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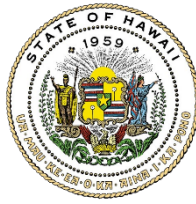
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March 30, 2026

HB 963, HD2, SD1: RELATING TO CRIMES AGAINST ELDERS

Chair Rhoads, Vice Chair Gabbard and Members of the Committee on Judiciary:

The Office of the Public Defender (OPD) **opposes** HB 963 HD2 SD1. This measure amends the offenses of Assault in the First and Second Degrees to impose **strict liability** with respect to the attendant circumstance that the complainant is seventy years of age or older. Specifically, the bill removes the requirement that a defendant knew or reasonably should have known the age of the alleged victim and instead provides that “a person shall be strictly liable” for that circumstance.

While the Office acknowledges and supports the Legislature’s intent to protect kūpuna, we have serious concerns with the elimination of any mens rea requirement as to the age element.

Hawai‘i’s penal code is grounded in the principle that criminal liability should generally attach only where a culpable state of mind is present. The proposed bill departs from that framework by imposing felony liability without requiring proof that a defendant knew, or even should have known, that the complainant was over seventy years old.

This is particularly concerning because the age of an individual is not always readily apparent. In many real-world interactions, especially brief, chaotic, or stressful encounters, there may be no reasonable way for a person to accurately assess whether someone is over the statutory threshold. Yet under this bill, that unknown and unknowable fact would elevate the offense and significantly increase criminal exposure.

By eliminating the state of mind requirement, the bill risks sweeping in conduct that is not meaningfully more culpable than existing offenses. Two identical acts committed with the same intent and under the same circumstances would be punished drastically differently based solely on the age of the complainant, regardless of whether the defendant had any awareness of that fact. This creates a risk of disproportionate penalties and undermines the fairness and proportionality that are central to Hawai'i's criminal justice system.

Current law already criminalizes assaultive conduct with appropriate gradations based on the severity of injury and the defendant's state of mind. It also permits enhanced accountability where a defendant knew or reasonably should have known of a victim's vulnerability.

The existing framework strikes an appropriate balance between protecting vulnerable individuals and ensuring that criminal liability is tied to culpability. Removing the knowledge requirement is unnecessary to achieve the bill's stated goal and instead disrupts that balance.

For these reasons, the Office of the Public Defender **opposes** HB 963, HD2, SD1.

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 KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-Third State Legislature
Regular Session of 2026
State of Hawai'i**

March 31, 2026

RE: H.B. 963, H.D.2, S.D.1; RELATING TO ELDER CRIME VICTIMS.

Chair Rhoads, Vice Chair Gabbard, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in **strong support** of H.B.963, H.D.2, S.D.1.

H.B. 963, H.D.2, S.D.1 clarifies who is considered an “elder” victim of crime for purposes of holding perpetrators accountable through more stringent penalties by removing the requirement that the perpetrator “knew or reasonably should have known” the age of the victim. As reflected in the current draft, the bill also applies these protections to victims seventy years of age or older.

Several years ago, this Legislature wisely passed H.B. 490 (2021), later enacted as Act 147 (2021), to better protect Hawai'i's elder population from being targeted for violence, theft, and fraud. At that time, the inclusion of a knowledge requirement regarding the victim's age was intended as a safeguard. However, in practice, that requirement has significantly limited the effectiveness of the law and continues to leave vulnerable victims without the full protection the Legislature intended.

Because perception of age varies widely and the State must prove every element beyond a reasonable doubt, it is extremely difficult for prosecutors to establish that a defendant knew or reasonably should have known the victim's age—particularly in assault cases involving strangers. Unlike theft or fraud offenses, which may involve deliberate targeting, many violent assaults occur spontaneously, with little or no evidence regarding the perpetrator's perception of age. As a result, even where an offender targets someone who appears vulnerable due to age, that fact often cannot be proven in court.

By removing the state-of-mind requirement, this measure appropriately eliminates that barrier and ensures that offenders are held accountable for the harm they actually cause. Strict

liability as to the victim's age is consistent with longstanding legal principles that those who commit violent acts take their victims as they find them.

The Department strongly supports this core improvement to the law. However, the Department respectfully recommends that the Committee consider restoring the age threshold to sixty years of age, as originally proposed and as reflected in prior legislative policy. As currently drafted, the bill applies only to victims seventy years of age or older. While individuals in that age group unquestionably warrant protection, limiting the statute to seventy and above excludes a significant and vulnerable population of older adults who are frequently targeted for crimes of violence.

Restoring the threshold to sixty years of age would not only better align with the Legislature's original intent to broadly protect kupuna, but would also maintain consistency within chapter 707, where sixty years of age has historically been the applicable standard for enhanced protections. Maintaining a uniform age threshold across the statute avoids unnecessary confusion, promotes clarity in enforcement, and ensures that similarly situated victims are treated equally under the law.

Importantly, this recommended amendment does not detract from the bill's central and much-needed reform eliminating the knowledge requirement, which the Department strongly supports.

Criminals should not be assaulting anyone. When they do, they should be held accountable for the harm they have actually caused. As has long been recognized, those who use violence must take their victims as they find them. Ensuring meaningful protections for elder victims—particularly through a workable and enforceable standard—advances both justice and public safety.

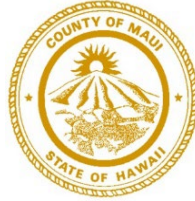
For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports H.B. 963, H.D.2, S.D.1, and respectfully requests that the Committee consider amending the bill to restore the age threshold to sixty years.

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 HD2 SD1
RELATING TO CRIMES AGAINST ELDERS

March 30, 2026

The Honorable Karl Rhoads
Chair
The Honorable Mike Gabbard
Vice Chair
and Members of the Committee on Judiciary

Chair Rhoads, Vice Chair Gabbard, 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 HD2 SD1, Relating to Crimes Against Elders**. This bill enhances protection for senior crime victims by holding offenders strictly liable as to knowledge of the victim's age for certain crimes involving elders.

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 wanted 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. For the SD1 version of this bill, 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 offense against a victim that could be over the age of seventy.

However, we respectfully disagree with the SD1 amendments that raised the threshold age for elderly assault victims to seventy and request that these changes be reverted to the language used in the HD2 version. In our view, the current age threshold of sixty appropriately reflects the age at which a citizen is reasonably recognized as an elderly person. Some federal laws dealing with elder abuse and community social services, such as the Elder Justice Act of 2010 and the Older Americans Act of 1965 that was reauthorized in 2020, have a minimum age of sixty for an individual to qualify

as an elder. The age of sixty has also been adopted by county agencies that coordinate elder services, such as the City and County of Honolulu Elderly Affairs Division, the Maui County Office on Aging, the County of Kauai Agency on Elderly Affairs, and the Hawaii County Office on Aging. A sixty year-old person who qualifies for community-based long term care services such as adult day care, home delivered meals and personal care should also qualify for enhanced protection from assault and thefts.

We also respectfully request that the proposed strict liability amendments for felony offenses such as Unauthorized Entry in a Dwelling, Theft and Forgery be reinstated for the following reasons. First, charging a defendant with the strict liability versions of these offenses is not mandatory. Every prosecutor has the discretion to charge a defendant with the standard versions of these offenses if a particular case warrants it. Allowing strict liability intent as to age for these offenses does not mean that every offense must be charged as such.

Second, when these offenses are committed by defendants who are experiencing cognitive decline or other mental health issues, those defendants are still able to assert a mental health defense and those cases can be resolved via both the existing HRS Chapter 704 mental health evaluation process and asserting said defense at trial. If a defendant's mental health was impaired to the point that they lacked the intent to commit the offense entirely, let alone the intent to understand that the victim was a particular age, a Chapter 704 evaluation would likely result in the defendant being acquitted by the trial court for that reason. Even if the evaluation doesn't result in an acquittal prior to trial, every defendant can raise a mental health defense at trial regardless of the evaluation.

