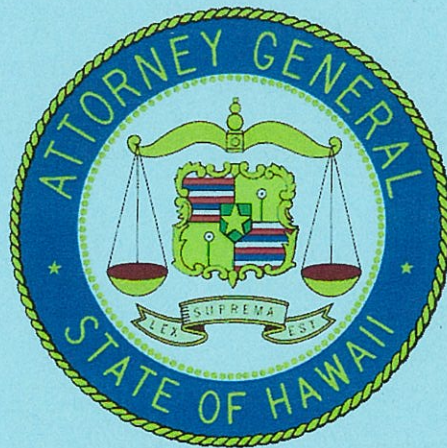


State of Hawaii
Department of the Attorney General



Annual Report
of Proceedings under the Hawaii
Omnibus Criminal Forfeiture Act
Fiscal Year 2008-2009

Submitted to
The Twenty-Fifth State Legislature
Regular Session of 2010

I. INTRODUCTION

In 1988, the Legislature enacted chapter 712A, Hawaii Revised Statutes (HRS), the Hawaii Omnibus Criminal Forfeiture Act. 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 at more than \$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 receive 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 seized property, 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.

II. HISTORY OF ASSET FORFEITURE

Forfeiture has been used since ancient times to take property wrongfully used or acquired. References to forfeiture in the Old Testament and in 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 trade,³ and authorized the forfeiture of real property in 1984.⁴ Federal civil and criminal forfeiture statutes now reach substantially the same offenses and types 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 profits, thereby preventing them from operating. A secondary benefit of forfeiture laws is that forfeited property, or the proceeds of its sale, is turned over to law enforcement and 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 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 that give rise to forfeiture. At the same time, it provides explicit procedural and substantive rights to claimants, especially innocent owners. The Legislature placed a ceiling of \$3,000,000 per year on the amount of forfeited property that could be retained by law enforcement, with any excess going into the state general fund.

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).

Distribution of forfeited property up to the ceiling is administered by the Attorney General according to the 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 further amended chapter 712A and made 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; sell property by public sale; pay valid claims against forfeited property; and destroy contraband or raw materials or equipment used to manufacture controlled substances.

Pursuant to section 712A-16(2), HRS, the Attorney General distributes 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 that 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, 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 2008-2009, \$105,251.01 was earmarked from the Criminal Forfeiture Fund for nineteen requests for training in fiscal year 2009-2010 or the latter part of fiscal year 2008-2009.

VI. ASSET FORFEITURE: FY 2008-2009

A. Total Seizures

“Total seizures” in fiscal year 2008-2009 were valued at an estimated \$1,299,794.⁶ 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 comprising this total are listed by the seizing agency in the following table:

TOTAL SEIZURES BY SEIZING AGENCY Fiscal Year 2008-2009 (Estimated Values)

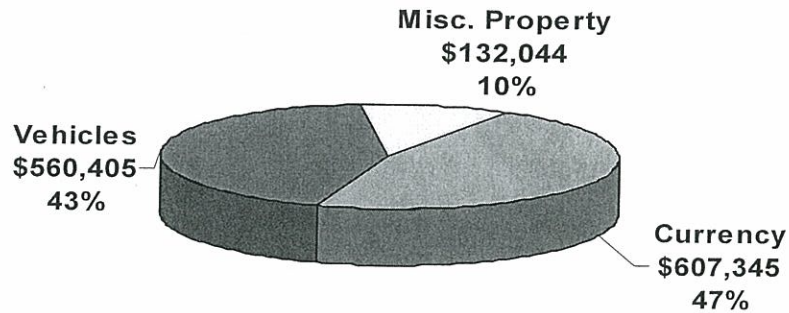
<u>Seizing Agency</u>	<u>Currency</u>	<u>Vehicles</u>	<u>Misc. Property</u>	<u>Total</u>
Honolulu Police Department	\$ 166,195	\$ 167,600	\$ 50,412	\$ 384,207
Hawaii County Police Department	189,500	258,250	44,561	492,311
Kauai Police Department	24,530*	41,720	821*	67,071*
Maui Police Department	156,215	30,235	850	187,300
Narcotics Enforcement	70,905	62,600	15,400	148,905
Dept. of Land and Natural Resources	0	0	20,000	20,000
Total	<u>\$ 607,345</u>	<u>\$ 560,405</u>	<u>\$ 132,044</u>	<u>\$1,299,794</u>

*Seizure of \$26,920 in currency and \$80,800 in property totaling \$107,720 filed administratively; dismissed because administrative forfeiture estimated total value must be less than \$100,000 pursuant to section 712A-10, HRS.

