

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 Finance**

April 4, 2022

S.B. No. 3189, SD2, HD1: RELATING TO GAMBLING

Chair Luke, Vice Chair Yamashita, and Members of the Committee:

The Office of the Public Defender (OPD) respectfully submits comments regarding S.B. No. 3189, SD2, HD1 which seeks to elevate Promoting Gambling in the First Degree and Promoting Gambling in the Second Degree to Class “B” and Class “C” felonies, respectively, and excludes these offenses from qualifying under the deferral statute, Hawaii Revised Statutes (HRS) § 853-4.

**The OPD does not disagree with the intent of this bill; however, Chapter 712, Part III Gambling Offenses should be clarified and corrected before any elevation in grade of offense can occur.**

**HRS § 712-1220 definitions should be corrected.**

The definition of “advance gambling activity” appears in HRS § 712-1220<sup>1</sup> and describes conduct that advances gambling activity. However, the very last line of the definition erroneously adds, “[A] person advances gambling activity if he plays or participates in any form of gambling activity.” To include simple gambling under activity known as “advancing gambling activity” was certainly not the intention of the legislature. Under this language, the otherwise law-abiding individual making a

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<sup>1</sup> A person “advances gambling activity” if he engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device, or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. A person advances gambling activity if, having substantial proprietary control or other authoritative control over premises being used with his knowledge for purposes of gambling activity, he permits that activity to occur or continue or makes no effort to prevent its occurrence or continuation. *A person advances gambling activity if he plays or participates in any form of gambling activity.*

“6-5” bet<sup>2</sup> on a sporting event is treated the same as an owner/operator who is actually advancing gambling activity. HRS § 712-1220 incorrectly conflates “advancing gambling activity” and “gambling.”

This means that the simple player or participant in gambling activity could potentially be charged with the same offense (Promoting Gambling) that the property owner or the “house” would be.

### **HRS § 712-1223 Gambling should be corrected.**

HRS § 712-1223 defines misdemeanor gambling as one who “knowingly advances or participates in any gambling activity.” The statute once again conflates “advancing gambling activity” with “gambling.” Misdemeanor gambling should simply be defined as “participating in any gambling activity.” As it currently stands, if an individual is allegedly “advancing gambling activity,” this individual could theoretically be charged under three different statutes: HRS § 712-1221 Promoting Gambling in the First Degree (“*advances* or profits from gambling activity”), HRS § 712-1222 Promoting Gambling in the Second Degree (“*advances* or profits from gambling activity”); or HRS § 712-1223 Gambling (“*advances* or participates in any gambling activity”). “Advances” should not appear in the simple gambling offense of HRS § 712-1223. But what is of more concern is that if one is simply gambling illegally, per the wide-ranging definition in HRS § 712-1220, one could be charged with Promoting Gambling in the Second Degree, which this measure seeks to elevate to a Class “C” felony.

Additionally, the definition of “gambling” also appears in HRS § 712-1220 and is inconsistent with HRS § 712-1223, insofar as the word “advances” does not appear. Gambling in HRS § 712-1220, in pertinent part, is defined as, “A person engages in gambling if he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome...” Furthermore, the definition of gambling, as it appears in HRS § 712-1220, is consistent with the definition of “player” as a “person who engages in gambling solely as a contestant or bettor.”

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<sup>2</sup> “6-5” game is when a losing better would have to pay \$6 on every \$5 wager.

**Promoting Gambling 1st and 2nd Degree should not be excluded from a deferral in HRS § 853-4.**

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The OPD is generally opposed to any measure that strips sentencing judges of discretion and the ability to consider a broad range of options at sentencing. Pursuant to HRS § 853-1 a judge has the discretion to grant a defendant a deferred acceptance of his or her no contest or guilty plea. The exercise of discretion in sentencing is one of the primary responsibilities endowed upon judges. Excluding the gambling offenses from the deferral statute would unnecessarily limit the judge's discretion.

Judges are subjected to a rigorous vetting process. A process that involves a roughly 40+ page judicial application, the Judicial Selection Committee interviewing and selecting, the Hawai'i State Bar Association interviewing and recommending, selection by either the Governor or the Chief Justice, and Senate confirmation. Judges are selected for their integrity, diligence, legal knowledge and ability, professional experience, judicial temperament, financial responsibility, public service, and their ability to fulfill the responsibilities and duties of the position. Judges should retain the power and authority to treat and consider each case on an individual basis. Judges should have the discretion to weigh mitigating factors as well as aggravating factors and to sentence the defendants that come before them accordingly. They are in a much better position to review a person's history, character, remorse, rehabilitative efforts, or lack thereof, family support etc.

