



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

S.B. NO. 2186, S.D. 1, RELATING TO HEALTH CARE WORKERS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Wednesday, February 28, 2024 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 016 and Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Mark S. Tom,
Deputy Attorney General, at 586-1160)

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

The purpose of the bill is to provide added protection for health care workers, by: (1) making assault on a health care worker a class A felony offense (Assault in the First Degree, section 707-710, Hawaii Revised Statutes (HRS)), in lieu of the current class C felony offense (Assault in the Second Degree, section 707-711, HRS); and (2) amending section 707-716, HRS, Terroristic Threatening in the First Degree, to include threats against a health care worker who is engaged in the performance of the worker's duty.

To avoid a potential constitutional issue, in which a defendant's rights to due process and equal protection could be violated, the Department suggests defining "health care facility" in the proposed definition of "health care worker" in section 707-700, HRS, as amended by section 1 of the bill (page 1, lines 4-5), and "mental health facility" in paragraph (g) of subsection (1) of section 707-711, HRS (page 4, lines 5-14), as set forth in section 3 of the bill. Although "health care facility" is defined in section 323D-2, HRS, it is not currently included in chapter 707, HRS, where these new offenses are designated. Without distinct definitions, both terms could potentially apply to a single person (e.g., health care worker in a facility that could be considered both a

“mental health facility” and a “health care facility”) committing a single offense, but with two different levels of penalties: Assault in the First Degree is a class A felony and Assault in the Second Degree is a class B felony. As discussed by the Hawaii Supreme Court in *State v. Modica*, 58 Haw. 249, 251, 567 P.2d 420, 422 (1977), “. . . where the same act committed under the same circumstances is punishable either as a felony or as a misdemeanor, under either of two statutory provisions, and the elements of proof essential to either conviction are exactly the same, a conviction under the felony statute would constitute a violation of the defendant’s rights to due process and the equal protection of the laws.”

Alternatively, the Committee could also create the necessary distinction between the offenses by supplementing the definition of “a person employed at a state-operated or -contracted mental health facility” (section 707-711(1)(g), HRS), by adding the same wording currently being proposed in paragraph (f) on page 4, lines 2-3. Thus, section 707-711(1)(g), HRS, would be amended to state:

- (g) Intentionally or knowingly causes bodily injury to a person employed at a state-operated or -contracted mental health facility. For the purposes of this paragraph, “a person employed at a state-operated or -contracted mental health facility” includes health care professionals as defined in section 451D-2; administrators, orderlies, security personnel, volunteers, and any other person who is engaged in the performance of a duty at a state-operated or -contracted mental health facility; provided that “a person employed at a state-operated or -contracted mental health facility” does not include health care workers who are otherwise included under section 707-710(1)(c);

Providing definitions that ensure a facility cannot be both a “health care facility” and a “mental health facility” concurrently, or wording clearly excluding health care workers from paragraph (g) of section 707-711(1), HRS, would remove any potential constitutional issues as it relates to *Modica*.

Lastly, the Department would suggest removing the proposed amendment in subsection (a), “including via direct personal visual or oral contact, telephone, or any form of electronic communication,” on page 7, lines 7-9, and subsection (b), defining electronic communication, on page 7, lines 17-19, in section 707-715, HRS. These

proposed amendments may be subject to legal challenges as violating section 14 of article III of the Hawaii State Constitution. Section 14 of article III of the Hawaii State Constitution provides, in relevant part, that “[e]ach law shall embrace but one subject, which shall be expressed in its title.” The title of the bill “health care workers” may not reasonably cover the amendments related to specifying various examples of terroristic threatening or the proposed definition, which would apply to persons who are not “health care workers.” Additionally, even if no legal challenge is made, as written, it appears the listed mediums are either already included in section 707-715, HRS, or are unenforceable (i.e. visual contact).

Thank you for the opportunity to provide comments for this bill.



**Written Testimony Presented Before the
Senate Committee on Judiciary
Wednesday, February 28, 2024 at 10:00 AM
Conference Room 016 & Videoconference
by
Laura Reichhardt, APRN, AGPCNP-BC, FAAN
Director, Hawai'i State Center for Nursing
University of Hawai'i at Mānoa**

WRITTEN TESTIMONY IN SUPPORT on S.B. 2186, S.D. 1

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee, thank you for hearing this measure which heightens the penalties for the assault and terroristic threatening of health care workers. Clarifies the definition of "terroristic threatening" to include the methods of contact.

