

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**

March 17, 2022

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

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

The Office of the Public Defender respectfully opposes S.B. No. 3189, SD2.

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 the threat of violence. It makes no logical sense to upgrade a low-level, non-violent offense from a misdemeanor to a felony. In stark contrast, the offense of Abuse of Family or Household Member is a misdemeanor that involves violence. Intentionally, knowingly, or recklessly causing bodily injury to a family member, for a first offense, carries a two-day mandatory minimum jail sentence, along with mandatory terms and conditions of probation. A second offense within one year remains a misdemeanor, but carries a mandatory thirty (30) day jail sentence. This is an appropriate “escalation” of sentence in response to a repeat offense. What justification is there to turn a second gambling conviction within ten years into a 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 supported the original version of S.B. No. 3189 that included a 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 supported this change in the asset forfeiture law that eliminated the financial incentive for law enforcement to seize and keep forfeited property. The current version of S.B. No. 3189, SD2 fails to address this issue and the Office of the Public Defender respectfully requests that §712A-16 (Disposition of property forfeited) subsection (3) be reinstated.

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

March 17, 2022

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

Chair Nakashima, Vice Chair Matayoshi, and members of the Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following comments regarding S.B. 3189, S.D. 2.

The purpose of this bill is to create increased penalties for repeat offenses of certain gambling crimes, in order to address an increase in illegal gambling and illegal game rooms.

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. While the Department does not oppose the idea of making a “tiered” penalty system for these offenses, we do note that the individuals who work as cashiers or security within these establishments typically 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 are commonly granted by the court in these types of cases.

That said, creating higher penalties for repeat offenses of HRS §712-1223 (Gambling), HRS §712-1225 (Possession of Gambling Records in the Second Degree) and Possession of a Gambling Device (§712-1226, H.R.S.), may not be particularly effective in curbing the activities of illegal gambling establishments. Nevertheless, **should the Committee believe this approach presents an effective deterrent to future activity, the Department would suggest including HRS §712-1222 (Promoting Gambling in the Second Degree) as another offense eligible for increased penalties.**

Thank for you the opportunity to testify on this matter.

SB-3189-SD-2

Submitted on: 3/15/2022 2:29:20 PM

Testimony for JHA on 3/17/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dana Keawe	Individual	Support	Written Testimony Only

Comments:

Support SB3189 SD2

SB-3189-SD-2

Submitted on: 3/15/2022 3:38:29 PM

Testimony for JHA on 3/17/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jennifer Azuma Chrupalyk	Individual	Support	Written Testimony Only

Comments:

Thank you for empowering prudence.

LATE

SB-3189-SD-2

Submitted on: 3/16/2022 7:47:50 PM

Testimony for JHA on 3/17/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Nikos Leverenz	Individual	Oppose	Written Testimony Only

Comments:

Chair Nakashima, Vice Chair Matayoshi, and Committee Members:

Given Hawaii's perennially overcrowded jails and prisons, and the ever-increasing costs of incarceration, the Legislature should endeavor to enact meaningful sentencing reforms, among other efforts to reduce the number of people in correctional facilities and under correctional supervision. This includes a bloated probation system that features the longest average term of any state in the nation (59 months).

The creation of new felonies is not warranted at this time.

As noted by the Honolulu prosecutor's prior testimony, the increased penalties provided for in this bill will most significantly impact those who are tasked with cashier or security duties.

As noted by the Office of the Public Defender's prior testimony, asset forfeiture proceeds should be dedicated to the general operating revenues of state and local governments to curb the current incentives to "police for profit." Unfortunately, the current Governor has not supported the meaningful reform efforts that the Legislature passed after the scathing [2018 report from the State Auditor](#). The report found that millions of forfeiture proceeds were mismanaged in a relatively short window of time, dedicated to overtime costs instead of the programs called for in statute. Hawaii's forfeiture law also has an unusual bond requirement that deters and functionally precludes those who have had relatively small sums from challenging forfeiture actions.

Should policymakers seek to reduce the negative externalities associated with illicit gaming, including the appearance of game rooms in commercial and residential neighborhoods, due consideration must be given to the legalization, regulation, and taxation of gaming. The legalization of online sports wagering through a public private partnership with an established gaming company could prove to be a modest and promising start.

Mahalo for the opportunity to provide testimony.