



STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
830 PUNCHBOWL STREET, ROOM 321  
HONOLULU, HAWAII 96813  
[www.hawaii.gov/labor](http://www.hawaii.gov/labor)  
Phone: (808) 586-8842 / Fax: (808) 586-9099  
Email: [dir.director@hawaii.gov](mailto:dir.director@hawaii.gov)

March 28, 2011

The Honorable Gilbert Keith-Agaran, Chair  
Committee on Judiciary  
House of Representatives  
State Capitol, Room 302  
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran:

Subject: S.B. 1025, S.D. 1, Proposed H.D. 1 Relating to the Penal Code

I am Kenneth G. Silva, Chair of the State Fire Council (SFC) and Fire Chief of the Honolulu Fire Department (HFD). The SFC and the HFD support the original intent of S.B. 1025, S.D. 1, which proposes to expand the offenses of assault against a law enforcement officer in the first and second degree to include assaults against fire fighters and water safety officers.

The proposed H.D. 1 creates a Class B felony for unauthorized entry into a dwelling based on the occupant's age and incapacity. It also establishes class A and B felony labor trafficking offenses, a nonpayment of wages offense, and an unlawful conduct with respect to documents offense and provisions related to prosecution of the offenses.

Fire fighters are public safety employees who respond to medical, fire, hazardous materials, and rescue incidents and are responsible to protect and render aid to citizens from these dangerous situations. Unfortunately, a few individuals have used physical violence against fire fighters during the performance of their official duties.

The current penalty for the use of such force is a misdemeanor. This measure proposes to increase that penalty to a Class C felony, which would make this offense equal to the penalty of assault against law enforcement and emergency medical services personnel, nurses, and physicians. It is the intent of this measure to curtail assaults on fire fighters with a more severe penalty and provide protection for fire fighters who encounter physical violence in the performance of their duties. Fire fighters must not be placed in compromising situations that may delay their life-saving actions.

The Honorable Gilbert Keith-Agaran, Chair  
Page 2  
March 28, 2011

The SFC and the HFD urge your committee's support on the passage of S.B. 1025,  
S.D. 1.

Should you have any questions, please call SFC Administrator Socrates Bratakos at  
723-7151.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth G. Silva". The signature is written in a cursive style with a large initial "K".

KENNETH G. SILVA  
Chair

KGS/LR;jl

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

March 29, 2011

S.B. 1025, S.D. 1, Proposed H.D. 1: Relating to the Penal Code.

Chair Keith-Agaran and Members of the Committee:

Part 1

Part 1 of this bill proposes to add two new groups to H.R.S. 707-712.5 in order to expand the special treatment that is now afforded to what has become a growing category of individuals.

Currently, H.R.S. 707-712.5 Assault Against a Law Enforcement Officer in the First Degree provides that conduct that would otherwise be misdemeanor assault becomes a felony if it is committed against a law enforcement officer. To illustrate, if a person intentionally or knowingly causes bodily injury (i.e. physical pain) to anyone other than a law enforcement officer OR negligently causes bodily injury with a dangerous instrument, it is a misdemeanor, punishable by up to one year in jail or one year probation. There is no requirement for mandatory jail time. However, under current law, if a person does the exact same conduct to a law enforcement officer, it is a felony, punishable by five years in prison or five years probation with a mandatory thirty day jail term.

This legislation seeks to add "firefighter" (defined as "any officer of a fire department or any other person vested by law with the duty to extinguish fires") and "water safety officer" (defined as "any public servant employed by the United States, the State, or any county as a lifeguard or person authorized to conduct water rescue or ocean safety functions") to H.R.S. 707-712.5. This change would elevate what is now misdemeanor conduct to a class "C" felony with mandatory jail time if the offense is committed against the new specified categories of persons.

Not only would this bill elevate "firefighters" and "water safety officers" to the same status of treatment as law enforcement officers but they would receive 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).

That special treatment would be two fold. First, the special treatment would mandate a minimum thirty day jail term. There is NO mandated jail term

for all of the other categories named in the paragraph above. Second, it would punish negligent conduct as a felony, a special treatment presently afforded exclusively to law enforcement personnel.

We do not believe that these two new categories should be singled out by mandating a thirty day jail term. Rather, if these categories are to receive special treatment, we urge that they be added to the current Assault in the Second Degree statute, just as all the other special categories, other than law enforcement, have been. With that change, the current misdemeanor conduct against water safety officers and firefighters would become class "C" felonies, carrying a possible five year prison term or five years probation, but without mandatory incarceration.

It would also avoid the other problem of treating these two new special categories to greater special treatment than is afforded all of the other special categories, except law enforcement. Currently, only law enforcement officers are afforded the special treatment of creating a felony offense from negligently causing bodily injury with a dangerous instrument. In all the other categories listed above, such negligent conduct is a misdemeanor. One can only assume that if "firefighters" and "water safety officers" are afforded the same treatment as law enforcement officers, all the other categories of persons listed above will be back for the same special treatment.

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.

Other than the exceptions noted, 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.

Perhaps most importantly, legislation such as this is often characterized as affording special protection for a specified group. Realistically, that's not true. Someone about to shove or hit on a beach doesn't stop to consider whether the conduct is a misdemeanor or 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.

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.

