

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender, State of Hawai‘i
to the House Committee on Judiciary & Hawaiian Affairs**

February 16, 2022

H.B. No. 2436: RELATING TO GAMBLING

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Office of the Public Defender opposes in part and supports in part H.B. No. 2436.

Class C Felony

We respectfully oppose the imposition of a heightened penalty of a class C felony for persons who repeatedly commit gambling offenses, to wit, offenses in violation of HRS § 712-1223 (gambling), § 712-1225 (possession of gambling records), and § 712-1226 (possession of gambling devices).

Gambling, possession of gambling records, and possession of a gambling device are all appropriately categorized as misdemeanors. These offenses do not appear in HRS Chapter 708, as they are not property offenses. These offenses most certainly do not appear in HRS Chapter 707 as they are not crimes against a person. They involve neither violence nor a threat of violence. It does not make sense to upgrade a low-level, non-violent offense from misdemeanor to felony.

It is a well-known fact that people who live in Hawai‘i simply love to vacation in Las Vegas. In fact, Las Vegas is often referred to as Hawai‘i’s “ninth island.” Many people from Hawai‘i enjoy gambling. Of course, gambling is legal in the State of Nevada, but it continues to be illegal in the State of Hawai‘i. So, it should come as no surprise that individuals in Hawai‘i who enjoy gambling will occasionally seek out illegal gambling while at home in the islands. Indeed, even those who do not gamble know someone who gambles on college and professional football games. While this is illegal in Hawai‘i, the conduct itself is not much different from what these same individuals do in Las Vegas – staking money upon the outcome of a contest of chance. Arguably, these gambling type offenses are victimless crimes. Aside from the gambler losing money, no one is harmed or injured. This measure seeks to turn these casual offenders, including 6-5 football gamblers, into convicted

felons. Moreover, it is inconsistent, unfair, and unjust that an individual who simply gambles repeatedly will receive the same punishment as the individual who engages in bookmaking, conducts a lottery, or operates an illegal gaming room. (A person who engages in such conduct is guilty of the offense of promoting gambling in the first degree, a Class C felony (*see* HRS § 712-1221)).

Finally, with the recent nationwide review of criminal justice policies, it is concerning that the trend in the State of Hawai‘i is to increase penalties. The courts currently have the ability to incarcerate defendants guilty of gambling, possession of gambling records, and possession of gambling devices for up to one year in jail. In weighing the jail sentence to the conduct in question, one year (at most) seems more than appropriate to penalize such illegal behavior.

Forfeiture

The Office of the Public Defender supports the measure’s proposal to amend HRS § 712A-16 by directing all forfeited property, and the sale thereof, pursuant to HRS § 712-1230, to be distributed to units of state or local government that administer, manage, operate, or oversee programs addressing homelessness, substance abuse, or compulsive gambling. We support any change in the asset forfeiture law that eliminates the financial incentive for law enforcement to seize and keep forfeited property.

Thank you for the opportunity to comment on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
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THE HONORABLE MARK M. NAKASHIMA, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Thirty-first State Legislature
Regular Session of 2022
State of Hawai'i

February 16, 2022

RE: H.B. 2436; RELATING TO GAMBLING.

Chair Nakashima, Vice-Chair Matayoshi and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in opposition to H.B. 2436.

The purpose of this bill is to create increased penalties for repeat offenses of certain gambling crimes, and redirect proceeds specifically forfeited from gambling cases to various state and county programs addressing homelessness, substance abuse and compulsive gambling.

The Department agrees that illegal gambling presents a serious risk to public safety and welfare—particularly those establishments that chronically house illegal gambling activity—and supports the intent to prosecute any individuals tied to these establishments. Hawaii's existing laws make it nearly impossible to prosecute property owners whose properties are used (by renters) as illegal gambling houses. As a result, most gambling cases only involve individuals who work as cashiers or security within these establishments, and they are typically charged with misdemeanor offenses of Promoting Gambling in the Second Degree (section §712-1222, Hawaii Revised Statutes ("HRS")) and/or Possession of a Gambling Device (HRS §712-1226). Typically, these individuals have very little if any criminal record, and they almost never have prior convictions for gambling-related offenses. Many qualify for deferred acceptance of no contest or guilty pleas, which is commonly granted by the court in these types of cases. Therefore, creating higher penalties for repeat offenses of HRS §712-1223 (Gambling) and HRS §712-1225 (Possession of Gambling Records in the Second Degree), may not be effective in curbing the undesired behavior.

With regards to H.B. 2436's proposal to redirect forfeiture proceeds from gambling cases to various rehabilitative programs, the Department notes that, over the last three years,

approximately 85% of the more than 60 forfeiture petitions filed by the Department have involved money seized from illegal gambling operations. These cases require thorough, independent review and legal documents unique to the civil asset forfeiture process, which results in substantial work and expenses for the Department and police. The Department continues this work as it believe that civil asset forfeiture is an effective tool to immediately and effectively disrupt the infrastructure of criminal activity, remove items that further criminal activity and ensure community safety. The proposed amendments in section 4 of this bill, which would divert all gambling forfeiture proceeds to agencies that address homelessness, substance abuse and compulsive gambling, would result in the loss of these proceeds that support the bulk of the Department's continued work on these cases. Although the Department supports funding these invaluable rehabilitative programs, diverting the current proceeds would seriously cripple law enforcement agencies' ability to combat those who profit from illegal activity.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes passage of H.B. 2436. Thank for you the opportunity to testify on this matter.

HB-2436

Submitted on: 2/15/2022 3:39:17 PM

Testimony for JHA on 2/16/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Gerard Silva	Individual	Oppose	No

Comments:

This state is letting out Criminals that rape and rob ,still cars and othe crimies that are much worst and then Gambling. You also slap them on the rist and let them back out in to the public to comnet the same crimes Again . You need to fix this problem befor you can make any more new Laws!!