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Testimony of the Office of the Public Defender to the House Committee on Judiciary and Hawaiian Affairs re: H.B. 963, HD 1: RELATING TO CRIMES AGAINST ELDERS

Chair Rep. David A. Tarnas, Vice-Chair Rep. Mahina Poepoe and Members of the Committee:

The Office of the Public Defender respectfully **opposes HB 963, HD 1.**

HB 963, HD 1 seeks to amend the Hawaii Revised Statutes to remove language dealing with the state of mind and attendant circumstances in relation to crimes against those who are sixty years of age or older. Specifically, this measure will allow the prosecution of defendants charged with crimes against those that are sixty years of age or older, without the need to prove that the age of the victim “was known to the defendant or reasonably should be known”.

This proposed measure directly undercuts the specific reason for having the current language in place. The current statutory language was inserted into the Hawaii Revised Statutes to deter criminal defendants from specifically targeting seniors, and those that appear to be frail or vulnerable because of age. Thus, the current language in the Hawaii Revised Statutes: “the age of the person is known or reasonably should be known to the person causing the injury” was designed for deterrence, and its removal makes age irrelevant to the defendant’s criminal purpose.

This measure is prompted by the belief that it would be too difficult to establish that a criminal defendant targeted a victim because of age. However, the current statutory language only requires proof that the defendant knew the person’s age (to deter crimes between parties that know each other) or reasonably should be known (to deter acts against those that appear to be of the requisite age). In cases wherein

the commission or attempted commission of a felony resulted in the victim's death, or serious or substantial injury the mandatory sentencing possibilities of HRS 706-660.2 would be made moot by eliminating the state of mind requirements relative to the age of the victim. Furthermore, the proposed statutory changes herein dealing with Unlawful Entry into a Dwelling, Theft and Forgery would allow for prosecutions even in situations where it would be impossible to know the age of the victim. This would seem incongruent when the current statutory language was promulgated for the purpose of deterring defendants from targeting a specific vulnerable population.

Previously, the legislature has carved out greater protections for individuals who perform certain jobs within our society. Please see HRS section 707-711 (Assault in the Second Degree), which elevates what would be a misdemeanor assault to a felony assault if it is perpetrated against police officers, correctional workers, educational workers etc. The purpose of said language was to give greater protection to those individuals, and to deter criminal defendants from committing assaults against those specific groups of people. Most importantly the knowledge that said victim was a member of that specially protected class of workers is an element of those crimes. HB 963, HD 1 is in opposition to this current statutory policy dealing with specific groups of victims.

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**

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**THE HONORABLE DAVID A. TARNAS, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Thirty-Third State Legislature
Regular Session of 2025
State of Hawai'i**

February 18, 2025

RE: H.B. 963; RELATING TO CRIMES AGAINST ELDERS.

Chair Tarnas, Vice Chair Poepoe, and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney for the City and County of Honolulu submits the following testimony in support of H.B. 963.

H.B. 963 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 if the victim is sixty years or older. But conviction requires proof that the defendant “knew or should have known” the victim’s age. H.B. 963 removes this state of mind requirement with respect to age.

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 But unlike theft or fraud, which often involve deliberation and selection, many assaults lack evidence regarding age. In many cases, violent criminals attack elderly strangers simply because they look like soft targets. Even if perceived age actually motivated that assessment, it cannot be proven in court.

Thus, even when the fact of the assault and the scope of injury are undisputed, trials for assault on an elder simply turn on a jury’s assessment of the victim’s age. This usually requires resort to stereotypes about aging. Impressions of elders from a different generation may shape how jurors assess age today. And superficial assessments remain just that—superficial. Despite appearances, kupuna remain vulnerable to greater pain and injury from an assault. The same broken bone that heals easily in youth can be debilitating in old age.

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).

Criminals should not be assaulting anyone. When they do, they should be held accountable for the harm they have actually done. As Lord Lawton memorably phrased it: “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 Strict liability with respect to age is a perfectly appropriate standard for those embarking on criminal violence.

Thank you for the opportunity to testify.

² *R. v. Blaue*, 1 WLR 1411 (1975).

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF HOUSE BILL 963 HD1

A BILL FOR AN ACT
RELATING TO CRIMES AGAINST ELDERS

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Representative David A. Tarnas, Chair
Representative Mahina Poepoe, Vice Chair

Wednesday, February 19, 2024 at 2:00 p.m.
Via Videoconference
State Capitol Conference Room 325
415 South Beretania Street

Honorable Chair Tarnas, Vice-Chair Poepoe and Members of the Committee on Judiciary and Hawaiian Affairs. The County of Hawai‘i, Office of the Prosecuting Attorney submits the following testimony in support of House Bill No. 963 HD1.

HB 963 HD1 was drafted with the intent to establish strict liability for crimes against elders with respect to the attendant circumstance that the victim was sixty years of age or older.

Kupuna are often times targets of exploitation, violence, and theft. This bill was drafted with the intent to establish strict liability for crimes against elders with respect to the attendant circumstance that the victim was 60 years of age or older.

Strict liability refers to a concept where a person can be held liable for their actions regardless of their intention or mental state at the time of the offense. Currently, Hawai‘i State law requires that the State establish that an offender “knew or reasonably should have known” the age of the victim in cases involving elder victims of crime. In doing so, this additional elemental burden unjustly jeopardizes the safety of our kupuna and undermines the overall effectiveness and intent of the law to protect our kupuna.

House Bill No. 963 HD1 will protect, support, and deter the commission of crimes against kupuna. For the foregoing reasons, the County of Hawai‘i, Office of the Prosecuting Attorney supports the passage of House Bill No. 963 HD1. Thank you for the opportunity to testify on this matter.

RICHARD T. BISSEN, JR.
Mayor

ANDREW H. MARTIN
Prosecuting Attorney

SHELLY C. MIYASHIRO
First Deputy Prosecuting Attorney



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TESTIMONY ON
H.B. 963 HD1
RELATING TO CRIMES AGAINST ELDERS

February 18, 2025

The Honorable David A. Tarnas
Chair
The Honorable Mahina Poepoe
Vice Chair
and Members of the Committee on Judiciary & Hawaiian Affairs

Chair Tarnas, Vice Chair Poepoe, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments **in support of H.B. 963 HD1, Relating to Crimes Against Elders**. This bill enhances protection for senior crime victims by removing the state of mind requirement as to the victim's age for multiple crimes involving elders, including assault, theft and forgery.

We support this bill because many senior victims of crime never fully recover from the physical, financial, psychological and emotional devastation caused by violent crime, theft or financial exploitation. When we helped draft what became Act 147 of the 2021 Legislative Session, we did it in order to strengthen and standardize the legal protection Hawai'i offers to our kupuna. This bill solidifies that protection by ensuring that an offender cannot avoid accountability by simply claiming they were unaware of their victim's age, similar to the strict liability intent requirements for a victim's age in child sexual assault offenses. It also has an additional deterrent effect for crimes against non-kupuna, as an offender knows that they run the risk of harsher penalties when they commit an assault, theft, forgery or other covered offense against an older adult victim and that victim happens to be sixty years of age.

For these reasons, the Department of the Prosecuting Attorney, County of Maui **supports H.B. 963 HD1**. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries. Thank you very much for the opportunity to provide testimony on this bill.



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The State Legislature
House Committee on Judiciary and Hawaiian Affairs
Wednesday, February 19, 2025
Conference Room 325, 2:00 p.m.

TO: The Honorable David Tarnas, Chair
FROM: Keali'i S. López, State Director
RE: Support for H.B. 963, HD1 Relating to Crimes Against Elders

Aloha Chair Tarnas, 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 age 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 H.B. 963 HD1 establishes strict liability for crimes against elders with respect to the attendant circumstance that the victim was sixty years of age or older.

Elders are often more vulnerable to crimes due to physical, cognitive, and social factors. Establishing strict liability ensures that perpetrators are held accountable, providing a stronger deterrent against crimes targeting this demographic. AARP advocates for the protection of older adults from abuse, neglect, and exploitation, and aligns with AARP's policy by ensuring that crimes against elders are met with appropriate legal consequences, reinforcing the importance of safeguarding our kupuna.

By establishing strict liability, the bill simplifies the prosecution process for crimes against elders. This means that the prosecution does not need to prove the perpetrator's intent, only that the crime occurred, and the victim was 60 years of age or older. This can lead to more efficient and effective justice for elder victims.

Strict liability serves as a preventive measure by signaling to potential offenders that crimes against elders will be met with serious consequences. This can reduce the incidence of elder abuse and improve the overall safety and well-being of older adults in the community.

Thank you very much for the opportunity to testify in support **H.B. 963, HD1**.

HB-963-HD-1

Submitted on: 2/16/2025 8:24:36 PM

Testimony for JHA on 2/19/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ruth Love	Individual	Support	Written Testimony Only

Comments:

Language in #2 seems fuzzy.

Thank you

Mrs Ruth Love

TESTIMONY IN STRONG SUPPORT OF HB963, HD1
Being heard by the House Committee on Judiciary & Hawaiian Affairs
Wednesday, February 19, 2025 at 2p.m.
In Conference Room 325

Aloha Chair Tarnas, Vice Chair Poepoe, and members of the Committee:

I am testifying in strong support of HB963, HD1. It's my understanding that the purpose of HRS sections referenced in this Bill is to provide added protection for our Kupuna by making the penalties stiffer when they are victims of crime. However, as currently written there is a loophole in the bill which defeats the purpose. The language that states, "and the age of the injured person is known or reasonably should be known to the person causing the injury" needs to be removed as proposed in this bill.

