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Testimony of the Office of the Public Defender to the Senate Committee on the Judiciary re: S.B. 281: RELATING TO TORTURE

Chair Sen. Karl Rhoads, Vice-Chair Sen. Mike Gabbard and Members of the Committee:

The Office of the Public Defender respectfully **opposes SB 281**.

SB 281 seeks to create new statutory prohibitions specifically related to torture, because of the belief that current criminal statutes do not adequately address this issue. The OPD believes that current statutory prohibitions dealing with kidnapping, assault, attempted murder, murder and felony abuse of family or household members, along with enhanced sentencing possibilities contained in HRS section 706 adequately address the issues outlined in this bill. Furthermore, some of the language contained in this proposed bill is too broad and can lead to confusion and prosecutorial abuses.

The proposed language and prohibitions of SB 281 listed in proposed subsections (1) (a)-(c) are all acts that are currently prohibited and more easily prosecuted under current criminal law and are all crimes for which enhanced sentencing can be used to insure adequate punishment. Subsections (c) (iv)-(viii) are concerning, because without more specific definitions of prohibited conduct the discretion to arrest and prosecute will lie with law enforcement and the related prosecutorial office. For example: (iv) reads "Depriving the minor or vulnerable person of necessary food, water or clothing". These prohibitions are too broad, specifically the definition regarding the term "necessary". Does "necessary" mean necessary to survive, live happily or to be totally free of hunger or thirst? (vi) reads "forcing the minor or vulnerable person to remain in an area unsuitable for human habitation, such as areas where urine or feces are actively present": Within this subsection there is no

definition of “remain” nor is it clear whether the parent or guardian is requiring the minor to “live” in the affected area. What if a parent or guardian wishes for the child or vulnerable person to clean or learn to clean a bathroom that they have misused, and have said person “remain” for a period of time therein to appreciate the necessity to clean? (vii) reads “forcing a minor or vulnerable person to ingest mind-altering drugs”, without a definition as to what substances are prohibited, or for what purpose they are being forced upon the minor or vulnerable person. Numerous medications dealing with hyperactivity, anxiety disorders or other medical conditions could be considered mind-altering, but also necessary medical treatments. This bill does not contain any section which exempts conduct intended to properly treat, teach or discipline a child or vulnerable person.

Subsection (2) states that “proof that the victim suffered pain is not an element of a violation of subsection (1)(c) of this offense”, thus making “torture” a strict liability crime (meaning that it can be prosecuted without proof of any physical or psychological harm). Furthermore, subsection (4) states that “Torture is a class A felony” punishable by 20 years of incarceration. The OPD believes that this would be too severe a penalty for some of the prohibited acts listed in SB 281 as currently proposed.

The OPD understands that recently reported cases uncovered possible evidence that the prohibitions contained in SB 281 seem necessary to protect the vulnerable within our community, and to adequately punish those that commit such acts. However, it would be better to add some of the prohibited conduct contained within this proposed bill to the current definitions of assault, abuse of a household member and other currently defined crimes, instead of creating an entirely new section to prohibit such conduct. Furthermore, current penalties contained in HRS section 706 would adequately punish any individual that were to commit said crimes.

Thank you for the opportunity to comment on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
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HOPE MUA LOIO HO'OPI'I

THE HONORABLE KARL RHOADS, CHAIR  
SENATE COMMITTEE ON JUDICIARY  
Thirty-Third State Legislature  
Regular Session of 2025  
State of Hawai'i

February 4, 2025

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

Chair Rhoads, Vice Chair Gabbard, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney for the City and County of Honolulu submits the following testimony in **strong support** of S.B. 281. This bill is part of the Department's 2025 legislative package, and we thank you for hearing it.

S.B. 279 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 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 risk to victims.

Beginning with the major inadequacies in the current law. Not all forms of torture meet the criteria for assault. All degrees of assault under the Hawai‘i Penal Code require proof of bodily injury.<sup>7</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.

