



*The Judiciary, State of Hawaii*

**Testimony to the House Committee on Judiciary**  
Representative Gilbert S.C. Keith-Agaran, Chair  
Representative Karl Rhoads, Vice Chair

**House Committee on Consumer Protection & Commerce**  
Representative Robert N. Herkes, Chair  
Representative Ryan I. Yamane, Vice Chair

Monday, February 13, 2012, 2:00 p.m.  
State Capitol, Conference Room 325

by  
Maira T. Chin  
Director, Office of the Public Guardian

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**Bill No. and Title:** House Bill No. 2192 H.D. 1, Relating to the Elderly.

**Purpose:** Creates the crime of financial exploitation of an elder and provides enhanced penalties. Requires two signatures of unrelated persons as witnesses to the execution of a power of attorney for health care. Requires financial institutions to report suspected financial abuse to the adult protective services of the Department of Human Services and the appropriate county police department.

**Judiciary's Position:** The Office of the Public Guardian (OPG) supports the intent of House Bill No. 2192, H.D. 1 to create financial exploitation of an elder as a crime.

OPG serves as court-appointed guardians for incapacitated adults as a last resort in instances where there are no relatives or friends willing and able to serve as guardians. We have seen increasing numbers of cases involving financial exploitation of the elderly by caregivers, acquaintances, friends, and family members. Isolated elders residing independently in their apartments, condominiums, or private homes have also been victims of financial exploitation and petitions for OPG guardianship are often made.

It has been noticed that increasing numbers of financial exploitation cases are being petitioned by the Department of Human Services, Adult Protective Services Branch. Many



House Bill No. 2192, H.D. 1, Relating to the Elderly  
House Committees on Judiciary / Consumer Protection & Commerce  
February 13, 2012  
Page 2

times, OPG is appointed after client assets have already been liquidated or properties sold. Exploitation becomes evident when the elder's agent with Power of Attorney or Successor Trusteeship or the elder's acquaintances, friends, care givers, and even family members fail to use the proceeds to pay for the incapacitated elder's support and care. OPG's client is often left destitute and for the few cases with clear documentation that resources were liquidated and not used for client care, there is very little hope to retrieve resources despite reports to Adult Protective Services and to the Honolulu Police Department.

We support this bill with the hope that more elders can be helped to protect their resources and not left vulnerable to perpetrators of financial exploitation. Thank you very much for the opportunity to testify on House Bill No. 2192, H.D. 1.



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TO THE  
HOUSE COMMITTEE ON THE JUDICIARY  
AND THE HOUSE  
COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE TWENTY-SIXTH LEGISLATURE  
REGULAR SESSION OF 2012

Monday, February 13, 2012  
2:00 p.m.

TESTIMONY ON H.B. NO. 2192, HD 1  
RELATING TO THE ELDERLY

THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,  
THE HONORABLE ROBERT N. HERKES, CHAIR  
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda Catalani, Commissioner of Financial Institutions ("Commissioner"). I am testifying on behalf of the Department of Commerce and Consumer affairs in support Section 5 of House Bill No. 2192, HD 1.

This bill requires financial institutions to report suspected financial abuse of elder adults to adult protective services of the Department of Human Services and to the appropriate local law enforcement agency.

While the Department supports the requirement that both the Department of Human Services and law enforcement agencies be informed of financial elder abuse, it believes that the current reporting function proposed is burdensome for financial institutions. The Department believes that telephoning both DHS and the appropriate county police department is burdensome. The Department recommends that the financial institutions initially telephone the appropriate county police departments and electronically file written reports with DHS and the appropriate police departments. In recognition that elder abuse is serious, financial institutions comply with the law by reporting the allegations that will allow both the DHS and the police departments to investigate the allegations.

We suggest the following amendment to Section 5, page 4, (b) reflected in H.B. No. 2192, HD 1:

- The initial telephone call should be made to the appropriate county police department. The written report, filed in 5 days, to be electronically provided to both the Department of Human Services and county police departments. We believe it is more efficient for all parties to receive one report filed electronically. We would be available to work with the parties to create a common report form that meets the needs of all parties (including the financial institutions).

We also suggest that subsection (c) (page 4-5) be deleted related to having DHS determine whether they have jurisdiction over the elder and informing the financial

TESTIMONY ON HOUSE BILL 2192, H.D.1  
February 13, 2012, 2:00 p.m.  
Page 3

institution before the police are notified. This process is cumbersome to both the financial institutions and DHS.

For these reasons, the Department supports the measure with amendments, House Bill No. 2192, HD1.

Thank you for the opportunity to testify. I would be pleased to respond to any questions you may.



STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
P. O. Box 339  
Honolulu, Hawaii 96809-0339  
February 13, 2012

**MEMORANDUM**

TO: The Honorable Gilbert S.C. Keith-Agaran, Chair  
House Committee on Judiciary  
  
The Honorable Robert N. Herkes, Chair  
House Committee on Consumer Protection and Commerce

FROM: Patricia McManaman, Director

SUBJECT: **H.B. 2192, H.D. 1- RELATING TO THE ELDERLY**  
  
Hearing: Monday, February 13, 2012; 2:00 p.m.  
Conference Room 325, State Capitol

**PURPOSE:** The purposes of H.B. 2192, H.D. 1 are to create the crime of financial exploitation of an elder and provide for enhanced penalties; require financial institutions to report suspected financial abuse to the adult protective services and the appropriate county police department; and require two signatures of unrelated persons as witnesses to the execution of a power of attorney for health care.

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) supports the intent of this bill to add financial exploitation of an elder as a crime in Chapter 708, Hawaii Revised Statutes (HRS). We suggest that Section 5 of this bill pertaining to section 412:3-114.5, HRS, include a reference to the newly created offense of "financial exploitation of an elder" to read as follows:

**"(e) For the purposes of this section:**

**"Financial abuse" means financial [~~abuse or economic exploitation.~~]**

**exploitation of an elder as described in section 708- ."**

DHS is opposed to the proposed amendments to section 412:3-114.5, HRS, requiring financial institutions to report suspected financial abuse to the appropriate county police department and to DHS. With the creation of a new offense pertaining to financial exploitation of an elder in Chapter 708, HRS, financial institutions should be reporting suspected financial abuse directly to the appropriate county police departments and not to DHS for criminal investigations.

DHS does not have the legal authority to directly seek judicial authorization to seize documents, freeze accounts or take other measures to immediately secure financial assets that may be at risk. Additionally, the DHS is without trained staff who have the expertise to review the complex financial records and transactions for the financial abuse cases identified by financial institutions.

Finally, the DHS does not conduct criminal investigations, nor does it prosecute crimes. The appropriate entity to receive reports of suspected financial abuse from financial institutions is the county police department which has investigators and legal remedies at its disposal to immediately stop access to an elderly person's financial accounts when warranted.

DHS has also been advised by the Attorney General's Office that there may be a constitutional problem with the title of this bill which states "Relating to the elderly." The scope of the title cannot be narrower than the scope of the subject matter of the bill. Sections 2 and 4 refer to HRS sections pertaining to children, emancipated minors, and handicapped persons. For DHS' purposes, sections 2 and 4 of this bill are not necessary.

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



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Testimony to the House Committees on Judiciary  
And Consumer Protection and Commerce  
Monday, February 13, 2012

Testimony in support (with amendments) of HB 2192 HD1, Relating to the Elderly

To: The Honorable Gil Keith-Agaran, Chair  
The Honorable Karl Rhoads, Vice-Chair  
Members of the Committee on Judiciary

The Honorable Robert Herkes, Chair  
The Honorable Ryan Yamane, Vice-Chair  
Members of the Committee on Consumer Protection and Commerce

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 81 Hawaii credit unions, representing approximately 811,000 credit union members across the state.

We are in support of HB 2192 HD1, which would create the crime of financial and economic exploitation of a dependent elder, but suggest one amendment be made. On Page 5, lines 10-11, we suggest that the word "immediately" be changed. As many of our credit unions are very small and may have very few staff members, "immediately" may be a difficult standard to achieve. We suggest the alternate wording of "as soon as possible".

Thank you for the opportunity to testify.



Testimony to the House Committee on Human Services

Representative Keith-Agaran, Chair, Representative Rhoads, Vice Chair, and

Committee members

**HB2192 – RELATING TO THE ELDERLY**

Aloha, Representative Keith-Agaran, Representative Rhoads , and committee members. My name is Lauren Chou and I am a graduate student at the University of Hawaii’s School of Social Work. My focus is on gerontology and I have had the opportunity to work with older adults in a variety of settings including Child and Family Services REACH program which serves clients that are at high risk for abuse. Unfortunately, financial abuse was one of the abuses I saw way too often during my internship there.

I am testifying in **strong support of HB2192** which seeks to enhance penalties for the financial exploitation of elders and require financial institutions to report suspected abuse. Some institutions voluntarily report when they see red flags, but it is not enough. Seniors on limited incomes that are being financially exploited are not able to meet their basic needs and must be protected against abuse.

Thank you for the opportunity to comment on this bill.

Lauren Chou

Myron B. Thompson School of Social Work MSW program

University of Hawaii