Part 2

Part 2 of this bill seeks to create a class "B" felony offense if the current crime of Unauthorized Entry in a Dwelling is committed when the "person lawfully in the dwelling" is 62 years of age or older, is incapacitated or is developmentally disabled. Definitions from laws outside the penal code are given for the terms "incapacitated" and "developmentally disabled".

We do not believe it is appropriate to single out an offense to provide for an increase in the penalty - in this case, from a possible five year prison term to a ten year prison term - solely based upon a characteristic (i.e. age, mental capacity, etc.) of the victim. We do not believe there is any other criminal statute that includes such a provision. While our sentencing statutes provide for enhanced penalty based upon the age or handicap of the victim in HRS §706-660.2, that statute applies to any offense that fits the definition of the statute. To provide for enhanced sentencing within a single statute simply invites proposals for such enhanced provisions in every other statute. This is poor legislative drafting, and particularly, poor public policy.

Because this would be such a departure from our current penal code structure, we would strongly urge, if this legislation were to pass, that it be accompanied by a sunset provision. In that way, there could be a report made to the legislature in, for example, two years, of how many offenses were charged, convicted and sentenced under this new statute and the Legislature could determine if this change would continue to be appropriate.

Part 3

Part 3 of this bill seeks to create the new offenses of Labor Trafficking in the First and Second Degree. The proposed First Degree offense would prohibit knowingly providing or obtaining or attempting to provide or obtain a person for labor or services by committing a list of crimes including extortion, kidnapping, assault, etc., or by engaging in specified conduct such as force, threat, intimidation, using labor to repay a debt, withholding government documents with the intent to impede movement, threatening family members, etc.

There are two particularly troublesome subsections in this First Degree offense. Firstly, the terms "force", "threat" and "intimidation" are not defined. Secondly, we object to the subsection listing the conduct:

"using or threatening to use any form of domination, restraint or control over the person which, given the totality of the circumstances, would have the reasonably foreseeable effect of

causing the person to engage in or to remain engaging in the labor or service"

The term "domination" is not defined. The term "reasonably foreseeable" is not attributed; in other words, "reasonably foreseeable" by whom? While we object to the entire first degree offense, we note that this subsection is particularly vague. We do not believe this subsection is necessary.

The offense of Second Degree Labor Trafficking would create a class "B" felony if someone benefited financially or received something of value from participating in a business relationship involving economic activity "in reckless disregard of the fact" that another person engaged in any activity that aided another person in the venture, knowing that the other person was committing the offense of First Degree Labor Trafficking. In other words, if person ONE was engaging in first degree labor trafficking and person TWO aided person ONE, knowing that person ONE was engaging in first degree labor trafficking, and person THREE benefited financially, or received something of value, from participation in a business relationship with person TWO, person THREE would be guilty of the second degree offense if person THREE had recklessly disregarded what persons ONE and TWO were up to.

If that is not confusing enough, just look up the definition of the "reckless" state of mind in §702-207(3). We do not see how persons who have merely invested in business matters would have sufficient guidance in order to avoid criminal liability under subsection (1)(b) of the proposed second degree offense.

The proposal in subsection (3) of the second degree offense would elevate the crime from a class "C" to a class "B" offense, if the violation of subsection (1) involved "kidnapping or an attempt to kidnap", aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to cause the death of a person, or if a death results".

So, if person THREE (in the example above) simply invested with person TWO in a business and was reckless in not learning that the business involved labor trafficking, person THREE would be guilty of a class "A" felony, if a victim of the labor trafficking had not been provided by person ONE with appropriate medical care, for example, and died as a result. It is important to note here that a class "A" felony is a mandatory maximum 20 year prison term and is not probationable. We further note that our penal code does not include offenses of "aggravated sexual abuse" which illustrates the problem of lifting either boiler-plate legislation or legislation from other jurisdictions and plopping down into the Hawaii Penal Code.

The proposed section 707-D is unnecessary as our current section 706-606 already mandates that the Court consider "the nature and circumstances of the offense" which would include the "time" of the offense, i.e., length of duration,

and the number of victims. It is never good drafting to simply repeat statutory material.

We note some of the same issues outlined above with other proposed sections in this bill, such as the "extended term of imprisonment" provision which provides for additional prison time for "permanent" or "life-threatening" bodily injury which are not defined, and for sentencing in accord with the relevant homicide statues when our penal code has NO statues covering homicide.

We also question the provision mandating restitution to the victim when not requested by the victim, especially the provision that the payments shall continue even if the victim leaves the country. What is the responsibility of the Court at that point? Is the Court responsible for locating the victim in another country so that the restitution can be paid to them? Is the Court responsible for making sure the payment is in a form that can be transacted in the home country and who will pay the costs of arranging for payment in that form? These may seem like minor questions but they need to answered or our taxpayers will be saddled with paying the costs of legislation that was not properly analyzed prior to passage.

Finally, the propose crime of nonpayment of wages would make a potential felon out of every boss who withholds payment of wages from an employee. The offense does not appear to distinguish between the actual withholding of wages for nefarious reasons versus the situation when there is a legitimate dispute between employer and employee or even when a business may be on the brink of closing and does not have sufficient money on the books to pay what is owed to an employee. Certainly, a provision such as this needs to be seriously discussed with the business community to make sure there are not unintended consequences.