Electrocution instances a classic example.<sup>8</sup> By calibrating the intensity of the current, duration of exposure, and electrical resistance, a torturer can avoid leaving a perceptible injury.<sup>9</sup> Starvation is a special favorite of child torturers.<sup>10</sup> In one nationwide study of extreme child abuse, 89% of the child victims were starved and 79% were fluid-restricted.<sup>11</sup> But starvation does not always cause pain either.<sup>12</sup> Both electrocution and starvation can inflict immense suffering on victims, while evading the technical meaning of an “assault.”

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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> 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>8</sup> See, e.g., *Jasinski v. Tyler*, 729 F.3d 531, 534-35 (6th Cir. 2013) (describing multiple reports to child protective services that father used cattle prod on his children); *State v. Canady*, 949 N.W.2d 348, 352 (Neb. 2020) (defendant electrocuted girlfriend’s son for alleged behavior); *Rippo v. State*, 946 P.2d 1017, 1021, 1022-23 (Nev. 1997) (defendant used stun gun multiple times on two women before fatally strangling them both).

<sup>9</sup> Cf. Darius Rejali, *Electricity: The Global History of a Torture Technology*, available at [https://www.reed.edu/poli\\_sci/faculty/rejali/articles/History\\_of\\_Electric\\_Torture.html](https://www.reed.edu/poli_sci/faculty/rejali/articles/History_of_Electric_Torture.html). See generally WebMD, *Electric Shock* (reviewed by Jabeen Begum, MD), May 9, 2023, available at <https://www.webmd.com/first-aid/electric-shock> (“Exposure to electrical energy may result in no injury at all or may result in devastating damage or death.”); Daniel P. Runde, *Electrical Injuries*, MERCK MANUAL CONSUMER VERSION (Nov. 2024), available at <https://www.merckmanuals.com/home/injuries-and-poisoning/electrical-and-lightning-injuries/electrical-injuries> (factors affecting severity of electrical injuries).

<sup>10</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>11</sup> Barbara L. Knox, et al., *Child Torture as a Form of Child Abuse*, 7 J. CHILD & ADOLESCENT TRAUMA 37, 39 (2014).

<sup>12</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>.

Likewise, torture often cannot be prosecuted as attempted murder. Attempted murder requires proof of the intent to kill.<sup>13</sup> But many torturers lack this homicidal goal: they want the victim alive precisely to elongate the suffering. For example, in a Pennsylvania case, the defendant beat his six-year-old son to death, and an autopsy showed multiple blunt force injuries, including brain trauma several months old and bleeding in the spinal cord weeks old.<sup>14</sup> On appeal, the defendant argued this history of abuse proved he lacked the intent to kill.<sup>15</sup> The Pennsylvania Supreme Court did not buy that argument, but our courts very well might.

Hawai‘i also does not permit prosecution of assault as a continuing offense.<sup>16</sup> In other words, the prosecution must charge each assault as a distinct episode. But for victims of torture, specific occasions may be impossible to parse. 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>17</sup>

Next, the 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>18</sup> (b) felony assault preceded by prior assaults;<sup>19</sup> and (c) specific forms of cruel and degrading treatment repeatedly inflicted against minors or vulnerable persons.<sup>20</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>21</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>22</sup> this category does not require proof of bodily injury. It therefore covers cases such as electrocution, starvation, suspension, or forced ingestion of feces that currently cannot be prosecuted as assault.

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<sup>13</sup> See *Briones v. State*, 74 Haw. 442, 450-52, 848 P.2d 966, 971-72 (1993).

<sup>14</sup> *Id.* at 413-414.

<sup>15</sup> *Id.* at 416 (“According to appellant, his history of abusing Raymond and the myriad acute injuries Raymond suffered actually negates a finding of specific intent to kill, because if appellant ‘wanted to kill this child it would have been easy for him to do so.’”).

<sup>16</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>17</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).

<sup>18</sup> S.B. 281, p. 1, ll. 15-16.

<sup>19</sup> S.B. 281, p. 2, ll. 1-4.

<sup>20</sup> S.B. 281, p. 2, l. 5 to p.3, l. 7.

<sup>21</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>22</sup> CAL. PENAL CODE § 206 (“The crime of torture does not require any proof that the victim suffered pain.”)

