

Pennsylvania State Police Testimony
Electronic Gambling Devices
House Gaming Oversight Committee
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Presented by:
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Good morning Chairmen Marshall and Conklin, and members of the House Gaming Oversight Committee. I am Major Scott Miller of the Pennsylvania State Police (PSP) and currently serve as the Director of the Bureau of Liquor Control Enforcement (BLCE). Joining me today are Lieutenant Michael Gaines, Eastern Section Commander, and Lieutenant Jeffrey Rineer, Central Section Commander. Thank you for the opportunity to appear before you today to discuss enforcement involving illegal electronic gambling devices and be part of the conversation about strengthening our ability to enforce prohibitions against illegal, unregulated gaming.

While illegal gambling is not new to the Commonwealth, we have experienced great expansion of this industry, both in number of devices and the variety of venues in which they are being operated. I would like to begin with some opening remarks, and then I will be available for questions; however, I must note, we have several cases currently pending in both the courts of common pleas and Commonwealth court, so some of my responses may be limited.

The Bureau of Liquor Control Enforcement has and continues to enforce violations involving illegal gambling. Since 2013, the BLCE has seized an average of 590 machines per year. Despite these efforts, illegal electronic gambling devices are present in Pennsylvania liquor licensed establishments. Several of my predecessors and I have been asked to estimate the number of illegal gambling devices in operation in the Commonwealth. In 2017, BLCE conducted a four-week study to examine the number of machines observed, and then extrapolated that figure to the number of licensees in the category of liquor licensees (other than licensed Casinos), where historically machines had been observed. Based upon those calculations, we conservatively estimated there

were 13,500 machines in operation in liquor licensed establishments, creating a \$350 million-dollar (gross revenues) per year illegal industry.

To be clear, these are not merely video games played to obtain a high score and input your name or initials. Nor are they arcade- type games where you may take your children to play and they win tickets, which they later exchange for trinkets or nominal prizes.

These devices accept one hundred dollar bills and advertise payouts in excess of one thousand dollars.

In January of 2019, BLCE began documenting the number of devices within liquor licensed establishments and is continuing to do so. As of May 31, 2019, after only inspecting a portion of the total licensees (not including licensed Casinos), BLCE found 1,822 businesses to have one or more machines, and the total number of machines observed was 4,368. Suspected illegal gambling devices were observed in liquor licensed establishments in every county in the Commonwealth.

As mentioned previously, since 2017, we have seen an increase in the number of machines and the types of venues in which they are being placed. Traditionally, electronic gambling devices have been placed in clubs (“C” licenses) or catering clubs (“CC” licenses), and limited numbers of restaurants (“R” licenses), and hotels (“H” licenses). The increased placement of “gray machines” or alleged “skill machines” have personally been observed by members of the BLCE in convenience stores, markets, truck stops, malls, and independent gambling establishments advertised and created in buildings and strip malls. These venues create an extra area of concern. As you know, gambling in Pennsylvania’s licensed casinos is strictly controlled and limited to persons

age 21 or older. There are no controls present in these expanded illegal venues to prevent minors from gambling. We have observed gambling devices placed next to candy displays in convenience stores.

Presently, we are aware of at least 5 different manufacturers of alleged "skill based" electronic gambling devices operating in the Commonwealth. Several of these manufacturers use different brand names, have multiple game types, and most have different software versions of the deployed devices.

Why do illegal electronic gambling devices continue to exist, despite enforcement? The machines are lucrative to both the vendor and the business owner; this is a multi-million-dollar industry, as machines generate \$100.00 - \$1,000.00 of income per week, while occupying a very small foot print, approximately 3 feet by 3 feet square, within the business. These proceeds are usually paid to the business owner by the vendor in cash and may or may not be reported for tax purposes. One manufacturer reportedly has 9,000 machines operating in the Commonwealth. Presuming an average income of \$500 per machine, per week, this would generate \$4.5 million in gross revenues per week for that one manufacturer .

As one example of the lack of tax reporting, we obtained information from a bartender that they contacted the bar owner about providing a W2-G tax form to a winner for a large payout on one of these devices, and they were simply told by the owner it was the vendor's responsibility, and no tax form was ever provided.

We have received information from liquor licensees who have stated they believe the machines are illegal, but have resorted to putting them into their establishments, because they are losing business to other liquor licensees, who have the machines in

their facility. Additionally, we received information from a vending company, who was told if they would not provide gambling machines to a liquor licensee, they need to remove their legitimate vending equipment, because the licensee was shifting to another vending machine distributor.

Many people believe that gambling is a victimless crime. The PSP routinely receives complaints from families who are victimized by family members who lose all their money in these illegal gambling devices, due to gambling addictions or impaired judgment. Illegal electronic gambling devices are unregulated, there are no set payout requirements, and payout retention may be changed by the manufacturers or vendors.

Why isn't the BLCE more aggressive in the enforcement of this illegal activity? These cases take time to develop. They involve undercover operations, and significant expenditures of time and money. Historically, these cases have been investigated with the aim of prosecuting the vendors of these machines, for felony violations of corrupt organizations, based upon the "Racketeering activity" associated with the gambling. Penalties for possession of the machines are a Misdemeanor 1, under the Crimes Code. Violations for possessing gambling machines under the Liquor Code are a standard range violation, usually resulting in a fine of approximately \$750.00, and historically, have not jeopardized the business' liquor license. The PSP, BLCE has worked with the Pennsylvania Liquor Control Board to address this issue.

Existing case law has further challenged law enforcement in our efforts to shut down these illegal gambling enterprises. Despite these challenges, we are committed to enforcing the law, and we continue to investigate the persons and venues engaged in these illegal activities.

The elements of gambling are: *consideration (money placed into a machine)*, *chance (the randomness of some act, i.e. spinning of a slot reel)*, and *reward (payout of cash or item of value)*. Due to case law, the element of chance vs. skill is measured by a predominant factor test. The nature of this determination, regarding specific gambling machines, has been placed upon the court system. This can, and has resulted, in differing opinions across the Commonwealth. One district attorney or common pleas judge may see a machine as being predominantly skill, and another may view the same machine as being predominantly chance.

Another challenge in making this determination is the technology associated with gaming devices is constantly changing. Individual devices may operate differently than other devices placed within a similar cabinet, or being labelled with the same name. Software versions may change or be upgraded. Increasingly this may be done remotely via an internet connection, thereby possibly making yesterday's machine different than the one in operation today. Thus, each case, outside established *per se* devices, may require an independent review, and will not result in precedential case law. Other technological advances such as remote control knock-off devices, and cellular telephone applications to shut down systems, have been encountered by our officers.

What can be done legislatively to address this issue? Under Title 4, the PSP believe these so-called games of skill machines are already illegal, and that is the subject of a declaratory judgment action presently pending in Commonwealth Court. This new proposed legislation will strengthen our ability to enforce the law.

Again, thank you for this opportunity to appear before you, and I will be glad to answer any questions.