⁶ In this context, “total seizures” means “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.

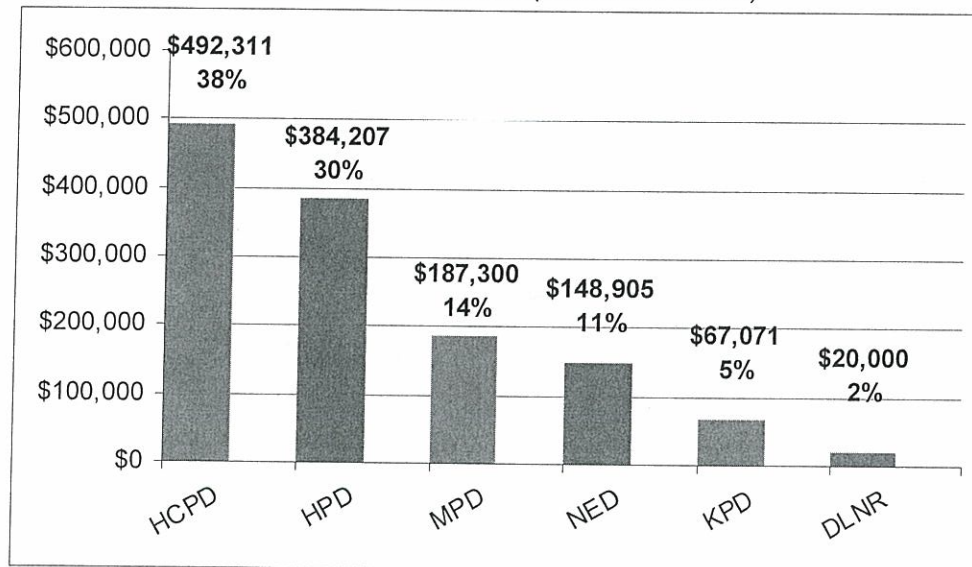
The total amount of seized property is broken down by type of property in the following table:

**PERCENTAGE OF TOTAL PROPERTY SEIZED
REPRESENTED BY TYPE OF PROPERTY
Fiscal Year 2008-2009 (Estimated Values)**



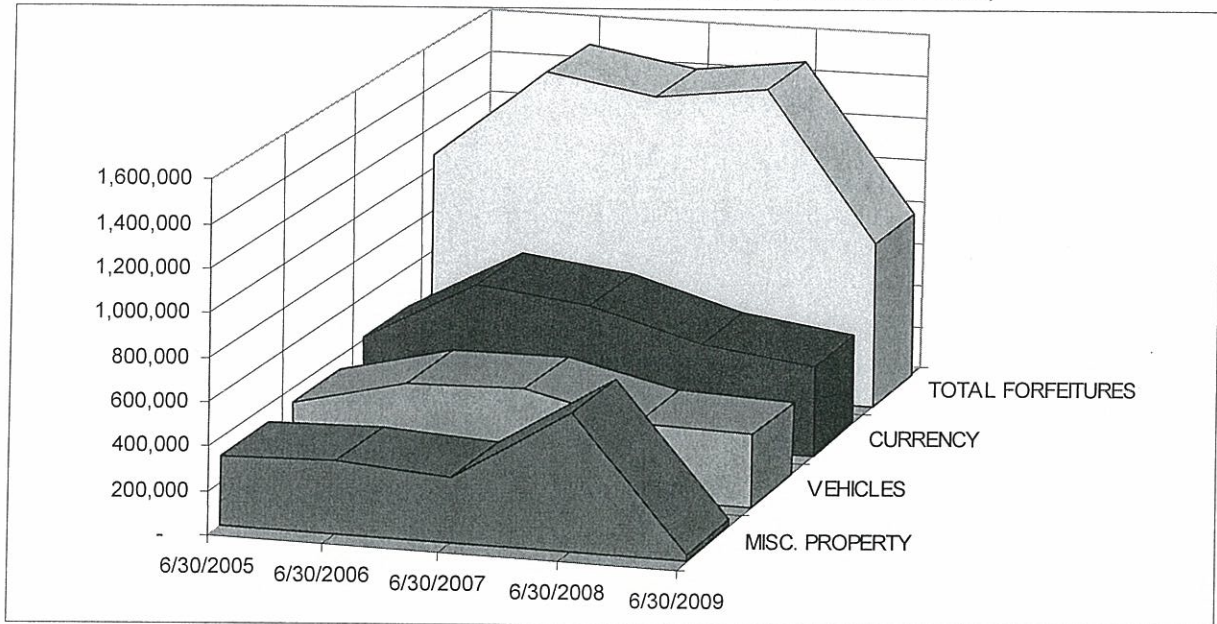
The total amount of seized property is broken down by seizing agency in the following table:

