

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 DAVID A. TARNAS, CHAIR**  
**HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**  
**Thirty-Second State Legislature**  
**Regular Session of 2023**  
**State of Hawai`i**

March 24, 2023

**RE: S.B. 591, S.D. 1; RELATING TO GAMBLING.**

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, **expressing concerns** regarding S.B. 591, S.D. 1, **with suggested amendments**.

The Department strongly agrees that illegal gambling establishments pose a serious risk to public safety and welfare, and has worked diligently over the years with legislators and police to address this ongoing problem. In 2022, Act 111 increased penalties for Promoting gambling in the first and second degree (HRS §712-1221 and -1222), and lowered the state of mind for both of these offenses, from “knowingly” to “recklessly” and “negligently” (respectively).

As currently written, S.B. 591, S.D. 1, would be much more difficult to prove than the existing offense of Promoting gambling in the second degree—which is also a class C felony (since Act 111 (2022))—and thus it is unlikely that prosecutors would ever charge this proposed offense. To explain further, the proposed offense would require that the State prove someone intentionally, knowingly or recklessly “conducts; finances, manages, supervises, directs, or owns all or part of an illegal gambling business” and the definition of an illegal gambling business would not only require the State to prove that a “business” (undefined) exists, but also require proof of numerous other elements, one of which is that the business advances gambling activity. Currently, the offense of Promoting gambling in the second degree **only** requires that someone advances gambling activity, and only requires that this be done “negligently” as opposed to “recklessly” (since Act 111 (2022)). Similarly, it is the Department’s understanding that the language in S.B. 591, S.D. 1, pertaining to civil asset forfeiture (p. 2, Ins. 1-8), is already covered by HRS §712-1230 and relevant statutes under HRS Chapter 712A.

If the Legislature wishes to further increase deterrence against illegal gambling enterprises, and increase the likelihood of holding property owners accountable for their role in

furthering this type of activity, the Department would suggest that earlier versions of H.B. 2197 (2022), the precursor to Act 111 (2022), be considered, to lower the state of mind for Promoting gambling in the first degree to “negligently,” and prohibit deferred acceptance of guilty or nolo contendere as options for both Promoting gambling in the first and second degree.

For years, law enforcement operations have typically resulted in the arrest and prosecution of only low-level participants, such as the cashiers or security guards on-premises, because it is exceedingly difficult, if not practically impossible, to hold property owners criminally liable for anything that occurs on their property. Even if repeated violations occur at the same property, it is highly unlikely that property owners (or even mid- to upper-level organizers) could ever be held to a *reckless* state of mind—in terms of their knowledge of the activities—beyond a reasonable doubt, if they never physically enter the premises nor witness the activity. Thus, **lowering the state of mind to negligence (for Promoting gambling in the first degree) could potentially lead to convicting higher-level participants associated with these types of enterprises.** At the same time, truly innocent property owners—such as an elderly person who is currently in a nursing home, ignorant of the fact that their adult children are using their property as an illegal gambling establishment—could **not** be prosecuted under these laws, because that would not rise to the level of negligence.

Also, while the Department believes these statutes (Promoting gambling in the first and second degree) would be more effective if they prohibited probation and prohibited suspension of sentence—as originally written in H.B. 2197 (2022)—**prohibiting deferrals (essentially a delayed dismissal of the case, under HRS Chapter 853) may be enough of a deterrent for workers, to at least hinder and/or discourage these establishments somewhat.** Notably, even if an individual is prohibited from receiving a deferral—as suggested—and receives a conviction for Promoting gambling in the second degree, it is highly unlikely that they would serve any additional jail time or imprisonment, as it has been the Department’s experience that “non-violent” class C felony offenders within our state court system are almost always placed on probation, with either no jail sentence or only “credit for time served.”

In recent years, the Department has received increasing complaints about illegal gambling establishments in commercial and residential neighborhoods, and the dangers presented by these establishments have been featured on the front page of the newspaper all too often, or the subject of reports such as the one published by the Hawaii State Commission on the Status of Women in 2021. Given the dire circumstances created by illegal gambling houses throughout Oahu, the Department has utilized and will continue to utilize whatever tools it is given by the Legislature and the rule of law, to prosecute those who would establish and maintain these unscrupulous and dangerous enterprises in our communities.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **expresses concerns** regarding the passage of S.B. 591, S.D. 1, as-is, but would support passage of the bill with the Department’s **suggested amendments**. Thank you for the opportunity to testify on this matter.