Lastly, to dispense with some scarecrows. This bill does not create strict liability; it specifies a state of mind for each class of offenses.<sup>23</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.

For example, choice of evils remains a defense that the prosecution must exclude beyond reasonable doubt.<sup>24</sup> The law also allows parents and guardians to use reasonable force for the care, discipline, and safety of minors or incompetents.<sup>25</sup> Neither a parent who must forcibly medicate an unwilling child nor one who must gently teach lessons in tidiness have anything to fear from this bill.

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

Thank you for the opportunity to testify.

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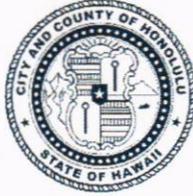
<sup>23</sup> See HRS § 702-212; *State v. Gonzalez*, 128 Hawai‘i 314, 321, 288 P.3d 788, 795 (2012) (explaining that strict liability requires plain legislative intent to eliminate state of mind requirement).

<sup>24</sup> HRS § 703-302.

<sup>25</sup> HRS § 703-309.

HONOLULU POLICE DEPARTMENT  
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KAHU MĀKA'I

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

OUR REFERENCE VL-BT

February 5, 2025

The Honorable Karl Rhoads, Chair  
and Members  
Committee on Judiciary  
State Senate  
415 South Beretania Street, Room 016  
Honolulu, Hawai'i 96813

Dear Chair Rhoads and Members:

**SUBJECT: Senate Bill No. 281, 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, 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.

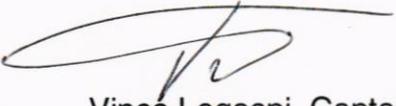
The HPD urges you to support use Bill No. 281, Relating to Torture.

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**  
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**STEPHEN L. FRYE**  
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## **OFFICE OF THE PROSECUTING ATTORNEY**

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

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

**COMMITTEE ON JUDICIARY**  
Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair

Wednesday, February 5, 2025 at 9:15 a.m.  
Via Videoconference and  
State Capitol Conference Room 016  
415 South Beretania Street

Honorable Chair Rhoads, Vice-Chair Gabbard, and Members of the Committee on Judiciary. The County of Hawai'i, Office of the Prosecuting Attorney submits the following testimony in support of Senate Bill No. 281, 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 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 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 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 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 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, with comments. Thank you for the opportunity to testify on this matter.

**COUNTY COUNCIL**

Mel Rapozo, Chair  
KipuKai Kualii, Vice Chair  
Addison Bulosan  
Bernard P. Carvalho, Jr.  
Felicia Cowden  
Fern Holland  
Arryl Kaneshiro



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January 29, 2025

**TESTIMONY OF ADDISON BULOSAN  
COUNCILMEMBER, KAUAI COUNTY COUNCIL  
ON  
SB 255, RELATING TO CAMPAIGN CONTRIBUTIONS,  
SB 260, RELATING TO JUDICIARY,  
SB 279, RELATING TO DANGEROUS DRUGS, AND  
SB 281, RELATING TO TORTURE  
Senate Committee on Judiciary  
Wednesday, February 5, 2025  
9:15 a.m.  
Conference Room 016  
Via Videoconference**

Dear Chair Rhoads and Members of the Committee:

Thank you for this opportunity to provide testimony in SUPPORT of SB 255, Relating to Campaign Contributions, SB 260, Relating to Judiciary, SB 279, Relating to Dangerous Drugs, and SB 281, Relating to Torture. My testimony is submitted in my individual capacity as a member of the Kaua'i County Council.

I wholeheartedly support the intent of SB 255, SB 260, SB 279, and SB 281, which would greatly affect the Kaua'i community.

Thank you again for this opportunity to provide testimony in support of SB 255, SB 260, SB 279, and SB 281. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188 or via email to [cokcouncil@kauai.gov](mailto:cokcouncil@kauai.gov).

Sincerely,

**ADDISON BULOSAN**  
Councilmember, Kaua'i County Council

AAO:mn

**SB-281**

Submitted on: 1/31/2025 4:24:27 PM

Testimony for JDC on 2/5/2025 9:15:00 AM

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

Comments:

Stand in strong support