



Office of the Public Defender State of Hawai‘i

Testimony of the Office of the Public Defender, State of Hawai‘i to the Senate Committee on Judiciary

March 28, 2019

H.B. No. 159, H.D. 1: RELATING TO CRIME

Chair Rhoads, Vice Chair Wakai and Members of the Committees:

The Office of the Public Defender opposes H.B. No. 159, H.D. 1.

We are particularly concerned with increasing the offense of gambling (in violation of H.R.S. § 712-1223) from a misdemeanor to a class C felony. The purpose of this measure is to increase the penalties for certain drug- and gambling-related offenses in order to deter property owners from allowing those activities on their properties. Increasing the offense of gambling to class C felony will not achieve the stated purpose.

Although we do not have any statistics to present regarding arrests and convictions for the offense of gambling, our office rarely represents individuals charged with the offense of gambling, let alone individuals with multiple convictions of gambling. Therefore, it does not appear that arresting individuals for gambling is a high priority with law enforcement. Moreover, the majority of our clients charged with the offense of gambling are the homeless who were simply alleged to be playing card games (e.g., pepito) in public areas.¹

Individuals now charged with the misdemeanor offense of gambling (including the homeless) are rarely arrested; instead, they are usually issued criminal citations to appear in court. And if an individual is arrested, the bail is set at an affordable/nominal amount. If the offense, however, is increased to a felony, individuals must be arrested and the bail will be set at a substantially higher amount, often not affordable by the homeless. The increase in bail and potential five-year prison sentence are directly contradictory to the legislature's current concern about prison overcrowding and sentencing reform.

Finally, because the affirmative defense of social gambling is not applicable for gambling conducted or played at business establishments, individuals participating in office or bar pools, including but not limited to the NCAA Men's Basketball Tournament and the Super Bowl, may be subjected to felony arrest and conviction.

Thank you for the opportunity to comment on H.B. No. 159, H.D. 1.

¹ Because individuals were allegedly gambling in a public area, the affirmative defense of social gambling was not available to them. *See* H.R.S. § 712-1231(a)(4).