---

---

# A BILL FOR AN ACT

RELATING TO GAMBLING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 712-1221, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§712-1221 Promoting gambling in the first degree.** (1) A  
4 person commits the offense of promoting gambling in the first  
5 degree if the person [~~recklessly~~] negligently advances or  
6 profits from gambling activity by:

7           (a) Engaging in bookmaking to the extent that the person  
8 receives or accepts in any seven-day period more than  
9 five bets totaling more than \$500;

10          (b) Receiving in connection with a lottery, or mutuel  
11 scheme or enterprise, money or written records from a  
12 person other than a player whose chances or plays are  
13 represented by such money or records; or

14          (c) Receiving or having become due and payable in  
15 connection with a lottery, mutuel, or other gambling  
16 scheme or enterprise, more than \$1,000 in any seven-  
17 day period played in the scheme or enterprise.

1 (2) Promoting gambling in the first degree is a class  
2 B felony."

3 SECTION 2. Section 853-4, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) This chapter shall not apply when:

6 (1) The offense charged involves the intentional, knowing,  
7 reckless, or negligent killing of another person;

8 (2) The offense charged is:

9 (A) A felony that involves the intentional, knowing,  
10 or reckless bodily injury, substantial bodily  
11 injury, or serious bodily injury of another  
12 person; or

13 (B) A misdemeanor or petty misdemeanor that carries a  
14 mandatory minimum sentence and that involves the  
15 intentional, knowing, or reckless bodily injury,  
16 substantial bodily injury, or serious bodily  
17 injury of another person;

18 provided that the prohibition in this paragraph shall  
19 not apply to offenses described in section 709-  
20 906(18);

21 (3) The offense charged involves a conspiracy or  
22 solicitation to intentionally, knowingly, or

- 1           recklessly kill another person or to cause serious  
2           bodily injury to another person;
- 3           (4) The offense charged is a class A felony;
- 4           (5) The offense charged is nonprobationable;
- 5           (6) The defendant has been convicted of any offense  
6           defined as a felony by the Hawaii Penal Code or has  
7           been convicted for any conduct that if perpetrated in  
8           this State would be punishable as a felony;
- 9           (7) The defendant is found to be a law violator or  
10          delinquent child for the commission of any offense  
11          defined as a felony by the Hawaii Penal Code or for  
12          any conduct that if perpetrated in this State would  
13          constitute a felony;
- 14          (8) The defendant has a prior conviction for a felony  
15          committed in any state, federal, or foreign  
16          jurisdiction;
- 17          (9) A firearm was used in the commission of the offense  
18          charged;
- 19          (10) The defendant is charged with the distribution of a  
20          dangerous, harmful, or detrimental drug to a minor;
- 21          (11) The defendant has been charged with a felony offense  
22          and has been previously granted deferred acceptance of

1 guilty plea or no contest plea for a prior offense,  
2 regardless of whether the period of deferral has  
3 already expired;

4 (12) The defendant has been charged with a misdemeanor  
5 offense and has been previously granted deferred  
6 acceptance of guilty plea or no contest plea for a  
7 prior felony, misdemeanor, or petty misdemeanor for  
8 which the period of deferral has not yet expired;

9 (13) The offense charged is:

10 (A) Escape in the first degree;

11 (B) Escape in the second degree;

12 (C) Promoting prison contraband in the first degree;

13 (D) Promoting prison contraband in the second degree;

14 (E) Bail jumping in the first degree;

15 (F) Bail jumping in the second degree;

16 (G) Bribery;

17 (H) Bribery of or by a witness;

18 (I) Intimidating a witness;

19 (J) Bribery of or by a juror;

20 (K) Intimidating a juror;

21 (L) Jury tampering;

22 (M) Promoting prostitution;