Thank you for the opportunity to comment on this measure.

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 SYLVIA LUKE, CHAIR**  
**HOUSE COMMITTEE ON FINANCE**  
**Thirty-first State Legislature**  
**Regular Session of 2022**  
**State of Hawai'i**

April 4, 2022

**RE: S.B. 3189, S.D. 2, H.D. 1; RELATING TO GAMBLING.**

Chair Luke, Vice-Chair Yamashita, and members of the House Committee on Finance, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in **support** of S.B. 3189, S.D. 2, H.D. 1, with a suggested amendment.

The purpose of this bill is to increase penalties for Promoting Gambling in the First and Second degrees (sections 712-1221 and 712-1222 of the Hawaii Revised Statutes ("HRS")), to class B and C felonies, respectively. It would also prohibit deferred acceptance of guilty or no contest plea, for both offenses.

The Department strongly agrees that illegal gambling poses a serious risk to public safety and welfare, and is particularly concerned about establishments that chronically house illegal gambling activity. As indicated in Section 1 of S.B. 3189, S.D. 2, H.D. 1, such enterprises have already been shown to attract and foster violence, illicit drugs, sex trafficking, and other dangerous activity. S.B. 3189, S.D. 2, H.D. 1, will help to deter—and more effectively hold offenders accountable for—illicit gambling activity. That said, the Department respectfully **suggests that the state of mind for these offenses be amended to (criminal) negligence**, as in the original version of H.B. 2197 (the bill from which the language of S.B. 3189, S.D. 2, H.D. 1, was derived), **in an effort to hold property owners responsible—to a reasonable extent—when their property is repeatedly used as an illegal gambling establishment.**

Currently, law enforcement operations typically result in the arrest and prosecution of only low-level participants, such as the cashiers or security guards on-premises, because it is exceedingly difficult, if not practically impossible, to hold property owners criminally liable for anything that occurs on their property. Even if repeated violations occur at the same property, it

is highly unlikely that property owners (or even mid- to upper-level organizers) could ever be held to a *reckless* state of mind—in terms of their knowledge of the activities—beyond a reasonable doubt, as they are almost never physically on premises and/or witness the activity. Notably, HRS §712-1221 and HRS §712-1222 currently have an even higher state of mind requirement than recklessness (i.e. “knowing”). **Lowering the state of mind to negligence could potentially lead to convicting higher-level participants associated with these types of enterprises.** At the same time, truly innocent property owners—such as an elderly person who is currently in a nursing home, ignorant of the fact that their adult children are using their property as an illegal gambling establishment—could not be prosecuted under these laws, because that would not rise to the level of negligence.

With regards to the low-level workers who are routinely charged under HRS §712-1222, Promoting Gambling in the Second Degree, increasing that offense to a class C felony may assist in deterring their participation in the first place, if HRS §853-4(a)(5) is also amended to prohibit deferral. Based on the Department’s experience, the current sentencing provisions for this offense are not a significant deterrent, as these low-level workers typically qualify for deferred acceptance of guilty or no contest plea—which the court commonly grants in these types of cases—meaning that the case is basically dismissed after one year, if defendants meet all terms and conditions of their deferral.

While the Department believes that it would be more effective for offenders to be denied probation or suspension of sentence, as originally written in H.B. 2197, increasing this offense to a felony—for which there is no opportunity for deferral— may be enough of a deterrent for workers, to significantly hinder and/or discourage these establishments. Notably, even those who do plead no contest or guilty to Promoting Gambling in the Second Degree currently have very little penalty, as they are typically sentenced to “credit for time served” or placed on probation, with no additional jail sentence.

In recent years, the Department has received increasing complaints about illegal gambling establishments in commercial and residential neighborhoods, and the dangers presented by these establishments are featured on the front page of the newspaper all too often, or the subject of reports such as the one published by the Hawaii State Commission on the Status of Women in 2021. Given the dire circumstances created by illegal gambling houses throughout Oahu, the Department has utilized and will continue to utilize whatever tools it is given by the Legislature and the rule of law, to prosecute those who would establish and maintain these unscrupulous enterprises in our communities.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **supports** passage of S.B. 3189, S.D. 2, H.D. 1, with the suggested amendment regarding “negligence.” Thank for you the opportunity to testify on this matter.



