



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

January 30, 2012

MEMORANDUM

TO: The Honorable John M. Mizuno, Chair
House Committee on Human Services

FROM: Patricia McManaman, Director

SUBJECT: **H.B. 2192 - RELATING TO THE ELDERLY**

Hearing: Monday, January 30, 2012; 8:30 a.m.
Conference Room 329, State Capitol

PURPOSE: The purposes of H.B. 2192 are to create the crime of financial exploitation of dependent elders and provide for enhanced penalties; require financial institutions to report suspected financial abuse to the adult protective services and the local law enforcement agency; 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 as a crime in Chapter 708, Hawaii Revised Statutes (HRS), and to provide for enhanced penalties for individuals convicted of financial and economic exploitation of a "dependent elder." We recommend that the definition for "dependent elder" be changed to mirror the definition of "vulnerable adult" as it appears in section 346-222, HRS. The term "dependent adult" in section 346-222, HRS, was amended in 2009 to "vulnerable adult" to more clearly define an individual who has impairments and who also 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. A "vulnerable elder" can still be defined as a person sixty-two years of age or older for the purposes of this bill.

DHS is opposed to the proposed amendments to section 412:3-114.5, HRS, requiring financial institutions to report suspected financial abuse to the local law enforcement agency and to DHS. The language contained in an Administration-sponsored bill, H.B. 2545, Relating to Financial Abuse of Elders, is preferred. H.B. 2545 will require financial institutions to report suspected financial abuse to the appropriate police department, and not to DHS.

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 local police department which has investigators and legal remedies at its disposal to immediately stop access to a "vulnerable elder's" financial accounts when warranted.

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



The Judiciary, State of Hawaii

Testimony to the House Committee on Human Services

Representative John M. Mizuno, Chair

Representative Jo Jordan, Vice Chair

Monday, January 30, 2012, 8:30 a.m.

State Capitol, Conference Room 329

By

Moira T. Chin

Director, Office of the Public Guardian

Bill No. and Title: House Bill No. 2192, Relating to the Elderly.

Purpose: Creates the crime of financial exploitation of dependent elders and provides enhanced penalties. Requires financial institutions to report suspected financial abuse to the adult protective services and the county police. Requires the signature of two unrelated witnesses to the execution of a power of attorney for health care.

Judiciary's Position:

The Office of the Public Guardian (OPG) supports the intent of House Bill No. 2192 to create financial exploitation of dependent elders as a crime.

OPG serves as court-appointed guardian of the person for incapacitated adults as a last resort in the absence of relatives or friends willing and able to serve. We have seen an increasing number of cases involving financial exploitation of the elderly not only by caregivers but by acquaintances, friends and family members. Exploitation of vulnerable elders residing independently in their apartments, condominiums or private homes have also been victims of financial exploitation. In these situations, a petition for OPG guardianship is often made.

For the past few years, there has also been a growing number of financial exploitation cases being petitioned by Adult Protective Services of the Department of Human Services. By the time OPG is appointed, however, client assets may have already been liquidated or properties sold. The 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



House Bill No. 2192, Relating to the Elderly
Committee on Human Services
January 30, 2012
Page 2

members fail to use the proceeds to pay for the incapacitated elders support and care. OPG's client is often left destitute except for any ongoing income sources which may be redirected by OPG for client's care. For the few cases with clear documentation that resources were liquidated and not used for client care, there has been little hope to retrieve resources despite reports to Adult Protective Services and to the Honolulu Police Department.

OPG supports this bill with the hope that more dependent 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.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

KEITH M. KANESHIRO
PROSECUTING ATTORNEY

ALI I PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY



THE HONORABLE JOHN M. MIZUNO, CHAIR
HOUSE COMMITTEE ON HUMAN SERVICES
Twenty-sixth State Legislature
Regular Session of 2012
State of Hawai'i

January 30, 2012

RE: H.B. 2192; RELATING TO THE ELDERLY.

Chair Mizuno, Vice Chair Jordan and members of the House Committee on Human Services, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony in support of House Bill 2192, with suggested amendments. Please review the Department's "Proposed HD1," which is attached for your reference.

The Department agrees with the intent of H.B. 2192, as financial crimes against the elderly can take many different forms, and can be just as devastating as physical injuries, leaving victims isolated, 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, the number of financial crimes against the elderly has increased in recent years, and is only expected to increase further, as Hawaii's baby-boomers continue to age.

However, rather than limiting the new offense (detailed in H.B. 2192, Section 1) to financial exploitation of "dependent elders" by "caregivers," the Department suggests that the offense include financial exploitation of any elder by any person. Prior cases indicate that many offenders specifically target elders with whom they have no professional or personal relationship, based on the fact that elderly people tend to be more trusting, and less able or inclined to guard against various types of financial exploitation. Anyone who would knowingly target elderly people as victims should face stricter penalties for such heinous actions; this would also serve as greater deterrent against such actions.

In addition, the Department suggests incorporating terminology from existing theft statutes, as these terms are already well-established and familiar to the courts. Terms such as "wanton disregard for the well-being of" a person are yet unknown, and may present

unnecessary challenges in interpretation. Moreover, we suggest that the various types of financial exploitation be defined generally--either as breaches of fiduciary duty, or with intent to deprive the elder of property-- rather than listing specific examples of such. Again, please see our Proposed HD1 for further clarification.

For all of the reasons noted above, the Department of the Prosecuting Attorney of the City and County of Honolulu supports H.B. 2192, with the suggested amendments. Thank for you the opportunity to testify on this matter.

STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO THE ELDERLY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§708- Financial exploitation of an elder. (1) A person commits the offense of financial exploitation of an elder if the person intentionally obtains or exerts control over the property of an elder, and the person:

(a) Breaches the person's fiduciary duty, resulting in the unauthorized appropriation, sale, or transfer of property; or

(b) Does so without authorization and with intent to deprive the elder of the property.

(2) Financial exploitation of an elder is punishable as a:

(a) Misdemeanor if the value of the assets, money, or property is not greater than \$500;

- (b) Class C felony if the value of the assets, money, or property is \$500 or more but less than \$5,000;
- (c) Class B felony if the value of the assets, money, or property is \$5,000 or more but less than \$10,000; and
- (d) Class A felony if the value of the assets, money, or property is \$10,000 or more.

(3) As used in this section:

"Elder" means any person sixty-two years of age or older."

SECTION 2. Section 706-660.2, Hawaii Revised Statutes, is amended to read as follows:

"§706-660.2 Sentence of imprisonment for offenses against children, elder persons, or handicapped persons.

Notwithstanding section 706-669, a person who, in the course of committing or attempting to commit a felony, causes the death or inflicts serious or substantial bodily injury upon a person, or is convicted of financial exploitation of an elder under section 708-____, who is:

- (1) Sixty years of age or older;
- (2) Blind, a paraplegic, or a quadriplegic; or
- (3) Eight years of age or younger;

and such disability is known or reasonably should be known to the defendant, shall, if not subjected to an extended term of imprisonment pursuant to section 706-662, be sentenced to a

mandatory minimum term of imprisonment without possibility of parole as follows:

- (1) For murder in the second degree--fifteen years;
- (2) For a class A felony--six years, eight months;
- (3) For a class B felony--three years, four months; or
- (4) For a class C felony--one year, eight months."

SECTION 3. This part does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

PART II

SECTION 4. Section 327E-3, Hawaii Revised Statutes, is amended by amending subsections (b) to read as follows:

"(b) An adult or emancipated minor may execute a power of attorney for health care, which may authorize the agent to make any health-care decision the principal could have made while having capacity. The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions. Unless related to the principal by blood, marriage, civil union, or adoption, an agent may not be an owner, operator, or employee of the health-care institution at which the principal is receiving care. The power shall be in writing, contain the date of its execution, be signed by the principal, and be witnessed by one of the following methods:

- (1) Signed by at least two individuals~~[7]~~ unrelated by blood, marriage, civil union, or adoption, each of whom witnessed either the signing of the instrument by the principal or the principal's acknowledgment of the signature of the instrument; or
- (2) Acknowledged before a notary public at any place within this State."

SECTION 5. Section 412:3-114.5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Suspected financial abuse shall be reported immediately to the adult protective services of the department and the proper local law enforcement agency initially by telephone and by electronic mail and then by written report sent by electronic mail within five business days~~[7]~~ after the initial report, to the department and the local law enforcement agency.

(c) Upon notification by a financial institution of suspected financial abuse, the department, in a timely manner, shall determine whether the department has jurisdiction over the elder involved; and if not, shall notify the financial institution~~[, which shall then notify the proper local law enforcement agency]~~ and the local law enforcement agency immediately by telephone ~~[and forward the written report to the~~

~~agency within three business days. A financial institution shall not be liable for failing to report suspected financial abuse to a local law enforcement agency in cases in which the department fails to notify the institution of the department's lack of jurisdiction.] and by electronic mail."~~

PART III

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

INTRODUCED BY: _____

Presentation of the Committees on Judiciary and Labor
Monday, January 30, 2012 at 8:30 a.m.
Testimony on HB 2192 Relating to the Elderly

In Support

TO: Honorable John M. Mizuno, Chair
Honorable Jo Jordan, Vice Chair
Members of the Committee

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in support of HB 2192. HBA is the trade organization that represents all FDIC insured depository institutions doing business in Hawaii.

This bill creates the crime of financial exploitation of dependent elder and provides enhanced penalties. It requires financial institutions to report suspected financial abuse to the adult protective services and the county police. It makes a requirement for two signatures of unrelated persons as witnesses to the execution of a power of attorney for health care.