In 2016, the U.S. Bureau of Labor Statistics found that violent events accounted for 12.2% of all injuries that nurses experienced, and that the incidence rate (12.7 per 10,000 FTEs) was three times greater than that of violent events for all occupations (3.8/10,000 workers). The report concluded "Additional measures to protect RNs from occupational hazards could benefit both patients and the healthcare system as a whole."¹

Unfortunately, the risk for workplace violence has exacerbated. According to research findings from Press Ganey, in the U.S., two nurses are assaulted every hour.² The American Nurses Association elaborates that one in four nurses are assaulted, yet only 20-60% of incidents are reported, and that 13% of missed workdays are due to workplace violence.³

In Hawai'i, according to the Hawai'i State Center for Nursing 2023 Nursing Workforce Supply report findings, 64% of all nurses reported some type of physical or verbal violence by a patient or visitor, and 32% percent of all nurses reported experiencing violence more than once a month (14% at least monthly, 13% at least weekly, and 5% at least daily).⁴

The national Nurse Staffing Think Tank, a thinktank comprised of thought leaders from the American Association of Critical Care Nurses, American Nurses Association, American Organization for Nursing Leadership, Healthcare Financial Management Association, and

¹ Michelle A. Dressner and Samuel P. Kissinger, "Occupational injuries and illnesses among registered nurses," Monthly Labor Review, U.S. Bureau of Labor Statistics, November 2018, <https://doi.org/10.21916/mlr.2018.27>

² PressGaney. (2022) On average, two nurses are assaulted every hour, new Press Ganey analysis finds. <https://www.pressganey.com/news/on-average-two-nurses-are-assaulted-every-hour-new-press-ganey-analysis-finds/>

³ American Nurses Association. (2023). Workplace Violence/ #EndNurseAbuse. <https://www.nursingworld.org/practice-policy/work-environment/end-nurse-abuse/>

⁴ Hawai'i State Center for Nursing (2023). 2023 Hawai'i Nursing Workforce Supply Statewide Data Tables by License . https://www.hawaiicenterfornursing.org/wp-content/uploads/2023/09/State-Data-Tables-v.Final_.pdf

The mission of the Hawai'i State Center for Nursing is to engage in nursing workforce research, promote best practices and disseminate knowledge, cultivate a diverse and well-prepared workforce, support healthy work environments, champion lifelong learning, and strategically plan for sound nursing workforce policy.

Institute for Healthcare Improvement made “Healthy Work Environment” a top priority. The Think Tank recommended that “Elevat[ing] clinician psychological and physical safety to equal importance with patient safety through federal regulation.” Action steps included in this recommendation include “Implement processes to track and prevent workplace violence within health systems” and “Advocate for implementation of federal legislation to protect health care professionals.”⁵

In 2018, the Hawai‘i Legislature, in its great wisdom, expanded protections for health care workers including nurses, nurse aides, and other members of the healthcare team through Act 147, SLH 2018. By increasing the penalty for assaulting a healthcare worker, and by expanding the protections to all employees and contractors of a healthcare facility, the state asserts its commitment to the healthcare worker community.

In addition, a systematic review⁶ of efforts to reduce violence against nursing in the workplace found that there are a number of worksite interventions that can further reduce the incidence of violence. These include environmental protections (panic buttons, security locks), developing standardized reporting systems for workplace violence, administrative process improvements (policies for violence prevention, safety procedures), and behavior training (basic education, structured education programs and simulation activities to improve staff capacity to respond to dangerous situations) all resulted in improved workplace environments, both alone and as multi-component interventions. The Hawai‘i State Center for Nursing has worked with our nursing stakeholders which has already identified Workplace Safety as a priority.

The Hawai‘i State Center for Nursing will continue to develop locally implementable strategies in addition to the commendable effort by the Legislature to improve wellbeing of healthcare workers, including nurses, while at work.

Thank you for the opportunity to testify on this measure.