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

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

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO  
PROSECUTING ATTORNEY

ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR**  
**HOUSE COMMITTEE ON JUDICIARY**  
Twenty-sixth State Legislature  
Regular Session of 2011  
State of Hawai'i

March 24, 2011

**RE: S.B. 1025, S.D. 1; RELATING TO THE PENAL CODE.**

Chair Keith-Agaran, Vice-Chair Rhoades and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of Senate Bill 1025, S.D. 1.

The purpose of S.B. 1025, S.D. 1 is to expand the offenses of assault against a law enforcement officer in the first and second degree, to include assaults against firefighters and water safety officers.

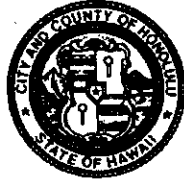
In 2003, HRS 707-712.5 and 707-712.6 were expanded from assault against police officers, to include assault against any and all law enforcement officers, such as police officers, sheriffs, sheriff deputies, department of land and natural resources enforcement officers, and investigators with the department of the attorney general. The Department believes that firefighters and water safety officers serve an equally important role in ensuring public safety and welfare, and it is imperative that they be permitted to carry out their duties without any unnecessary danger or injury from others.

For this reason, the Department of the Prosecuting Attorney of the City and County of Honolulu supports Senate Bill 1025, S.D. 1. Thank you for the opportunity to testify on this matter.



HONOLULU EMERGENCY SERVICES DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

3375 KOAPAKA STREET, SUITE H-450 • HONOLULU, HAWAII 96819-1869  
Phone: (808) 723-7800 • Fax: (808) 833-3934



PETER B. CARLISLE  
MAYOR

JAMES H.E. IRELAND, M.D.  
DIRECTOR

MARK K. RIGG  
DEPUTY DIRECTOR

March 28, 2011

The Honorable Gilbert S.C. Keith-Agaran, Chair and Members  
The Honorable Karl Rhoads, Vice Chair and Members  
Committee on Judiciary  
House of Representatives  
The Twenty Sixth Legislature  
Regular Session of 2011

Dear Chair Keith-Agaran, Vice Chair Rhoads, and Committee Members:

Re: SB 1025, SD1, HD1, RELATING TO THE PENAL CODE

The City and County of Honolulu's Emergency Services Department strongly supports the intent of SB 1025, SD1, HD1, 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 injuries and drownings, rescue, and emergency response to aquatic and medical cases in 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, 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. 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.

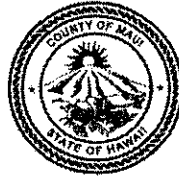
Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Ireland", is written over a horizontal line.

James H.E. Ireland, M.D.  
Director

ALAN M. ARAKAWA  
MAYOR



JEFFREY A. MURRAY  
CHIEF

ROBERT M. SHIMADA  
DEPUTY CHIEF

**COUNTY OF MAUI**  
DEPARTMENT OF FIRE AND PUBLIC SAFETY

200 DAIRY ROAD  
KAHULUI, MAUI, HAWAII 96732  
(808) 270-7561  
FAX (808) 270-7919  
EMAIL: fire.dept@mauicounty.gov

March 23, 2011

The Honorable Gilbert Keith-Agaran, Chair  
Committee on Judiciary  
House of Representatives  
State Capitol, Room 302  
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran:

Subject: S.B. 1025, S.D. 1 Relating to the Penal Code

I am Jeffrey A. Murray, Fire Chief of the County of Maui, Department of Fire & Public Safety (MFD) and a member of the State Fire Council (SFC). The MFD and the SFC support S.B. 1025, S.D. 1, which proposes to expand the offenses of assault against a law enforcement officer in the first and second degree to include assaults against fire fighters and water safety officers.

Fire fighters are public safety employees who respond to medical, fire, hazardous materials, and rescue incidents and are responsible to protect and render aid to citizens from these dangerous situations. Unfortunately, a few individuals have used physical violence against fire fighters during the performance of their official duties.

The current penalty for the use of such force is a misdemeanor. This measure proposes to increase that penalty to a Class C felony, which would make this offense equal to the penalty of assault against law enforcement and emergency medical service personnel, nurses, and physicians. It is the intent of this measure to curtail assaults on fire fighters with a more severe penalty and provide protection for fire fighters who encounter physical violence in the performance of their duties. Fire fighters must not be placed in compromising situations that may delay their life-saving actions.

The MFD and the SFC urge your committee's support on the passage of S.B. 1025, S.D. 1.

Should you have any questions, please call SFC Administrator Socrates Bratakos at 723-7151.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Murray".

JEFFREY A. MURRAY  
Fire Chief

**Bernard P. Carvalho, Jr.**  
Mayor



**Robert F. Westerman**  
Fire Chief

**Gary K. Heu**  
Managing Director

**John T. Blalock**  
Deputy Fire Chief

**KAUA'I FIRE DEPARTMENT**

**County of Kaua'i, State of Hawai'i**

3083 Akahi Street, Suite 101, Līhu'e, Hawai'i 96766  
TEL (808) 241-4980 FAX (808) 241-6508

March 28, 2011

The Honorable Gilbert Keith-Agaran, Chair  
Committee on Judiciary  
House of Representatives  
State Capitol, Room 302  
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran:

**Subject: S.B. 1025, S.D. 1, Proposed H.D. 1 Relating to the Penal Code**

I am Robert F. Westerman, Fire Chief of the Kauai Fire Department (KFD) and a member of the State Fire Council (SFC). The SFC and the KFD support the original intent of S.B. 1025, S.D. 1, which proposes to expand the offenses of assault against a law enforcement officer in the first and second degree to include assaults against fire fighters and water safety officers.

