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S.B. No. 2197, SD1: RELATING TO GAMBLING OFFENSES

Chair David Tarnas
Vice Chair Gregg Takayama
Honorable Committee Members

The Office of the Public Defender **opposes** this bill.

This bill needlessly includes passive partners of property owners who are aware of gambling activity on site but cannot prevent it. Suppose a married couple owned a property in which the husband ran an unlawful gambling operation. While the wife knows about the operation and objects to the operation, she can do little to dissuade her husband and stop the activity. The new definition proposed in this bill would allow prosecutors to go after her as well as her husband and the deleterious consequences that come with a criminal prosecution like civil asset forfeiture, suspension of voting rights, and immigration consequences would fall on the wife.

Earlier testimony of the Department of the Attorney General acknowledges this inclusion and wants to ensure that those people come within the ambit of a gambling prosecution. While unlawful game rooms are prevalent and should be stopped, this bill takes aim at the wrong people and will do little to curb the gambling. It should be deferred.

**DEPARTMENT OF THE PROSECUTING ATTORNEY
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**THE HONORABLE DAVID A. TARNAS, CHAIR
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Thirty-Second State Legislature
Regular Session of 2024
State of Hawai'i**

March 13, 2024

RE: S.B. 2197 SD1; RELATING TO GAMBLING OFFENSES.

Chair Tarnas, Vice Chair Takayama, and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in **strong support** of S.B. 2197 SD1. This bill is part of the Department's 2024 legislative bill package, and we thank you for hearing it.

The purpose of S.B. 2197 SD1 is to amend the definition of "advances gambling activity," to delete the phrase: "or makes no effort to prevent its occurrence or continuation." By deleting these ten words, we believe the Legislature could effectively close an existing loophole in our laws, and assist prosecutors in combatting illegal gambling establishments in Hawai'i.

"Advances gambling activity" is a key phrase used in Sections 712-1221 and 712-1222 of the Hawaii Revised Statutes ("HRS") (Promoting gambling in the first & second degree), which are the primary sections used to prosecute people involved with illegal gambling establishments.¹ In 2022, our State Legislature passed Act 111, SLH 2022², to better equip county prosecutors in prosecuting these types of establishments, and we thank you for the support.

Since the passage of Act 111, SLH 2022, the Department has strengthened partnerships with relevant units within the Honolulu Police Department, Department of Homeland Security, U.S. Attorney's Office, and other county, state and federal agencies. We have also assigned

¹ Available online at https://www.capitol.hawaii.gov/hrscurrent/Vol14_Ch0701-0853/HRS0712/HRS_0712-1221.htm and https://www.capitol.hawaii.gov/hrscurrent/Vol14_Ch0701-0853/HRS0712/HRS_0712-1222.htm, respectively. Last accessed January 30, 2024.

² Available online at: https://www.capitol.hawaii.gov/session/archives/measure_indiv_Archives.aspx?billtype=HB&billnumber=2197&year=2022. Last accessed on January 30, 2024.

dedicated resources and personnel within our own office, to assist in coordinating these multi-agency efforts, and to more effectively pursue illegal gambling establishments on Oahu. Through these efforts, the Department is currently building cases against those profiting at all levels from these establishments: criminal cases against staff and armed security, civil cases against organizers and/or property owners, and civil asset forfeiture against cash and property.

Unfortunately, one of the provisions that could be most effective in prosecuting “higher level” organizers and/or property owners is hindered by a technicality. As found in HRS §712-1220, the definition of “advances gambling activity” states:

A person "advances gambling activity" if the person:

* * *

- (2) Having substantial proprietary control or other authoritative control over premises being used with the person's knowledge for purposes of gambling activity, permits that activity to occur or continue **or makes no effort to prevent its occurrence or continuation.**³

The ten words emphasized in bold (above) effectively bar prosecutors from charging someone with this particular offense, if a defendant has made any effort whatsoever—even a verbal reprimand to a tenant, or to a property manager—to stop the illegal gambling activities occurring on a property. Deleting these words would likely close the loophole, and place more responsibility on these property holders and others involved with these enterprises.

As this Committee is well aware, illegal gambling establishments throughout the state—and perhaps most alarmingly in our residential neighborhoods—have become notorious for attracting and fostering violence, illicit drugs, sex trafficking, and other dangerous activity.⁴ This is not a victimless crime, and it is not healthy for our communities. If S.B. 2197 SD1 is ultimately enacted, the Department hopes that property owners and others involved will be more motivated to take their responsibilities seriously, and to make more meaningful efforts to stop and/or prevent this type of activity from occurring in the future. And if they are not so motivated, prosecutors will be better equipped to take legal action against them.

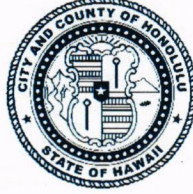
For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **strongly supports** the passage of S.B. 2197 SD1. Thank you for the opportunity to testify on this matter

³ Available online at https://www.capitol.hawaii.gov/hrscurrent/Vol14_Ch0701-0853/HRS0712/HRS_0712-1220.htm. Emphasis added. Last accessed January 30, 2024.

⁴ See KHON2, “Kapiolani game room shooter sentenced to three 20-year terms,” January 25, 2024. Available online at <https://www.khon2.com/hawaii-crime/game-room-shooter-sentenced-to-three-20-year-terms/>; last accessed January 31, 2024. See also Hawaii News Now, “Illegal game room exposed in latest police raid near Ala Moana Center,” June 30, 2023. Available online at <https://www.hawaiinewsnow.com/2023/06/30/illegal-game-room-exposed-latest-police-raid-near-ala-moana-center/>; last accessed on January 30, 2024.

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OUR REFERENCE ML-HR

March 13, 2024

The Honorable David A. Tarnas, Chair
and Members
Committee on Judiciary
and Hawaiian Affairs
The Honorable Cedric Asuega Gates, Chair
and Members
Committee on Agriculture
and Food Systems
House of Representatives
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chairs Tarnas and Gates and Members:

SUBJECT: Senate Bill No. 2197, S.D.1, Relating to Gambling Offenses

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

The HPD supports Senate Bill 2197, S.D.1, Relating to Gambling Offenses.

Over the past year, the HPD had effected more than 30 search warrants on properties that had illegal gambling occurring on the property. Out of those properties, at least five were previously served more than three different times. Throughout the investigation, property owners would be notified or informed of the HPD's findings, satisfying the element of giving the owners knowledge of the illegal activity that had occurred on the property. Owners would take minimal effort to evict the tenants who were conducting the illegal operations. Tenants would then sometimes reopen and continue operations within days or weeks after a search warrant was effected.

Currently, the language within the law for "Advanced Gambling" only requires the owner of a property to make an effort to stop illegal gambling from occurring on the property.

The Honorable David A. Tarnas, Chair
The Honorable Cedric Asuega Gates, Chair
and Members
March 13, 2024
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Changes to the language of the law would help the HPD to hold the property owners accountable if they allow illegal gambling establishments to continue to operate. The owners could then be prosecuted after the HPD can prove that the owners were aware of the illegal activity if they do not stop it from occurring (not just put an effort).

The HPD believes that holding the property owners more accountable, would help close and stop these illegal gambling establishments from reopening and would also help create a safer community for everyone.


The HPD urges you to support Senate Bill 2197, S.D.1, Relating to Gambling Offenses.

Thank you for the opportunity to testify.

Sincerely,


Mike Lambert, Major
Narcotics/Vice Division

APPROVED:


Arthur J. Logan
Chief of Police