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THE HONORABLE MARK M. NAKASHIMA, CHAIR
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Thirty-first State Legislature
Regular Session of 2021
State of Hawai`i

March 24, 2021

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

Chair Nakashima, Vice Chair Matayoshi, members of the House Committee on Judiciary & Hawaiian Affairs, 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, H.D. 1, with express concerns.

The purpose of S.B. 1342, S.D. 1, H.D. 1, is to add a new subsection to HRS §712-1221, Promoting gambling in the first degree, to elevate advancing gambling activities by “receiv[ing] or entertain[ing] other persons as guests...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 the proposed language in S.B. 1342, S.D. 1, H.D. 1, we believe the phrase “receiv[ing] or entertain[ing] other persons as guests...on real property” is rather vague, and would likely encompass the low-level workers who are already being prosecuted for misdemeanors. While this is certainly a policy decision within the Legislature’s purview, it is unclear whether the actual level of involvement and/or profit of these low-level workers merits felony charges. In addition, please note that the phrase, “with the intent of advancing gambling activity” (*see* page 2, lines 2-3) would create an increased—or potentially conflicting—state of mind requirement, where the current state of mind is “knowing” (*see* page 1, line 4).

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, H.D. 1, with express concerns. Thank you for the opportunity to testify on this matter.

SB-1342-HD-1

Submitted on: 3/22/2021 4:34:44 PM

Testimony for JHA on 3/24/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dana Keawe	Individual	Support	No

Comments:

I support sb1342 sd1 hd1

SB-1342-HD-1

Submitted on: 3/22/2021 8:04:32 PM

Testimony for JHA on 3/24/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members,

Please support SB1342.

Thank you,

Andrea Quinn