

# SB531

|                   |  |
|-------------------|--|
| Measure Title:    | RELATING TO HEALTH.  |
| Report Title:     | Penal Code; Caregivers; Financial Exploitation; Elder Abuse                      |
| Description:      | Makes financial exploitation of an elder by a caregiver a Class A felony.        |
| Companion:        | <a href="#">HB691</a>  |
| Package:          | None   |
| Current Referral: | CPH/HMS, JDC   |
| Introducer(s):    | BAKER, S. CHANG, INOUYE, MORIWAKI, WAKAI, Fevella, Gabbard, Ruderman, L. Thielen |

DAVID Y. IGE  
GOVERNOR



PANKAJ BHANOT  
DIRECTOR

CATHY BETTS  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
P. O. Box 339  
Honolulu, Hawaii 96809-0339

February 5, 2019

TO: The Honorable Senator Rosalyn H. Baker, Chair  
Senate Committee on Commerce, Consumer Protection & Health; and

The Honorable Senator Russell E. Ruderman, Chair  
Senate Committee on Human Services

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 531 – RELATING TO HEALTH**

Hearing: February 8, 2019, 9:00 a.m.  
Conference Room 229, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) appreciates the intent of SB 531 and offers comments.

**PURPOSE:** The purpose of SB 531 is to provide an additional mechanism to protect elderly against financial exploitation by making the financial exploitation of an elder by a caregiver a class A felony.

DHS supports the intent of this bill to provide for criminal penalties for caregivers who financially exploit elders under their care and supervision, and for whom the caregiver had accepted responsibility to provide services to ensure the elder's health, safety, and welfare.

However, DHS comments that that the proposed definition of criminal financial exploitation of an elder by a caregiver is similar but different from the civil definition provided by section 346-222, Hawaii Revised Statutes (HRS), and may create an unprotected group of individuals. The Adult Protective & Community Services branch investigates reports of elder

abuse or neglect, including financial exploitation, involving "vulnerable adults" defined by section 346-222, HRS, to mean

"a person eighteen years of age or older who, because of mental, developmental, or physical impairment, is unable to:

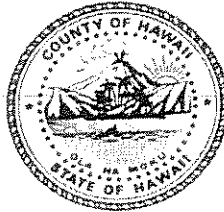
- (1) Communicate or make responsible decisions to manage the person's own care or resources;
- (2) Carry out or arrange for essential activities of daily living; or
- (3) Protect oneself from abuse, as defined in this part."

Consequently, the proposed criminal penalty would not apply when the victim is a "vulnerable adult" ages 18 to 59.

Thank you for the opportunity to provide comments on this measure.

MITCHELL D. ROTH  
PROSECUTING ATTORNEY

DALE A. ROSS  
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PROSECUTING ATTORNEY



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## OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF SENATE BILL NO. 531

A BILL FOR AN ACT RELATING TO HEALTH

COMMITTEE ON COMMERCE, CONSUMER  
PROTECTION, AND HEALTH  
Senator Rosalyn H. Baker, Chair  
Senator Stanley Chang, Vice Chair

COMMITTEE ON HUMAN SERVICES  
Senator Russell E. Ruderman, Chair  
Senator Karl Rhoads, Vice Chair

Friday, February 8, 2019, 9:00 a.m.  
State Capitol, Conference Room 229

Honorable Chair Baker, Honorable Vice Chair Chang, Honorable Chair Ruderman, Honorable Vice Chair Rhoads and Members of the Committees on Commerce, Consumer Protection and Health, and Human Services. The Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in SUPPORT of Senate Bill No. 531.

This measure makes financial exploitation of an elder by a caregiver a Class A felony.

Financial exploitation is a fast-growing and under reported form of elder abuse. The financial abuse of the elderly often falls through the cracks with no recourse. This Bill provides additional protection to the elderly by making the financial exploitation of an elder by a caregiver a Class A felony.

The Office of the Prosecuting Attorney, County of Hawai'i SUPPORTS the passage of Senate Bill No. 531. Thank you for the opportunity to testify on this matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
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KEITH M. KANESHIRO  
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DWIGHT K. NADAMOTO  
ACTING FIRST DEPUTY  
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**THE HONORABLE ROSALYN H. BAKER, CHAIR  
SENATE COMMITTEE ON COMMERCE,  
CONSUMER PROTECTION, AND HEALTH**

**THE HONORABLE RUSSELL E. RUDERMAN, CHAIR  
SENATE COMMITTEE ON HUMAN SERVICES**

**Thirtieth State Legislature  
Regular Session of 2019  
State of Hawai'i**

**RE: S.B. 531; RELATING TO THE ELDERLY.**

Chair Baker, Chair Ruderman, Vice-Chair Chang, Vice-Chair Rhoads, members of the Senate Committee on Commerce, Consumer Protection, and Health, and members of the Senate Committee on Human Services, the Department of the Prosecuting Attorney submits the following testimony in support of S.B. 531, with one suggested amendment.

