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Testimony of the Office of the Public Defender to the House Committee on Human Services and Homelessness re: H.B. 963: RELATING TO CRIMES AGAINST ELDERS

Chair Lisa Marten, Vice-Chair Ikaika Olds and Members of the Committee:

The Office of the Public Defender respectfully **opposes HB 963**.

HB 963 seeks to amend the Hawaii Revised Statutes to remove language dealing with the state of mind and attendant circumstances in relation to crimes against those who are sixty years of age or older. Specifically, this measure will allow the prosecution of defendants charged with crimes against those that are sixty years of age or older, without the need to prove that the age of the victim “was known to the defendant or reasonably should be known”.

This proposed measure directly undercuts the specific reason for having the current language in place. The current statutory language was inserted into the Hawaii Revised Statutes to deter criminal defendants from specifically targeting seniors, and those that appear to be frail or vulnerable because of age. Thus, the current language in the Hawaii Revised Statutes: “the age of the person is known or reasonably should be known to the person causing the injury” was designed for deterrence, and its removal makes age irrelevant to the defendant’s criminal purpose.

This measure is prompted by the belief that proving that a criminal defendant targeted a victim because of age would be too difficult to establish. However, the current statutory language only requires proof that the defendant knew the person’s age (to deter crimes between parties that know each other) or reasonably should be known (to deter acts against those that appear to be of the requisite age).

But again, this language for the purpose of deterring defendants from targeting this

vulnerable population, and thus the deletion of this important element of the crime is in opposition to that purpose.

Previously, the legislature has carved out greater protections for individuals who perform certain jobs within our society. Please see HRS section 707-711 (Assault in the Second Degree), which elevates what would be a misdemeanor assault to a felony assault if it is perpetrated against police officers, correctional workers, educational workers etc. The purpose of said language was to give greater protection to those individuals, and to deter criminal defendants from committing assaults specifically against those groups of people. Most importantly the knowledge that said victim was a member of that specially protected class of workers is an element of those crimes. HB 963 is in opposition to this current statutory policy dealing with specific groups of victims.

It might be more prudent to amend relevant sections of HRS 706 (sentencing of defendants) to allow a trial judge the option of sentencing someone who commits a crime against a person of a certain age or vulnerability to a more serious penalty, than to attempt to make it easier for the prosecution to gain a conviction. The current language within the HRS dealing with crimes against the elderly were promulgated to deter such crimes, this proposed measure would undercut that purpose.

Thank you for the opportunity to comment on this measure.

**DEPARTMENT OF THE PROSECUTING ATTORNEY
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**THE HONORABLE LISA MARTEN, CHAIR
HOUSE COMMITTEE ON HUMAN SERVICES AND HOMELESSNESS
Thirty-Third State Legislature
Regular Session of 2025
State of Hawai'i**

February 10, 2025

RE: H.B. 963; RELATING TO CRIMES AGAINST ELDERS.

Chair Marten, Vice Chair Olds, and members of the House Committee on Human Services and Homelessness, the Department of the Prosecuting Attorney for the City and County of Honolulu submits the following testimony in support of H.B. 963.

H.B. 963 amends the offenses of first-degree assault and second-degree assault when the victim is elderly. Under the current law, assault is aggravated by one grade if the victim is sixty years or older. But conviction requires proof that the defendant “knew or should have known” the victim’s age. H.B. 963 removes this state of mind requirement.

In 2021, the Legislature passed Act 147 to better protect Hawaii’s seniors from being targeted by violence, theft, or fraud. The law now provides additional penalties for those who harm kupuna.¹ But unlike theft or fraud, which often involve deliberation and selection, many assaults lack evidence regarding age. In many cases, violent criminals attack elderly strangers simply because they look like soft targets. Even if perceived age actually motivated that assessment, it cannot be proven in court.

Thus, even when the fact of the assault and the scope of injury are undisputed, trials for assault on an elder simply turn on a jury’s assessment of the victim’s age. This usually requires resort to stereotypes about aging. Impressions of elders from a different generation may shape how jurors assess age today. And superficial assessments remain just that—superficial. Kupuna who appears quite youthful remains vulnerable to greater pain and injury from an assault. The same broken bone that heals easily in youth can be debilitating in old age.

¹ See, e.g., HRS § 708-830.5(1)(e) (first-degree theft targeting the elderly); HRS § 708-851(c) (first-degree forgery targeting the elderly).

Criminals should not be assaulting anyone. When they do, they should be held accountable for the harm they have actually done. As Lord Lawton memorably phrased it: “It has long been the policy of the law that those who use violence on other people must take their victims as they find them.”² Strict liability with respect to age is a perfectly appropriate standard for those embarking on criminal violence.

Thank you for the opportunity to testify.

² *R. v. Blaue*, 1 WLR 1411 (1975).



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The State Legislature
House Committee on Human Services
Tuesday, February 11, 2025
Conference Room 329, 9:45 a.m.

TO: The Honorable Lisa Marten, Chair
FROM: Keali'i S. López, State Director
RE: Support for H.B. 963 Relating to Crimes Against Elders

Aloha Chair Marten, and Members of the Committee:

My name is Keali'i Lopez and I am the State Director for AARP Hawai'i. AARP is a nonpartisan, social impact organization that advocates for individuals age 50 and older. We have a membership of nearly 38 million nationwide and nearly 135,000 in Hawaii. We advocate at the state and federal level for the issues that matter most to older adults and their families.

AARP supports H.B. 963 establishes strict liability for crimes against elders with respect to the attendant circumstance that the victim was sixty years of age or older.

Elders are often more vulnerable to crimes due to physical, cognitive, and social factors. Establishing strict liability ensures that perpetrators are held accountable, providing a stronger deterrent against crimes targeting this demographic. AARP advocates for the protection of older adults from abuse, neglect, and exploitation, and aligns with AARP's policy by ensuring that crimes against elders are met with appropriate legal consequences, reinforcing the importance of safeguarding our kupuna.

By establishing strict liability, the bill simplifies the prosecution process for crimes against elders. This means that the prosecution does not need to prove the perpetrator's intent, only that the crime occurred, and the victim was 60 years of age or older. This can lead to more efficient and effective justice for elder victims.

Strict liability serves as a preventive measure by signaling to potential offenders that crimes against elders will be met with serious consequences. This can reduce the incidence of elder abuse and improve the overall safety and well-being of older adults in the community.

Thank you very much for the opportunity to testify in support **H.B. 963**.

HB-963

Submitted on: 2/5/2025 8:58:54 AM

Testimony for HSH on 2/11/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Maile Daniel	Individual	Support	Written Testimony Only

Comments:

HB963 Testimony

T. Maile Daniel supports HB963: Establishing Strict Liability for Crimes Against Elders

Hearing Date: February 11, 2025

Committee: Human Services and Homelessness

Judiciary and Hawaiian Affairs

Honorable Chair, Lisa Marten, Vice Chair, Ikaika Olds, and Members of the Committee:

I strongly support HB963, which establishes strict liability for crimes against elders when the victim is 60 years of age or older. This bill is crucial to protecting one of Hawaii’s most vulnerable populations and ensuring that perpetrators of crimes against our kupuna are held fully accountable.

Elder abuse, whether financial exploitation, physical harm, or neglect, is a growing concern in our state. Many elderly people live on fixed incomes, face physical or cognitive impairments, and are often unable to defend themselves or report crimes effectively. By removing the burden of proving that an offender knew the victim’s age, this bill strengthens enforcement and ensures that those who target or harm elders cannot evade responsibility.

Our kupuna have contributed immensely to our communities and deserve to live with dignity and security. Passing this measure would send a clear message that crimes against elders will not be tolerated and will be met with the full force of the law. I respectfully urge you to pass HB963 and take this important step in protecting Hawaii’s seniors.

Mahalo for the opportunity to comment on this measure.

Maile Daniel

HB-963

Submitted on: 2/6/2025 8:32:12 AM

Testimony for HSH on 2/11/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Linda Elento	Individual	Support	Written Testimony Only

Comments:

Thank you.

TESTIMONY IN STRONG SUPPORT OF HB963
Being heard by the House Committee on Human Services & Homelessness
Tuesday, February 11, 2025 at 10a.m.
In Conference Room 329

Aloha Chair Marten, Vice Chair Olds, and members of the Committee:

I am testifying in strong support of HB963. It's my understanding that the purpose of HRS sections referenced in this Bill is to provide added protection for our Kupuna by making the penalties stiffer when they are victims of crime. However, as currently written there is a loophole in the bill which defeats the purpose. The language that states, "and the age of the injured person is known or reasonably should be known to the person causing the injury" needs to be removed as proposed in this bill.

Whether a person is 60 years or older is a matter of fact. While whether a person looks or acts like a Kupuna is subjective. Thus, we should stick to the facts and strict liability should apply.

I can speak from personal experience; a couple of 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 of the loophole and because strict liability did not apply. Thus, I was prohibited to receive the added protection that the Legislature felt was appropriate for Kupunas. This bill would fix this wrong.

Assailants may think twice about attacking someone if they know that the person may be a Kupuna and 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." The current loophole in the law is a "get out of jail card" that needs to be eliminated.

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