

STATE PUBLIC DEFENDER

**DEFENDER COUNCIL**  
1130 NORTH NIMITZ HIGHWAY  
SUITE A-254  
HONOLULU, HAWAII 96817

**HONOLULU OFFICE**  
1130 NORTH NIMITZ HIGHWAY  
SUITE A-254  
HONOLULU, HAWAII 96817

**APPELLATE DIVISION**  
TEL. No. (808) 586-2080

**DISTRICT COURT DIVISION**  
TEL. No. (808) 586-2100

**FAMILY COURT DIVISION**  
TEL. No. (808) 586-2300

**FELONY DIVISION**  
TEL. No. (808) 586-2200

**FACSIMILE**  
(808) 586-2222



STATE OF HAWAII  
**OFFICE OF THE PUBLIC DEFENDER**

ASSISTANT PUBLIC DEFENDER

**HILO OFFICE**  
275 PONAHAHAWAI STREET  
SUITE 201  
HILO, HAWAII 96720  
TEL. No. (808) 974-4571  
FAX No. (808) 974-4574

**KONA OFFICE**  
75-1000 HENRY STREET  
SUITE #209  
KAILUA-KONA HI 96740  
TEL. No. (808) 327-4650  
FAX No. (808) 327-4651

**KAUA'I OFFICE**  
3060 EIIWA STREET  
SUITE 206  
LIHUE, HAWAII 96766  
TEL. No. (808) 241-7128  
FAX No. (808) 274-3422

**MAU'I OFFICE**  
81 N. MARKET STREET  
WAILUKU, HAWAII 96793  
TEL. No. (808) 984-5018  
FAX No. (808) 984-5022

Testimony of the Office of the Public Defender to the House Committee on Human Services and Homelessness re: S.B. 281, SD1: RELATING TO TORTURE

Chair Rep. Lisa Marten, Vice-Chair Rep. Ikaika Olds and Members of the Committee:

With an understanding of the legislature's commitment to public safety, and the recent reported events within our community the Office of the Public Defender understands the purpose of SB 281, SD1, and does appreciate the changes made to the original language of SB 281. However, the OPD respectfully **opposes specific parts of SB 281, SD1.**

The proposed language in subsection (b) reads: "knowingly causes serious bodily injury or substantial bodily injury to another person, and the actor has previously engaged in a pattern and practice of physically abusing the other person". This language is legally confusing and does not give adequate notice as to what behavior is being prohibited. When coupled with the definition language in sub-section (3) which reads: "Pattern or practice means two or more acts within a period of two years with a common state of mind", this confusion is only compounded.

A statutory prohibition must be clear in what it prohibits. This section is not clear as to what "physically abusing the other person" means. In a prosecution based on this section, would actual convictions for the crime of Abuse of a Household Member be required, or simply evidence of prior physical contacts that a jury would have to determine are prior incidents of "physical abuse"? Such lack of clarity creates a nightmare for a trial Judge to properly craft jury instructions for such a charge and does not give adequate notice to a defendant as to what must be defended. The term "common state of mind" is also confusing and unclear. Within the criminal law the term: "state of mind" usually refers to the thinking of a defendant at the time they

commit a criminal act towards another person, and not whether they have acted with one scheme, plan, or purpose to harm someone. As written, this subsection could require proof that a person had physically abused another person in the past, two times within two years, and at that time, did so, with the intention of causing that other person serious or substantial bodily injury in the future, and causes said injuries. The OPD would propose that this language be stricken from this proposed statute, and that this body consider amendments to HRS section 709-906, to reflect an increase in penalty for abuse that rises to the level of torture.

Subsection (c) (iv) referring to minors or vulnerable persons discusses the restriction of basic and necessary bodily functions. However, the proposed language is too broad in its definition of prohibited conduct. As written, a person can be prosecuted for a violation of this section for restricting such functions for minutes, hours, days, with or without a pattern of said conduct and without any evil intent. Thus, it is not clear as to what would constitute torture by restricting bodily functions.

Subsection (c) (v) deals with forcing a minor or vulnerable person to remain in a place unsuitable for human habitation without a definition as to what is suitable, unsuitable or for how long a child is required to remain there. This sub-section does offer an example dealing with a place wherein urine or feces are actively present. However, as written, a person could be prosecuted for leaving a child in a bathroom until said child had cleaned up after themselves.

The OPD would recommend that to clear up these issues with sub-section (c), this body consider adding language to the end of said subsection to read: “and does so with the intent to cause physical or psychological harm to said minor or vulnerable person”. By doing so, the government would be required to prove that said conduct is for the specific purpose of torturing another individual, and the legislature would be clear in communicating a desire to prohibit said conduct.

Thank you for the opportunity to comment on this measure.

**DEPARTMENT OF THE PROSECUTING ATTORNEY**  
**KA 'OIHANA O KA LOIO HO'OPI'I**  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 768-7400 • FAX: (808) 768-7515 • WEBSITE: [www.honoluluprosecutor.org](http://www.honoluluprosecutor.org)

STEVEN S. ALM  
PROSECUTING ATTORNEY  
LOIO HO'OPI'I



THOMAS J. BRADY  
FIRST DEPUTY PROSECUTING ATTORNEY  
HOPE MUA LOIO HO'OPI'I

**THE HONORABLE LISA MARTEN, CHAIR**  
**HOUSE COMMITTEE ON HUMAN SERVICES AND HOMELESSNESS**  
**Thirty-Third State Legislature**  
**Regular Session of 2025**  
**State of Hawai'i**

March 7, 2025

**RE: S.B. 281 S.D. 1; RELATING TO TORTURE.**

Chair Marten, Vice Chair Olds, and members of the House Committee on Human Services and Homelessness, the Department of the Prosecuting Attorney for the City and County of Honolulu submits the following testimony in **strong support** of S.B. 281 S.D. 1. This bill is part of the Department's 2025 legislative package, and we thank you for hearing it.

S.B. 281 S.D. 1 defines and prohibits the offense of torture. More than 25 states have laws prohibiting torture.<sup>1</sup> But Hawai'i currently only punishes torture as an aggravating circumstance for murder.<sup>2</sup> Even application of that sentence has been substantially weakened because the prosecution must prove the torture inflicted was "unnecessary."<sup>3</sup>

Hawai'i lacks adequate laws protecting children and vulnerable adults from torture. In its 2020 report card on child torture laws, the National Center for Child Abuse Statistics and Policy awarded Hawai'i a failing grade.<sup>4</sup> Under Hawai'i law, abuse of a family or household member is a misdemeanor.<sup>5</sup> That may be an appropriate penalty for a parent who rashly beats a child in a moment of anger. But it is far too lenient a response to calculated, malignant, deliberate abuse.