The purpose of S.B. 531, is to provide additional mechanisms within the Hawai'i Revised Statutes, to provide protection for elder persons who are the target of *financial* exploitation. Specifically, the bill seeks to protect elderly persons from caregivers who abuse their fiduciary duty and financially exploit elders. Our only concern with this bill, as currently written, is that limiting this offense to "caregivers" may actually exclude non-caregiver family members, and unfortunately, many of the financial exploitation cases we see are perpetrated by family members. As such, we would strongly encourage the Committee to expand the applicability of offense.

Although the law currently provides enhanced penalties for felonies that cause death or serious bodily injury to an elderly person, there are no such penalties for targeting elderly persons for financial crimes. Nevertheless, financial crimes can be just as devastating as physical injuries, leaving victims in isolation, vulnerable and scared, at a time in their life when they are typically less capable and have less time to recover emotionally or rebuild their finances.

Moreover, financial crimes against the elderly are not only committed by strangers--via internet, mail, investment schemes and other methods--but also by relatives and caregivers, who have more opportunity to take an elder's money, property, and valuables; deny companionship, services or medical care; or cash pension or social security checks without permission.

The Department appreciates that the proposed offense has been raised to a class A felony, pertaining to values over \$50,000, since prior versions of this bill were last heard. This will help to ensure that this statute is utilized for all relevant cases, as Theft in the First Degree and Theft in the Second Degree—which can also be used to prosecute financial exploitation—have less elements to prove, but are only class B and class C felonies, respectively. In addition, the Department believes that a threshold of \$50,000 would uphold the very essence of the proposed bill by illustrating the seriousness and damaging effects that financial exploitation has on the elderly.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of S.B. 531. Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

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JOHN D. McCARTHY  
JONATHAN GREMS  
DEPUTY CHIEFS

OUR REFERENCE GB-KK

February 8, 2019

The Honorable Rosalyn H. Baker, Chair  
and Members  
Committee on Commerce, Consumer  
Protection, and Health  
The Honorable Russell E. Ruderman, Chair  
and Members  
Committee on Human Services  
State Senate  
Hawaii State Capitol  
415 South Beretania Street, Room 229  
Honolulu, Hawaii 96813

Dear Chairs Baker and Ruderman and Members:

SUBJECT: Senate Bill No. 531, Relating to Health

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

The HPD supports Senate Bill No. 531, Relating to Health.

Census figures show that Hawaii residents who are 65 years and older account for some 17 percent of the population and has grown by 25 percent in the six-year period between 2010 and 2016. In particular, financial fraud targeting the elderly is an area that has experienced tremendous growth even as we have seen a general reduction in crime in other areas.

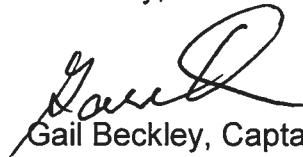
Crimes against the elderly can be particularly devastating to this segment of the population given that at this stage in their life the elderly are often not able to recover from serious financial setbacks. Given this vulnerability, special consideration and protection are required to safeguard our Kupuna. This bill appropriately provides addition protection to the elderly by making the financial exploitation of an elder by a caregiver a Class A felony.

The Honorable Rosalyn H. Baker, Chair  
and Members  
The Honorable Russell E. Ruderman, Chair  
and Members  
February 8, 2019  
Page 2

The HPD urges you to support Senate Bill No. 531, Relating to Health; Making financial exploitation of an elder by caregiver a Class A felony.


Thank you for the opportunity to testify.

Sincerely,



Gail Beckley, Captain  
Criminal Investigation Division

APPROVED:



Susan Ballard  
Chief of Police



**SB-531**

Submitted on: 2/7/2019 8:10:18 AM

Testimony for CPH on 2/8/2019 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b>  | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|--|---------------------------|---------------------------|
| Melodie Aduja       | Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i | Support                   | No                        |

Comments:



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Testimony to the Senate Committee on Consumer Protection & Health; and  
Senate Committee on Human Services  
Friday, February 8, 2019, 9:00 am  
Hawaii State Capitol, Room 229



In Support of SB 531, Relating to Health

To: The Honorable Rosalyn Baker & Russell Ruderman, Chairs  
The Honorable Stanley Chang & Karl Rhoads, Vice-Chairs  
Members of the Committees

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 51 Hawaii credit unions, representing over 800,000 credit union members across the state. We offer the following testimony in support of SB 531, Relating to Health.

This bill would make financial exploitation of an elder a Class A felony. Unfortunately, financial elder abuse is a crime that occurs often, and is often difficult to uncover. Hawaii's kupuna would definitely benefit from the strengthening of this law. Hawaii's credit unions have long worked with law enforcement to investigate and prosecute these types of crimes. With our elder population growing, this bill will help protect our elderly members and their assets.

Thank you for the opportunity to provide testimony in support.

**SB-531**

Submitted on: 2/4/2019 6:41:25 AM

Testimony for CPH on 2/8/2019 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Kekai Quartero      | Individual          | Support                   | No                        |

Comments:

Aloha Kakou,

I support SB531 because of the rising commonality of heinous crimes resulting in the exploitation of defenseless individuals dominating the American public landscape, especially as demonstrated by the rising trend of youth and adult hate crime in the Hawaii Islands.

Sincerely,

Robert Quartero

**SB-531**

Submitted on: 2/3/2019 12:42:44 PM

Testimony for CPH on 2/8/2019 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Victor K. Ramos     | Individual          | Support                   | No                        |

Comments:

**SB-531**

Submitted on: 2/4/2019 12:55:30 PM

Testimony for CPH on 2/8/2019 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Dara Carlin, M.A.   | Individual          | Support                   | No                        |

Comments:

Stand in STRONG SUPPORT for SB531!

Representative Rosalyn H. Baker, Chair  
Representative Stanley Chang, Vice Chair  
Committee on Commerce, Consumer Protection, and Health  
Representative Russell E. Ruderman, Chair  
Karl Rhoads, Vice Chair  
Committee on Human Services  
Representative Chris Lee, Chair  
Representative Joy A. San Buenaventura, Vice Chair

Michelle Okamoto

Friday, February 8, 2019

Support for S.B. No. 531, Relating to Health

My name is Michelle Okamoto. I'm a U.H. Manoa student and a substitute teacher. I support S.B. No. 531, Relating to Health, because the financial exploitation of the elderly is a serious crime. As the population in Hawaii and across the nation ages, the financial exploitation of the elderly increases due to caregivers taking advantage of the elderly, cognitive difficulties of the elder, and decline in senior's health. All these factors may contribute to the vulnerability that seniors experience without their knowledge.

According to the Council on Aging, 1 in 10 Americans who are 60 and older have experienced some form of elder abuse. Some estimates range as high as 5 million elders who are abused each year. One study estimated 1 in 14 cases of abuse are reported to authorities. In almost 60% of elder abuse and neglect incidents, the perpetrator is a family member. Two thirds of perpetrators are adult children or spouses.

In an article by the Securities and Exchange Commission (2018), it mentioned that in 2017 that about 5.5 million Americans have Alzheimer's with a diagnosis of Dementia. More than 96 percent of that group (5.3 million people) consisted of persons age 65 or older. By 2050, the number of people age 65 and older with Alzheimer's disease is expected to more than double, to 13.8 million. This decrease in cognitive impairment in the elderly increasingly makes

them more susceptible to people who may take advantage of their kindness by taking their money.

According to an article done in collaboration by Center on the Family, College of Tropical Agriculture and Human Resources, and University of Hawaii at Manoa about senior citizen's in Hawaii, in 2010, persons aged 60 and over made up 20.6% of the state's population. This share is projected to increase to 28.5% by 2040. As these senior citizen's age, this may increase their vulnerability because a deterioration in health. This in turn makes the elderly who are sick and looked after by their caregivers' financially exploit the elderly.

By passing this measure, it will hold people responsible for financially exploiting the elderly a crime. I strongly urge you to pass S.B. No. 531, that will make the financial exploitation of the elderly by a caregiver a Class A felony. Thank you for this opportunity to testify.

**SB-531**

Submitted on: 2/6/2019 8:39:05 AM

Testimony for CPH on 2/8/2019 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| karen oneill        | Individual          | Support                   | No                        |

Comments: