

**SB-2180-SD-1**

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Richard K. Minatoya	Maui Department of the Prosecuting Attorney	Support	No

Comments:

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS SB 2180, SD 1 - Relating to Lesser Included Offenses. This measure will clarify the law to specifically state that lesser included offenses are available in cases charged by felony complaint. The Department requests that this measure be PASSED.

Thank you very much for the opportunity to provide this testimony.

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**THE HONORABLE SCOTT NISHIMOTO, CHAIR**  
**HOUSE COMMITTEE ON JUDICIARY**  
**Twenty-Ninth State Legislature**  
**Regular Session of 2018**  
**State of Hawai`i**

March 14, 2018

**RE: S.B. 2180, S.D. 1; RELATING TO LESSER INCLUDED OFFENSES.**

Chair Nishimoto, Vice Chair San Buenaventura, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu (Department) submits the following testimony in strong support of S.B. 2180, S.D. 1, with a suggested amendment. This bill is part of the Department's 2018 legislative package.

The purpose of this bill is to amend parts of §701-109 of the Hawaii Revised Statutes to clarify that a defendant may be convicted of a lesser included offense in cases filed through felony complaint, indictment or information, in circuit or district court.

According to Black's Law Dictionary, "lesser included offenses" are crimes in which a lesser offense contains all the elements of a greater offense, with the caveat that the greater offense contains one or more additional elements to be proven beyond a reasonable doubt. This issue commonly arises when a defendant proceeds to either a jury or a bench trial. In jury trials, a judge is tasked with ensuring that the jury is aware of any lesser included offenses. Following the presentation of all evidence and arguments at trial, if a jury cannot unanimously agree on the outcome of the initial charge, the jury may then consider the guilt or innocence of the defendant for any lesser included offenses. In bench trials, this determination falls solely on the judge.

As a matter of law, all felony cases can be initiated for prosecution via felony complaint or indictment (Grand Jury proceedings), and in specific types of felony charges, cases can be initiated via information. Each case presents different challenges, and there are times when—strategically—initiating the case via felony complaint is preferred because a preliminary hearing follows the filing of the complaint. At a preliminary hearing, the defendant is afforded the right to confront a witness against him or her, and the defendant's attorney is allowed an opportunity

to cross-examine the witnesses. Additionally, the State is given an opportunity to have sworn testimony from witnesses that may, in certain circumstances, be used at trial if a witness suddenly becomes unavailable prior to trial. Because the Department does initiate some felony cases via felony complaint, it is important constitutionally that the courts and juries are authorized to consider lesser included offenses in those cases as well, when determining a defendant's guilt or innocence. **Because non-felony charges may also have lesser included offenses—which should be considered by a jury or judge when relevant—The Department further suggests removing the word “felony” from the phrase “felony complaint” on page 1, line 4 in S.B. 2180, S.D. 1. This would ensure that lesser included offenses are also considered in non-felony cases as well.**

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of S.B. 2180, S.D. 1, with the suggested amendment. Thank you for the opportunity to testify on this matter.