

STATE OF HAWAII
OFFICE OF THE PUBLIC DEFENDER

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

February 4, 2022

S.B. No. 3189: RELATING TO GAMBLING

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Office of the Public Defender opposes in part and supports in part S.B. No. 3189.

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.

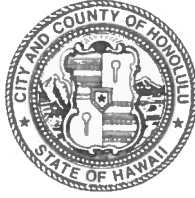
Forfeiture

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.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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



RICK BLANGIARDI
MAYOR

RADE K. VANIC
INTERIM CHIEF

OUR REFERENCE PJ-GK

February 4, 2022

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: Senate Bill No. 3189, Relating to Gambling

I am Major Phillip Johnson of the Narcotics/Vice Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 3189, Relating to Gambling.

In recent years, the HPD has seen a steady rise in complaints involving illegal gambling establishments. These game rooms operate 24/7, where the most undesirable elements gravitate, causing peripheral crimes such as narcotics trafficking, assaults, robberies, thefts, vehicle break-ins, and even homicides.

Illegal gambling establishments create a nuisance to the community that includes excessive noise, unnecessary foot traffic, and loitering at all hours. Additionally, numerous studies have confirmed that gambling causes problems such as bankruptcy, theft, embezzlement, suicide, child abuse and neglect, divorce, incarceration, and homelessness.

In 2021, the HPD disrupted 50 illegal game rooms, seized over \$340,000, recovered nearly 696 gambling machines, and made 85 arrests. Many of those arrested were repeat offenders operating at repeat establishments. The HPD supports legislation that increases penalties for repeated gambling offenders.

The Honorable Karl Rhoads, Chair
and Members
February 4, 2022
Page 2

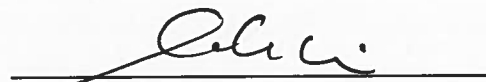
The HPD urges you to support Senate Bill No. 3189, Relating to Gambling, and thanks you for the opportunity to testify.

Sincerely,



Phillip Johnson, Major
Narcotics/Vice Division

APPROVED:



Rade K. Vanic
Interim Chief of Police

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 KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-first State Legislature
Regular Session of 2022
State of Hawai'i

February 4, 2022

RE: S.B. 3189; RELATING TO GAMBLING.

Chair Rhoads, Vice-Chair Keohokalole and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in opposition to S.B. 3189.

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 (§712-1222, H.R.S.) and/or Possession of a Gambling Device (§712-1226, H.R.S.). 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 S.B. 3189'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 S.B. 3189. Thank for you the opportunity to testify on this matter.

SB-3189

Submitted on: 1/31/2022 5:19:09 PM

Testimony for JDC on 2/4/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Cathy Goeggel	Individual	Support	No

Comments:

On behalf of Animal Rights Hawai'i I urge passage of this bill and we suggest that the defendants' chickens be confiscated and that he/she be prohibited from owning any chickens/roosters ever again.Mahalo

THE SENATE
THE THIRTY-FIRST LEGISLATURE
REGULAR SESSION OF 2022

COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

NOTICE OF HEARING

DATE: Friday, February 4, 2022
TIME: 9:30 a.m.

Thank you for the opportunity to testify on **SB 3189** in **SUPPORT**. Overtime illegal gambling activity has increased along the Waianae Coast per Honolulu Police Department report at the Waianae Coast Neighborhood Board #24 a few months ago. Another reason for the increase is the "lack of police officers" in District 8 therefore, the "lack of enforcement." According to HPD, gambling houses "pop" up at other locations as soon as one house is raided by special forces.

Sincerely,

Johnnie-Mae L. Perry

Resident of Waianae

Email: waianaenb569@gmail.com