

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO
PROSECUTING ATTORNEY

CHASID M. SAPOLU
FIRST DEPUTY PROSECUTING ATTORNEY



THE HONORABLE BRIAN TANIGUCHI, CHAIR
SENATE COMMITTEE ON JUDICIARY
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawai`i

February 6, 2018

RE: S.B. 2180; RELATING TO LESSER INCLUDED OFFENSES.

Chair Taniguchi, Vice Chair Rhoads, and members of the Senate 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. This bill is part of the Department's 2018 legislative package.

The purpose of this bill is to amend parts of Section 701-109, 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 such cases, a judge is to ensure that the jury is aware of such lesser included offenses, and that based on the evidence presented in the trial, the jury is allowed to consider the guilt and innocence of the defendant for not only the initial charge, but also any lesser included offenses, if a jury cannot unanimously agree on the outcome of the initial charge.

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 information 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.

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. Thank you for the opportunity to testify on this matter.

SB-2180

Submitted on: 2/5/2018 9:26:03 AM

Testimony for JDC on 2/6/2018 9:30:00 AM

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

Comments:

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS SB 2180, 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 bill be PASSED.

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