

**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 • WEB: <https://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 JOY A. SAN BUENAVENTURA, CHAIR
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES**
Thirty-Third State Legislature
Regular Session of 2026
State of Hawai'i

January 27, 2026

RE: S.B. 278; RELATING TO ELDER CRIME VICTIMS.

Chair San Buenaventura, Vice Chair McKelvey, and members of the Senate Committee on Health and Human Services, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in **strong support** of S.B. 278. This bill is part of the Department's 2025 legislative package, and we appreciate the opportunity to testify.

S.B. 278 amends the offenses of first-degree assault and second-degree assault when the victim is elderly. Under the current law, assault is aggravated by one grade when the victim is sixty years or older, but only if the defendant "knew or should have known" the victim's age. S.B. 278 removes this state of mind requirement regarding age, while raising the threshold age to sixty-five.

In 2021, the Legislature passed Act 147 to better protect Hawaii's seniors from being targeted by violence, theft, or fraud. The law now provides additional penalties for those who harm kupuna.¹ As Lord Lawton memorably phrased the principle: "It has long been the policy of the law that those who use violence on other people must take their victims as they find them."² This doctrine reflects a basic legal tenet: those who choose violence must assume responsibility for its actual consequences.

Assault differs fundamentally from theft or fraud in ways that make the current mens rea requirement unworkable. Property crimes typically involve deliberation, planning, and selection that leaves evidentiary traces of intent. Violent assaults frequently occur without such premeditation. Elderly victims are often selected precisely because age-related vulnerability is visually apparent, yet the current standard requires proof of a defendant's internal assessment—something that exists, if at all, only in the mind of someone who has already demonstrated willingness to attack strangers.

¹ See, e.g., HRS § 708-830.5(1)(e) (first-degree theft targeting the elderly); HRS § 708-851(c) (first-degree forgery targeting the elderly).

² *R. v. Blaue*, 1 WLR 1411 (1975).

The current standard asks juries to decide not whether an assault occurred, not whether the victim was elderly, but whether a defendant consciously processed the victim's age. This transforms trials into speculative exercises about perception and cognition rather than adjudications of real harm. The law's focus on a defendant's subjective awareness obscures what should be central: the objective vulnerability of elderly victims and the actual injury inflicted. The same broken bone that heals readily in youth can permanently disable a kupuna.

Criminals should not be assaulting anyone. When they do, they should be held accountable for the harm actually done. Strict liability with respect to victim age is consistent with established criminal law doctrine and appropriately places responsibility on those who initiate criminal violence.

Thank you for the opportunity to testify.

Rebecca V. Like
Prosecuting Attorney



Keola Siu
First Deputy
Prosecuting Attorney

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

3990 Ka'ana Street, Suite 210, Lihu'e, Hawai'i 96766

808-241-1888 ~ FAX 808-241-1758

Victim/Witness Program 808-241-1898 or 800-668-5734

The Honorable Joy A. San Buenaventura, Chair
Senate Committee on Health and Human Services
Thirty-third State Legislature
Regular session of 2026
State of Hawai'i
January 26, 2026

RE: SB 278. Relating to Elder Crime Victims

Dear Chair San Buenaventura and members of the Committee on Health and Human Services:

Thank you for the opportunity to provide testimony in **OPPOSITION** to this bill. Our Office strongly supports protecting Hawaii's kupuna and shares the Committee's commitment to ensuring that older adults are treated with dignity, compassion and respect. We recognize the importance of preventing elder abuse and exploitation, particularly as our population continues to age. However, this bill's creation of strict liability criminal offenses based solely on the age of the victim raises serious concerns and is unlikely to improve safety or well-being for elderly individuals or their families.

- (1) Strict liability should be used only in narrow and clearly justified circumstances.

Strict liability offenses are generally avoided in criminal law and cause grave constitutional concerns for the judiciary. They are reserved for very limited circumstances where heightened protection is essential, the conduct is inherently wrongful regardless of intent, and the harm is inherently devastating. One recognized example is the protection of children from sexual assault by adults. In those cases, minors are legally incapable of consent, the age difference itself establishes vulnerability, and the damage that results from such abuse is near-uniformly overwhelming and long-lasting. Strict liability serves a clear protective purpose in that setting.

Those circumstances are fundamentally different from situations involving older adults. Elderly individuals are autonomous adults with full legal capacity, and their interactions often involve complex, family, caregiving or interpersonal dynamics that cannot be fairly addressed through automatic criminal liability. Additionally, imposing felony punishment for an assault of a senior regardless of the severity of the injury inflicted on a strict liability basis will be disproportionate in many cases.

- (2) Many cases involving older adults are complex and do not involve exploitation.

In real-world practice, cases involving elderly individuals are often not situations involving a younger offender intentionally preying upon a vulnerable elder. Instead, we frequently see disputes between spouses or partners who are both over the age of 60, conflicts between elderly neighbors, family disagreements related to caregiving or finances, and incidents arising from stress, declining health, or cognitive challenges. In many cases, both the alleged victim and the defendant are elderly, and neither party is meaningfully more vulnerable than the other. A strict liability framework does not allow courts or service providers to recognize these realities or respond in a way that promotes safety or stability.

- (3) The harm to society from enactment of a strict liability offense may outweigh the protection it affords kupuna.