**PERCENTAGE OF TOTAL PROPERTY SEIZED
REPRESENTED BY SEIZING AGENCY
Fiscal Year 2008-2009 (Estimated Values)**



The following table compares seizures by type of property in fiscal years 2004-2005 through 2008-2009:

TOTAL SEIZURES BY PROPERTY TYPE
Fiscal years 2004-2005 through 2008-2009 (Estimated Values)



	<u>6/30/2005</u>	<u>6/30/2006</u>	<u>6/30/2007</u>	<u>6/30/2008</u>	<u>6/30/2009</u>
CURRENCY	\$745,983	\$471,706	\$426,342	\$492,398	\$417,612
VEHICLES	\$682,180	\$401,720	\$728,045	\$353,907	\$327,185
MISC. PROPERTY	\$252,816	\$465,685	\$629,220	\$627,362	\$26,215
TOTAL SEIZURES	\$1,680,979	\$1,339,111	\$1,783,607	\$1,473,667	\$771,012

B. Forfeiture Actions Filed

In fiscal year 2008-2009, 192 Petitions for Administrative Forfeiture were filed with the Department of the Attorney General by the prosecuting attorneys.⁷ In fiscal year 2008-2009, 206 cases were processed. Of the 206 processed cases, 63 were filed and processed within fiscal year 2008-2009, and the other 145 were pending cases from previous fiscal years. Of the 206 cases, 167 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 34 of the 206 processed cases; 9 cases involved judicial proceedings; and 2 cases were voluntarily withdrawn by the prosecuting attorney.

⁷ “Prosecuting Attorney” in this context means “the prosecuting attorney or deputy prosecuting attorneys of the various counties, or the attorney general or deputy attorneys general when engaged in the prosecuting of a criminal offense,” as defined in section 712A-1, HRS. All figures stated for total forfeiture actions filed include those filed both by deputy prosecuting attorneys and deputy attorneys general.

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

In fiscal year 2008-2009, 9 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 fiscal year 2008-2009, 2 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 2008-2009, 35 Petitions for Remission or Mitigation were filed. At the close of fiscal year 2008-2009, 27 of these Petitions for Remission or Mitigation had been resolved and 8 were still pending inquiry by the Department of the Attorney General pursuant to section 712A-10(6) and (7), HRS.

D. Property Forfeited

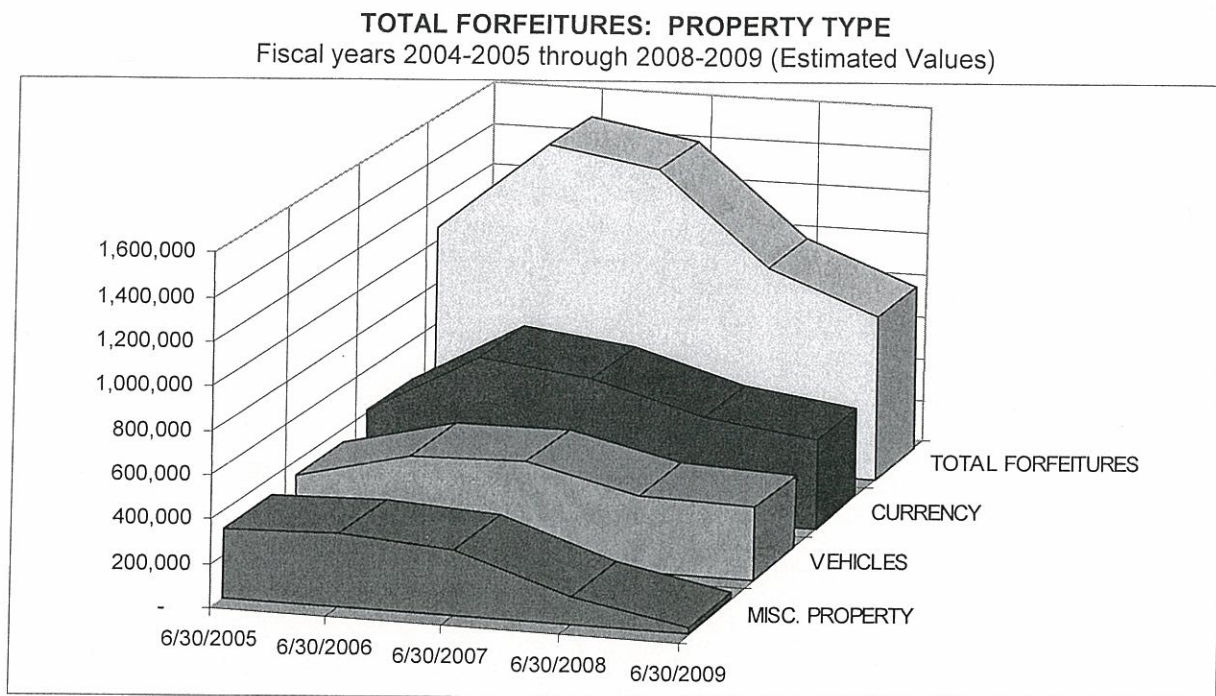
The estimated value of all property forfeited in fiscal year 2008-2009 was \$776,912, including \$417,612 in currency. A portion of the forfeited vehicles and miscellaneous property was sold at public auctions held on September 6, 2008, December 13, 2008, February 28, 2009, and June 13, 2009. The net proceeds from the auctions were \$153,244.50, \$64,938.20, \$55,731.75, and \$62,234.50, respectively.

