

**STATE OF HAWAI‘I**  
**OFFICE OF THE PUBLIC DEFENDER**

**Testimony of the Office of the Public Defender,  
State of Hawai‘i to the Senate Committee on Judiciary**

March 19, 2021

H.B. No. 490 H.D.2: RELATING TO CRIMES AGAINST SENIORS

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Office of the Public Defender respectfully opposes, in part, and supports, in part, H.B. No. 490 H.D.2. This bill amends several current criminal statutes to create special treatment for cases that involve victims who are sixty (60) years old or older. The Office of the Public Defender has consistently opposed the creation of special victim classes that elevate criminal liability. In the past, the legislature has elevated those individuals that, due to their employment, are in positions that have required more protection, and recently elevated those seeking protection from domestic violence. These special classes were created to elevate what would otherwise be a misdemeanor to a class C felony. This bill does the same thing for those who are sixty years old or older, and also elevates what would be a class C felony assault into a class B felony assault, misdemeanor assault into a class C felony assault, misdemeanor/petty misdemeanor theft into a class B felony theft, and misdemeanor theft into a class C felony theft. Elevating all individuals who are sixty years of age or older into a special victim class is not necessary for the protection of the public.

What is problematic under this measure is when a defendant is the same age or older than the victim. Under this measure, an 80-year-old defendant who simply slaps a 60-year-old person and only causes the 60-year-old to experience “pain” (which is included in the definition of “bodily injury”), the 80-year-old defendant will be subjected to a class C felony instead of a misdemeanor offense.

The Office of the Public Defender does understand that protecting the senior members of our community is a necessity. However, the Hawai‘i Revised Statutes already addresses that need. HRS § 706-660.2 requires a mandatory jail term for those who commit crimes against those sixty years of age or older for any felony charge which causes death, serious or substantial bodily injury. This current statute should serve as ample deterrence to the victimization of those who are sixty years of age or older.

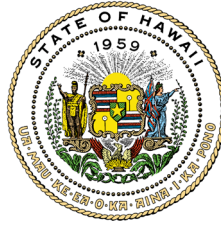
Although the Office of the Public Defender opposes providing special treatment to those over sixty years of age, we do support amending HRS § 708-812.55; HRS § 708-830.5; HRS § 708-831; and HRS § 708-852 to include the following language: “. . . **and the age of ... is known or reasonably should be known to the person who...**” Likewise, the Office of the Public Defender also supports the inclusion of the language, “. . . **and the age of the injured person is known or reasonably should be known to the person causing the injury**” included in the amended assault statutes and similar language appearing in HRS §§707-710 & 707-711.

Acknowledging that there are a good number of individuals sixty years of age or older who look and act much younger than their age in Hawai‘i for a variety of reasons, it is vital that the proposed statute continue to have a *mens rea*, or state of mind element, attached to the criminal conduct so that the dangerous and morally blameworthy parties are penalized, and not the individuals who unwittingly commit an offense that was not intended.

Thank you for the opportunity to comment on H.B. No. 490, HD2.

DAVID Y. IGE  
GOVERNOR OF HAWAII

ELIZABETH A. CHAR, M.D.  
DIRECTOR OF HEALTH



CAROLINE CADIRAO  
DIRECTOR

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STATE OF HAWAII  
EXECUTIVE OFFICE ON AGING  
NO. 1 CAPITOL DISTRICT  
250 SOUTH HOTEL STREET, SUITE 406  
HONOLULU, HAWAII 96813-2831

**Testimony in SUPPORT of HB490 HD2  
Relating to Crimes Against Seniors**

COMMITTEE ON JUDICIARY  
SENATOR KARL RHOADS, CHAIR  
SENATOR JARRETT KEOHOKALOLE, VICE CHAIR

Testimony of Caroline Cadirao  
Director, Executive Office on Aging  
Attached Agency to the Department of Health

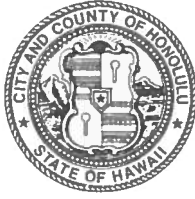
Hearing Date: March 19, 2021  
9:30 a.m.

Via Video Conference

- 1 **EOA's Position:** The Executive Office on Aging (EOA), an attached agency of the Department
- 2 of Health (DOH), is in support of House Bill 490 HD2, Relating to Crimes Against Seniors.
- 3 **Purpose and Justification:** The purpose of this bill is to amend HRS Chapter 707 (Offenses
- 4 Against the Person) and Chapter 708 (Offenses Against Property Rights) in which certain
- 5 penalties apply for crimes committed against seniors sixty years of age and making certain
- 6 criminal offenses against seniors applicable if the perpetrator knows or reasonably should know
- 7 the victim's age. This measure will add further protection to our most vulnerable adults and deter
- 8 crimes intentionally targeting seniors. The EOA supports the proposed amendments to HRS
- 9 Chapter 707 and Chapter 708 and urges legislators to move the measure forward.
- 10 Thank you for this opportunity to testify.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org



RICK BLANGIARDI  
MAYOR

SUSAN BALLARD  
CHIEF

JOHN D. McCARTHY  
AARON TAKASAKI-YOUNG  
DEPUTY CHIEFS

OUR REFERENCE

**MK-KK**

**March 19, 2021**

The Honorable Karl Rhoads, Chair  
and Members  
Committee on Judiciary  
State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

**SUBJECT: House Bill No. 490, H.D. 2, Relating to Crimes Against Seniors**

I am Mikel Kunishima, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 490, H.D. 2, Relating to Crimes Against Seniors.

This bill appropriately eliminates the confusion and standardizes the age of seniors to 60 years of age or older. It also adds to the applicable sections of the Hawaii Revised Statutes that the perpetrators will be held accountable for their actions if they had knowledge of or reasonably should have known the age of their victims. The HPD supports making the commission of certain criminal offenses against a senior's person or property a crime.

Victimization of seniors is an important subset of crime, and this vulnerable age group is targeted due to their advanced age, health factors, and decreased likelihood of reporting the crime. Our kupuna should be cherished and treated with respect.

The HPD urges you to support House Bill No. 490, H.D. 2, Relating to Crimes Against Seniors.

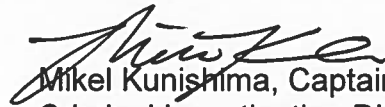
The Honorable Karl Rhoads, Chair  
and Members

Page 2

March 19, 2021

Thank you for the opportunity to testify.

Sincerely,

  
Mikel Kunishima, Captain  
Criminal Investigation Division

APPROVED:



Susan Ballard  
Chief of Police

**MICHAEL P. VICTORINO**  
Mayor

**ANDREW H. MARTIN**  
Prosecuting Attorney

**MICHAEL S. KAGAMI**  
First Deputy Prosecuting Attorney

**ROBERT D. RIVERA**  
Second Deputy Prosecuting Attorney



**DEPARTMENT OF THE PROSECUTING ATTORNEY**  
COUNTY OF MAUI  
150 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
PHONE (808) 270-7777 • FAX (808) 270-7625

TESTIMONY  
ON  
H.B. 490 HD2 RELATING TO  
CRIMES AGAINST SENIORS

March 17, 2021

The Honorable Karl Rhoads  
Chair  
The Honorable Jarrett Keohokalole  
Vice Chair  
and Members of the Committee on Judiciary

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments concerning H.B. 490 HD2, Relating to Crimes Against Seniors. Specifically, we would like to express our strong support for H.B. 490 HD2. In our experience, many senior victims of crime never fully recover from the physical, financial, psychological and emotional devastation caused by violent crime, theft or financial exploitation. We helped draft this bill in order to strengthen and standardize the legal protection Hawaii offers to our kupuna.

The bill accomplishes this goal in two ways. First, it creates stronger charging options for certain crimes of violence or financial exploitation when a senior is victimized and the offender knows or reasonably should know the senior's age. For example, conduct that would otherwise constitute Assault in the Second Degree can be charged as Assault in the First Degree if the offender knows or reasonably should know that the victim was sixty years of age or older.

Second, it lowers and standardizes the age threshold from sixty-two (62) to sixty (60) for these charging options. This increases the number of protected elders protected by our laws, while also creating a consistent statutory scheme for enforcement purposes.

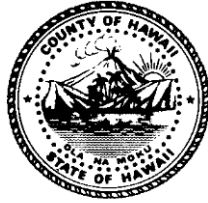
We would also like to note that we have revised this bill from its earlier versions based on input from the community and from the Legislature. Most notably, the bill previously had a strict liability component regarding an offender's knowledge of an elderly victim's age. The current version removes that component and replaces it with a requirement that an offender knows or reasonably should know that a victim is sixty years old or older. We believe this amendment renders the bill more fair and equitable from a constitutional perspective, while still retaining the core goal of enhancing the legal protection offered to our kupuna by Hawaii laws.

For these reasons, the Department of the Prosecuting Attorney, County of Maui strongly supports the passage of H.B. 490 HD2. 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.

**Mitchell D. Roth**  
Mayor



**Paul K. Ferreira**  
Police Chief

**Kenneth Bugado Jr.**  
Deputy Police Chief

## County of Hawai'i

### POLICE DEPARTMENT

349 Kapi'olani Street • Hilo, Hawai'i 96720-3998  
(808) 935-3311 • Fax (808) 961-2389

March 18, 2021

Senator Karl Rhoads  
Chairperson and Committee Members  
Committee on Judiciary  
415 South Beretania Street  
Honolulu, Hawai'i 96813

RE: HOUSE BILL 490, HD2, RELATING TO CRIMES AGAINST SENIORS  
HEARING DATE: MARCH 19, 2021  
TIME: 9:30 A.M.

Dear Senator Rhoads:

The Hawai'i Police Department **supports** House Bill 490, HD2, with its purpose to lower the age at which enhanced penalties apply for crimes against seniors from sixty-two (62) years of age to sixty (60) years of age. Makes commission of certain criminal offenses against a senior's person or property applicable if the perpetrator knows or reasonably should know the senior victim's age.

Our Kupuna are one of our most vulnerable populations as they are often targeted by perpetrators due to their advanced age, health, diminished cognitive ability, and lower likelihood of reporting a crime. Our elders should be cherished and treated with respect; this bill goes a long way to protect and allow for a standardized recognition of age. Amending the Hawai'i Revised Statutes to hold suspect's accountable for their actions if they had knowledge of or reasonably should have known the age of their victims will be extremely beneficial and closes a loophole that perpetrators will otherwise capitalize on. The inclusion of crimes against our Kupuna's property will further stiffen the penalties of those who prey on the weak by deception or direct theft. Hawaii's elderly population often live on fixed incomes and have little or no recourse to replace items or income that is stolen by perpetrators.

It is for these reasons, we urge this committee to approve this legislation. Thank you for allowing the Hawai'i Police Department to provide comments relating to House Bill 490, HD2.

Sincerely,

A handwritten signature in black ink that reads "Paul K. Ferreira".

PAUL K. FERREIRA  
POLICE CHIEF



**HB-490-HD-2**

Submitted on: 3/18/2021 9:19:32 AM

Testimony for JDC on 3/19/2021 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
HMS APCS (Lisa Amador)	Testifying for DHS APCS	Support	No

Comments:

Written testimony submitted separately. Appearing to answer any questions.

**HB-490-HD-2**

Submitted on: 3/17/2021 2:43:37 AM

Testimony for JDC on 3/19/2021 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mary Gilmeister	Testifying for Macha	Support	No

Comments:

Thank you for the opportunity to submit comments. This bill is critical as crimes against the elderly are increasing. Many states on the Mainland have also submitted similar bills and have passed lowering the age for elder abuse as well. Mahalo

Mary Gilmeister AAP, NCP

Macha

President and CEO

**HB-490-HD-2**

Submitted on: 3/16/2021 11:09:59 AM

Testimony for JDC on 3/19/2021 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mike Goljuch, Sr.	Individual	Support	No

Comments:

I definitely support HB490. Please pass this bill.

**HB-490-HD-2**

Submitted on: 3/16/2021 1:58:11 PM

Testimony for JDC on 3/19/2021 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lynn Murakami-Akatsuka	Individual	Support	No

Comments:

I strongly support the passage of HB 490, HD 2. Crimes against the elderly have increasing in their homes, walking to the bus, on their way to work, and against elderly with disabilities. I am glad that the age of 60 years old individuals are covered in this bill.

Beverly Gotelli  
6286 Opaekaa Road  
Kapaa, HI 96746

Committee on Judiciary:  
Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair

HB490, HD 2 RELATING TO CRIMES AGAINST SENIORS

Friday, March 19, 2021 9:30 AM

Senator Rhoads and members of the Committee:

I'm Beverly Gotelli a member of the Policy Advisory Board for Elder Affairs (PABEA) which has a statutory obligation to advocate on behalf of the senior citizens of Hawaii. While we advise the Executive Office on Aging (EOA), we do not speak on its behalf.

I would like to offer testimony in support of HB 490 HD 2. The proposed legislation would lower the age of enhanced penalties for crimes against seniors from 62 to 60. Many seniors of crime never fully recover from the physical financial, psychological and emotional devastation caused by violent crime, theft or financial exploitation.

We are a growing population and it is unforgiveable to have crimes committed against seniors who are going about their daily activities. Seniors enjoy a full life and like to be out and independent. This bill will help protecting those who may fall victim to a violent crime or any other type of injury. Seniors are often too ashamed to name a family member who may have been abusing them, financially, emotionally and psychologically.

Thank you for the opportunity to testify in support of this measure.

**HB-490-HD-2**

Submitted on: 3/16/2021 2:18:54 PM

Testimony for JDC on 3/19/2021 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dara Carlin, M.A.	Individual	Support	No

Comments:

Stand in Support

**HB-490-HD-2**

Submitted on: 3/17/2021 7:03:53 PM

Testimony for JDC on 3/19/2021 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
E. Ileina Funakoshi	Individual	Support	No

Comments:

Thank you for this measure. There are many disabled seniors who are unable to protect themselves from purse snatchers or assault.

If I may request that the Legislature also review the UEMV law in relations to some of us seniors inadvertently entering a car to toot the horn of an illegally parked car and because of the UEMV law no matter how badly we are abused, we are felons. The UEMV law needs to be fine tuned, if I may state so.

Mahalo and Aloha,

e. ileina funakoshi.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
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**LATE**

STEVEN S. ALM  
PROSECUTING ATTORNEY



THOMAS J. BRADY  
FIRST DEPUTY  
PROSECUTING ATTORNEY

**THE HONORABLE KARL RHOADS, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY**  
**Thirty-First State Legislature**  
**Regular Session of 2021**  
**State of Hawai`i**

March 19, 2021

**RE: H.B. 490, H.D. 2; RELATING TO CRIMES AGAINST SENIORS.**

Chair Rhoads, Vice Chair Keohokalole, 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 support of H.B. 490, H.D. 2.

The purpose of H.B. 490, H.D. 2, is twofold: 1) to provide additional mechanisms within the Hawai`i Revised Statutes to provide protection for elder persons who are the target of physical and financial harm; 2) to make uniformed the age in which an individual would be afforded additional protection. Specifically, the original bill sought to protect persons 60 years of age or older from certain crimes by making the criminal conduct against them specifically have more severe consequences.

The Department believes H.B. 490, H.D. 2, which addresses various forms of elder abuse is a substantial effort in protecting our kupuna. Currently, the Elder Abuse Unit at the Honolulu Prosecutor's Office is handling a trial load which includes 43 violent crimes (including 9 homicides), 76 property crimes and 27 financial crimes. These numbers are significantly higher than the month of January 2020, where criminal cases set for trial included only 34 violent crimes, 29 property crimes and 17 financial crimes. In addition, with this tragic increase of violent crimes against our elderly, we are now nearing the point at which elder abuse cases have increased to almost double the number of felony domestic violence cases currently being prosecuted.

Through a series of amendments to existing statutes, H.B. 490, H.D. 2, will, in short, modify the law in the following manner: 1) if a person assaults a senior causing them physical pain, that crime could be charged as a class C felony instead of being treated as a misdemeanor offense (current law requires more serious injuries, like broken bones, in order for these crimes to be treated more seriously) - this effectively makes Assault in the Third Degree (§707-712, H.R.S.) and Abuse of Family and Household Member (§709-906, H.R.S. - for parent abuse situations) into Assault in the Second Degree (§707-711, H.R.S.) offenses; 2) if a person steals over \$250 from a senior



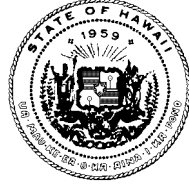
(current law says over \$750), that crime could now be charged as a class C felony offense of Theft in the Second Degree (§708-831, H.R.S.) as oppose to a misdemeanor offense of Theft in the Third Degree (§708-832, H.R.S.); and 3) if a person forges a senior's name on a document or tries to cash a stolen check belonging to them, that matter is now a more serious felony offense.

Additionally, H.B. 490, H.D. 2, standardizes the definition of who would be considered a senior or elderly under the criminal statutes. Currently, an elder is defined differently throughout the Hawaii Revised Statutes. While most criminal statutes place the age of a senior at 60, there are instances where the ages of 62 and 65 are mentioned as well in the law. The Department believes that the age of 60 across the different applicable statutes would be an appropriate age and will remove unnecessary confusion during the charging and prosecuting elder abuse cases.

The Department believes that the amendments in H.B. 490, H.D. 2, will serve as a strong deterrent for individuals who are targeting seniors and further illustrate that our State will not stand by and leave our kupuna defenseless. For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of H.B. 490, H.D. 2. Thank you for the opportunity to testify on this matter.

**LATE**

DAVID Y. IGE  
GOVERNOR



CATHY BETTS  
DIRECTOR

JOSEPH CAMPOS II  
DEPUTY DIRECTOR

STATE OF HAWAII  
**DEPARTMENT OF HUMAN SERVICES**

P. O. Box 339  
Honolulu, Hawaii 96809-0339

March 18, 2021

TO: The Honorable Senator Karl Rhoads, Chair  
Senate Committee on Judiciary

FROM: Cathy Betts, Director

SUBJECT: **HB 490 HD2 – RELATING TO CRIMES AGAINST SENIORS.**

Hearing: March 19, 2021, 9:30 a.m.  
Via Videoconference, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) supports the intent of the bill as this change will further protect the health, safety and well-being of vulnerable adults and seniors in the community as a deterrent for individuals who continue to victimize kupuna.

The House Committee on Health, Human Services, and Homelessness amended the measure by adding a savings clause, defecting the effective date, and making technical amendments. The House Committee on Judiciary & Hawaiian Affairs further defecting the effective date and made additional technical amendments.

**PURPOSE:** This bill lowers the age at which enhanced penalties apply for crimes against seniors from sixty-two years of age to sixty years of age. Makes commission of certain criminal offenses against a senior's person or property applicable if the perpetrator knows or reasonably should know the senior victim's age.

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