

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

March 16, 2010

S.B. 2249, SD1, HD1: Relating to the Penal Code.

Representative Karamatsu and Members of the Committee:

This bill proposes to create a new H.R.S. Section to expand the special treatment which is now afforded to a growing category of individuals to include "water safety officers", defined as "an employee of any county of the state whose principal duty is to stand guard over the beaches of the state and counties to ensure the safety of individuals thereon". This change would elevate what is now misdemeanor conduct, i.e. "intentionally or knowingly causing bodily injury ("any pain, illness or impairment of physical condition", §707-700) to another person" to a class "C" felony if the offense is committed against the new specified category 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 original bill elevated "water safety officers" to the same status of treatment as law enforcement officers (under HRS §077-712.5), meaning that they would have received greater special treatment than educational workers" (under §707-711(1)(e)), "emergency medical services personnel" (under §707-711(1)(f)), "persons employed at a state-operated or -contracted mental health facility" (under §707-711(1)(g)), and "emergency workers" (under §707-712.7). The current draft corrects that situation by deleting the provision that would have created a felony offense from negligently causing bodily injury with a dangerous instrument.

Unfortunately, that appropriate change in the bill does not render this a wise change in our current law. 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.

As noted above, our current Second Degree assault statute gives special consideration to correctional workers, educational workers, emergency medical services personnel and persons employed at a state-operated or -contracted mental health facility. In recent years, we have seen legislation proposed seeking to add "health care professionals" and "child welfare social workers" because those groups have asked for the same consideration. In fact, this session, HB 2349 proposes to afford this special treatment to emergency medical services "providers" to include "physicians, physician's

assistants, nurses, or nurse practitioner's who provide medical services in the emergency room of a hospital". 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, 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 this additional proposed category.

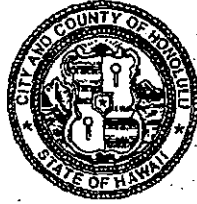
Legislation such as S.B. 2249, SD1, HD1 is often claimed to afford special protection for a specified group. Realistically, this is not the case. An individual who is about to throw a punch on a beach doesn't stop to say I'll engage in this conduct as a misdemeanor offense but not if it's a felony. Likewise, 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 these situations are often under the influence of alcohol or drugs or a combination of both, not to mention those who may also be suffering from mental illness.

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 this bill. Thank you for the opportunity to comment on this bill.

HONOLULU EMERGENCY SERVICES DEPARTMENT
CITY AND COUNTY OF HONOLULU

3375 KOAPAKA STREET, SUITE H-450 • HONOLULU, HAWAII 96819-1869
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MUFI HANNEMANN
MAYOR

ELIZABETH A. CHAR, M.D.
DIRECTOR

March 15, 2010

The Honorable Riki Karamatsu, Chair, and Members
Committee on Judiciary
House of Representatives
The Twenty Fifth Legislature
Regular Session of 2010
State Capitol
Honolulu Hawaii 96813

Dear Chair Karamatsu and Committee Members:

Re: SB2249, SD1, HD1, Relating to the Penal Code

The City & County of Honolulu's Emergency Services Department strongly supports the intent of SB2249, which would make assaulting a Water Safety Officer in the State of Hawaii a Class C felony. The Ocean Safety and Lifeguard Services Division of this Department employs over two hundred men and women who provide essential lifeguard services for the island of Oahu. These services include constant monitoring and surveillance of beach and ocean areas, the prevention of aquatic injury and drowning, rescue, and emergency response to medical cases at the beach and near shore environments. During the last five years there have been 10 documented cases of assault on our lifeguard personnel during the course of their duties.

We understand that there are very important issues being discussed during this legislative session and that this issue may not be perceived as a priority. Unfortunately, many of the effects of the economic downturn, including increased drug use and homelessness, have manifested themselves in the parks and beaches of Oahu. In most cases, the City and County Water Safety Officer is the only figure of authority in the areas where many incidents occur, including domestic violence cases, thefts, and other crimes. Our lifeguards do not have any law enforcement authority or training to detain or arrest those who break the law, and are limited to warning and advising people and alerting the appropriate enforcement agency (HPD, DLNR Enforcement) when offenses occur. This notification and subsequent contact by the enforcement personnel places the lifeguard in an extremely vulnerable and defensive position, as he or she must remain on the beach at their assigned station, susceptible to retaliation and retribution by the law breaker when the enforcement personnel leave the area.

We feel strongly that our Ocean Safety personnel are essential public safety employees who need the same level of protection from unnecessary assault and battery that is enjoyed by other public safety and health care workers. We urge you to seriously consider this matter and recognize the important role of professional lifeguards in the State of Hawaii.

Thank you for the opportunity to testify.

Sincerely,

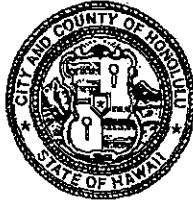
A handwritten signature in black ink, appearing to read "Elizabeth A. Char".

Elizabeth A. Char, M.D., Director
Honolulu Emergency Services Department

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The Honorable Riki Karamatsu, Chair, and Members
Committee on Judiciary
House of Representatives
The Twenty Fifth Legislature
Regular Session of 2010
State Capitol
Honolulu Hawaii 96813

Dear Chair Karamatsu and Committee Members:

Re: SB2249, SD1, HD1, Relating to the Penal Code

Please find attached testimony from three employees of the Ocean Safety and Lifeguard Services Division, in support of SB 2249, SD1, HD1, that will make an assault on a Water Safety Officer employed by the counties or state a class C felony.

The Division strongly supports the intent of this bill and urges your favorable consideration of the matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph S. Goto". The signature is stylized and written in cursive.

Ralph S. Goto
Ocean Safety Administrator

Attachments: (3)

To whom it may concern:

My name is Paul Merino and I am currently employed with the Ocean Safety Lifeguard Services for the City and County of Honolulu. I have prepared a written statement supporting SB2249, assault bill.

While working at station 2-alpha, Waikiki beach I was requested by a lady to responded down the beach to a first aid. I arrived at the scene of a 65-year-old visitor who had a large laceration to her left calf muscle. While I was managing the first aid I inquired as to how this injury had occurred. The woman pointed out a young man who was sand sliding in the shoreline on a hard wooden sand slider board. She said that the board he was using got away from him and hit her. I finished giving the woman first aid and watched as the young man would run down the beach and throw his hard wood sand slider down onto the wet sand and slide along the waters edge. The beach was packed with visitors and I felt the activity of the sand slider was dangerous to the public.

I approached the young man and asked him if he would stop his activity due to the crowded conditions. He refused to stop stating that there was no law against it. I called on my radio to our dispatch and I requested a police officer. When the young man heard me request police assistance he punched me in the face from the side when I was not looking. He then grabbed his board and ran away. I was cut on the inside of my mouth and was bleeding slightly. I returned to the lady that I had given first aid to and helped her walk off of the beach to seek medical attention.

Incidents like this have occurred several times to other lifeguards through out my 31-year career as a lifeguard. The public perceives the lifeguards as front line authority at our island beaches. With the passing of assault bill 2249 it will give the lifeguard added protection and the confidence to continue to help with public safety at our beaches. Hopefully it will educate the public to the severity of an assault on a lifeguard, public safety officer.

Mahalo

Paul J. Merino
Paul J. Merino

Goto, Ralph

From: Kim, Daniel
Sent: Sunday, February 21, 2010 5:28 PM
To: Goto, Ralph
Subject: Harassment while driving rescue truck

Dear Ralph Goto,

A few months ago while driving our city & county rescue truck to go and get gas at Kapolei, I was confronted with threats from a driver on Farrington Hwy. This person was in a midsize car and as I was driving he pulled up next to me telling me to pull over. I was feeling very threatened as this person was 6'4" with lots of tattoos and a very heavy built of 200 plus pounds. He kept yelling at me and pointing to the side of the road in which he wanted me to exit to, I held up my radio in the truck saying to him that I was going to call the police. This did not faze him or deter him in any way as he kept on following me towards my destination. I feared for my safety so as I exited at Kapolei I saw a traffic officer and drove towards him to seek help. The officer then pulled over the other driver and kept him at his car, the officer asked me what I wanted to do about the situation. I told him that I wanted the driver arrested but the officer said that I had no evidence or proof that this driver wanted to kick my butt. The driver of the other car said that I cut him off and I told the officer that I didn't know that I did such a thing, this person really wanted to cause harm to me with his posturing, language and verbal threats. The officer said that he could not arrest this person and that the only thing I could do was make a traffic harassment claim which I did to protect myself. The reason for making this claim the officer insisted would help if this person caused further harassment and that it was the only thing I could do. I felt helpless and unprotected!!

Another instance happened while working the beach as an Ocean Safety WSO II at Pokai Bay. I remember it clearly because it was Thanksgiving and it was at the start of my work day. Our Lieutenants always wanted us to park in the Lifeguard parking stalls while staying off of the ramp at Pokai Bay the reason for this was that it was mainly used for the handicapped people and it was a no parking zone. So as I pulled up to park in my stall a truck was present in the area, a man was standing by his truck. I told the man politely if he could move his truck and that we needed to park in the Lifeguard parking stall because our Lt.s expected us to. As I politely asked this man if he could move his vehicle he replied with "What like me get my son to kick your ass", I said to him that it was inappropriate for him to threaten me that way. Finally, after a lot of coaxing he moved his vehicle but he was willing to call his son to beat me up just for a parking stall.

I would really appreciate you as lawmakers to make the right decision in passing this law to protect the Ocean Safety Lifeguard; we are public servants and are trying our best to save lives. Passing this bill will help give us the confidence in order to do our job to the best of our ability so please consider in making the right decision in helping us help you. The life of someone you know may be saved one day from our brave and outstanding Ocean Safety Lifeguard.

Aloha,
Daniel Kim
Ocean Safety Lieutenant
District 4

3/5/2010

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MAR-15-2010 01:14PM FAX:833 3934

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Emergency Services Department
Ocean Safety and Lifeguard Services Division
City and County of Honolulu
January 28, 2010

Aloha,

My name is Captain Dwight Perkins of the Ocean Safety and Lifeguard Services Division, Training Unit.

Two years ago I was assaulted in my office entry way at the Ocean Safety and Lifeguard services Division Training Unit at Ala Moana Beach Park.

A male approximately 30 to 35 years old knocked on the training unit door, where we train all the City and County of Honolulu beach lifeguards, and when I opened the door he ran into the office entry way demanding to see someone in the office. I asked the individual if he had an emergency that I could help him with and he said no. I stated that the individual he was looking for was not here and that I would leave a message for him if he would like to. He stated no and said I'm going to just stay here until he comes back. I said he is not coming back today and I am closing the building for the day and you have to leave. The individual stated I am not going to leave, I'm going to wait here until he comes back. I then stated to him again that he had to leave the building and if he didn't I was going to call the police. When I said this the individual became very upset, ran at me, got me in a head lock and tried to hit and wrestle me to the ground. I pushed him away and he came back at me again trying to get the phone out of my hand that I was calling 911 with. I then pushed him off me again and out the door of the building and he ran away. This was an unprovoked attack on me.

After this incident I received more information about this individual. He had in the past had non physical confrontations with other lifeguards in the Waikiki and Ala Moana areas. After pressing charges I found out that there were other assault cases pending against this individual.

I went to court hearings for this case four or five times ending in this person being released from custody.

Thank you for your time,
Respectfully

Captain Dwight Perkins



March 16, 2010

The Honorable Jon Riki Karamatsu, Chair and Members
 Committee on Judiciary
 Hawai'i State House of Representatives
 The Twenty Fifth Legislature
 Regular Session 2010
 State Capitol
 Honolulu Hawaii 96813

Dear Chair Karamatsu and Members:

Re: SB 2249 SD1, HD1 Relating to the Penal Code

The Hawaiian Lifeguard Association supports the intent of SB 2249 which would make it a Class C felony to assault a water safety officer in the course of his/her duties while providing ocean safety services to the public on the beaches and near shore waters of our State.

Water Safety Officers and Ocean Safety Officers in the State of Hawaii are at high risk of assault while performing their normal duties of protecting the public. There have been at least 10 documented cases of lifeguards being assaulted while on duty in the last five years. These cases illustrate not only the potential and reality of physical harm and injury to lifeguards, but also the negative impact on the safety of public who are unprotected because the officer is distracted from his/her primary duty of beach and ocean hazard vigilance, rescue, and emergency medical treatment.

This is a serious problem for Water Safety and Ocean Safety Officers on Oahu, Maui, Kauai, and Hawaii Island. While performing their duties, lifeguards are extremely visible, exposed, and vulnerable to retaliation and attacks. They are not within the confines of an office, vehicle, or station, but work out of an open lifeguard tower on the beach. Constant distraction and concern for personal safety certainly compromises lifeguards' ability to watch the public they are charged with protecting.

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Hawaiian Lifeguard Association
SB 2249 SD1, HD1
Page 2

The HLA respectfully suggests that rather than amending HRS Chapter 707 to create a new section, that the bill be reworded to amend Chapter 707, Section 711, to include Water Safety Officers employed by the State and/or Counties. The other work groups covered by Chapter 707-711 are correctional officers, educators, EMS workers, and workers at State mental health facilities.

Water Safety Officers are frontline health, safety, public trust employees who are called upon by the public for assistance in a wide variety of law enforcement, rescue, and emergency medical situations.

We feel that this group of employees both needs and deserves enhanced legal protection from assaults by the public during the performance of their duties.

We urge your favorable consideration of this matter and thank you for the opportunity to testify.

Sincerely,

Jan Prins, PhD
President

From: Monty Downs, M.D.
Chair, Kauai Water Safety Task Force and
Wilcox Hospital ER
160 Lani Alii Place
Kapaa, HI 96746

**To: House Committee on Judiciary
Representative Jon Riki Karamatsu, Chair**

**TESTIMONY IN SUPPORT OF SB 2249, SD1, HD1
Hearing on 3/16/10, 2:15 p.m.**

Dear Chairman Karamatsu and Committee Members

I know why I support SB 2249, SD1, HD1 and I hope this testimony will help you conclude that you too should support it. I regret that my Kauai work schedule precludes my being able to testify in person.

Our Water Safety Officers (WSO's) are not, nor do they wish to be, Enforcement Officers. They do however routinely give advice, including some occasionally strongly-stated safety-oriented advice. They give this kind of advice to hundreds of thousands of people per year – and by doing this they of course prevent many drownings. There are always people, however, who don't take well to advice, and it's therefore inevitable – and fortunately rare – that our WSO's find themselves in an unpleasant and potentially confrontational situation. I leave it to our WSO's themselves to describe some real examples of this.

There are also occasional (and again fortunately rare) times when the WSO is the only public safety employee present when a person is being assaulted, and although they know to summon Police with a 911 call, it may be up to 15 minutes until Police arrive. During those minutes basic humanity can come into play and the WSO might make an effort to stop the assault – and insodoing he (or her) himself becomes vulnerable to being assaulted.

There is also the special consideration that the WSO's, unlike other essential public safety personnel such as Police and Fire, return to their same very visible workplace every day, and because of that they are in an unusually vulnerable position from someone who might hold a grudge because of a prior day's events.

These are three specific examples of reasons that WSO's should be protected by Statutes which call for penalties that have real teeth when someone assaults them while they're in their line of duty.

SB 2249, SD1, HD1 would create a new Statute which would accomplish this. Our Task Force, however, was very recently informed that this protection might more easily and just as effectively be accomplished by adding WSO's to a Statute that already exists, namely Statute

707-711 in the Charter. I am not trained nor well versed in attorney matters, and I trust that I am validly presenting this new information. Assuming I am, my Testimony is in favor of the intent of SB2249, HD1, SD1, with the possibility that the Bill may be revised to reflect the 707-711 situation – if that is deemed appropriate by people who are more expert than myself in these matters.

I have been an ER doctor on Kauai since 1972, and I became very involved with ocean safety issues starting in 1991. I became involved because I had witnessed far too many drownings and destroyed families. I have lobbied hard for increased and improved Lifeguard services on Kauai, and thanks to enlightened Mayors and Councilors and Fire Chiefs, we have worked our way up to having 45 Kauai WSO's (from 13 in 1991). Furthermore, as Lifeguard training and professionalism and technology have advanced, I have increasingly become a witness to some death-defying and in-all-ways spectacular Lifeguard rescues, and to dozens and dozens (actually hundreds and hundreds) of more "routine" ones. In the ER I get to see the people they have brought back from the edge, and I get to talk with the eternally grateful families who often can't really even comprehend what commitment and training and equipment and skill it took to make the rescue. When these cases come in my nurses, as they're running past me, often blurt out "Thank you Dr. Downs for lobbying for our Lifeguards, and Thank God for our Lifeguards."

SB 2249, HD1, SD1, then, is not only a Bill with legal importance and implications. It's a Bill about the respect which our skillful and brave Water Safety Officers have earned. I ask that you pass SB 2249, SD1, HD1 with the possible revision that I've made reference to.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Monty Downs", written in a cursive style.

Monty Downs, M.D.