Hawai'i

Committee: House Committee on Finance  
Hearing Date/Time: Monday, April 4, 2022 at 2:30pm  
Place: Conference Room 308 and Via Videoconference

**Testimony of the ACLU of Hawai'i in opposition to SB 3189, SD2, HD1  
Relating to Gambling**

Dear Chair Luke, Vice Chair Yamashita. and members of the Committee:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") submits this testimony in **opposition to SB3189, SD2, HD1**, which makes the penalty for the offense of possession of a gambling device a misdemeanor for the first offense and a class C felony for a second or subsequent offense that occurs within ten years of a prior conviction. This latest draft also deletes language that would have directed all forfeited property or proceeds from sales thereof to units of state or local government that administer, manage, operate, or oversee programs addressing homelessness, substance abuse, or compulsive gambling.

The Department of the Prosecuting Attorney in the City and County of Honolulu supports this measure based on their submission that "illegal **gambling** poses a serious risk to public safety and welfare." Rather than citing metrics, the Prosecuting Attorney points to front page newspaper stories about **gambling** establishments.

As policymakers, we urge you to consider local data, as well as national and state trends towards criminal legal reforms, before enacting laws that would increase the felony class level and consequently, increase sentencing terms, incarceration rates, and the collateral consequences of criminal records.

The **Statistical Reports from the Judiciary for 2020-21** shows a limited number of **gambling** cases pending throughout all circuits in Hawaii – seventeen (17) at the start of that time period. See Table 7.<sup>1</sup>

Table 12 shows the total number of sentenced meted out by all Circuit Courts in Hawaii for **gambling** offenses. In 2020-2021, forty-nine (49) persons were sentenced for **gambling**.

Interestingly, Table 13 shows the total number of persons sentenced in the First Circuit (Oahu) for **gambling**. **In 2020-2021, the number was zero (0).**

During that same fiscal year, forty-four (44) persons were sentenced to **gambling** within the Second Circuit (Maui). See Table 14

Five (5) persons were sentenced to **gambling** in the Third Circuit (Hawai'i– Big Island) in 2020-2021. See Table 15

Like Oahu, no persons were sentenced for **gambling** offenses in 2020-21 in the Fifth Circuit (Kauai). See Table 16

<sup>1</sup> <https://www.courts.state.hi.us/wp-content/uploads/2021/12/AD-P-751-StatsRpt2021.pdf>

According to the Crime in Hawaii, 2020 Report for Crime in City and County of Honolulu, prepared by the Attorney General's Research and Statistics Branch, a total of fifty (50) people were arrested for **gambling** offenses in the City and County of Honolulu in 2020.<sup>2</sup>

For reasons unknown, it appears that in 2020-2021, nearly fifty (50) people were sentenced to **gambling** in the Maui and Hawai'i island circuit, but none within the First Circuit (Oahu).

**Based on the Circuit Courts Caseload activity in 2020-21 and AG's Crime in Hawaii 2020 Report, it appears that **gambling** is less of a concern and priority for police compared to other criminal offenses. (In comparison, there were over 3,000 criminal cases for controlled substances and over 2,000 for theft.)**

Elevating repeat **gambling** offenses to a Class C felony and accompanying longer sentences is inconsistent, unfair and disproportionate compared to other criminal offenses. Moreover, there is no evidence to support the Prosecutor's "hope" that that the proposed bill will deter illegal **gambling**.

This proposed measure is based on the debunked theory that criminalizing and enhancing penalties for gambling will have a deterrent effect. **There are already laws criminalizing the conduct targeted by this bill, and there is no proof cited that increasing the promotion of gambling to a Class C felony for repeat offenses and enhanced penalties will have a deterrent effect.**

Under this measure, a person who is convicted of playing or participating in any form of gambling more than once would now be subjected to a Class C felony. **SB 3189 SD2 HD1 is an expensive change that has the potential to increase overcrowding in our jails and prisons, with no demonstrated benefit to public safety.**

For decades, Hawai'i has experienced severe overcrowding in our jails and prisons, resulting in inhumane conditions of confinement. **Taxpayers bear the costs of incarceration – paying \$219 to incarcerate an adult per day or nearly \$80,000 a year** to place people in jails and prisons where people use drugs, and experience extortion and violence, and only a small fraction receive comprehensive health care and rehabilitation opportunities.

**Currently, in Hawai'i, 560,800 people have a criminal legal record.** That is 1 in 2, or over 50% of people are saddled with records that could block their access to jobs, housing, education, starting a business, or participating fully in social and civic community life. In the digital era, with nearly 9 in 10 employers, 4 in 5 landlords, and 3 in 5 colleges<sup>3</sup> now using background checks, any record—no matter how old or minor—can put employment, housing, education, and other basics permanently out of reach.

By increasing a repeat offense of promoting gambling to a Class C felony, Hawai'i will move further away from data-driven criminal legal reforms – and subject more people to the collateral consequences of a criminal record.

- For example, a criminal record reduces a job seeker's chance of getting a callback or job offer by nearly 50 percent.<sup>4</sup>

<sup>2</sup> <https://ag.hawaii.gov/cpja/files/2021/11/Crime-in-the-City-and-County-of-Honolulu-2020.pdf>

<sup>3</sup> <https://www.americanprogress.org/article/news-can-use-research-roundup-re-entry-advocates/>

<sup>4</sup> <https://scholar.harvard.edu/pager/publications/sequencing-disadvantage-barriers-employment-facing-young-black-and-white-men>

- Formerly incarcerated people are **nearly 7 times more likely** than the general public to experience homelessness.<sup>5</sup>

Hawai'i's families will continue to bear the human and financial cost of incarceration until we implement meaningful, community-based solutions and alternatives to incarceration. Many groups, including the ACLU of Hawai'i,<sup>6</sup> have proposed pathways for divestment from incarceration and reinvestment in our communities. This measure only takes us further from the progress our state so desperately needs.

For these reasons, ACLU of Hawai'i respectfully requests that the Committee defer this measure, and instead invest in evidence-based strategies that have proven to reduce pathways to crime and desistance from crime. Thank you for the opportunity to submit testimony in opposition to **SB 3189 SD2 HD1**.

Sincerely,

Carrie Ann Shirota  
Policy Director  
ACLU of Hawai'i

*The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for over 50 years.*

American Civil Liberties Union of Hawai'i  
P.O. Box 3410 Honolulu,  
Hawai'i 96801T:  
808.522.5900  
F: 808.522.5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)[www.acluhawaii.org](http://www.acluhawaii.org)

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<sup>5</sup> <https://www.prisonpolicy.org/reports/housing.html>

<sup>6</sup> In 2019, the American Civil Liberties Union, in partnership with the ACLU of Hawai'i and Urban Institute, released the Blueprint for Smart Justice Hawai'i. This report resulted from a two-year research project dedicated to identifying key reforms in Hawai'i that would cut the state's incarcerated population in half and reduce racial disparities in Hawai'i's corrections system. The report is available at <https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-HI.pdf> and may serve as a resource as the Legislature considers future reforms.



**SB-3189-HD-1**

Submitted on: 4/1/2022 9:52:00 AM

Testimony for FIN on 4/4/2022 2:30:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Linda Reeve         | Individual          | Support                   | Written Testimony<br>Only |

Comments:

The amount of gambling homes that continue to open even after being raided just goes to show that the current system doesn't deter them. The consequences have to be severe enough to make them think twice about opening back up. They make so much money on a daily basis that the current fines are nothing to them. The rest of the community has to deal with the consequences so please make pass this bill so that its the criminals that actually pay the consequences instead of the community.

**SB-3189-HD-1**

Submitted on: 4/1/2022 11:57:51 AM

Testimony for FIN on 4/4/2022 2:30:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Patty Teruya        | Individual          | Support                   | Written Testimony Only |

Comments:

Aloha Lahu'i,

Happy Aloha Friday....

I SUPPORT BILL 3189 SD2 HD1 as it increases the penalties and brings awareness to an on-going problem.

Together we can make a strong message in our communities, let's work together in taking a stand in changing the laws.

We do not support Illegal Gambling Rooms or businesses! (Homesteads and in communities) many communities have encountered years of illegal gambling establishments, our community of Wai'anae has over 28 or more illegal gambling to pop up on our Homesteads, businesses, homes. We together can clean our communities in making it a safe and better place to live, work and play!

