

SB 2450

Measure Title: RELATING TO SENTENCING.
Report Title: Crimes Against Elders; Sentencing
Description: Establishes mandatory minimum prison terms for certain offenses committed against persons 60 years of age or older.
Companion:
Package: None
Current Referral: HMS, JDL
Introducer(s): CHUN OAKLAND (BR)

DEPARTMENT OF THE PROSECUTING ATTORNEY
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THE HONORABLE SUZANNE CHUN OAKLAND, CHAIR
SENATE COMMITTEE ON HUMAN SERVICES
Twenty-sixth State Legislature
Regular Session of 2012
State of Hawai'i

January 31, 2012

RE: S.B. 2450; RELATING TO SENTENCING.

Chair Chun-Oakland, Vice-Chair Ihara and members of the Senate Committee on Human Services, the Department of the Prosecuting Attorney submits the following testimony in support of Senate Bill 2450.

The purpose of S.B. 2450 is to amend Hawaii Revised Statutes, Section 706-660.2, to provide enhanced penalties for those who target elder persons for *financial* crimes. Specifically, the bill seeks to extend the protections afforded by Section 706-660.2 to elderly victims of first and second-degree theft or identity theft.

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.

Financial crimes against the elderly have been a growing problem in Hawaii, where it is common to see several generations living under the same roof, and in May of 2006, the Honolulu Advertiser published a series of *nine* articles regarding the financial abuse of seniors, indicating that Adult Protective Services had received more than 1,800 reports of suspected incidents,

within two-years prior. It is our understanding that these numbers have continued and are expected to increase as our population grows grayer with the aging of baby boomers.

Criminals who knowingly target an elderly victim for first or second-degree theft, or identity theft, should face enhanced penalties as a result of their decision to victimize an elder person. S.B. 2450 is consistent with the intent of current laws, which provide enhanced penalties for serious physical injury to an elder, and only apply when it is proven beyond a reasonable doubt that the defendant knew or reasonably should have known the victim was 60 years of age or older. The Department of the Prosecuting Attorney believes that S.B. 2450 will provide greater protection for Hawaii's growing elderly population and present a greater deterrence to those who would contemplate targeting Hawaii's elderly for financial crimes.

For these reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports this bill. Thank you for the opportunity to testify on this matter.



SENATE COMMITTEE ON HUMAN SERVICES
Senator Suzanne Chun Oakland, Chair

Conference Room 016
January 31, 2012 at 1:15 p.m.

Supporting SB 2450: Relating to Sentencing

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 SB 2450, which establishes mandatory minimum prison terms for certain offenses committed against elderly persons.

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

Hawaii's elderly population is growing faster than even the national average. Since statehood, the proportion of elderly to Hawaii's total population has increased three-fold, from roughly 5% in 1960 to 15% in 2009. By comparison, the nation's population stands at 13%. Between 1990 and 2009, the number of elderly aged 75 and older increased 115% in Hawaii compared to 44% nationally. By 2030, the elderly population will represent 20% of the population, both in Hawaii and nationally.

There is a clear relationship between age and the prevalence of chronic conditions and level of disability. The elderly are the heaviest users of health care resources. Hawaii's existing resources are not sufficient to satisfy the current high demand for care for the elderly, which is increasing further as the population ages.

A related issue is elder abuse. 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. 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) 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 expand care for the elderly and address elder abuse.

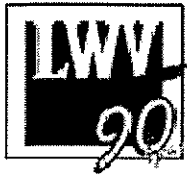
Thank you for the opportunity to testify in support of SB 2450.

From: mailinglist@capitol.hawaii.gov
Sent: Friday, January 27, 2012 6:04 PM
To: HMS Testimony
Cc: kat.caphi@gmail.com
Subject: Testimony for SB2450 on 1/31/2012 1:15:00 PM

Testimony for HMS 1/31/2012 1:15:00 PM SB2450

Conference room: 016
Testifier position: Oppose
Testifier will be present: Yes
Submitted by: Kat Brady
Organization: Community Alliance on Prisons
E-mail: kat.caphi@gmail.com
Submitted on: 1/27/2012

Comments:



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TESTIMONY ON SB 2450 RELATING TO SENTENCING BEFORE THE COMMITTEE ON HUMAN SERVICES

Committee on Human Services
Senator Suzanne Chun Oakland, Chair
Senator Les Ihara, Jr., Vice Chair
Tuesday, January 31, 2012
1:15 p.m. Conference Room 016

Testimony by Jean Aoki, Legislative Committee member,

Chair Chun Oakland, Vice Chair Ihara, members of the Committee on Human Services,

The League of Women Voters of Hawaii opposes the imposing of mandatory minimum sentences by the legislature, effectively restricting the ability of judges to treat each defendant fairly, based on all of the facts of the case, the criminal history of the defendant and the circumstances surrounding the case while following general sentencing guidelines.

The League shares the legislators' indignation over lawbreakers' preying on the aged, the handicapped and the very young who are least able to defend themselves, and the general sentencing guidelines should reflect society's concern.

However, an example of the negative results of the imposition of mandatory minimum sentencing is the harsh sentencing in drug cases that has resulted in swelling prison populations of young minority men.

In an August 10, 2003 article in the *San Francisco Chronicle* staff writer Bob Egelko begins with this quote: "U.S. Supreme Court Justice Anthony Kennedy, in a striking departure from his court's and the Bush administration's hard line on crime, criticized the nation's imprisonment policies Saturday and called for the repeal of mandatory-minimum sentences for federal crimes.

'Our resources are being misspent. Our punishments are too severe. Our sentences are too long,' Kennedy said in a speech at the American Bar Association convention in San Francisco."



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According to the article, at that time, 2.1 million people were behind bars in the United States. About 1 in 143 Americans are incarcerated compared with 1 in 1,000 in many European countries. "About 10% of African American men are behind bars," said Justice Kennedy.

In his speech, Kennedy said he agrees with the need for federal sentencing guidelines – established by federal law in 1984 to make sentences more uniform-- but believes they are too severe and should be shortened.

"In contrast to the guidelines which allow judges some flexibility, mandatory minimums are virtually ironclad. I can accept neither the wisdom, the justice, nor the necessity of mandatory minimums," Kennedy said. "In all too many cases, they are unjust."

The League of Women Voters believes in judicial independence for the Judiciary and the judges and justices. Federal judges are given lifetime tenures so that they can make the decisions they think necessary even when some of those decisions may not be supported by the President of the United States, or the Congress, or even the majority of the people. Congress can change the laws or begin the process of amending the U.S. Constitution, if in their collective wisdom, it feels that any decision is detrimental to the welfare of the people or of the United States.

We frequently read stories of the attempts by the legislative bodies of different states and cities, and yes, even Congress, to strip the courts of some of their jurisdiction and their independence because the courts stand in the way of their desire to enact laws that reflect their ideologies or their own sense of what is right and wrong. In order for our governments at all levels to work properly, each of the co-equal branches of government must respect the jurisdictions of the other two, while exerting the proper checks on them to maintain the proper balance among the three branches.

We say yes to general sentencing guidelines, but no to mandatory minimum sentences. Let the judges be judges, not just clerks doing what the legislative branches decide for them.

Thank you for this opportunity to address SB 2450.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 26, 2012 9:05 PM
To: HMS Testimony
Cc: lkakatsu@hawaii.rr.com
Subject: Testimony for SB2450 on 1/31/2012 1:15:00 PM

Testimony for HMS 1/31/2012 1:15:00 PM SB2450

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Lynn Murakami-Akatsuka
Organization: Individual
E-mail: lkakatsu@hawaii.rr.com
Submitted on: 1/26/2012

Comments:
Strongly support this bill as written.