HBA supports this bill and HB 2190. We have a few recommendations to streamline the reporting process as follows:

1. The term "proper local law enforcement agency" should be expanded to include federal law enforcement agencies. Sometimes, if the incident involves a large crime, a federal agency (FBI, U.S. Secret Service, or the U.S. Postal Inspectors) will get involved.
2. The State Agency that receives the report should be consistent between this bill and HB 2190. It should either be DHS or Adult Protection Service (APS). I believe the current practice is to send to APS.
3. The bill should allow financial institutions (FI) the option to **notify and report** using electronic mail **or** notify by phone with an email filing of the report, as determined by the FI.

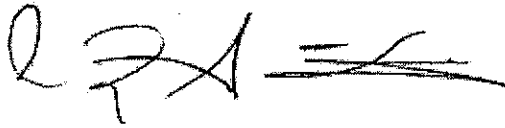
4. A **standardized reporting form** should be developed and adopted by DHS/APS and the county police departments in Hawaii.

5. If possible, an email and telephone reporting contact list should be compiled and maintained.

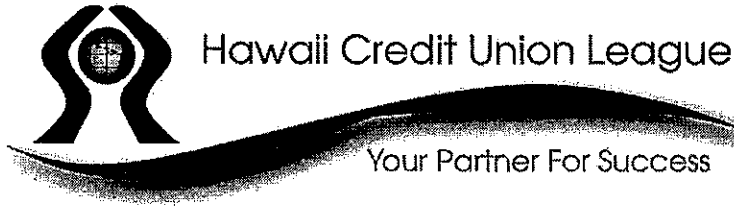
Currently, it is not unusual for an FI employee to be kept waiting on the telephone line after calling 911 and then waiting for an officer to arrive to take a report. The current process takes away valuable time from an already overly burdened county police departments.

These recommended changes will help ensure a streamlined and uniform reporting process instead of the current practice of using different reporting forms and methods (telephone call, fax, email, etc.), which wastes valuable time.

Thank you for this opportunity to testify.

A handwritten signature in black ink, appearing to read 'Gary Y. Fujitani', with a horizontal line drawn through the bottom of the signature.

Gary Y. Fujitani
Executive Director



1654 South King Street
Honolulu, Hawaii 96826-2097
Telephone: (808) 941.0556
Fax: (808) 945.0019
Web site: www.hcul.org
Email: info@hcul.org



Testimony to the House Committee on Human Services
Monday, January 30, 2012 at 8:30 a.m.

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

To: The Honorable John Mizuno, Chair
The Honorable Jo Jordan, Vice-Chair
Members of the Committee on Human Services

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 82 Hawaii credit unions, representing approximately 811,000 credit union members across the state.

We are in support of HB 2192, which would create the crime of financial and economic exploitation of a dependent elder, but suggest amendments be made for clarity. While our credit unions support the provision to notify "local law enforcement" of the suspected crime, we suggest that it be made clear which law enforcement agency this may be – in cases of financial crime, this could be either the county police department, or the Federal Bureau of Investigation (FBI). Further, we suggest that electronic mail (e-mail) be specified as the primary method of communication. This would help to expedite the process.

Thank you for the opportunity to testify.



HOUSE COMMITTEE ON HUMAN SERVICES
Rep: John Mizuno, Chair

Conference Room 329
January 30, 2012 at 8:30 a.m.

Supporting HB 2192: Relating to the Elderly

The Healthcare Association of Hawaii advocates for its member organizations that span the entire spectrum of health care, including all acute care hospitals, as well as long term care facilities, home care agencies, and hospices. In addition to providing quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 40,000 people. Thank you for this opportunity to testify in support of HB 2192, which is designed to prevent the financial and economic exploitation of a dependent elder.

This bill is one of many that are designed to reduce elder abuse or to strengthen the infrastructure that cares for the elderly.

As elders become more physically frail, they are less able to stand up to bullying and/or to fight back if attacked. They may not see or hear as well or think as clearly as they used to, leaving openings for unscrupulous people to take advantage of them.

Elder abuse can take the form of physical abuse, emotional abuse, sexual abuse, neglect, abandonment, and financial exploitation. When abuse occurs, the State's Adult Protective Services program, as well as other relevant agencies, investigate reports of abuse and take corrective action.

An infrastructure has been created to prevent elder abuse and to address it when it happens. Some of its components include the following: (1) Respite care to provide relief for caregivers; (2) Public awareness campaigns; (3) Chore services to support the frail elderly; (4) Special provisions to encourage the reporting of abuse by certain professionals and institutions, including banks; (5) Ensuring sufficient funding for Adult Protective Services; and (6) Making fiduciaries, persons with power of attorney, and guardians more accountable for their actions. This infrastructure should be strengthened.

HAH supports a broad range of legislative measures designed to prevent elder abuse and to address it when it occurs. As such, we support HB 2192.

Thank you for the opportunity to testify.