The proposed H.D. 1 creates a class B felony for unauthorized entry into a dwelling based on the occupant's age and incapacity. It also establishes class A and B felony labor trafficking offenses, a nonpayment of wages offense, and an unlawful conduct with respect to documents offense and provisions related to prosecution of the offenses.

Fire fighters are public safety employees who respond to medical, fire, hazardous materials, and rescue incidents and are responsible to protect and render aid to citizens from these dangerous situations. Unfortunately, a few individuals have used physical violence against fire fighters during the performance of their official duties.


The current penalty for the use of such force is a misdemeanor. This measure proposes to increase that penalty to a Class C felony, which would make this offense equal to the penalty of assault against law enforcement and emergency medical service personnel, nurses, and physicians. It is the intent of this measure to curtail assaults on fire fighters with a more severe penalty and provide protection for fire fighters who encounter physical violence in the performance of their duties. Fire fighters must not be placed in compromising situations that may delay their life-saving actions.

The SFC and the KFD urge your committee's support on the passage of S.B. 1025, S.D. 1.

The Honorable Gilbert Keith-Agaran, Chair  
March 28, 2011  
Page 2

Please call me at (808) 241-4980 should you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink that reads "Robert Westerman". The signature is written in a cursive style with a prominent flourish at the end.

Robert Westerman  
Fire Chief, County of Kaua'i

RFW/eld

Council Chair  
Danny A. Mateo

Vice-Chair  
Joseph Pontanilla

Council Members  
Gladys C. Baisa  
Robert Carroll  
Elle Cochran  
Donald G. Couch, Jr.  
G. Riki Hokama  
Michael P. Victorino  
Mike White




Director of Council Services  
Ken Fukuoka

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.maui-county.gov/council](http://www.maui-county.gov/council)

March 28, 2011

TO: The Honorable Gilbert S. C. Keith-Agaran, Chair  
House Committee on Judiciary

FROM: Joseph Pontanilla, Treasurer  
Hawaii State Association of Counties 

SUBJECT: **HEARING OF MARCH 29, 2011; TESTIMONY IN SUPPORT OF SB 1025, SD1,  
RELATING TO THE PENAL CODE**

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure is to expand the offenses of assault against a law enforcement officer in the first and second degree to include assaults against firefighters and water safety officers.

I am aware that the President of the Hawaii State Association of Counties (HSAC) has submitted testimony on behalf of HSAC in support of this measure, which is in the HSAC Legislative Package. As the Treasurer of HSAC, I concur with the testimony submitted by the President, and urge you to support this measure.

ocs:proj:legis:111legis:11testimony:sb1025,SD1\_paf11-085a\_kcw



March 23, 2011

The Honorable Gilbert S.C. Keith-Agaran, Chair  
 Committee on Judiciary  
 The House of Representatives  
 The Twenty Sixth Legislature  
 Regular Session of 2011

Dear Chair Keith-Agaran and Members:

Re: In Support of SB 1025, SD1 (SSCR 475) Relating to the  
 Penal Code

The Hawaiian Lifeguard Association (HLA) is the non-profit organization that represents the 400 professional ocean lifeguards employed by the four counties in the State of Hawaii.

The mission of the HLA is to promote the advancement of professional ocean lifesaving and to reduce drowning in the ocean waters surrounding our island state. The HLA accomplishes this mission by supporting the efforts of Hawaii's lifeguards through fundraising, the development and delivery of educational programs, and by partnering with government agencies in delivering the statewide Junior Lifeguard Program.

The HLA strongly supports SB 1025 as it may have a direct impact on the reduction of drowning and clearly supports the advancement of professional lifesaving as it relates to the health and safety of our professional ocean lifeguards.

The primary responsibility for safeguarding everyone who uses our beaches and ocean waters, in all the many ways that we all love, is the duty of our beach Ocean Safety Officers across the State.

PMB271 • 758 Kapahulu Avenue, Ste A • Honolulu, Hawaii 96816 •  
 (808) 922-3888

Facsimile (808) 922-0411 • Email: [lifeguards@aloha.com](mailto:lifeguards@aloha.com)

Committee on Judiciary

Page 2

March 23, 2011

This is an enormous responsibility and in many cases (thousands each year) is a matter of life and death. Hundreds of thousands of times each year this means some simple words of guidance or direction to a safer area which ultimately prevents a rescue, injury, or loss of life.

Whatever the reason and no matter the severity of the situation our Ocean Safety Officers must remain vigilant to their primary responsibility of ensuring the safety of all who come to the beach and/or use the waters where they are stationed.

This becomes impossible when our ocean lifeguards come under attack from the public and must defend themselves from imminent harm. Our beach lifeguards are nearly defenseless when individuals or groups attack at the beach. They do not carry weapons, they do not have law enforcement authority, and if they must escape an attack situation it is not possible for them to safeguard the public they are responsible for.

In this sense an assault on a beach lifeguard is an assault on the safety and well being of the entire community.

During last session this measure was heard in both the House and Senate. Concerns were raised by the Public Defenders office regarding homeless and/or mentally impaired beach patrons who "act out" inappropriately and would be subject to prosecution under this proposed amendment to the current statute. The issue was the cost of bail and if bail could not be raised incarcerating individuals who have committed an assault.

