

SB-228-SD-1

Submitted on: 3/20/2023 9:35:39 AM

Testimony for JHA on 3/22/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Daniel Foley	Commission to Improve Standards of Conduct	Support	Remotely Via Zoom

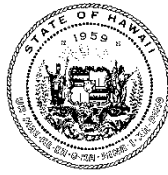
Comments:

Dear Mr. Chairman and members of the Judiciary and Hawaiian Affairs Committee,

As Chair of the Commission to Improve Standards of Conduct, I support SB 228, SD 1, for reasons stated in the Commission's December 1, 2022 Final Report to the House of Representatives, specifically at pages 19 - 20.

Although this was not a bill specifically presented to and considered by the Commission, the bill is encompassed in the Commission's recommendations to have strong state ant-corruption laws.

Mahalo, Judge Daniel Foley (ret.)



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

March 20, 2023

TO: The Honorable David A. Tarnas, Chair
House Committee on Judiciary & Hawaiian Affairs

The Honorable Gregg Takayama, Vice Chair
House Committee on Judiciary & Hawaiian Affairs

Members of the House Committee on Judiciary & Hawaiian Affairs

FROM: Tony Baldomero, Associate Director for ^{TB}
Kristin Izumi-Nitao, Executive Director
Campaign Spending Commission

SUBJECT: **Testimony on S.B. No. 228, SD1, Relating to Fraud.**

Wednesday, March 22, 2023
2:00 p.m., Conference Room 325 & Videoconference

Thank you for the opportunity to testify on this bill.¹ This bill was introduced on behalf of the Commission to Improve Standards of Conduct. The Campaign Spending Commission (“Commission”) supports this bill.

This bill is modeled after federal law and it (1) establishes the offense of making a false, fictitious, or fraudulent claim against the State or any county as a class C felony, (2) prohibits the use or making of false statements or entries in matters within the jurisdiction of the executive, legislative, or judicial branches of the State as a class C felony, and (3) Establishes a general fraud statute that is intended to cover schemes to defraud or for the purpose of obtaining money or property by means of false or fraudulent pretenses, representations, or promises (including a scheme to deprive another of the intangible right of honest services). as a class B felony. The Commission supports the enhancement of criminal penalties for offenses involving public corruption. If enforced, the Commission believes that criminal penalties are the most effective remedies to deter public corruption.

The Commission requests that this Committee pass this bill.

¹ The companion bill is H.B. No. 127, which this Committee did not hear.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-7515

STEVEN S. ALM
PROSECUTING ATTORNEY



THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE DAVID A. TARNAS, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Thirty-Second State Legislature
Regular Session of 2023
State of Hawai`i

March 22, 2023

RE: S.B. 228, S.D. 1; RELATING TO FRAUD.

Chair Tarnas, Vice-Chair Takayama 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 **support** of S.B. 228, S.D. 1, with **suggested amendments**. This bill is part of the Department's 2023 legislative package, and we thank you for hearing it.

The purpose of S.B. 228, S.D. 1 is to establish new criminal offenses under state law, that mirror similar statutes currently used under federal law to deter fraud, false claims, and false statements in the course of business for the executive, legislative, or judicial branches of our government.

While the Department appreciates the intent of the prior committee, we strongly believe **these types of offenses should not be given the opportunity for deferred acceptance of a guilty or nolo contendere plea**, as that could eventually result in the case(s) being wiped from the offender’s record, almost as if it never happened. Notably, the proposed fraud offense could only be committed if the offender acted intentionally (p. 4, ln 5: “intent to defraud”), so it would not be possible for someone to be convicted of this offense if their level of culpability was merely knowing or reckless. Similarly, for false statements, the offender would have to act intentionally or knowingly (p. 5, ln. 10), and it would not be enough simply for the person to act recklessly. For false claims, the State would have to prove beyond a reasonable doubt that the offender knew their claim was false (Section 3, p. 5, ln. 1).

Please keep in mind, even if deferral is prohibited—as the Department believes it should be—it is highly unlikely that these offenders would ever be sentenced to prison time. Based on the Department’s general experience with the State criminal justice system, we would anticipate that all or nearly all offenders convicted of this type of charge would be sentenced to probation. That said,

the Department does believe that mandatory minimum imprisonment should be imposed for the offense of fraud, as a strong and appropriate deterrent to such offenses.

Given the years of scandal that have shaken the public's trust in Hawaii's state and local government, the Department believes our state laws should be amended to reflect the egregious nature of certain offenses—such as fraud, false claims and false statements—that further betray the public's trust and/or manipulate the system to one's own benefit. While federal prosecutors have largely taken the lead in prosecuting incidents of state and local government misconduct, this is largely due to the greater effectiveness and severity of federal laws on the matter. To better equip our county prosecutors with the tools to prosecute this type of corruption, the Department strongly believes our State laws must be strengthened and carry serious consequences. As such, we respectfully **ask that that language be re-instated to prohibit deferral of all 3 of these offenses, and re-instate mandatory minimum term of imprisonment for fraud.**

Every day, thousands of dedicated government workers serve the public diligently and honorably, and their hard work and good reputation should not be marred by those who would selfishly seek their own ends. With the amendments suggested above, the Department believes that S.B. 228, S.D. 1, would appropriately address this type of public corruption, and allow our county prosecutors to reasonably pursue prosecution of these matters.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **supports** the passage of S.B. 228, S.D. 1, with **suggested amendments**. Thank you for the opportunity to testify on this matter.

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.

CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org

RICK BLANGIARDI
MAYOR



ARTHUR J. LOGAN
CHIEF

KEITH K. HORIKAWA
RADE K. VANIC
DEPUTY CHIEFS

OUR REFERENCE PB-MS

March 22, 2023

The Honorable David A. Tarnas, Chair
and Members
Committee on Judiciary and
Hawaiian Affairs
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Tarnas and Members:

SUBJECT: Senate Bill No. 228, S.D. 1, Relating to Fraud

I am Parker Bode, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 228, S.D. 1, Relating to Fraud.


Public corruption erodes community trust and confidence in government. It can also misallocate public resources and degrade economic prosperity. This bill establishes offenses related to public corruption and seeks to tackle deception in government. The proposed measures will serve as a deterrent and will help to restore trust and strengthen democracy.


The HPD urges you to support Senate Bill No. 228, S.D. 1, Relating to Fraud.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


Arthur J. Logan
Chief of Police


Parker Bode, Captain
Criminal Investigation Division

SB-228-SD-1

Submitted on: 3/20/2023 10:51:54 AM

Testimony for JHA on 3/22/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in Strong Support