Because strict liability removes the requirement to consider intent or circumstances, it may result in enhanced criminal penalties when harm was not intentional, conduct resulted from confusion or cognitive decline, or the situation stemmed from caregiver stress or unmet support needs. For older adults, involvement in the criminal justice system can be deeply destabilizing and may worsen medical, mental health, or housing insecurity. This approach risks increasing criminalization without meaningfully increasing safety.

- (4) Existing law already provides meaningful protection for elderly victims.

Current law already allows courts to consider the age and vulnerability of the victim, the relationship between the parties, whether conduct was exploitative or predatory, and the overall impact on the elderly individual. Judges are fully equipped to impose enhanced consequences involving true abuse or exploitation of vulnerable victims. As a result, this bill is unnecessary to achieve its intended goal.

(5) Effective elder protection is better served by other responses.

Protecting kupuna is best achieved through access to supportive services, caregiver support, mental health and substance use treatment, and individualized court responses. There are far more effective and urgently-needed means for the state legislature to provide care to kupuna than enactment of a class of strict liability felonies.

Our Office shares this Committee's commitment to protecting Hawaii's kupuna. That protection is strongest when laws are carefully tailored, grounded in the realities of aging, and designed to promote safety without causing unintended harm. Because strict liability is not appropriate in this context and risks outcomes that do not serve elderly individuals or families, our office respectfully **OPPOSES** this bill. Thank you for the opportunity to testify.



1001 Bishop Street #625 | Honolulu, HI 96813
866-295-7282 | aarp.org/hi | hiaarp@aarp.org |
Twitter.com/aarphawaii | facebook.com/aarphawaii

The State Legislature
Senate Committee on Health and Human Services
Wednesday, January 28 2026
Conference Room 225, 1:30 p.m.

TO: The Honorable Joy San Buenaventura, Chair
FROM: Keali'i S. López, State Director
POSITION: Support for S.B. 278 Relating to Elder Crime Victims with Amendment

Aloha Chair San Buenaventura and Members of the Committee:

My name is Keali'i Lopez and I am the State Director for AARP Hawai'i. AARP is a nonpartisan, social impact organization that advocates for individuals aged 50 and older. We have a membership of nearly 38 million nationwide and nearly 135,000 in Hawaii. We advocate at the state and federal level for the issues that matter most to older adults and their families.

AARP supports the intent of SB 278 to strengthen Hawai'i's response to crimes committed against older adults. However, we respectfully request an amendment to ensure that the bill enhances—not reduces—protection for vulnerable residents.

I. SUPPORT FOR REMOVING THE “STATE OF MIND” REQUIREMENT

AARP supports the bill's proposal to remove the state-of-mind requirement related to an offender's knowledge of a victim's age. This change is important because it:

- Eliminates a barrier to prosecuting elder assaults
- Ensures offenders cannot evade accountability simply by claiming they did not know the victim's age
- Reflects the seriousness with which Hawai'i should treat violence against older residents

II. CONCERNs REGARDING THE PROPOSED AGE INCREASE FROM 60 TO 65

SB 278 proposes raising the age threshold for enhanced protection from 60 years old to 65 years old. AARP is concerned that this increase would weaken existing protections for thousands of Hawai'i residents aged 60–64 who remain at high risk for physical violence, abuse, and exploitation. The federal Elder Justice Act establishes age 60 as the baseline definition for “elder” status in abuse-prevention laws. Raising the threshold to 65, as proposed in SB 278, would create misalignment with federal standards and reduce protections for thousands of vulnerable Hawai'i residents aged 60–64.

SUGGESTED AMENDMENT

To maintain consistent and effective protections, AARP respectfully recommends preserving the existing age threshold of 60 years or the prevailing minimum age specified under Hawai'i law for elder abuse protections.

AARP Hawai'i appreciates the Legislature's commitment to protecting older adults from violence and exploitation. We support SB 278's intent to improve prosecution of elder assaults through the strict-liability provision, but we urge the Committee to retain the age threshold of 60 or prevailing minimum kūpuna age definition to avoid unintentionally reducing protections for vulnerable adults.

We respectfully request the Committee PASS SB 278 WITH AMENDMENT. Thank you for the opportunity to testify.

SB-278

Submitted on: 1/27/2026 10:46:05 AM
Testimony for HHS on 1/28/2026 1:30:00 PM

Submitted By	Organization	Testifier Position	Testify
Austin "Shiloh" Martin	Testifying for Libertarian Party of Hawaii	Support	Remotely Via Zoom

Comments:

Aloha Chair Aquino, Vice Chair Shimabukuro, and committee members. I am Austin Martin, Chair of the Libertarian Party of Hawaii, testifying with qualified support for SB 278 (Crimes Against Elders/Minors).

Enhancing criminal penalties for verifiable physical aggression or fraud against elders and minors properly fulfills government's role in protecting individual rights from initiation of force. The bill's focus on vulnerable populations aligns with proportionate state response to rights violations.

However, any vague definitions or mandatory reporting provisions must be tightened to prevent overreach or erosion of due process. I recommend passing with amendments requiring clear intent elements and prioritizing victim restitution over additional incarceration.

Mahalo for your kokua to this matter.

Austin Martin

Libertarian Party

SB-278

Submitted on: 1/24/2026 11:21:53 AM
Testimony for HHS on 1/28/2026 1:30:00 PM

Submitted By	Organization	Testifier Position	Testify
Victor K. Ramos	Individual	Oppose	Written Testimony Only

Comments:

Wasn't the age recently dropped to sixty years old? Why is it being changed to sixty-fives years old?