We do not believe that the true cost to our community was taken into account during the deliberations last session.

Thank you for the opportunity to present this testimony.

James D. Howe, Jr.

for the Board of Directors



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
AFSCME Local 152, AFL-CIO

**RANDY PERREIRA**  
*Executive Director*  
Tel: 808.543.0011  
Fax: 808.528.0922

**NORA A. NOMURA**  
*Deputy Executive Director*  
Tel: 808.543.0003  
Fax: 808.528.0922

**DEREK M. MIZUNO**  
*Deputy Executive Director*  
Tel: 808.543.0055  
Fax: 808.523.6879

The Twenty-Sixth Legislature, State of Hawaii  
House of Representatives  
Committee on Judiciary

Testimony by  
Hawaii Government Employees Association  
March 29, 2011

S.B. 1025, S.D. 1 – RELATING  
TO THE PENAL CODE

The Hawaii Government Employees Association, AFSCME Local 125, AFL-CIO supports the purpose and intent of S.B. 1025, S.D. 1 - Relating to the Penal Code.

The intent of S.B. 1025, S.D. 1 is to expand the offenses of assault against a law enforcement officer in the first and second degree to include assaults against firefighters and water safety officers. The HGEA represents over three hundred (300) water safety officers statewide, who stand guard over our beaches of the state and counties to ensure the safety of the people. Ensuring the safety and well-being of water safety officers in the course of the performance of their duties is a necessity in order for them to manage and direct the activities on the beaches for the people of Hawaii as well as our many visitors. Individuals who intentionally or knowingly commit harm to water safety officers should be held accountable for their violent behaviors.

We appreciate the opportunity to submit our testimony in support of S.B. 1025, S.D. 1.

Respectfully Submitted,

Nora A. Nomura  
Deputy Executive Director





**Hawai'i State Association of Counties (HSAC)**  
Counties of Kaua'i, Maui, and Hawai'i, and City & County of Honolulu

**TESTIMONY OF DEREK S. K. KAWAKAMI**  
**PRESIDENT, HAWAI'I STATE ASSOCIATION OF COUNTIES**

**HOUSE COMMITTEE ON JUDICIARY**  
**TUESDAY, MARCH 29, 2011, 2010 AT 3:30 P.M.**  
**CONFERENCE ROOM 325, STATE CAPITOL**

**Senate Bill No. 1025, Senate Draft 1, Relating to the Penal Code;**  
**Firefighters and Water Safety Officers;**  
**HSAC Package**

The Honorable Gilbert S.C. Keith-Agaran, House Committee on Judiciary and Committee Members:

My name is Derek S. K. Kawakami, and I submit this testimony in my capacity as President of the Hawai'i State Association of Counties (HSAC).

The Hawai'i State Association of Counties is in support of S.B. 1025, S.D. 1, a measure included in the 2011 Hawai'i State Association of Counties Legislative Package, which proposes to amend Section Sections 707-700, 707-712.5, and 707-712.6 of the Hawai'i Revised Statutes to protect firefighters and water safety officers while performing their job duties. The intent of this legislation is to protect firefighters and water safety officers from harm, as they may be assaulted by those they assist while performing their job duties. Firefighters and water safety officers are vital to the health and safety of the community they serve; whether it may be a resident or visitor, everyone benefits from their services. When firefighters and water safety officers reach the site of an emergency that is in progress, they must perform their duties while focusing on their own safety. In certain situations, they must work in difficult hostile and volatile situations, which often stem from drug abuse or domestic violence cases. Water safety officers have been confronted from irate members of the public, upset that the water safety officers are trying to direct them to safer places during high surf or bad conditions. In numerous cases, members of the public become furious as they feel that the water safety officers have no authority to inform them where to go and not to go swimming, etc.

Recently in the state of Illinois, a mob of 300 assaulted police and firefighters with fireworks by aiming fireworks towards them; and in California, a firefighter was assaulted by a suspect who was arrested for burglary, as well as a felony battery of a fireman.

Thank you for this opportunity to submit this testimony.

Mahalo nui loa,

  
Derek S.K. Kawakami  
HSAC President



THE PACIFIC ALLIANCE  
TO STOP SLAVERY

DATE: 3/28/11

ATTN: HOUSE JUDICIARY COMMITTEE

Rep. Gil Keith-Agaran, Chair  
Rep. Karl Rhoads, Vice Chair

HEARING DATE: Tuesday, March 29<sup>th</sup> 2011

HEARING PLACE: Conference Room 325 - State Capitol - 415 South Beretania Street

TIME: 3:30pm

RE: **HB1025 PROPOSED HD1**

---

Dear House Committee on Judiciary:

The Pacific Alliance to Stop Slavery strongly supports SB1025 Proposed HD1. The rise in Human Trafficking among international and domestic trafficked persons is increasing as Hawaii is now 1 of 5 states in the nation that has not passed local legislation making it all too easy for victims of this modern-day slavery to fall through the cracks of our justice system as they are mistakenly seen as "illegal immigrants."

Hawaii has also recently been implicated in a federal investigation of the largest human-trafficking case in U.S. history involving more than 400 victims. ([Global Horizons](#)).

Existing laws are non-existent to deter Labor-Trafficking while protecting victims. Effective deterrents require bringing traffickers who exploit trafficked persons, to justice.

The lack of legal definition in our Hawaii criminal statutes creates a reluctance in the implementation of adequate services and facilities in Hawaii to meet the needs of trafficking victims in terms of health care, housing, education, medical services, and legal assistance--services which safely support the recovery and ability of trafficked persons to regain control of their lives and also to assist with the prosecution of traffickers.

In order to deter Human Trafficking, Hawaii must recognize that Human Trafficking is a serious offense. This can be simply accomplished by prescribing appropriate punishment, giving priority to the prosecution of trafficking offenses, and protecting, rather than punishing, the victims of these offenses.



PACIFIC ALLIANCE  
TO STOP SLAVERY

Please pass this measure.

Sincerely,

A handwritten signature in black ink, appearing to be 'Kathryn Xian', written in a cursive style.

Kathryn Xian  
Executive Director

Monty Downs, M.D.  
President, Kauai Lifeguard Association &  
E.R. Physician, Wilcox Hospital  
Lihue, Kauai

To: House Judiciary Committee  
Representative Gilbert S.C. Keith-Agaran, Chair and  
Representative Karl Rhoads, Vice-Chair

Hearing on Thursday, March 24, 2011 at 2:00 p.m.

**Testimony in Support of S.B. 1025, Senate Draft 1**

Dear Chairman Keith-Agaran, Vice Chairman Rhoads, and Honorable Committee  
Members:

I am writing in support of SB 1025, S.D.1, a Bill which, if passed, will make it a felony to assault a Firefighter or a Water Safety Officer while they are on duty.

This Bill is long overdue, and we all know that similar legislation provides this level of penalty if you assault a Police Officer. Although it's not common for Firefighter and Water Safety Officers who are entrusted with our community's safety to be assaulted while on duty, there are occasional circumstances where their actions and advice offend the people they are trying to help. Our men and women need to feel the publicized protection that this Bill will offer, if passed. I believe that it will help them maximize their ability to focus on the safety issues at hand, while in turn minimizing their having to be concerned for their own protection from, for example, irate would-be swimmers, or from other would-be assailants who are resisting their advice or their actions.

I am sorry that I won't be able to testify in person. I very much appreciate this opportunity to submit this written testimony testify in writing in support of SB 1025, S.D.1.

Respectfully Submitted,

Monty Downs, M.D.  
Lihue, HI

DATE: Tuesday, March 28, 2011

ATTN: COMMITTEE ON JUDICIARY

Rep. Gilbert S.C. Keith-Agaran, Chair  
Rep. Karl Rhoads, Vice Chair  
Rep. Tom Brower  
Rep. Rida T.R. Cabanilla  
Rep. Mele Carroll  
Rep. Robert N. Herkes  
Rep. Ken Ito  
Rep. Sylvia Luke  
Rep. Angus L.K. McKelvey  
Rep. Blake K. Oshiro  
Rep. Joseph M. Souki  
Rep. Clift Tsuji

Rep. George R. Fontaine

Rep. Barbara C. Marumoto

Rep. Cynthia Thielen

HEARING DATE: Tuesday, March 29, 2011

HEARING PLACE: Conference Room 325 - State Capitol - 415 South Beretania Street

TIME: 3:30PM

**RE: SB1025 RELATING TO THE PENAL CODE.**

PROPOSED HD1: Expands the offenses of assault against a law enforcement officer in the first and second degree to include assaults against firefighters and water safety officers. Creates a class B felony for unauthorized entry in a dwelling based on occupant's age and incapacity. Establishes class A and B felony labor trafficking offenses, a nonpayment of wages offense, and an unlawful conduct with respect to documents offense. Establishes provisions related to prosecution of the offenses. Effective 1/7/2059. (SB1025 SD1 HD1 Proposed)

EMAIL: LABTestimony@Capitol.hawaii.gov

Dear Committee on Labor & Public Employment:

Aloha! My name is Saho Uemura, Master of Social Work candidate in University of Hawaii at Manoa.

I am in strong support of SB1025 SD1 HD1.

In order to describe appropriate punishment for offenders, and to protect victims, Hawaii needs an effective state statute that focuses on criminalizing perpetrators.

Although human trafficking occurs both internationally and domestically, victims who are trafficked across the nation are extremely vulnerable.

They may be isolated from society because of limited language skill or knowledge in the US.

According to TIP report 2010, 12.3million adults and children are in forced labor, bonded labor, and forced prostitution around the world. AND 56 % of the victims are women and girls.

Victims of labor trafficking are often in debt bondage, and/or often have their document of identification confiscated by the traffickers.

Trafficking victims have various needs in health care, housing, education, medical services, and legal assistance

In which if seen as criminals these services will be deprived from them and they may be deported.

They are not "illegal immigrants", but "victims of modern-day slavery."

I am originally from Japan, which is one of major destination countries for human trafficking. I have seen that many from another country forced to work

The more I got to know about human trafficking, the more I became overwhelmed at this complex and deep-rooted issue.

But I will devote myself to establish social justice in Hawaii, which is my second home.

I believe the best thing I can do now is speak in support of this bill. Please pass this important bill. I thank you and your committee for the opportunity to testify.