Forfeited property may be destroyed if found to be unsafe or in poor condition. 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.

The type and amount of property forfeited in fiscal year 2008-2009 are listed by jurisdiction in the following table:

TOTAL FORFEITURES BY JURISDICTION				
Fiscal Year 2008-2009 (Estimated Values)				
<u>Jurisdiction</u>	<u>Currency</u>	<u>Vehicles</u>	<u>Misc. Property</u>	<u>Total</u>
City & County of Honolulu	\$ 346,939	\$ 242,720	\$ 198,714	\$ 788,373
Hawaii County	224,349	105,715	86,134	416,198
Kauai County	48,703	29,000	15,548	93,251
Maui County	15,095	3,855	0	18,950
Narcotics Enforcement	1,512	20,000	0	21,512
Dept. of Land & Natural Res.	0	67,000	0	67,000
Total	<u>\$ 636,598</u>	<u>\$ 468,290</u>	<u>\$ 300,396</u>	<u>\$1,405,284</u>

The following table compares total forfeitures by type of property in fiscal years 2004-2005 through 2008-2009:



E. Property Distributed

In fiscal year 2008-2009, a total of \$492,316 in forfeited currency and auction proceeds was distributed to the police departments and prosecuting attorneys of the City and County of Honolulu and the counties of Hawaii, Maui, and Kauai, as well as to the Narcotics Enforcement Division of the Department of Public Safety, pursuant to section 712A-16(2), HRS.

In fiscal year 2008-2009, forfeited property other than currency, including vehicles with an estimated value of \$54,940, was transferred to the Kauai County Police Department, the Conservation and Resources Enforcement Division of the Department of Land and Natural Resources, and the Narcotics Enforcement Division of the Department of Public Safety, pursuant to section 712A-16(2), HRS.

F. Criminal Forfeiture Fund Deposits and Expenditures

In fiscal year 2008-2009, \$806,867.89 was deposited into the Criminal Forfeiture Fund. In fiscal year 2008-2009, the Department of the Attorney General expended \$294,955.06 from the Criminal Forfeiture Fund. The type, amount, and explanation of the expenditures are listed below:

<u>Purpose</u>	<u>Amount</u>	<u>Explanatory Notes</u>
Training	\$ 38,996.55	<ul style="list-style-type: none"> • 9th Annual Inter-County Detective Training Seminar • 8th Annual San Diego International Family Justice Center Conference • Undercover Operations Class • Reid Technique of Interviewing and Interrogation Seminar • Landlord Training, Keeping Illegal Activity Out of Rental Property
Equipment for Law Enforcement	\$ 16,703.75	Stealthstat DRUIII TSC; 6 Free Agent Ext HDDs; HP Laserjet multifunction printer; 14 Garmin NUVI 250W GPS Units; 15 Xerox Documates 252 personal scanners
Reimbursement of Service Fees to Agencies	\$ 3,933.29	Certified and regular mail
Newspaper Publication of Legal Notice	\$ 10,791.15	Notice of pending forfeiture
Upkeep/Storage of Forfeited Assets	\$ 2,715.17	Alarm system operation and utilities; towing of vehicles; equipment; real property upkeep
Auction Expenditures	\$ 14,705.39	Automotive repair and parts; overtime payments; shipping and towing of vehicles; auctioneer services
Lien Payment Expenditures & Compromise	\$ 10,180.25	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	\$ 194,676.48	Asset Forfeiture Program manager, legal assistant and secretary salaries; related payroll taxes
Other Operating Expenditures	\$ <u>2,253.03</u>	Phone charges; office supplies; petty cash replenishment
TOTAL	\$ <u>294,955.06</u>	

VII. 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.