⁵ Nurse Staffing Think Tank. (2022). Priority Topics and Recommendations. <https://www.nursingworld.org/~49940b/globalassets/practiceandpolicy/nurse-staffing/nurse-staffing-think-tank-recommendation.pdf>

⁶ Somani, R., Muntaner, C., Hillan, E., Velonis, A. J., & Smith, P. (2021). A Systematic Review: Effectiveness of Interventions to De-escalate Workplace Violence against Nurses in Healthcare Settings. *Safety and Health at Work*, 12(3), 289–295. <https://doi.org/10.1016/j.shaw.2021.04.004>

The mission of the Hawai‘i State Center for Nursing is to engage in nursing workforce research, promote best practices and disseminate knowledge, cultivate a diverse and well-prepared workforce, support healthy work environments, champion lifelong learning, and strategically plan for sound nursing workforce policy.



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Quality Healthcare For All"

COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice-Chair

February 28, 2024
10:00 AM
Hawaii State Capitol
Room 016 & Via Videoconference

TESTIMONY IN STRONG SUPPORT

SB 2186, SD1 RELATING TO HEALTH CARE WORKERS

Establishes heightened penalties for the assault and terroristic threatening of health care workers. Clarifies the definition of "terroristic threatening" to include the methods of contact. Takes effect 12/31/2050.

Edward N. Chu
President & Chief Executive Officer
Hawaii Health Systems Corporation

On behalf of the Hawaii Health Systems Corporation (HHSC) Corporate Board of Directors, thank you for the opportunity to present testimony in **strong support of SB 2186, SD1 Relating to Health Care Workers.**

HHSC is deeply committed to ensuring workplace safety in all of its facilities. We do our best to support and protect our nurses and staff from abuse. Incidents of assault and violence against our HHSC employees are taken very seriously. These incidents have an impact on our employees' health, morale, and well-being. Passage of SB 2186 would strengthen the existing law to ensure more legal protections for Hawaii's valued healthcare workforce.

Thank you for the opportunity to provide testimony on this matter.



**Testimony to the Senate Committee on Judiciary
Wednesday, February 28, 2024; 10:00 a.m.
State Capitol, Conference Room 016
Via Videoconference**

RE: SENATE BILL NO. 2186, SENATE DRAFT 1, RELATING TO HEALTH CARE WORKERS.

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The Hawaii Primary Care Association (HPCA) is a 501(c)(3) organization established to advocate for, expand access to, and sustain high quality care through the statewide network of Community Health Centers throughout the State of Hawaii. The HPCA **SUPPORTS THE INTENT** of Senate Bill No. 2186, Senate Draft 1, RELATING TO HEALTH CARE WORKERS.

By way of background, the HPCA represents Hawaii's Federally Qualified Health Centers (FQHCs). FQHCs provide desperately needed medical services at the frontlines to over 150,000 patients each year who live in rural and underserved communities. Long considered champions for creating a more sustainable, integrated, and wellness-oriented system of health, FQHCs provide a more efficient, more effective and more comprehensive system of healthcare.

This bill, as received by your Committee, would:

- (1) Make a conviction for assaulting a health care worker a class A felony;
- (2) Make a conviction for terroristic threatening of a health care worker a class A felony; and
- (3) Define the term “health care worker” to include all employees and contractors of a health care facility or in the home of another, including foster care homes.

This bill would take effect on December 31, 2050.

As employers, FQHCs have an obligation to ensure the health, welfare, and safety of their employees, contractors, volunteers, patients, and patients' friends and family who accompany or visit patients at FQHC facilities. To the extent that this measure serves as a deterrent to violence perpetrated against health care workers, HPCA wholeheartedly supports this effort.

Testimony on Senate Bill No. 2186, Senate Draft 1
Wednesday, February 28, 2024; 10:00 a.m.
Page 2

Yet, it should also be noted that when violence is committed against a health care professional, especially when it occurs at a health care facility, a crime is committed not only against the individual, but against all of society. When persons go to a health care professional, it is when that person is most vulnerable -- he or she is sick, or injured, or stressed from concern over a loved one. These places have long been held as sanctuary. During war, hospitals were marked on their rooftops with red crosses so that they would not be bombed.

Violence committed against a health care professional or at a health care facility causes sick or injured persons to hesitate before seeking help, which might exacerbate their condition. It also dissuades persons from entering the field of health care. At a time when Hawaii is facing unprecedented shortages in physicians, nurses, specialists, and other health care professionals, especially in rural areas, incidents of violence against health care professionals or at health care facilities may likely cause youths to consider other fields for future employment.

Be that as it may, while we support efforts to heighten penalties for the assault and terroristic threatening of health care workers, we defer to your wisdom on the appropriate punishments for these crimes.

Thank you for the opportunity to testify. Should you have any questions, please do not hesitate to contact Public Affairs and Policy Director Erik K. Abe at 536-8442, or eabe@hawaiiipca.net.



Monday, February 28, 2024 at 10:00 am
Conference Room 016

Senate Committee on Judiciary

To: Chair Karl Rhoads
Vice Chair Mike Gabbard

From: Paige Heckathorn Choy
AVP, Government Affairs
Healthcare Association of Hawaii

Re: **Testimony in Support**
SB 2186 SD 1, Relating to Health Care Workers

The Healthcare Association of Hawaii (HAH), established in 1939, serves as the leading voice of healthcare on behalf of 170 member organizations who represent almost every aspect of the healthcare continuum in Hawaii. Members include acute care hospitals, skilled nursing facilities, home health agencies, hospices and assisted living facilities. In addition to providing access to appropriate, affordable, high-quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 30,000 people statewide.

Thank you for the opportunity to **support** this measure, which would classify the bodily injury of a healthcare worker engaged in the performance of duty at a healthcare facility as an offense in the first degree. Further, this measure would classify terroristic threatening of a healthcare worker engaged in the performance of duty at a healthcare facility as a Class A felony.

We were extremely grateful to the legislature when it expanded protections for healthcare workers in Act 147, SLH 2018. One recent study found that 44% of nurses reporting being subjected to physical violence, and 68% reporting verbal abuse in a recent study.¹ A widening of the applicability of the law to all types of workers engaged in their duties is a welcomed change. Our members have followed best practices in terms of security, trainings, and educational opportunities to reduce violence against our workers. However—and unfortunately—these events continue to happen, and we believe any effort to strengthen penalties against offenders will be beneficial.

Thank you for hearing this important measure and considering our amendments, and for your continued support of essential healthcare workers in Hawaii.

¹ <https://www.aha.org/lettercomment/2024-01-24-aha-voices-support-safety-violence-healthcare-employees-save-act-hr-2584>



**WAIANAЕ COAST
COMPREHENSIVE
HEALTH CENTER**

Aloha Chair Karl Rhoads, Vice Chair Mike Gabbard, and Members of the Committee on Judiciary:

Waianae Coast Comprehensive Health Center (WCCHC) is a non-profit organization dedicated to improving the health and well-being of the West Oahu community through accessible and affordable medical and traditional healing services, including vital telehealth services and online social support, crucial for our community's wellbeing. Celebrating over 50 years of service, WCCHC remains committed to providing holistic healthcare and promoting the health of our local community and environment. We are in strong support of SB 2186 SD1.

SB 2186 SD1 is a pivotal measure aimed at fortifying the protections for health care workers across our state. By expanding the definition of "Health Care Worker" and the existing heightened penalties for assaults and strengthening penalties for terroristic threats, this bill directly aligns with our mission to ensure a safe and secure environment for our dedicated employees and the communities we serve.

The escalation of violence and threats against health care workers is a growing concern both state wide and nationally. It jeopardizes not only the safety of these individuals but also the overall well-being of our patients. This measure's approach to expanding penalties for assaults on health care workers and clarifying the application of terroristic threatening laws, including threats made over the phone, is a step in the right direction in addressing this pressing issue. While we recognize this legislation is not perfect, we would like to see the discussion continue as stakeholders and legislators look for ways to protect the people who do the essential work of taking care of our people when they are sick and injured.

We extend our gratitude to Chair Karl Rhoads for scheduling a hearing on this measure, and to the members of this committee for considering its merits. By supporting SB 2186, we affirm our collective commitment to the safety and dignity of all health care workers, ensuring they can continue their vital work in a supportive environment.

Thank you for the opportunity to testify in support of this critical legislation.

Mahalo,

Leinaala Kanana
Chief Community Health Services
LKanana@wcchc.com



UNITED PUBLIC WORKERS

AFSCME Local 646, AFL-CIO

THE SENATE
KA 'AHA KENEKOA
THE THIRTY-SECOND LEGISLATURE
REGULAR SESSION OF 2024

COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Wednesday, February 28, 2024, 10:00 AM
Conference Room 016 & Videoconference

Re: Testimony on SB2186, SD1 – RELATING TO HEALTH CARE WORKERS

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The United Public Workers, AFSCME Local 646, AFL-CIO ("UPW") is the exclusive bargaining representative for approximately 14,000 public employees, which includes blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health, and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. UPW also represents 1,500 members who are healthcare employees in the private sector.

UPW supports SB2186, SD1, which establishes heightened penalties for the assault and terroristic threatening of healthcare workers and clarifies the definition of "terroristic threatening" to include the methods of contact.

We strongly believe that healthcare workers, whether they are employed at the Hawaii State Hospital or Maui Memorial Medical Center, should be afforded greater protections against assault and the threat of violence. This bill provides healthcare workers, from certified nursing assistants to custodians, some assurances that they can perform their duties without fear of violence in the workplace.

Mahalo for the opportunity to testify on this measure.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kalani Werner', written over a light blue horizontal line.

Kalani Werner
State Director

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Randy Perreira
President

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The Thirty-Second Legislature, Hawaii
The Senate
Committee on Judiciary

Testimony by
Hawaii State AFL-CIO

February 28, 2024

TESTIMONY ON SB2186 SD1 - RELATING TO HEALTH CARE WORKERS

Chair Rhoads, Vice Chair Gabbard, and members of the committee:

The Hawaii State AFL-CIO is a federation of 74 affiliate labor organizations who represent over 68,000 union members within the State of Hawaii. The Hawaii State AFL-CIO serves its affiliates by advocating for workers and their families before the state legislature and other branches of state and county government.

The Hawaii State AFL-CIO is in **support** of SB2186 SD1, which establishes heightened penalties for the assault and terroristic threatening of health care workers. Protecting health care workers is vital, given their critical role in our healthcare system.

Our affiliates represent health care workers in various capacities and this bill allows for comprehensive protection for all in the health care sector. The clarification of "terroristic threatening" to include various methods of contact is also crucial. Health care workers face high-stress situations and must be safeguarded while performing their duties.

We urge the committee to advance this bill to protect health care workers across the state of Hawaii.

Respectfully submitted,

Randy Perreira
President



THE QUEEN'S HEALTH SYSTEM

To: The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice Chair
Members, Senate Committee on Judiciary

From: Jace Mikulanec, Director, Government Relations, The Queen's Health System

Date: February 28, 2024

Re: Support for SB2186 SD1 – Relating to Health Care Workers

The Queen's Health System (Queen's) is a nonprofit corporation that provides expanded health care capabilities to the people of Hawai'i and the Pacific Basin. Since the founding of the first Queen's hospital in 1859 by Queen Emma and King Kamehameha IV, it has been our mission to provide quality health care services in perpetuity for Native Hawaiians and all of the people of Hawai'i. Over the years, the organization has grown to four hospitals, and more than 10,000 affiliated physicians, caregivers, and dedicated medical staff statewide. As the preeminent health care system in Hawai'i, Queen's strives to provide superior patient care that is constantly advancing through education and research.

Queen's appreciates the opportunity to provide testimony in support of SB2186 SD1, which establishes heightened penalties for the assault and terroristic threatening of health care workers. National data has shown that those practicing in healthcare settings are experiencing growing acts of violence; according to the Bureau of Labor Statistics, 20,050 workers in private industry experienced trauma from nonfatal workplace violence.

As we are experiencing a major workforce shortage across all sectors in healthcare, more needs to be done to assure our healthcare workforce that their safety is prioritized. Queen's has taken recent steps to expand our security measures by installing metal detectors at main entry points to facilities and also instituting the new Strongline emergency system. This later system provides a mechanism to enable Queen's staff to request security wherever a threatening experience is taking place on our campus. The expanded provisions within SB2186 SD1 contribute to the suite of deterrents aimed at keeping our healthcare ohana safer.

We appreciate and support the amendments made by the previous committee and thank you for allowing Queen's to provide testimony in support of SB2186 SD1.

The mission of The Queen's Health System is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.

SB-2186-SD-1

Submitted on: 2/20/2024 7:38:09 PM

Testimony for JDC on 2/28/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Scott Kidd	Individual	Support	Written Testimony Only

Comments:

I support this measure