Sincerely,

Saho Uemura  
Master f Social Work candidate  
University of Hawaii Manoa

Christopher D. Yanuaria  
1800 East-West Road  
Honolulu, HI 96822

Rep. Gilbert S.C. Keith-Agaran, Chair

Rep. Karl Rhoads, Vice Chair

**COMMITTEE ON JUDICIARY**

Tuesday, March 29, 2011 3:30PM

State Capitol, Conference Room 325

**RE: SB1025 RELATING TO THE PENAL CODE.**

PROPOSED HD1: Expands the offenses of assault against a law enforcement officer in the first and second degree to include assaults against firefighters and water safety officers. Creates a class B felony for unauthorized entry in a dwelling based on occupant's age and incapacity. Establishes class A and B felony labor trafficking offenses, a nonpayment of wages offense, and an unlawful conduct with respect to documents offense. Establishes provisions related to prosecution of the offenses. Effective 1/7/2059. (SB1025 SD1 HD1 Proposed)

Aloha Chairman Keith-Agaran, Vice Chair Rhoads and Members of the Committee,

My name is Christopher Yanuaria, a graduate student at Myron B. Thompson School of Social Work and a resident of Maui County. I am testifying in **strong support of SB1025.**

Included among the five remaining states in the nation with no local Human Trafficking law, and with recent uncovering of labor trafficking charges including involvement in the largest labor-trafficking case in U.S. history (Global Horizons<sup>1</sup>), it is clear that Hawai'i has fallen short to prevent labor trafficking while wrongfully criminalizing victims of these violations go unchallenged.

Human Trafficking continues to thrive because traffickers are able to operate in areas lacking sufficient laws to prosecute perpetrators and ensure the protection of those most vulnerable in society. Awareness of these offenses demands the responsibility of both state and federal legislation to take action. The passing of SB1025 will be a step forward to deter labor-trafficking occurring in Hawai'i for these reasons:

---

<sup>1</sup>Global Horizon's Case

<http://www.civilbeat.com/articles/2010/09/02/4084-largest-human-trafficking-case-in-us-history-filed-in-honolulu/>

- SB1025 recognizes Human Trafficking as a serious violation of human rights worthy of strict consequences if convicted.
- SB1025 creates a working legal definition of identifying perpetrators, therefore making it easier to prosecute traffickers with sentences commensurable to their crime.
- SB1025 identifies and protects victims of Human Trafficking rather than treating them as a criminal.

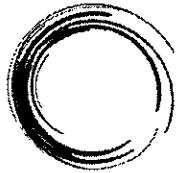
Last year as an intern at the Polaris Project in Washington, D.C. I spent about seven months working directly with victims of both labor and sex trafficking. I have seen and heard stories of unspeakable atrocities. I have witnessed the difficulties these women had to face in their ever day lives. I was able to put a face to the issue. Apart from their struggles it was the strength they demonstrated every day that inspired me to dedicate my work towards helping victims who has suffered from this horrific crime both here at home and abroad.

**I urge you to please pass SB1025.** Mahalo.

Sincerely,

Christopher Yanuaria





# POLARIS PROJECT

FOR A WORLD WITHOUT SLAVERY

## TESTIMONY IN SUPPORT OF SB1025 PRESENTED TO THE HOUSE JUDICIARY COMMITTEE MARCH 29, 2011

Mr. Chairman, members of the House Judiciary Committee, on behalf of the more than 15,000 supporters of Polaris Project, thank you for providing us with an opportunity to speak about the crime of human trafficking. My name is James Dold and I am Policy Counsel for Polaris Project.

Polaris Project is a leading national organization dedicated to combating human trafficking within the United States by serving victims, raising public awareness, and engaging in policy advocacy at both the State and Federal level. We have been selected by the U.S. Department of Health and Human Services to be its training and technical assistance provider and have operated the National Human Trafficking Resource Center and Hotline since December 2007. During this time our human trafficking call specialists have fielded over 25,000 calls from across the nation. We have also provided victim services to more than 300 survivors of human trafficking since 2004 in our D.C. and New Jersey client service offices.

We greatly appreciate the Hawaii Legislature's concern for and willingness to address the crime of human trafficking, a grave violation of human rights. Human trafficking is a monstrous crime, shrouded in secrecy, often unknown except to those who remain bound by invisible chains. It is one of the great injustices of our lifetime and will continue to threaten the freedom of our children, our neighbors, and our fellow brothers and sisters until it is eradicated completely.

### **Human Trafficking National and Global Perspective**

Human trafficking is the modern-day slavery, and it is one of the fastest growing criminal industries in the world, consisting of the subjugation, recruitment, harboring, or transportation of people for the purpose of forced labor or services or commercial sexual exploitation. Victims of human trafficking in the United States include children and adults, as well as foreign nationals and U.S. citizens.

The United States Government estimates that between 600,000 to 800,000 people are trafficked across international borders for forced labor and sexual servitude each year, 70 percent of whom are women and over 50 percent are children. This does not

include those trafficked within their own countries, which is as high as 2 to 4 million persons. Of those trafficked across international borders, up to over 60,000 individuals at a minimum are trafficked into the United States each year. These numbers suggest that the actual figure for the scope of human trafficking is much higher. The State Department estimates that there are roughly 12.3 million slaves in the world today, more than at any other time in the history of the world. Another estimate, by renowned human trafficking expert Kevin Bales, puts the total number of people trapped in modern-day slavery at an estimated 27 million. Of that astounding number, Dr. Bales estimates that 15 to 20 million are victims of labor trafficking.

Most victims suffer a horrific life in which they are repeatedly beaten, raped, starved, chained or locked up, and psychologically tortured. For many, the only way of leaving is by means of escape, rescue, suicide, or murder.

There have been trafficking investigations in all 50 States and incidence of trafficking have been reported in 91 U.S. cities. Human trafficking is a crime that thrives in secrecy and is fed by the insatiable greed of those who see human beings as a commodity to be profited off of. Globally, human trafficking generates over \$32 billion in annual revenue.

Recently, Polaris Project served a labor trafficking victim, "Sabine," who was brought over from Rwanda by a wealthy family in the United States. Sabine was the only survivor from her family of the genocide in Rwanda, so when a wealthy family offered her a chance to move to America with them she agreed. Upon arrival, however, she quickly learned that she had been taken advantage of. She was imprisoned in the home; unable to leave, she was made to work around the clock. Anytime she had to sleep she was made to sleep on the kitchen floor. After six months of servitude she was allowed to go to church for an hour each Sunday. On one of her visits she was approached by a kindly Rwandan man. He asked if she was ok and after learning about her situation, he helped her escape. He took Sabine to one of our partner agencies and once they learned her story they immediately referred her to Polaris Project.

Unfortunately, Sabine's story is far too common in the United States. I cannot impress upon members of the Human Services Committee enough, that labor trafficking is alive and well in the United States and it affects every corner of our nation. It is also prevalent in Hawaii.

### **Human Trafficking in Hawaii**

Every day we receive calls through the National Human Trafficking Resource Center referencing situations where men, women, and young children are subjected to

violence, coercion, and fraud in order for their traffickers to profit. While we do not know how many victims there are in Hawaii, we do know that the National Hotline has received calls referencing trafficking situations in cities throughout the state of Hawaii. Some of these calls were classified as tips that human trafficking was occurring in different cities, including Honolulu, Hilo, and Wakiki Beach.

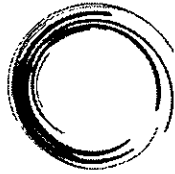
Most recently, Hawaii was home to the largest labor trafficking case in the history of the United States. On September 1, 2010, the U.S. Department of Justice brought formal charges against the President and Chief Operating Officer of Global Horizons for “engaging in a conspiracy to commit forced labor and document servitude.” The case involved 400 Thai workers who were lured with false promises of high-paying farm jobs but were exploited and forced into labor, often with little or no pay. The victims were sent to 13 states including Washington, California, Florida, Colorado, Hawaii, Utah, the Carolinas, the Dakotas, Kentucky, New York, and Virginia. One of the most publicized cases came from victims who worked at 13 to 14 farms on Oahu, Kauai, Maui and the Big Island, tending to coffee, fruits and vegetables for Aloun Farms and Maui Pineapple Farm.

Human trafficking is a scourge that preys on the most vulnerable among us and exploits those who are in need of protection. And while it may be easy at times to pretend that human trafficking is not a crime that affects every day Americans, I can tell you with absolute certainty that it does. It is a crime of absolute evil, but by criminalizing labor trafficking you will provide law enforcement and prosecutors in Hawaii with the tools that are needed to combat it.

Based on my review of state statutes from across the country I can tell you that the labor trafficking provisions that have been incorporated into SB1025 are quite strong. We do, however, recommend one small amendment to make the labor trafficking provisions more comprehensive. This provision would make activities such as recruiting, enticing, soliciting, isolating, harboring, transporting, maintaining, or obtaining of a person with knowledge that the person would be subject to forced labor a crime. This proposed amendment has been included for your reference. If Hawaii passes SB1025 it will bring its laws in line with the other 46 states that have enacted some form of anti-human trafficking law.

### **Support SB1025 as Amended**

Therefore, we ask that the honorable members of the Judiciary Committee act, with what Dr. Martin Luther King, Jr. referred to as “the fierce urgency of now,” by voting favorably upon SB1025. If you should have any questions, please feel free to call me at (202) 745-1001, ext. 132. Mahalo.



# POLARIS PROJECT

FOR A WORLD WITHOUT SLAVERY

## Proposed Amendments

Proposed amendments appear in all caps.

In this section, the following amendment is proposed:

**§707-C Labor trafficking in the second degree.** (1) A person commits the offense of labor trafficking in the second degree if the person knowingly:

(A) RECRUITS, ENTICES, SOLICITS, ISOLATES, HARBORS, TRANSPORTS OR MAINTAINS, OR SO ATTEMPTS, ANOTHER PERSON KNOWING THAT THE PERSON WILL BE SUBJECTED TO FORCED LABOR OR SERVICES UNDER §707-B; OR

(b) Either acting as an individual or using a licensed business or business enterprise, aids another in a venture knowing that the other person in that venture is committing the offense of labor trafficking in the first degree; or

(b) Benefits, financially or by receiving something of value, from participation in a venture knowing or in reckless disregard of the fact that another person has engaged in any act in violation of subsection (a) in the course of that venture or that another person in that venture is committing the offense of labor trafficking in the first degree.

(2) Labor trafficking in the second degree is a class B felony; provided that if a violation of subsection (1) involves kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to cause the death of a person, or if a death results, the offense shall be a class A felony.

(3) Upon conviction of a defendant under subsection (1), the court shall also order that any and all business licenses issued by the State be revoked for the business or enterprise that the defendant used to aid in the offense of labor trafficking in the second degree; provided that the court, in its discretion, may reinstate the business license upon petition to the court by any remaining owner or partner of the business or enterprise who was not convicted of an offense under this section.