

STAND. COM. REP. NO.

2191

Honolulu, Hawaii

FEB 12 2018

RE: S.B. No. 2491
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred S.B. No. 2491 entitled:

"A BILL FOR AN ACT RELATING TO HEALTH CARE WORKERS,"

begs leave to report as follows:

The purpose and intent of this measure is to increase
protections for health care workers by increasing the criminal
penalties for assaulting a health care worker who is engaged in
the performance of duties.

Your Committee received testimony in support of this measure
from the Department of Health; Hawaii Government Employees
Association, AFSCME Local 152, AFL-CIO; Healthcare Association of
Hawaii; Hawaii Medical Association; Hawaii Primary Care
Association; Kaiser Permanente; Pali Momi Medical Center; Hilo
Medical Center; Hawaii Pacific Health; United Public Workers,
AFSCME Local 646, AFL-CIO; The Queen's Health Systems; Hawaii
Nurses Association, OPEIU Local 50; One Kalakaua Senior Living;
Ohana Pacific Management Company; American Organization of Nurse
Executives - Hawaii Chapter; Legacy of Life Hawaii; and twenty-six
individuals. Your Committee received comments on this measure
from the Hawaii Medical Service Association.

Your Committee has heard the concerns of individuals, many of
whom are employees of hospitals and other medical providers who
were victims of assaults, who noted that health care workers may



be less likely to report assaults under existing law, in part because the offense is classified as a misdemeanor and therefore is capable of being expunged from the offender's record and subject to a time served sentence. Your Committee finds that this measure will extend protections for health care workers, encourage prosecution of individuals who assault health care workers, and assist in the retention of needed health care workers by elevating the offense of assault of a health care worker who is engaged in the performance of duty to a felony. In so doing, this measure will provide an equal level of protection for health care workers as for employees of state-operated or state-contracted mental health facilities.

Your Committee has also heard the concerns of the Hawaii Primary Care Association, which noted that this measure, as written, changes the base offense from a misdemeanor to a felony by amending section 707-711, Hawaii Revised Statutes (HRS), and that categorical classifications of victims inject subjectivity into the penalization process. The Hawaii Primary Care Association suggested, as an alternative, amending section 706-662, HRS, which provides for extended terms of imprisonment for persons convicted of certain crimes. However, your Committee notes that the extended terms of imprisonment under section 706-662, HRS, apply only to felony convictions. Therefore, in order to make assault of a health care worker who is engaged in the performance of duty eligible for an extended term of imprisonment, either the offense would need to be elevated to a felony offense or section 706-662, HRS, would need to be amended to allow extended terms of imprisonment for misdemeanor offenses. Your Committee finds that allowing extended terms of imprisonment for misdemeanor offenses, in order to accommodate this offense, falls outside of the purview of your Committee and may affect a much greater population than is intended by this measure. Accordingly, your Committee finds that retaining the amendment in section 707-711, HRS, to make assault of a health care worker who is engaged in the performance of duty a felony, is the most appropriate option at this time.

Accordingly, your Committee has amended this measure by:

- (1) Broadening the covered range of activities and potential work settings for persons protected by this measure to include those providing health services in addition to

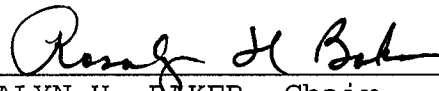


case management, and to include those providing health services in a health care provider's office or in any other setting; and

- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2491, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2491, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Health,



ROSALYN H. BAKER, Chair



The Senate
 Twenty-Ninth Legislature
 State of Hawai'i

Record of Votes
Committee on Commerce, Consumer Protection, and Health
CPH

Bill / Resolution No.:* <i>SB 2491</i>	Committee Referral: <i>CPH, JDC</i>	Date: <i>2/6/18</i>		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	✓			
TOKUDA, Jill N. (VC)				✓
CHANG, Stanley	✓			
ESPERO, Will	✓			
IHARA, Jr., Les	✓			
NISHIHARA, Clarence K.				✓
RUDERMAN, Russell E.	✓			
TOTAL	5			2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>[Signature]</i>				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes