

**Testimony of the Office of the Public Defender
State of Hawaii
to the House Committee on Judiciary**

February 11, 2010

H.B. 2349: Relating to Violence Against Health Care Personnel.

Representative Karamatsu and Members of the Committee:

This bill proposes to amend H.R.S. Section 707-711 (1) yet again by changing subsection (f) to expand the special treatment which is now afforded to “emergency medical services personnel” to “emergency medical services providers” and include “physicians, physician’s assistants, nurses, or nurse practitioner’s who provide medical services in the emergency room of a hospital”. This change would elevate what is now misdemeanor conduct, i.e. “intentionally or knowingly causing bodily injury to another person” to a class “C” felony if the offense is committed against the new specified categories of persons.

In other words, conduct currently classified as Assault in the Third Degree, punishable by up to one year in prison, would become Assault in the Second Degree, punishable by up to five years in prison, if committed against the designated persons.

The definition of “emergency medical services personnel” is referenced to HRS section 321-222 where the term is defined as “any mobile intensive care technician or emergency medical technician who is certified or licensed by the State”. As we have noted previously, as a matter of legislative drafting, it is not a good idea to reference definitions that are outside the penal code as they may be changed at any time in relation to the statute within which they are contained and without consideration of the ramifications for other statutes that reference them. Any definition for purposes of this proposal should be contained in the penal code.

This bill is the latest in a line of proposals seeking to single out particular occupations for special treatment as a class of victims. The problem with such legislation is that it does not afford greater protection from harm but it does create an ongoing desire by other occupations to be afforded the same special treatment.

Currently, our Second Degree assault statute gives special consideration to correctional workers, educational workers, and emergency medical services personnel. In recent years, we have seen legislation proposed seeking to add “health care professionals”, “child welfare social workers” and “emergency medical workers” because those groups have asked for the same consideration. Next might come fire fighters, security guards, or any other of a legion of occupations, which would ask why their group was not entitled to the same special treatment.

Other than the exceptions noted above for correctional, educational and medical service workers as defined in §321-222, the structure of our penal code bases the level of an assault charge on three general criteria:

- the level of injury, if any, if caused by the defendant's conduct,
- the state of mind with which the conduct was done, and
- the actual conduct itself, including whether or not a weapon was used.

We believe that the current structure should not be further changed to include these additional proposed categories.

Our office also opposes the suggested change in Section 2 of this bill that seeks to elevate conduct that would currently constitute Terroristic Threatening in the Second Degree (a misdemeanor under section 707-717) to the level of Terroristic Threatening in the First Degree (a class "C" felony under section 707-716).

We believe this is unnecessary. For informational purposes, we note that any emergency medical personnel that are employees of the State of Hawai'i are currently afforded special treatment because they come under the "public servant" provision in section 707-716(1). "Public servant" is defined in section 710-1000(15) and includes any employee of any branch of government.

Adding additional categories of persons to receive special treatment creates the same problem discussed above in relation to the assault statutes. Other groups who feel they merit the same special treatment will fall in line to say that the misdemeanor offense of terroristic threatening against them should be elevated to a felony offense. Currently, if the felony offense of terroristic threatening is committed against this category of persons, it is charged as a felony. Misdemeanor level conduct should continue to be charged as a misdemeanor.

Legislation such as H.B. 2349 is often referred to as affording special protection for a specified group. Realistically, that is not the case. An individual who is about to commit an assault in an emergency room or is threatening to do so doesn't stop to say I'll engage in this conduct as a misdemeanor offense but not if it's a felony. Likewise, the situations in which these personnel find themselves where this type of behavior might occur does not lend itself to a higher degree of penalty having a deterrent effect. People acting out in emergency rooms are often under the influence of extreme pain, drugs, alcohol or a combination of some or all of these influences.

What legislation such as this provides in reality is not special protection, but special treatment. As such, it is not appropriate, especially considering that it will simply open the door to other groups seeking the same special treatment.

For the reasons set out above, the Office of the Public Defender does not support passage of H.B. 2349. Thank you for the opportunity to comment on this bill.



THE QUEEN'S MEDICAL CENTER

1301 Punchbowl Street • Honolulu, Hawaii 96813 • Phone (808) 538-9011 • Fax: (808) 547-4646

Rep. Jon Riki Karamatsu, Chair
Rep. Ken Ito, Vice Chair

February 11, 2010 – 2:00 p.m.
State Capitol, Conference Room 325
COMMITTEE ON JUDICIARY

Re: HB 2349 – Relating to Violence Against Health Care Personnel

Chair Karamatsu, Vice Chair Ito and Members of the Committee,

My name is Cindy Kamikawa, Chief Nurse Executive for The Queen's Medical Center (Queen's) **testifying in strong support of HB 2349** which extends protection from assault and terroristic threatening to emergency room personnel.

The prevention of workplace violence has emerged as an important safety issue in hospitals. According to the Emergency Nurses Association and the American College for Emergency Physicians, occurrences in healthcare violence are on the rise, and hospital emergency rooms have become the most prevalent location for violence in a health care setting. Nationally, thousands of non-fatal assaults on hospital workers have occurred. Studies have shown that between 35% and 80% of hospital staff have been physically assaulted at least once and that nurses are at increased risk for violence while on duty.

The Legislature has extended protections similar to those sought in this measure to correctional, educational, and other service providers. Emergency room personnel are routinely exposed to unstable patients with drug or alcohol impairment, or suffering from psychiatric disorders. Verbal and physical threats to health care personnel extend into the waiting areas as well. The Queen's Medical Center Emergency Department is the largest and busiest Emergency Department in the State, with approximately 50,000 visits a year. This additional protection will ensure a safer environment for health care personnel and patients.

We urge you to pass this measure and thank you for the opportunity to testify.



HAWAII MEDICAL ASSOCIATION

1360 S. Beretania Street, Suite 200, Honolulu, Hawaii 96814
Phone (808) 536-7702 Fax (808) 528-2376 www.hmaonline.net

Thursday, February 11, 2010, 2:00 p.m., Conference Room 325

To: COMMITTEE ON JUDICIARY
Rep. Jon Riki Karamatsu, Chair
Rep. Ken Ito, Vice Chair

From: Hawaii Medical Association
Gary A. Okamoto, MD, Legislative Co-Chair
Linda Rasmussen, MD, Legislative Co-Chair
April Donahue, Executive Director
Lauren Zirbel, Government Affairs
Dick Botti, Government Affairs

Re: HB2349 RELATING TO VIOLENCE AGAINST HEALTH CARE PERSONNEL

In Support

Chairs & Committee Members:

Hawaii Medical Association supports HB2349 Relating to Violence Against Health Care Personnel.

By clarifying that the classification "emergency medical service providers" includes physicians, physician's assistants, nurses, and nurse practitioners in a hospital emergency room, this measure acknowledges the value of protecting these health care providers from assault and terroristic threatening.

The personnel in our hospital emergency rooms care for the people of Hawaii who are often the most vulnerable, and it is vital that they be allowed to provide this care free from harm.

Thank you for the opportunity to testify.

OFFICERS

President - Robert Marvit, MD President-Elect - Morris Mitsunaga, MD Secretary - Thomas Kosasa, MD
Immediate Past President - Gary Okamoto, MD Treasurer - Stephen Kemble, MD Executive Director - April Donahue

Testimony of
John M. Kirimitsu
Legal and Government Relations Consultant

Before:
House Committee on Judiciary
The Honorable Jon Riki Karamatsu, Chair
The Honorable Ken Ito, Vice Chair

February 11, 2010
2:00 pm
Conference Room 325

Re: HB 2349 Relating to Violence Against Health Care Personnel

Chair Karamatsu and committee members thank you for this opportunity to provide testimony on this bill regarding violence against health care personnel.

Kaiser Permanente supports this bill.

Kaiser Permanente supports this bill to protect emergency medical personnel in the workplace, and establish strong legal consequences against potential attackers for causing these injuries to medical personnel.

Violence against healthcare personnel seems to be on the increase. According to the U.S. Department of Labor, Bureau of Statistics, healthcare workers experience violent assaults at a rate four times higher than average, and it is even worse for emergency personnel at a rate of more than twelve times the national average. U.S. Department of Labor, Bureau of Statistics. (n.d.). Injuries, illness and fatalities. (Accessed February 2008).

The emergency department by its very nature is a place of high stress for the patient and the emergency medical staff. Emergency department workers routinely find themselves at increased risk of violence due to the high volatility of the emergency patient population, with an increasing number of patients and visitors using drugs and alcohol, or having psychiatric disorders or dementia, that make them more prone to violence. The type of violence, ranging from verbal to violent physical attacks, is becoming all too common, which negatively impacts the emergency medical personnel through a mistaken belief that this type of violence is just part of their job.

To help deter these violent and abusive acts against emergency medical personnel, legislation is needed to protect emergency medical personnel to avoid their unnecessary removal from the workplace resulting from these acts of violence, which will then negatively impact the quality of patient care.

Thank you for your consideration.

karamatsu1-Kenji

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 10, 2010 11:03 AM
To: JUDtestimony
Cc: jkuwabar@hgea.org
Subject: Testimony for HB2349 on 2/11/2010 2:00:00 PM

Testimony for JUD 2/11/2010 2:00:00 PM HB2349

Conference room: 325
Testifier position: support
Testifier will be present: Yes
Submitted by: Nora Nomura
Organization: HGEA
Address:
Phone:
E-mail: jkuwabar@hgea.org
Submitted on: 2/10/2010

Comments: