

Auditor's Summary

Audit of the Department of the Attorney General's Asset Forfeiture Program

Report No. 18-09



PHOTO: DEPARTMENT OF THE ATTORNEY GENERAL

IN REPORT NO. 18-09, *Audit of the Department of the Attorney General's Asset Forfeiture Program*, we reviewed the State's asset forfeiture program to evaluate its efficiency and effectiveness, to determine whether the program uses its moneys for the purposes outlined in statute, to account for money and property seized and disposed of through asset forfeitures, and to determine how many asset forfeitures occurred in cases that did not result in criminal convictions. We also followed up on the recommendations made in Auditor's Report No. 95-22, *Sunset Evaluation of the Forfeiture Program*.

What We Found

Our audit found that, even after nearly 30 years since the program's inception, the department has not yet adopted administrative rules describing procedures and practice requirements for asset forfeiture. Without these rules, the program provides only informal, piecemeal guidance to law enforcement agencies and the public. We also found that the asset forfeiture program lacks policies and procedures, and has a program manager who did not guide and oversee day-to-day activities and financial management during our audit period.

Why Did These Problems Occur?

Although efforts have been made toward adoption of rules, the process has been painfully slow, and has not been a priority. In a 2005 report to the Legislature, the department identified adopting rules as a program goal, but then listed that same goal — "promulgating rules, policies and procedures pursuant to Chapter 712A, HRS, for more efficient operation" — in its



What's in a Rule?

UNDER HAWAII LAW, the term "rule" is defined to mean "each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term does not include regulations concerning only the internal management of an agency and not affecting private rights of or procedures available to the public, nor does the term include declaratory rulings issued pursuant to section 91-8, nor intra-agency memoranda."

— Section 91-1, HRS

2006, 2007, 2008, 2009, and 2010 reports. In 2011, the department began fielding suggestions from county prosecutors in preparation of drafting rules. In 2013, an Asset Forfeiture Task Force, made up of county prosecutors, provided comments on the department's proposed rules. Draft rules were presented to the Attorney General for approval by mid-2014. However, we found that these rules have been languishing with the Attorney General and have yet to be adopted as of March 2018.

**Total Number and Dollar Amount of Administrative and Judicial Forfeitures
by Type of Property for FY2006–FY2015**



Currency

1,196
forfeitures

\$2,753,198



Firearms

4
forfeitures

\$1,250



**Miscellaneous
Property**

39
forfeitures

\$368,792



Multiple

413
forfeitures

\$4,745,579



Real Property

12
forfeitures

\$1,267,224



Vehicles

597
forfeitures

\$2,449,654

GRAND TOTAL: \$11,585,697

Source: Office of the Auditor

Why Do These Problems Matter?

One result of the lack of consistent, formal rules is the program's high rate of dismissal of administrative forfeiture petitions, because prosecutors are unclear as to the department's requirements for administrative forfeiture. In FY2013–FY2015, the department dismissed 107 petitions for administrative forfeiture — 14 percent of the total filed — for reasons such as lack of probable cause; failure to establish a nexus between the seized property and a covered offense; insufficient notice to property owners of forfeiture procedures; and technical errors in documents. We found dismissal rates were significantly higher on the neighbor islands compared to O'ahu.

Rules are also needed to guide property owners who are seeking remission or mitigation of the forfeiture of their property. It's likely that property held pending forfeiture may lose value; some property may deteriorate or fall into disrepair; and some property may become outdated or obsolete. For some owners, being deprived of their property for any period of time may result in significant hardship. Without clear rules guiding the process for requesting a pardon of the property, these effects are prolonged and exacerbated.

Additionally, without policies, procedures, and a manager to guide and oversee day-to-day activities and financial management, the program cannot fully account for the property it has obtained by forfeiture, is unable to adequately manage its funds, and cannot review or reconcile its forfeiture case data to ensure accurate reporting of information to the Legislature and the general public.