Third, the sentence for each strict liability offense is still determined by the courts and every defendant is allowed to present mitigating evidence at a sentencing hearing. For example, a defendant being sentenced for the elderly victim variant of Assault in the Second Degree can present mitigating evidence that the defendant was completely unaware of the age of the victim. The sentencing court would then have the discretion to impose a more lenient sentence than would ordinarily be selected for a felony assault charge, such as probation and a fine with no further jail.

For these reasons, the Department of the Prosecuting Attorney, County of Maui **supports H.B. 963 HD2 SD1**. 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.

TESTIMONY IN SUPPORT OF HB963, SD1, but seeking an Amendment
Being heard by the Senate Committee on Health & Human Services
Tuesday, March 31, 2026 at 10:30a.m.
In Conference Room 415

Aloha Chair Rhoads, Vice Chair Gabbard, and members of the Committee:

I am testifying in support of HB963, SD1, but am requesting an amendment to make the language closer to the intent of the original draft of the bill, HB963 (“Original Draft”).

It’s my understanding that the purpose of HRS sections referenced in the Original Draft was to provide added protection for our Kupuna by making the penalties harsher when they are victims of crime. These crimes included: Assault in the first degree, Assault in the second degree, Unauthorized entry in a dwelling in the first degree, Theft in the first degree, Theft in the second degree, Forgery in the first degree, and Forgery in the second degree. The goal of the Original Draft is to eliminate the state of mind requirement for crimes against Kupunas sixty years of age or older.

The Senate Committee on Health and Human Services (“HHS”) however, amended the bill by limiting it only to Assault in the first degree and second degree.¹ It also made the threshold higher to protect Kupunas by raising the age to seventy years or older. The Chair of the HHS stated that seventy was appropriate because that is when Kupuna are eligible for Social Security. With all due respect to the HHS Chair, its my understanding that Kupunas are eligible for social security at 62. Therefore, I don’t understand or agree with raising the age to 70. Moreover, the threshold age for Unauthorized entry in a dwelling in the first degree, Theft in the first degree, Theft in the second degree, Forgery in the first degree, and Forgery in the second degree is 60. To avoid confusion, ages should be consisted.

Therefore, I request that you pass this bill with amendments by returning the age to sixty for strict liability.

Alternatively, if the Committee is inclined to keep the age of 70 for strict liability, they should retain the age of 60 for the requisite state of mind language that is currently in the statute but was struck out in the SD1. This is vital because without it the Senate basically is proposing less protection to kupunas. The SD1 strikes out the language that if a Kupuna is 60 years of age or older and the age of the Kupuna is known or reasonably should be known to the person causing the injury. In other words, under the SD1, Kupuna between

¹ No reason was given by HHS for this.

the age of 60 and 69 will receive less protection even if the assailant knew or should have known the age of the Kupuna.

This bill is very personal to me because a few 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 strict liability did not apply and they did not believe that I looked 60. Thus, I was prohibited to receive the added protection that the Legislature felt was appropriate for Kupunas. I do not want any other Kupuna to have to experience the ordeal and trauma that I did and not get an appropriate remedy. This bill would fix this wrong.

Assailants may think twice about attacking Kupunas if they know that 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." and threaten to assault me again.

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

Therefore, as a Kupuna, I strongly request that you pass out this bill.

Thank you,

Sandie Wong

HB-963-SD-1

Submitted on: 3/25/2026 6:27:56 PM

Testimony for JDC on 3/31/2026 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Johnnie-Mae L. Perry	Individual	Oppose	Written Testimony Only

Comments:

I, Johnnie-Mae L. Perry, Oppose w/comment this measure only address people in a specific career/profession and NOT the GENERAL PUBLIC LIKE ME.

963 HB RELATING TO CRIMES AGAINST ELDERS.