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**COMMENTS ON 13-H 6221,
RELATING TO CASINO GAMING
June 13, 2013**

The ACLU of Rhode Island wishes to raise some specific concerns about language in this bill creating various new casino gaming crimes and giving the state police broad authority to investigate them. We understand that the legislation has been placed on an apparent fast track in an attempt to enact it before the introduction of table games at Twin River next week. But in the state's effort to speedily pass this legislation, we believe that imprecise and overly broad wording and provisions in the bill create significant unintended problems and civil liberties concerns.

Our two most important concerns involve the penalties proposed for violations of gaming laws, and the powers given to gambling facility employees to detain patrons alleged to have violated the law. In this testimony, we also briefly address, in the order of their appearance in the bill, a handful of other problematic provisions.

I. PENALTIES

The legislation uniformly authorizes ten-year prison sentences and fines up to \$100,000 for conviction of any of the newly-designated gambling-related offenses. R.I.G.L. §42-61.3-2(b) [Pages 49-54]. This punishment is extremely harsh and should be significantly reduced.

In setting a uniform penalty, the bill makes no distinction in the types of offenses or the harm caused by the commission of the offense. It subjects a gambling addict who commits a gaming offense to the same penalties as an out-of-state criminal-syndicate-associated gambling shark. While we recognize that judges ultimately will have discretion to weigh all the circumstances in deciding the appropriate punishment for a particular offender, allowing the actual fine to vary from \$1 to \$100,000 is not discretion, but pure arbitrariness. Worse, it means the small-time offender faces utter uncertainty about his/her fate until sentence is imposed, even if a stiff penalty is unlikely.

It is worth noting that the current gambling laws do not impose such draconian penalties on gambling patrons. It is true that some penalties in the current law being repealed authorize \$100,000 fines, but they apply to *licensee* misconduct, not that of patrons. [E.g., §41-9.1-36, Pages 43-44] The felony cheating penalties in current law that involve patron misconduct generally carry punishment of **five years** in prison and a **\$10,000** fine. [See, e.g., §§41-9.1-31, 41-9.1-32, Pages 41-43] Similarly, the current separate law on the books – not being repealed by this bill – addressing the manipulation of video lottery terminals or table games sets a 10

year/\$10,000 penalty. R.I.G.L. §42-61.2-8. When one considers that, under this bill, cheating now consists of even “taking advantage of a malfunctioning machine,” the harshness of these penalties becomes even clearer.

For obvious reasons, we decided to take a quick look at Nevada’s gaming laws for comparison. As far as we can tell, their gaming fraud penalties provide for \$10,000 fines and prison sentences of one to six years. With that state’s extensive experience in dealing with gaming violations, we cannot understand why Rhode Island feels the need to impose penalties ten times greater.

Integrity in table games is important, but that is true of many other activities that do not carry such extremely high financial penalties. When the fine for lying before a General Assembly committee is \$500, see R.I.G.L. §11-33-6, it seems even more difficult to justify the extraordinary fines in this bill.

II. EMPLOYEE POLICE POWERS

We have very serious concerns about Section 42-61.3-5 [Page 54], a new provision that allows *any* casino employee to question and forcibly detain patrons suspected of violating gaming laws “in a reasonable manner and for a reasonable length of time.” The employees are immune from liability for any such actions unless they were “unreasonable under all the circumstances.” This deputization of all casino employees to employ such a fundamental police power is extremely troubling. Further, by failing to provide any details on how employees are to effectuate these detentions or the rights that patrons have upon being detained, this provision leaves both employees and patrons vulnerable to questionable and disturbing practices.

It is unclear to us why casino employees should be given any police powers at all. We expect that a security presence will be substantial in any casino, eradicating any need for general employees to have, much less exercise, police powers.

We can think of only one vaguely analogous provision in state law, and that involves the power of merchants to temporarily detain individuals suspected of shoplifting. Even there, the law sets a variety of limits on how the detention is conducted, and lays out some minimal rights the customer has. R.I.G.L. §11-41-21. And while that law establishes a maximum detention time of an hour, in a highly-regulated environment like a casino any legally-authorized private detention should be measured in minutes. Further, requiring a patron subjected to this type of search and seizure to prove that it was “unreasonable under all the circumstances” in order to legally contest it is an inappropriately high burden that should be resoundingly rejected.

III. OTHER ISSUES

* Page 1, line 5. The bulk of this bill consists of the repeal of chapter 9.1 of title 41. Therefore, the reference to that chapter should be deleted on this line.

* Section 42-61.3-1(g)(5) [Page 48, line 34-Page 49, line 6] authorizes the ejection or exclusion of patrons from gaming facilities under certain circumstances, but provides no standards or procedures for an individual to contest the exclusion. As a matter of due process, we believe some mechanism should be in place to do so. In that regard, this subsection is unlike the current law, which references a hearing process. [§41-9.1-5(a)(11), Page 14]

* Subsection 42-61.3-2(b)(1) makes it a crime to use, attempt to use, *or have possession* of a cheating device. [Page 50, line 13] Considering that such devices are now defined to include “tape, string or dental floss,” §42-61.3-2(a)(3)(i), we urge clarification of the “possession” offense. It is true that the definition of “cheating device” means a device “used in such a manner as to cheat,” §42-61.2-3, so it is confusing as to what it means to illegally “possess” such a device when the same provision makes it illegal to “use or attempt to use” it.

* Section 42-61.3-2(b)(11) [Page 52, lines 1-12], barring devices that analyze strategies for playing casino games, appears to be so broadly worded that it could potentially apply to the possession of smartphones with innocuous cell phone apps.

* Section 42-61.3-2(b)(18) [Page 53, lines 20-24] appears to create a general punishment for gaming law violations that are completely unrelated to crimes taking place in gambling facilities. It is unclear to us how these penalties would fit in with the many other gambling statutes currently on the books.

* Various offense provisions do not contain a *mens rea* requirement, but should be explicit in doing so. See, e.g., §42-61.3-2(b)(21) [Page 53, lines 33-34], making it a felony for an employee to accept a wager from a person under 18 years of age. The current laws being repealed are generally explicit in requiring that violations of the law be knowing and/or willful in nature. [See, e.g., §41-9.1-32, Pages 42-43]

* As previously noted, a new section of the law allows casino employees to detain patrons if there is probable cause to believe they have violated the gaming laws. A condition to exercising that power is the posting of a sign in the facility warning patrons that they may be subject to detention. §42-61.3-4(c) [Page 55, lines 1-3] However, the sign falsely tells patrons they are subject to detention for violating “*any* provisions of Rhode Island law,” rather than solely for violations of the gaming laws.

We urge that these issues be addressed before passing this bill. By largely turning the attention of the laws towards the patrons and away from the licensees – who, as a condition of licensing, necessarily have less constitutional protection – this bill raises a number of legal and policy concerns that should be more carefully addressed. Thank you for consideration of our views.