- 1 (N) Abuse of family or household member except as  
2 provided in paragraph (2) and section 709-  
3 906(18);
- 4 (O) Sexual assault in the second degree;
- 5 (P) Sexual assault in the third degree;
- 6 (Q) A violation of an order issued pursuant to  
7 chapter 586;
- 8 (R) Promoting child abuse in the second degree;
- 9 (S) Promoting child abuse in the third degree;
- 10 (T) Electronic enticement of a child in the first  
11 degree;
- 12 (U) Electronic enticement of a child in the second  
13 degree;
- 14 (V) Commercial sexual exploitation pursuant to  
15 section 712-1200.5;
- 16 (W) Street prostitution and commercial sexual  
17 exploitation under section 712-1207(1)(b) or  
18 (2)(b);
- 19 (X) Commercial sexual exploitation near schools or  
20 public parks under section 712-1209;
- 21 (Y) Commercial sexual exploitation of a minor under  
22 section 712-1209.1; [~~or~~]

- 1 (Z) Habitual commercial sexual exploitation under  
2 section 712-1209.5;
- 3 (AA) Violation of privacy in the first degree under  
4 section 711-1110.9;
- 5 (BB) Violation of privacy in the second degree under  
6 section 711-1111(1)(d), (e), (f), (g), or (h);  
7 [~~or~~]
- 8 [+](CC) [+]  
9 Habitually operating a vehicle under the  
10 influence of an intoxicant under section 291E-  
11 61.5(a);
- 12 (DD) Promoting gambling in the first degree; or  
13 (EE) Promoting gambling in the second degree;
- 14 (14) The defendant has been charged with:  
15 (A) Knowingly or intentionally falsifying any report  
16 required under part XIII of chapter 11, with the  
17 intent to circumvent the law or deceive the  
18 campaign spending commission; or  
19 (B) Violating section 11-352 or 11-353; or
- 20 (15) The defendant holds a commercial driver's license and  
21 has been charged with violating a traffic control law,  
22 other than a parking law, in connection with the  
operation of any type of motor vehicle."



**1** SECTION 3. Statutory material to be repealed is bracketed

**2** and stricken. New statutory material is underscored.

**3** SECTION 4. This Act shall take effect upon approval.

INTRODUCED BY: \_\_\_\_\_



# Animal Welfare Institute

900 PENNSYLVANIA AVENUE, SE, WASHINGTON, DC 20003 · 202-337-2332 · AWIONLINE.ORG

March 24, 2023, 2PM

Committee on Judiciary and Hawaiian Affairs  
Hawai'i State House of Representatives

**Re: SB 591 SDI RELATING TO ILLEGAL GAMBLING**

Dear Chair Tarnas and Committee members:

On behalf of the Animal Welfare Institute (AWI),<sup>1</sup> the following testimony is submitted:

AWI would like to take this opportunity to express our **support for SB591, contingent upon the below critical amendments**, which are necessary to ensure the enforceability of the original language of the bill as it pertains to the forfeiture of fighting animals in illegal gambling operations. These amendments are based on concurrence in previous discussions with the Honolulu Police Department VICE Division, who, along with county-contracted animal control agencies, who also support these amendments, would be implementing this essential measure.

1. On Page 1 line 14-16, Delete (c) Has been or remains in substantially continuous operation for a period in excess of thirty days or, and add ; or
2. On Page 1 line 17, Add new section (d) Or allows any person to be a spectator at, to participate in, or to wager on the fighting of animals.

(2) For purposes of this section, "illegal gambling business" means a business that:

- (a) Advances gambling activity in violation of this part;
- (b) Involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of the business; and
- (c) ~~Has been or remains in substantially continuous operation for a period in excess of thirty days or~~ Has a gross revenue in excess of \$2,000 in any single day-; or
- (d) Allows any person to be a spectator, to participate in, or to wager on the fighting of animals.

Thank you for your consideration of these important amendments.

Sincerely,

Nancy Blaney  
Director, Government Affairs

---

<sup>1</sup> The Animal Welfare Institute, founded in 1951 and headquartered in Washington DC, is dedicated to reducing animal suffering and advancing the welfare of all animals, including those raised for food. AWI has participated extensively in the development of regulations related to the interisland transport of livestock in Hawai'i.

**SB-591-SD-1**

Submitted on: 3/22/2023 4:31:22 PM

Testimony for JHA on 3/24/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Gerard Silva	Individual	Oppose	Written Testimony Only

Comments:

Gambling is not a Problem the only Problem is the Crooked Government That cheats in Elections and allows Child Traficing and other Crimes . It also Has e Revolving Door to Let the Crooks in and right Back out to do the same Crimes again.Work on the real Crimes and for get the Littal ones!!