Please send your testimony in supporting the Bill.

Mahalo,

Patty Kahanamoku-Teruya

**SB-3189-HD-1**

Submitted on: 4/1/2022 12:37:01 PM

Testimony for FIN on 4/4/2022 2:30:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Alice Abellanida    | Individual          | Support                   | Written Testimony<br>Only |

Comments:

I support this bill.

**SB-3189-HD-1**

Submitted on: 4/1/2022 1:01:39 PM

Testimony for FIN on 4/4/2022 2:30:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Gerard Silva        | Individual          | Oppose                    | Written Testimony<br>Only |

Comments:

There are many crimes that are worst than Gambling. Like Child Sex Trafficking Money Laundering which we know is going on in our own Legislature and Government which should be Felonies Fix the Problems not create more. Gambling should only be a Misdemeanor!!

**SB-3189-HD-1**

Submitted on: 4/2/2022 6:25:40 AM

Testimony for FIN on 4/4/2022 2:30:00 PM

| <b>Submitted By</b>    | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|------------------------|---------------------|---------------------------|------------------------|
| Susan Yamane-Carpenter | Individual          | Support                   | Written Testimony Only |

Comments:

Dear Rep.Nakashima and Rep. Makayoshi,

I support stronger measures to deal with illegal gambling houses. I also favor directing the proceeds from the sale of gambling equipment to services addressing homelessness and substance abuse.

I live on Pokai Bay Street in Waianae. For the past several years a former neighbor's abandoned home became a gambling house. At 4 pm in the afternoon the community park parking lot across the street filled up with cars. A steady stream of gamblers and local homeless flowed into the dilapidated house. At night the squatters took over the property. The house was always full of trash, and the trash spread across the street into the park . It took HPD several years to close in on the gambling operation. Once the gambling was shut down, the afternoon traffic to the park and the number of homeless milling around the property and Lualualei Beach Park subsided. Gambling can destroy a neighborhood. Those benefitting from gambling establishments need to be dealt with in a serious manner.

Sincerely,

Sue Yamane-Carpenter

86-012 Pokai Bay St, Waianae

**SB-3189-HD-1**

Submitted on: 4/2/2022 6:41:24 AM

Testimony for FIN on 4/4/2022 2:30:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Dan Carpenter       | Individual          | Support                   | Written Testimony<br>Only |

Comments:

I support any bill that might help reduce illegal gambling. Crime and homelessness increased when it occurred on our street. Also a more speedy police response is needed. It took over 2 years of our complaints to get them shut down.

**SB-3189-HD-1**

Submitted on: 4/2/2022 7:05:46 AM

Testimony for FIN on 4/4/2022 2:30:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Katherine Kamada    | Individual          | Support                   | Written Testimony<br>Only |

Comments:

As a former teacher at Nanakuli High And Intermediate School, I have seen sometimes daily the consequences of gambling whether it be on campus or as a result of illegal gambling off campus. Students gambled away their lunch money; fought over gambling; it was a distraction to learning; and it took away the privilege for students to use restrooms because of gambling. This is just a tip of the iceberg of a list of why gambling is a detriment to society. I am against all forms of gambling in Hawaii.

**SB-3189-HD-1**

Submitted on: 4/2/2022 7:48:54 AM

Testimony for FIN on 4/4/2022 2:30:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Heather Graeber     | Individual          | Support                   | Written Testimony<br>Only |

Comments:

I support.



**SB-3189-HD-1**

Submitted on: 4/2/2022 4:33:33 PM

Testimony for FIN on 4/4/2022 2:30:00 PM

| <b>Submitted By</b> | <b>Organization</b>         | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|-----------------------------|---------------------------|------------------------|
| Mary Ellen Apostol  | Neighborhood Security Watch | Support                   | Written Testimony Only |

Comments:

AS a member of the NSW for Pokai Bay/ Lualualei Beach Park 11, our community has been exposed to game room activity for 2 years without enforcement, witnessing the drug,prostitution activity and noise 24/7. I personally had to deal with a game room directly across the street from me. Traffic of motor cycles, moppeds, cars & skateboards surrounded my resident day and night interrupting my sleep daily. Strangers congregating outside my home and hearing their converstions.

I/we support the increased penalties for game room activity of SB3189 SD2 SD1.