ● Emergency Vehicle Operator Course Instructor Certification Training
Equipment	\$ 28,895.00**	9 units LTI UltraLyte 100 LR Speed Laser Gun
Newspaper Publication of Legal Notice	\$ 14,250.83	Notice of pending forfeiture
Upkeep/Storage of Forfeited Assets	\$ 3,044.41	Alarm system operation and utilities; towing of vehicles; equipment; real property upkeep
<p>* \$66,162.73 is the actual amount paid for training in fiscal year 2007-2008. \$88,819.97 was the amount allocated for training. The difference of \$22,657.24 is the money approved for training but the requesting law enforcement agencies did not request for reimbursement.</p>		
<p>** \$28,895.00 is the actual amount paid for equipment in fiscal year 2007-2008. \$39,361.27 was the amount allocated for equipment. The difference of \$10,466.27 is the money approved for equipment but the requesting law enforcement agencies did not request for reimbursement.</p>		
Auction Expenditures	\$ 18,775.28	Automotive repair and parts; overtime payments; shipping and towing of vehicles; auctioneer services
Lien Payment Expenditures and Compromise	\$ 7,844.41	Payments to financial institutions for release of lien placed on forfeited vehicles; fees and costs associated with the compromise of claims
Payroll Expenditures for the Asset Forfeiture Unit	\$ 206,977.28	Asset Forfeiture Program manager, legal assistant and secretary salaries; related payroll taxes
Other Operating Expenditures	\$ <u>2,558.13</u>	Phone charges; office supplies; petty cash replenishment; mailing expenses incurred in service of forfeiture documents
TOTAL:	\$ <u>348,508.07</u>	

VII. ASSET FORFEITURE DEVELOPMENTS AND TRENDS

During fiscal year 2007-2008, 251 petitions for administrative forfeiture of property having an estimated value of \$1,505,143 were filed with the Department of the Attorney General. Those numbers compare closely with a four-year average of 277 petitions having an estimated value of \$1,647,667. A review of the cases filed during the first four months of fiscal year 2008-2009, indicates that filings for fiscal year 2006-2007 will probably meet or exceed the four-year average.

During fiscal year 2007-2008, 212 forfeiture cases involving property having an estimated value of \$1,564,238 were closed.

In response to the information needs of the public, in March 1998, the asset forfeiture program went on-line as a part of the Attorney General's web page on the Internet. Auction information is now available on the Internet at http://hawaii.gov/ag/criminal_justice/asset/criminal_justice/asset/auction_information/index.htm. Additional auction information and pictures of items to be sold at auction are available at <http://www.rosenauctions.com/>.

Since January 1, 1998, auctions of forfeited property are held at least once each quarter. This fiscal year auctions were held on August 25, 2007, December 1, 2007, February 23, 2008, and May 3, 2008. The fiscal year 2008-2009 auction schedule is September 6, 2008, December 13, 2008, and the remaining dates are still being scheduled as of the date of this report.

VIII. CONCLUSION

The permanent enactment of the Hawaii Omnibus Criminal Forfeiture Act by the Legislature in 1996 has had a positive impact on the handling and processing of administrative forfeitures. We expect that fiscal year 2008-2009 forfeiture revenues will meet or exceed historical norms.