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<sup>1</sup> See, e.g., CAL. PENAL CODE § 206; CONN. GEN. STAT. ANN. § 53-20(a)(1), (b)(1); FLA. STAT. § 827.03(a); KAN. STAT. § 21-5602(a)(1); MICH. COMP. LAWS SERV. § 750.85; MISS. CODE ANN. § 97-5-39(a); OHIO REV. CODE ANN. § 2919.22(B)(2); S.D. CODIFIED LAWS § 26-10-153; WASH. REV. CODE 9A.36.120(1)(a)(ii)(B).

<sup>2</sup> HRS § 706-657.

<sup>3</sup> *State v. Young*, 93 Hawai'i 224, 227, 234-38, 999 P.2d 230, 233, 240-44 (2000) (finding insufficient evidence of torture where Burger King employee was bludgeoned to death with a hammer).

<sup>4</sup> *State Criminal Code Failures: 2020 Report & Report Card*, NATIONAL CENTER FOR CHILD ABUSE STATISTICS AND POLICY, available at <https://www.nccasp.org/fighting-child-torture>.

<sup>5</sup> HRS § 709-906(5).

In drafting this bill, the Department examined statutes and judicial decisions from Hawai‘i and across the United States. We reviewed academic literature and case studies of torture, as well as a guide prepared for law enforcement by the FBI’s Behavioral Analysis Unit.<sup>6</sup> Based on this study, we focused on present inadequacies in Hawai‘i law and the most urgent scenarios presenting heightened danger to victims.

The Department has prosecuted and continues to prosecute murder cases where victims have been tortured as defined by S.B. 281. To illustrate legal principles, we refer to published Hawai‘i cases. But when describing specific factual scenarios, we have selected cases from outside Hawai‘i to avoid extrajudicial comment on evidence in pending prosecutions.<sup>7</sup>

**A. The Department strongly urges reinstatement of the provision criminalizing repeated starvation of children or vulnerable persons.**

All degrees of assault under the Hawai‘i Penal Code require proof of bodily injury.<sup>8</sup> The same holds true for abuse of a family or household member<sup>9</sup> and endangering the welfare of a minor.<sup>10</sup> “Bodily injury,” in turn, “means physical pain, illness, or any impairment of physical condition.” But some methods of torture do not necessarily inflict bodily injury.

Likewise, torture often cannot be prosecuted as attempted murder. Attempted murder requires proof of the intent to kill.<sup>11</sup> But many torturers lack this homicidal goal: they want the victim alive precisely to elongate the suffering.<sup>12</sup>

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<sup>6</sup> Joy Lynn E. Shelton, James E. Hardie, Barbara L. Knox, & Taylor E. Burd, *Child Torture as a Form of Child Abuse: A Guide for Recognition and Response*, FEDERAL BUREAU OF INVESTIGATION (Aug. 2024).

<sup>7</sup> Hawai‘i Rules of Professional Conduct Rule 3.6 (governing trial publicity)

<sup>8</sup> See, e.g., HRS § 707-710(1)(a) (“A person commits the offense of assault in the first degree if the person intentionally or knowingly causes [s]erious bodily injury to another person[.]”); HRS § 707-711(1)(b) (“A person commits the offense of assault in the second degree if the person [r]ecklessly causes serious bodily injury to another[.]”); HRS § 707-712(1)(a) (“A person commits the offense of assault in the third degree if the person [i]ntentionally, knowingly, or recklessly causes bodily injury to another person[.]”).

<sup>9</sup> See *State v. Basnet*, 131 Hawai‘i 286, 291-92, 299, 318 P.3d 126, 131-32, 139 (2013) (affirming jury instruction that physical abuse means causing bodily injury to another person).

<sup>10</sup> HRS § 709-903.5 (except in cases of drug ingestion, endangering the welfare of a minor in the first degree requires proof of serious or substantial bodily injury); HRS § 709-904(1)(a) (except in cases of drug ingestion, endangering the welfare of a minor in the second degree requires proof of serious or substantial bodily injury).

<sup>11</sup> See *Briones v. State*, 74 Haw. 442, 450-52, 848 P.2d 966, 971-72 (1993).

<sup>12</sup> Cf. *Commonwealth v. Powell*, 956 A.2d 406, 415-16 (Pa. 2008) (defendant arguing that long history of battering six-year-old son proved he lacked intent to kill because he could have killed the child if he wanted during the prior beatings.).

Starvation illustrates both problems. Food and water deprivation is a common method of child torture.<sup>13</sup> In one nationwide study of extreme child abuse, 89% of the child victims were starved and 79% were fluid-restricted.<sup>14</sup> But starvation does not always cause pain,<sup>15</sup> because hunger selectively inhibits inflammatory pain.<sup>16</sup> So a requirement to prove “bodily injury” will thwart prosecution of deliberate starvation as assault, abuse of a family or household member, or endangering the welfare of a minor.

Similarly, torture by starvation cannot be prosecuted as murder or attempted murder in cases of intermittent feeding. In one North Carolina case,<sup>17</sup> the defendant fed his four-year-old stepson only once a day, while deliberately allowing the boy waste away from malnutrition.<sup>18</sup> On appeal, he argued that intermittent feeding proved he lacked the intent to kill.<sup>19</sup> Starvation, he claimed, required complete deprivation of nutrition.<sup>20</sup> His argument did not succeed in North Carolina. But under our statute, intermittent feeding could defeat an attempted murder prosecution.

It is illegal to starve a dog in Hawai‘i.<sup>21</sup> But it remains legal to starve a child. Only when hunger has ended the child’s life can the prosecution at last prove homicidal intent.

As originally drafted, S.B. 281 included “[d]epriving the minor or vulnerable of necessary food, water, or clothing” among the forms of prohibited conduct under subsection (c). The Senate Committee on Judiciary expressed concern that criminalizing the starvation of children may expose parents to criminal prosecution for simple poverty. We respectfully request this Committee reinstate the earlier provision regarding starvation for three reasons.

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<sup>13</sup> See, e.g., *State v. Cheeks*, 858 S.E.2d 566 (N.C. 2021); *People v. Jennings*, 237 P.3d 474 (Cal. 2010);

<sup>14</sup> Barbara L. Knox, et al., *Child Torture as a Form of Child Abuse*, 7 J. CHILD & ADOLESCENT TRAUMA 37, 39 (2014).

