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**THE HONORABLE AARON LING JOHANSON, CHAIR**  
**HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE**  
**Thirty-first State Legislature**  
**Regular Session of 2021**  
**State of Hawai`i**

March 18, 2021

**RE: S.B. 1342, S.D. 1; RELATING TO ILLEGAL GAMBLING.**

Chair Johanson, Vice Chair Kitagawa, members of the House Committee on Consumer, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony, supporting the intent of S.B. 1342, S.D. 1, with express concerns.

The purpose of S.B. 1342, S.D. 1, is to add a new subsection to HRS §712-1221, Promoting gambling in the first degree, to elevate “hosting activities that advance gambling activity on real property” to a class C felony.

The Department agrees that illegal gambling presents a serious risk to public safety and welfare—particularly those establishments that are chronically housing illegal gambling activity—and supports the intent to prosecute the real property owners, managers or others who would knowingly “host” gambling activity on real property under their authority or control. That said, we do have concerns about whether the proposed amendment would be enforceable, in the manner we believe it is intended.

In criminal proceedings, it is exceedingly difficult, if not practically impossible, to hold property owners criminally liable for any activity that occurs on their property—beyond a reasonable doubt—if they are never physically on-premises and/or witness to the activity. While the low-level workers on premises are already charged under HRS §712-1222, Promoting gambling in the second degree, a misdemeanor, it is highly unlikely that an actual property owner(s), or even mid- to upper-level organizers, could ever be held even to a reckless state of mind—in terms of their knowledge of the activities—if it must be proven beyond a reasonable doubt. Notably, HRS §712-1221 and HRS §712-1222 have an even higher state of mind requirement (i.e. “knowingly”).

Current efforts to “impact” property owners is primarily done through civil asset forfeiture proceedings, and this applies as much to gambling as it does to sex trafficking, drug trafficking, or other such heinous crimes.

In terms of creating a new felony offense for “hosting” gambling activities on real property, we greatly appreciate the intent, but we believe the phrases “receiving and entertaining others” or “providing services and resources to others” are quite broad, and would likely encompass the low-level workers who are already being prosecuted for misdemeanors, whose actual level of involvement and/or profit may not merit felony charges. The phrase “organizing or promoting” may reach a different level of worker, but in our experience, it is also impossible or nearly impossible to prove the identity or involvement of organizers.

We do note that the general definition of “advance gambling activity” (HRS §712-1220), contains relevant language, which currently applies to both Promoting gambling in the first and second degrees, as follows:

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.

Depending on the Committee’s intent, there may be multiple ways of approaching amendments to this or other sections of the gambling laws, and our Department welcomes the opportunity to discuss this matter further with proponents of the bill and other stakeholders. Given the serious negative effects that illegal gambling has on our community, the Department greatly appreciates all efforts to make enforcement of Hawaii’s gambling laws more effective and lasting.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the intent of S.B. 1342, S.D. 1, with express concerns. Thank you for the opportunity to testify on this matter.