Whether a person is 60 years or older is a matter of fact. While whether a person looks or acts like a Kupuna is subjective. Thus, we should stick to the facts and strict liability should apply.

I can speak from personal experience; a couple of years ago I was assaulted at 9a.m. on a very busy street in Honolulu and although I was 62 at the time, the Prosecutors did not seek the higher penalty for a Kupuna victim because of the loophole and because strict liability did not apply. Thus, I was prohibited to receive the added protection that the Legislature felt was appropriate for Kupunas. This bill would fix this wrong.

Assailants may think twice about attacking someone if they know that the person may be a Kupuna and higher penalties will occur. Indeed, when my assailant saw me calling for help, he brazenly yelled, "Go ahead, nothing is going to happen to me." The current loophole in the law is a "get out of jail card" that needs to be eliminated.

I think we would all agree that as a State we should do everything possible to limit crimes; especially against vulnerable kupuna?

I would note that this Committee passed a similar bill last Session, HB1870, HD1.¹ Therefore, as a Kupuna, I strongly request that you pass out this bill.

Thank you,

Sandie Wong

¹ Unfortunately, the Chair of the Senate Health and Human Services Committee refused to hear it and did not give a reason for her inaction. Hopefully, Kupunas will receive more aloha and protection from the Senate this Session.

House Committee on Judiciary & Hawaiian Affairs (JHA)

Opposition to HB963 HD1

Wednesday February 19, 2025

2:00 PM

Aloha, Chair David A. Tarnas, Vice Chair Mahina Poepoe and all committee members,

My name is Holly-Jill Zablan, and I am a social work student specializing in gerontology at University of Hawai'i at Mānoa. These opinions are my own and do not represent any of these organizations. I am grateful for this opportunity to testify in respectful opposition to HB963 which seeks to amend sections of the Hawaii Revised Statutes related to crimes against elders. While I share the goal of protecting elderly individuals, I believe this bill's approach is fundamentally flawed and raises serious concerns about fairness and due process.

I oppose this bill because it introduces the concept of strict liability with respect to the age of the victim in cases of first-degree assault (substantial bodily injury), unauthorized entry into a dwelling, theft, and forgery. While I agree that crimes against elders are a serious concern, I believe the strict liability component of HB963 HD1 is an overreach that could lead to unjust outcomes.

The removal of the requirement to prove that the perpetrator knew the victim was over 60 in these specific instances sets a dangerous precedent. In effect, it allows for a felony conviction, with potentially severe penalties, even if the individual had no awareness that their actions were targeting an elderly person. This departs from the fundamental principle of mens rea, which requires a guilty mind for a criminal conviction.

Consider a scenario where a young person enters the wrong apartment in a large complex, mistakenly believing it to be their friend's residence. Unbeknownst to them, the apartment belongs to an elderly individual. If an altercation ensues and the elderly resident sustains "substantial bodily injury," the young person could be charged with a Class B felony under HB963 HD1, even if they were acting in self-defense and had no intention of targeting an elderly person or even knowing that the resident was elderly. This potential for disproportionate punishment is deeply troubling.

Furthermore, the bill could lead to unintended consequences within the justice system. Prosecutors, armed with the strict liability provision, might be less inclined to offer reasonable plea bargains, potentially leading to more trials and further burdening our already strained courts. This could also disproportionately impact individuals from marginalized communities who may face greater scrutiny from law enforcement.

While I acknowledge the immense importance of protecting our kūpuna, I believe there are more effective and just ways to achieve this goal. Rather than resorting to strict liability, we should focus on strengthening existing laws, providing better training to law enforcement on identifying and responding to crimes against elders, and investing in community-based programs that support seniors and prevent elder abuse.

For these reasons, I respectfully oppose HB963 HD1. I believe it is a misguided approach that sacrifices fundamental principles of fairness in the pursuit of a worthy goal. I encourage the legislature to explore alternative solutions that prioritize prevention, education, and targeted enforcement, while upholding the principles of due process and individual liberty.

Thank you again for this opportunity to testify.

HB-963-HD-1

Submitted on: 2/18/2025 4:19:05 PM

Testimony for JHA on 2/19/2025 2:00:00 PM

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

Comments:

Stand in Support

HB-963-HD-1

Submitted on: 2/19/2025 8:47:06 AM

Testimony for JHA on 2/19/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Gregory Misakian	Individual	Support	Written Testimony Only

Comments:

I support HB963 HD1.

Gregory Misakian