<sup>15</sup> See, e.g., Karen Kaplan & Rosie Mestel, *Ceasing Food and Fluid Can Be Painless*, LOS ANGELES TIMES (Mar. 23, 2005), available at <https://www.latimes.com/archives/la-xpm-2005-mar-23-sci-schiavodeath23-story.html>.

<sup>16</sup> Amber L. Alhadeff, et al., *A Neural Circuit for the Suppression of Pain by a Competing Need State*, 173 CELL 140, 141 (2018).

<sup>17</sup> *State v. Cheeks*, 858 S.E. 2d 566, 567-73 (N.C. 2021)

<sup>18</sup> *Id.* at 576

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> HRS § 711-1109(1)(b) (“A person commits the offense of cruelty to animals in the second degree if the person intentionally, knowingly, or recklessly deprives a pet animal of necessary sustenance or causes that deprivation.”).

First, no reasonable person equates poverty with abuse or neglect, let alone torture.<sup>22</sup> Courts must construe a statute reasonably and avoid absurdity.<sup>23</sup> And when a criminal law is unclear, the court must choose the interpretation that favors the defendant.<sup>24</sup> Reasonably construed, the provision would never permit a prosecution solely based on poverty.

Second, the criminal law can only penalize a voluntary act or voluntary omission.<sup>25</sup> Culpability requires choice; for this reason, a punishment assigned solely for status is unconstitutional.<sup>26</sup> But by hypothesis, if poverty alone prevents a parent from providing necessary food, that is not a voluntary choice. No individual controls the economic system. So no reasonable factfinder should assign criminal culpability in such circumstances.

But third, and most importantly, miscarriage of justice can be completely avoided by expressly permitting poverty as a defense. We recommend adopting this amendment to subsection (1)(c) of the proposed offense:

(viii) Depriving the minor or vulnerable person of necessary food, water, or clothing; provided that the defendant's poverty or financial destitution shall be an affirmative defense.

We believe this express language addresses any concerns about criminalizing poverty. But it is absolutely urgent that this bill addresses case of deliberate starvation. The law presently allows sadists to run their homes as miniature concentration camps, while facing—at most—only misdemeanor penalties. This is heartbreaking, outrageous, and unacceptable.

We must do better.

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<sup>22</sup> See, e.g., *Brock v. Commonwealth*, 268 S.W.315, 315 (Ky. 1925) (observing that poverty, unemployment, and other external circumstances do not qualify as parental abandonment); *Lewis v. State*, 72 Ga. 164, 167-68 (1883) (jury instruction that criminal starvation requires intentional withholding of food, not simply poverty or destitution).

<sup>23</sup> HRS § 1-15(3) (“Where the words of a law are ambiguous [e]very construction which leads to an absurdity shall be rejected.”).

<sup>24</sup> *State v. Borge*, 152 Hawai‘i 458, 469, 526 P.3d 435, 446 (2023) (“The rule of lenity provides that where a criminal statute is ambiguous, it must be strictly construed against the government and in favor of the accused.”) (cleaned up).

<sup>25</sup> HRS § 702-200(1) (“In any prosecution it is a defense that the conduct alleged does not include a voluntary act or the voluntary omission to perform an act of which the defendant is physically capable.”). See also 4 William Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND, \*20-21 (1769) (“An involuntary act, as it has no claim to merit, so neither can it induce any guilt: the concurrence of the will, when it has its choice either to do or to avoid the fact in question, being the only thing that render human actions either praiseworthy or culpable. Indeed, to make a complete crime, cognizable by human laws, there must be both a will and an act.”).

<sup>26</sup> *Robinson v. California*, 370 U.S. 660 (1962) (striking down state law that criminalized the status of drug addiction).

**C. Hawai‘i does not permit prosecution of assault or physical abuse as a continuing offense.**

The Department has no objection to the Senate amendment requiring the “knowing” state of mind for all offenses defined under this section. Although it increases the prosecutorial burden of proof, the provision still reaches the vast majority of the criminal conduct targeted by this bill.

In principle, we agree no child or vulnerable person should be subjected even once to the cruel and degrading treatment defined here. But we respectfully request that this Committee retain the provisions requiring multiple acts in subsections (b) and (c). This best ensures torture is prosecuted as a continuing offense.

A continuing offense aggregates the individual episodes of a crime as a unified course of conduct with a common state of mind. Theft is a classic example. In *State v. Shaw*,<sup>27</sup> the defendant falsely padded tips on 105 customer receipts. Rather than hold dozens of individual trials on each theft, the law permitted aggregation of the thefts as a single continuing offense.<sup>28</sup>

But Hawai‘i does not permit prosecution of assault or physical abuse as a continuing offense.<sup>29</sup> In other words, the prosecution must charge each offense as a distinct episode. Former Hawai‘i Supreme Court Justice Pollack dissented from that holding.<sup>30</sup> He argued that the abuse of family or household members statute suggests a continuing offense may sometimes be charged.<sup>31</sup> But as a matter of law, the majority disagreed.

For victims of torture, specific occasions may be impossible to parse. S.B. 281 would permit prosecution of these repeated assaults as a continuing offense. Prosecution of the continuing offense will permit evidence regarding the unified course of conduct. For similar reasons, Hawai‘i has long recognized that sexual assault of a child can be prosecuted as a continuing offense.<sup>32</sup> Defining torture as a continuing offense will allow victims to testify regarding the complete unified course of conduct.

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<sup>27</sup> *State v. Shaw*, 150 Hawai‘i 56, 59, 497 P.3d 71, 74 (2021).

<sup>28</sup> *Id.* at 61-63, 497 P.3d at 76-78.

<sup>29</sup> *State v. Decoite*, 132 Hawai‘i 436, 441, 323 P.3d 80, 85 (2014) (categorically refusing to treat repeated abuse as a continuing offense).

<sup>30</sup> *State v. Decoite*, 132 Hawai‘i 436, 441 (Pollack, J., dissenting).

<sup>31</sup> *Id.* at 444-45.

<sup>32</sup> HAW. CONST. art. I, § 25; HRS § 707-733.6. *See also State v. Tran*, 154 Hawai‘i 211, 549 P.3d 296 (2024) (upholding constitutionality of the continuous sexual assault statute).

**D. S.B. 281 identifies torture in circumstances indicating (1) the abuser exercises pervasive control over the victim and (2) the abuser can inflict greater harm to the victim.**

This bill identifies specific aggravating acts and circumstances that heighten the suffering of victims and the cruelty of their torment. Torture is characterized by the pervasive control the abuser exercises over the victim. We identified three contexts of heightened danger to victims: (a) first-degree assault combined with forcible restraint or forcible restriction of movement;<sup>33</sup> (b) felony assault preceded by prior assaults;<sup>34</sup> and (c) specific forms of cruel and degrading treatment repeatedly inflicted against minors or vulnerable persons.<sup>35</sup>

The first category recognizes that forcible restraint permits torturers to inflict greater injury on the victim. For example, restraint facilitates burning or scalding the victim, because flinching from the heat is not possible.<sup>36</sup> The second category focuses on cases where intermittent assaults escalate to severe injuries. It allows prosecution of these crimes as continuing offenses. The third category focuses on persons vulnerable to repeated degrading treatment, especially children. Borrowing from California's torture statute,<sup>37</sup> this category does not require proof of bodily injury. It therefore covers cases such as electrocution, suspension, or forced ingestion of feces that currently cannot be prosecuted as assault.

**E. S.B. 281 does not create strict liability. Nor does it eliminate standard defenses such as choice of evils or reasonable parental discipline.**

Lastly, we should emphasize what this bill does not do. This bill does not create strict liability; it specifies a "knowing" state of mind for each class of offenses.<sup>38</sup> Mistakes, accidents, and episodes of innocent automatism do not fall within the ambit of this law. Nor does the bill impair or abolish standard defenses available to all defendants.

Choice of evils, or the defense of necessity, remains a standard defense that the prosecution must exclude beyond reasonable doubt.<sup>39</sup> For example, although the law generally prohibits felons from possessing firearms,<sup>40</sup> Hawai'i courts recognize that a felon may

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<sup>33</sup> S.B. 281, p. 1, ll. 15-16.

<sup>34</sup> S.B. 281, p. 2, ll. 1-4.

<sup>35</sup> S.B. 281, p. 2, l. 5 to p.3, l. 7.

<sup>36</sup> *Burn Injuries in Child Abuse: Portable Guide to Investigating Child Abuse*, U.S. DEPARTMENT OF JUSTICE (June 2001), available at <https://www.ojp.gov/pdffiles/91190-6.pdf>.

<sup>37</sup> CAL. PENAL CODE § 206 ("The crime of torture does not require any proof that the victim suffered pain.")

<sup>38</sup> See HRS § 702-212; *State v. Gonzalez*, 128 Hawai'i 314, 321, 288 P.3d 788, 795 (2012) (explaining that strict liability requires plain legislative intent to eliminate state of mind requirement).

<sup>39</sup> HRS § 703-302.

<sup>40</sup> HRS § 134-7.



temporarily use a gun in self-defense.<sup>41</sup> The law excuses a technical crimes when necessary to avoid a greater harm. That would not change with passage of S.B. 281. The prosecution must still disprove this defense beyond reasonable doubt

Nor does it stop parents from correcting misbehavior. The law already allows parents and guardians to use reasonable force for the care, discipline, and safety of minors or incompetents.<sup>42</sup> Hawai‘i law provides robust protection to parents who use physical discipline on misbehaving children. For example, in *State v. Dowling*,<sup>43</sup> as punishment for repeated lying, the defendant punched his eleven-year-old son hard enough to leave bruises. The Intermediate Court of Appeals held that these injuries did not lead to extreme mental distress.<sup>44</sup> It also found the use of force reasonably related to the welfare of the child.<sup>45</sup> The legal defense of reasonable parental discipline is not changed by S.B. 281. The prosecution must still disprove this defense beyond reasonable doubt.

This bill is urgently needed to protect the most vulnerable members of our community from the very worst class of criminals. The Department strongly encourages passage of S.B. 281.

Thank you for the opportunity to testify.

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<sup>41</sup> *State v. Padilla*, 114 Hawai‘i 507 (App. 2007).

<sup>42</sup> HRS § 703-309.

<sup>43</sup> 125 Hawai‘i 406, 263 P.3d 116 (App. 2011)

<sup>44</sup> *Id.* at 411-12, 263 P.3d at 121-22.

<sup>45</sup> *Id.* at 413, 263 P.3d at 123.

**DEPARTMENT OF THE PROSECUTING ATTORNEY**  
**KA 'OIHANA O KA LOIO HO'OPI'I**  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 768-7400 • FAX: (808) 768-7515 • WEBSITE: [www.honoluluprosecutor.org](http://www.honoluluprosecutor.org)

STEVEN S. ALM  
PROSECUTING ATTORNEY  
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**THE HONORABLE LISA MARTEN, CHAIR**  
**HOUSE COMMITTEE ON HUMAN SERVICES & HOMELESSNESS**  
**Thirty-Third State Legislature**  
**Regular Session of 2025**  
**State of Hawai'i**

March 11, 2025

**RE: S.B. 281, S.D. 1; RELATING TO TORTURE.**

Chair, Vice-Chair, and members of the **Senate** Committee on, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in **strong support** of S.B. 281, S.D. 1, with amendments.

My name is Steve Alm and I am the Prosecuting Attorney for the City and County of Honolulu. My number one job is protecting the people of Honolulu, especially our keiki and most vulnerable citizens, and that is why I am testifying in support of S.B. 281, S.D. 1. This bill is part of the Department's 2025 legislative package and we appreciate your time in hearing it.

As originally drafted, the Department included depriving a minor or vulnerable person of necessary food, water, or clothing. The Senate Committee on Judiciary deleted that section because of a fear that, "...in some instances, parents or guardians may inadvertently fail to provide a minor or vulnerable person necessary food, water, or clothing due to poverty."<sup>1</sup> However, this law, with the inclusion of depriving a child or vulnerable person of food and water, is not intended to punish parents and guardians who are having difficulty making ends meet. It is intended for the intentional starvation of children that end up with a child dying or suffering harm due to a lack of necessary food and water.<sup>2</sup> Without the inclusion of this section, prosecutors cannot prosecute for the starvation of children who are found alive yet suffering from severe deprivation of food and water.

We strongly urge the passage of this bill with the inclusion of original language prohibiting the deprivation of food, water, or clothing.

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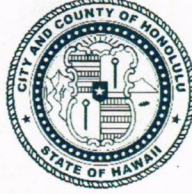
<sup>1</sup> Stand. Com. Rep. No. 814

<sup>2</sup> See <https://www.staradvertiser.com/2025/03/05/hawaii-news/2-women-are-indicted-in-3-year-old-girls-death/>

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. 281, S.D.1. Thank you for the opportunity to testify on this matter.

KA 'OIHANA MAKA'I O HONOLULU  
**CITY AND COUNTY OF HONOLULU**

801 SOUTH BERETANIA STREET • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 • WEBSITE: [www.honolulu.gov](http://www.honolulu.gov)



RICK BLANGIARDI  
MAYOR  
MEI'A

ARTHUR J. LOGAN  
CHIEF  
KAHU MAKA'I

KEITH K. HORIKAWA  
RADE K. VANIC  
DEPUTY CHIEFS  
HOPE LUNA NUI MAKA'I

OUR REFERENCE VL-KK

March 11, 2025

The Honorable Lisa Marten, Chair  
and Members  
Committee on Human Services  
and Homelessness  
House of Representatives  
415 South Beretania Street, Room 329  
Honolulu, Hawaii 96813

Dear Chair Marten and Members:

SUBJECT: Senate Bill No. 281, S.D. 1, Relating to Torture

I am Vince Legaspi, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 281, S.D. 1, Relating to Torture.


Currently, there is no clear legal definition of torture in the state, even though it should be explicitly prohibited. It is essential to distinguish between abuse and torture, as they differ in severity, and the penalties should reflect that distinction. In 2024, there were several cases involving the torture of children; however, existing laws provided no framework to charge and penalize the perpetrators appropriately. Passing this bill would establish charges that accurately reflect the severity of such acts, ensuring that offenders are held accountable for the magnitude of their crimes.


The HPD urges you to support use Bill No. 281, S.D. 1, Relating to Torture.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

  
Arthur J. Logan  
Chief of Police

  
Vince Legaspi, Captain  
Criminal Investigation Division

**KELDEN B.A. WALTJEN**  
PROSECUTING ATTORNEY

**SHANNON M. KAGAWA**  
FIRST DEPUTY  
PROSECUTING ATTORNEY



888 KEALAKEHE AVENUE  
HILO, HAWAII 96720  
PH: (808) 961-0466  
FAX: (808) 961-8908

74-675 KEALAKEHE PARKWAY  
KAILUA-KONA, HAWAII 96740  
PH: (808) 322-2552  
FAX: (808) 322-6584

64-1067 MAMALAHOA HIGHWAY, C-3  
KAMUELA, HAWAII 96743  
PH: (808) 887-3017  
FAX: (808) 887-3016

## **OFFICE OF THE PROSECUTING ATTORNEY**

### **TESTIMONY IN SUPPORT OF SENATE BILL NO. 281 SD1 WITH COMMENTS**

#### **A BILL FOR AN ACT RELATING TO TORTURE**

#### **COMMITTEE ON HUMAN SERVICES & HOMELESSNESS**

Representative Lisa Martin, Chair  
Representative Ikaika Olds, Vice Chair

Tuesday, March 11, 2025 at 10:00 a.m.  
Via Videoconference and  
State Capitol Conference Room 329  
415 South Beretania Street

Honorable Chair Martin, Vice-Chair Olds, and Members of the Committee on Human Services and Homelessness. The County of Hawai'i, Office of the Prosecuting Attorney submits the following testimony in support of Senate Bill No. 281 SD1, with comments.

In recent years, the Office of the Prosecuting Attorney for the County of Hawai'i has seen and prosecuted multiple cases involving child victims who suffered acts of torture, including at the hands of parents or guardians. In such cases, the heinous nature of the crime and its life-altering effects on the victims and the community may not be adequately reflected by the criminal charges and remedies previously available.

This bill was drafted with the intention to create a new class A felony offense of Torture. This new offense would serve as an enhanced charge for certain acts that might otherwise be charged as lesser offenses under the current penal code, and also would serve to punish some types of torture that current law does not adequately address. This bill reflects the need to hold individuals accountable for acts of torture, particularly when committed against minors or vulnerable persons.

The Office of the Prosecuting Attorney, County of Hawai'i, further adds the following comments as to possible ways to strengthen and clarify this bill:

- SB 281 SD1 could be strengthened by adding back language that would define a knowing failure to provide a minor or vulnerable person with necessary food, water, or clothing as an act of torture. The Office of the Prosecuting Attorney, County of Hawai'i has regrettably seen multiple cases in recent years involving the intentional or knowing starvation of minors, and strongly supports defining such conduct as an act of torture. Language to this effect was in the original bill draft, but was removed in the SD1 draft

due to a concern that the language could be interpreted to apply to situations caused by poverty. However, by removing this language entirely, the SD1 version of the bill would fail to punish intentional starvation even where poverty is not a factor. Rather than allow intentional starvation to escape punishment, the Office of the Prosecuting Attorney, County of Hawai‘i, recommends that an exception for poverty be added to address this concern. Language to this effect could be adapted from Section 709-903, HRS, dealing with persistent nonsupport, limiting the act of torture to knowingly “depriving the minor or vulnerable person of necessary food, water, or clothing which the person can provide.”

- SB 281 SD1 could be strengthened by reducing the number of occasions of acts of torture that must be proven beyond a reasonable doubt under subsection (1)(c). The current bill requires three or more occasions within a period of two years. It can be difficult, particularly where torture is ongoing or continuous over a long period of time, or where a child victim is involved, to clearly separate the history of torture into three or more distinct occasions. In addition, certain acts of torture such as branding or electrocution are especially heinous and deserve enhancement even when committed on a single occasion.
- SB 281 SD1 could be strengthened by increasing the lookback period under (1)(c). The current bill requires proof of three or more occasions within a limited lookback period of two years. For comparison, the general statute of limitations for a class A felony is six years, with additional time for certain offenses involving child victims. Increasing the lookback period beyond two years would give more flexibility to address cases involving a long history of concealed torture.
- SB 281 SD1 could be clarified by altering the language under subsection (1)(c)(viii) pertaining to exposure to the elements. The current bill requires proof that the victim was exposed to “extreme temperatures.” Other aspects of exposure to the natural elements may be more hazardous than temperature in Hawai‘i, especially precipitation, wind, or sun exposure. The Office of the Prosecuting Attorney, County of Hawai‘i, suggests that this language be modified to more generally criminalize “denying the minor or vulnerable person adequate shelter sufficient to protect the minor or vulnerable person from the natural elements.”
- SB 281 SD1 could be strengthened by adding the act of confining or restraining a child or vulnerable person within a cage to the acts specified under subsection (1)(c).
- SB 281 SD1 could be clarified by including a definition for “strangling” under subsection (1)(c)(i). Current law makes it a class C felony offense to intentionally or knowingly cause bodily injury to a family or household member by impeding the normal breathing or circulation of the blood by (a) applying pressure on the throat or the neck with any part of the body or a ligature; (b) blocking the nose and mouth; or (c) applying pressure to the chest, provided that infliction of visible bodily injury is not required to establish an offense. HRS § 709-906(9). Use of a similar definition would be appropriate here.

The County of Hawai‘i, Office of the Prosecuting Attorney remains committed to pursuing justice with integrity and commitment. For the foregoing reasons, the County of Hawai‘i, Office

of the Prosecuting Attorney supports the passage of Senate Bill No. 281 SD1, with comments.  
Thank you for the opportunity to testify on this matter.



**SB-281-SD-1**

Submitted on: 3/9/2025 2:26:48 AM

Testimony for HSH on 3/11/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Jamie Detwiler	Hawaiian Islands Republican Women	Support	Written Testimony Only

Comments:

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee,

The Hawaiian Islands Republican Women stand in strong SUPPORT of SB 281, relating to torture.

SB281 is necessary to protect the most vulnerable people including children and adults who depend on others to care for them.

Law enforcement officers and the judicial system should have the legal authority to detain and prosecute anyone who harms and tortures innocent and vulnerable people.

Please vote YES in support of SB281. Thank you for the opportunity to testify.

Respectfully,

Jamie Detwiler, President

Hawaiian Islands Republican Women



**SB-281-SD-1**

Submitted on: 3/10/2025 7:30:05 PM

Testimony for HSH on 3/11/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Sylvia Dolena	Kulia I Ka Nu'u outreach Services	Support	Written Testimony Only

Comments:

Support Bill SB281. We must protect our children. They depend on us.

Mahalo.

**SB-281-SD-1**

Submitted on: 3/7/2025 9:19:33 PM

Testimony for HSH on 3/11/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Keoni Mendiola	Individual	Support	Written Testimony Only

Comments:

I Keoni Mendiola,is in full support of SB281.

**SB-281-SD-1**

Submitted on: 3/9/2025 11:37:23 AM

Testimony for HSH on 3/11/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in Support

**SB-281-SD-1**

Submitted on: 3/9/2025 1:23:34 PM

Testimony for HSH on 3/11/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Rita Kama-Kimura	Individual	Support	Written Testimony Only

Comments:

**Committee on Human Services and Homelessness**

**Rep. Lisa Marten, Chair    Rep. Ikaika Olds, Vice Chair**

**Members:**

**Terez Amato, Cory Chun, Sue Keohokapu-Lee Loy, Gregg Takayama, Jenna Takenouchi  
David Alcos III and Diamond Garcia**

**My name is Rita Kama-Kimura, I am submitting this in strong support of this bill SB281  
SD1Report Title: Honolulu Prosecuting Attorney Package; Criminal Offenses; Penal Code;  
Torture; Prohibition**

**It is noted that Senate Pres. Kouchi submitted the bill on behalf of the Honolulu  
Prosecuting Attorney.**

**I noted on page 1.**

**... SECTION 1. The legislature finds that *many forms of cruel and degrading sadism* are  
inadequately addressed by the current criminal law.**

**Also note the word “*minor*” was used 10 times throughout the bill. The bill is only 4 pages  
long.**

**There have been way too many cases in which young innocent children have been  
neglected, beaten, tortured, and have lost their lives. Sadly, it appears that in some cases  
the state was involved in which the child had been placed in some of these dangerous  
situations. How can this continue to happen? Silence!**

**Too many cases going back to the heartbreaking case of Peter Boy Kema, more than two  
decades ago.**

**This needs to stop, I pray this bill will be the first step in truly protecting these innocent  
precious children.**

**I note that in the senate there were no opposing votes, which was so hopeful.**

**So, with this I ask you to please pass this bill.**

**Lastly, I thank the Honolulu Prosecuting Attorney's office for instituting this bill and I look forward to positive changes to come.**

**Respectfully,  
Rita Kama-Kimura**

**SB-281-SD-1**

Submitted on: 3/10/2025 9:57:21 AM

Testimony for HSH on 3/11/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Jennifer Chiwa	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Representative Marten, Vice Chair Representative Olds and Members of the Committee on Human Services and Homelessness.

Please support SB 281 SD 1 to make torture a class A felony.

Mahalo.

Jennifer Chiwa

Makiki and life long resident of Oahu

**SB-281-SD-1**

Submitted on: 3/10/2025 11:24:27 AM

Testimony for HSH on 3/11/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Joy Inada	Individual	Support	Written Testimony Only

Comments:

Good morning! I am writing in support of this SB 281. Our laws need to prosecute the offender(s) on a felony level and with no minimum sentence other than a life sentence when a death occurs due to parental/guardian negligence. Our social workers need better assistance from all law enforcement/health agencies involved! Please consider this SB281 as a step in the right direction for now as Hawaii needs to start somewhere. Mahalo for hearing me out on this matter.

**SB-281-SD-1**

Submitted on: 3/10/2025 2:46:14 PM

Testimony for HSH on 3/11/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Amber Franco	Individual	Support	Written Testimony Only

Comments:

Aloha,

I am writing this testimony in support of SB281.

The amount of child abuse and neglect that occurs in Hawai'i is unimaginable and a shame. What is shameful is the increase of cases that the state has reported over the past 5 years.

4 years ago, Ariel Pili'alo'ha Sellers, was reported missing by her adoptive parents, Isaac and Lehua Kalua. Less than a month later, they were arrested for her murder. One that was preventable by the State of Hawai'i.

Ariel, formally known by the court as "Isabella Kalua," was beaten and abused by the very people who were supposed to protect her and love her. But instead, her life ended early. Even prior to her last breath. Pictures of this girl floating across social media, had me SICK, and in tears. To find out that the abusers were reported, but nothing was done about it, was absolutely shameful.

My 'ohana assisted with the search of her lifeless body. We protested, rallied, cried, grieved and always came back to asking WHY? Why did the adoptive/foster parents allow this to happen? Why did the state allow this to happen?

Over the past 5 years, the total amount of children reported by the government, especially those in recent events, is absolutely sickening and shameful. The people who commit these heinous and hateful crimes should be charged with Murder, with death penalty and 0 bond.

The acts by these people should result in death penalty by firing squad. Who in their right mind, or any mind, could ever think to doing such acts? And why hasn't the State of Hawaii done anything about it?

I support SB281, because the keiki of Hawai'i deserve more. They do not and should not go through that abuse. As a keiki of Hawaii, seeing these cases in the news is absolutely heartbreaking. These children do not deserve to live such terrible lives that lead to early death.

That is all I want to say, and I hope the state of Hawaii can do something about this so that we see this no longer within the islands.





**SB-281-SD-1**

Submitted on: 3/10/2025 6:09:42 PM

Testimony for HSH on 3/11/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Master Shelby Pikachu Billionaire	Ohana Unity Party & Kingdom of The Hawaiian Islands	Support	Remotely Via Zoom

Comments:

Dear Esteemed Members of the Hawaii State Legislature

I am writing to formally endorse Senate Bill No. 281, introduced in the Thirty-Third Legislature of 2025, which seeks to amend Chapter 707 of the Hawaii Revised Statutes by defining and prohibiting the offense of torture as a class A felony. This legislation addresses a significant deficiency in our current criminal justice framework by targeting acts of extreme cruelty and sadism that inflict profound physical and psychological harm, particularly on vulnerable populations. The compelling evidence and statutory gaps outlined below underscore the urgent need for this measure, and I respectfully urge your affirmative vote to advance this critical protection for Hawaii's residents.

The Current Legal Deficiency: Hawaii's existing penal code inadequately captures the full scope of torturous conduct, as noted in the bill's findings. While aggravated assault and kidnapping statutes address some violent acts, they fail to encompass the pervasive control and suffering inherent in torture—especially when bodily injury is not the sole metric of harm. Consider the following:

- **Unaddressed Cruelty:** Acts such as starvation, electrocution, or forced ingestion of harmful substances may evade prosecution under current definitions of "bodily injury," yet they impose devastating suffering through domination and degradation.
- **Prevalence of Severe Abuse:** The U.S. Department of Justice (2023) estimates 1.3 million aggravated assaults occur annually nationwide, with a subset involving prolonged torment. In Hawaii, the Department of Health reported 2,875 substantiated child abuse and neglect cases in 2023—a troubling 8% increase since 2020—some of which likely include torture-like acts not fully prosecutable today.
- **Vulnerable Populations at Risk:** The bill wisely prioritizes minors (under 18) and vulnerable persons (e.g., family members, handicapped individuals). Hawaii's demographics amplify this concern: 19% of our population is over 65, and 14% is under 18 (U.S. Census, 2023), comprising a significant portion susceptible to predatory control.

S.B. No. 281's Robust Response: This legislation provides a precise and comprehensive framework to criminalize torture, ensuring accountability for egregious acts:

- **Defined Offenses:** It prohibits knowingly causing serious bodily injury under custody/control, injury following a pattern of abuse, or subjecting minors/vulnerable persons to specific acts (e.g., strangling, burning, suspending, restricting hygiene) on three or more occasions within two years.
- **Pattern Recognition:** By defining a "pattern or practice" as two or more acts within two years, the bill aligns with evidence that abuse escalates over time. The CDC (2022) found 60% of domestic violence victims endure repeated incidents, suggesting a significant local caseload of potential torture.
- **Appropriate Penalty:** Classified as a class A felony, torture carries a maximum 20-year sentence (HRS §706-659), comparable to penalties in states like California (life imprisonment under Penal Code §206), reflecting its severity and deterrent intent.

Supporting Evidence: The need for this law is substantiated by data highlighting both the scope of abuse and its consequences:

- **Child Maltreatment:** Nationally, 1 in 7 children experiences abuse or neglect by age 18 (National Children's Alliance, 2023). In Hawaii, 1,102 physical abuse cases were substantiated in 2023 (DOH), with repeated or extreme incidents potentially qualifying as torture under S.B. 281.
- **Elder Abuse Surge:** The Executive Office on Aging (2024) reported 543 elder abuse cases in 2023, a 12% rise since 2020. Acts like exposure to unsanitary conditions or extreme temperatures—cited in the bill—often fall through legal cracks today.
- **Psychological Devastation:** Torture's toll exceeds physical harm. The American Psychological Association (2023) notes PTSD rates among torture survivors exceed 70%, compared to 20-30% for typical assault victims. Hawaii's mental health system, facing a 15% increase in crisis calls since 2021 (DOH), cannot bear this burden without preventive action.
- **Prosecution Gaps:** States with specific torture statutes, like New York and Illinois, report 15-20% higher prosecution rates for severe abuse cases (National Institute of Justice, 2022). Hawaii lags behind, with only 13 states currently codifying torture explicitly.

Policy and Moral Imperative: S.B. No. 281 is both a pragmatic and ethical necessity:

- **Safeguarding Vulnerable Groups:** Protecting over 33% of our population—minors, elders, and disabled individuals (U.S. Census, 2023)—upholds Hawaii's commitment to justice and equity.
- **Enhancing Deterrence:** A class A felony designation signals zero tolerance, potentially reducing recidivism. Nationally, felony convictions for severe abuse deter repeat offenses by up to 25% (Bureau of Justice Statistics, 2023).
- **Modernizing the Penal Code:** By joining states with explicit torture laws, Hawaii aligns with evolving standards of criminal justice, ensuring our statutes reflect the sophistication of modern cruelty.

I respectfully urge you to support S.B. No. 281 in its current form and vote in favor upon its approval. This legislation empowers prosecutors to hold perpetrators accountable, protects our most vulnerable citizens, and reinforces Hawaii's dedication to human dignity and public safety. Thank you for your steadfast leadership and consideration of this pivotal measure.

Sincerely,

Master Shelby "Pikachu" Billionaire, HRM

Ohana Unity Party, Chairman

[www.Ohanaunityparty.com](http://www.Ohanaunityparty.com)

Kingdom of The Hawaiian Islands

**SB-281-SD-1**

Submitted on: 3/10/2025 8:21:18 PM

Testimony for HSH on 3/11/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Alice Abellanida	Individual	Support	Written Testimony Only

Comments:

I strongly support this bill. It is long overdue.

**SB-281-SD-1**

Submitted on: 3/10/2025 9:12:35 PM

Testimony for HSH on 3/11/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Kimberly Oshiro	Individual	Support	Written Testimony Only

Comments:

Please pass this measure to hold those responsible for abuse fully accountable. The system is failing to protect our keiki.

**SB-281-SD-1**

Submitted on: 3/10/2025 9:58:36 PM

Testimony for HSH on 3/11/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Esther McDaniel	Individual	Support	Written Testimony Only

Comments:

Aloha and Mahalo to the Committee on Human Services and Homelessness:

I support SB 281 SD1.

This bill is just one part of helping to protect people particularly vulnerable keiki and kupuna. More must be done, but strengthening and clarifying the law allows for prosecution of these heinous acts and is a step in the right direction.

Mahalo for your time,

Esther McDaniel - Wife, mom, grandmother and former licensed Resource Caregiver (Foster Parent)

**SB-281-SD-1**

Submitted on: 3/10/2025 11:48:57 PM

Testimony for HSH on 3/11/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Tiare Smith	Individual	Support	Written Testimony Only

Comments:

**\*\*Testimony in Support of S.B. 281\*\***

Aloha Chair, Vice Chair, and Honorable Members of the Committee,

My name is Tiare Smith, a proud Native Hawaiian and resident of Kahalu‘u, O‘ahu, where I have lived for 45 years. As a kama‘āina deeply rooted in this community, I have witnessed the evolution of our islands’ social and legal frameworks, often with pride, but occasionally with concern when justice falls precipitously short. I submit this testimony in strong support of Senate Bill 281 (SB 281), which seeks to define and prohibit the offense of torture as a class A felony under Chapter 707, Hawaii Revised Statutes. This measure is a vital step toward rectifying a glaring deficiency in our penal code, aligning it with principles of humanity, equity, and communal well-being that resonate with our Hawaiian values of pono (righteousness) and aloha.

**### The Imperative for SB 281**

The legislature’s finding that “many forms of cruel and degrading sadism are inadequately addressed by the current criminal law” is not merely an observation—it is an indictment of a system that has too long permitted egregious acts of violence to evade proportionate accountability. Torture, as delineated in SB 281, encompasses a spectrum of heinous behaviors—from starvation and electrocution to the systematic degradation of minors and vulnerable persons—that inflict profound physical and psychological harm. These acts, often cloaked within aggravated kidnappings or patterns of abuse, exploit gaps in existing statutes, leaving victims disenfranchised and perpetrators emboldened.

As a Native Hawaiian, I am acutely aware of the historical traumas inflicted upon our people, traumas that echo in the present when justice is denied. SB 281 is not merely a legal reform; it is an affirmation of our collective duty to protect the most vulnerable among us—minors, the elderly, and those with disabilities—who are disproportionately targeted by such atrocities. To allow these acts to persist unaddressed is antithetical to the spirit of lōkahi (harmony) that underpins our cultural heritage.

**### Commendation of SB 281’s Framework**

I commend the bill’s precise articulation of torture, particularly its recognition of “pervasive physical and psychological control” as the common denominator. By delineating specific acts—



strangling, branding, restricting basic hygiene, and forcing ingestion of harmful substances—SB 281 establishes a robust foundation for prosecution. The inclusion of a “pattern or practice” clause under subsection (1)(b) astutely acknowledges the insidious nature of repeated abuse, while subsection (1)(c)’s focus on minors and vulnerable persons reflects an equitable prioritization of those least able to defend themselves. Classifying torture as a class A felony appropriately reflects its gravity, ensuring penalties commensurate with the suffering inflicted.

### ### Proposed Amendments for Safety, Efficacy, and Cost-Effectiveness

While SB 281 is a commendable stride forward, I respectfully propose the following amendments to enhance its safety, efficacy, cost-effectiveness, and equity. These suggestions are grounded in a pragmatic assessment of implementation challenges and a commitment to maximizing public resources without compromising justice.

#### 1. \*\*Amendment to Subsection (1)(c): Expand Preventative Measures\*\*

The current language identifies acts of torture after they occur, but proactive prevention could mitigate harm and reduce long-term costs. I propose adding a provision requiring mandatory reporting and intervention by social services or law enforcement upon the first documented instance of any act listed under (1)(c)(i)-(vii). For example:

\*“Upon credible evidence of a single occurrence of an act under subsection (1)(c), the Department of Human Services shall initiate an immediate investigation and, if substantiated, provide protective services to the minor or vulnerable person.”\*

This amendment enhances safety by preempting escalation, reduces judicial and incarceration costs by addressing issues early, and ensures equitable protection for at-risk populations.

#### 2. \*\*Cost-Effective Enforcement: Tiered Sentencing and Rehabilitation\*\*

Classifying all torture as a class A felony, while just, may strain an already overburdened correctional system, with incarceration costs averaging \$167 per day per inmate (based on 2023 estimates). I propose a tiered sentencing structure:

- Retain the class A felony designation (20-year maximum) for acts under (1)(a) and (1)(b), involving serious bodily injury or established patterns.

- Introduce a class B felony option (10-year maximum) for first-time offenders under (1)(c), coupled with mandatory participation in a state-funded rehabilitation program focused on behavioral correction and victim restitution.

Cost savings are evident: a 10-year sentence with rehabilitation (estimated at \$50,000 annually, including program costs) versus 20 years of incarceration (\$1.2 million per inmate) yields significant fiscal relief while prioritizing rehabilitation over punitive excess.

#### 3. \*\*Equity Enhancement: Community-Based Monitoring\*\*

To address disproportionate impacts on Native Hawaiian and low-income communities, where intergenerational trauma and resource scarcity amplify vulnerability, I propose adding:

\*“The Department of Health, in collaboration with community organizations, shall establish a pilot program in high-risk districts, such as Kahalu‘u, to provide free training for residents to identify and report signs of torture, with funding not to exceed \$500,000 annually.”\*

This leverages existing community networks, reduces reliance on state agencies (saving approximately \$200,000 annually in administrative overhead), and empowers residents to safeguard their own, fostering equity and self-determination.

#### 4. \*\*Clarification of “Custody or Physical Control”\*\*

The definition of “custody or physical control” could be exploited to exclude psychological coercion absent physical restraint. I recommend amending it to:

\*“‘Custody or physical control’ means the forcible restriction of a person’s movements, confinement, or the exercise of pervasive psychological dominance sufficient to subjugate the victim’s autonomy, without consent or lawful authority.”\*

This ensures efficacy by capturing the full scope of torture dynamics, enhancing prosecutorial precision.

#### ### Conclusion

SB 281 represents a bold and necessary advancement in Hawaii’s penal code, one that I, as a Native Hawaiian resident of Kahalu‘u with 45 years of lived experience, wholeheartedly endorse. With the proposed amendments, this bill can transcend mere prohibition to become a model of justice that prioritizes safety, efficacy, cost-effectiveness, and equity. I urge the committee to adopt these refinements and pass SB 281, ensuring that our laws reflect the dignity and resilience of our people. Let us not falter in our pursuit of pono for all who call these islands home.

Mahalo nui loa for your consideration.

Respectfully submitted,

Tiare Smith

Kahalu‘u, O‘ahu

**SB-281-SD-1**

Submitted on: 3/11/2025 2:52:53 AM

Testimony for HSH on 3/11/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Ellen Awai	Individual	Support	Written Testimony Only

Comments:

I support this bill SB281.SD1. that torture be an A class felony to a minor or vulnerable individual and not a consenting adult.