

JAN 19 2018

A BILL FOR AN ACT

RELATING TO HEALTH CARE WORKERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The rates of assault and violence against
2 health care workers in Hawaii are rising. A 2017 survey of
3 hospitals, nursing homes, and home health care agencies, found a
4 record number of one thousand seventy-five incidents of assault
5 against workers in those establishments and home health care
6 workers in patients' homes. In thirty-nine per cent of those
7 cases, the local police department was contacted, with the
8 remainder being handled by the establishment's security
9 department.

10 The average costs incurred by hospitals for incidents
11 relating to violence against their health care workers amounted
12 to \$258,000 per year. These costs include worker's compensation
13 benefits costs, direct medical expenses, time off from work for
14 recovery, and absenteeism costs. However, it is likely that
15 this cost estimate is vastly underreported, in large part
16 because of the difficulty in tracking the full costs for each
17 individual who faced violence in the workplace and for their



S.B. NO. 2491

1 family. The American Hospital Association found that hospitals
2 nationally spend \$4,700,000,000 a year to provide security at
3 their facilities. According to the American Hospital
4 Association report, hospitals also spend annually:

5 (1) \$175,000,000 training health care staff in violence
6 prevention and de-escalation;

7 (2) \$98,000,000 developing a violence prevention plan;

8 (3) \$42,000,000 on medical care and compensation for lost
9 wages; and

10 (4) \$91,000,000 in disability and absenteeism costs.

11 These amounts for annual costs do not include or account for the
12 financial and emotional toll that assaults take on the
13 individuals impacted and on the family members of these
14 employees.

15 Between 2005 and 2014, reported rates of workplace violence
16 in private hospitals increased by one hundred ten per cent
17 nationally. A 2014 study found that seventy-six per cent of
18 nurses were subject to violence or abuse over the course of a
19 year. The same study found that, of the nurses who experienced
20 violence or abuse in a year, most faced verbal abuse. However,
21 almost a quarter of that group faced physical violence.



1 Being subjected to violence or abuse does not only affect
2 nurses. Health care professionals, including physicians,
3 physician assistants, allied health professionals, aides, home
4 health care workers, and even volunteers, are at risk of
5 violence from patients and visitors. According to the Bureau of
6 Labor Statistics, the rates of nonfatal workplace violence
7 against health care workers are from five to ten times higher
8 than for workers overall. The rate of nonfatal workplace
9 violence against all workers was 2.8 incidents per ten thousand
10 workers. For hospital workers, the rate was 14.7 incidents per
11 ten thousand workers and for nursing and residential workers,
12 the rate was an astonishing 35.3 incidents per ten thousand
13 workers.

14 Like other existing protected classes, health care workers
15 are particularly vulnerable to attack. Hospitals, nursing
16 homes, and other facilities are generally public spaces where
17 almost anyone can enter. Home health care workers and case
18 managers are particularly at-risk because they typically enter a
19 patient's home without backup or security of any kind. The lack
20 of current protections for health care workers exposed to abuse
21 and violence is having a debilitating impact on health care



1 workers. Providing sufficient protections in the law will help
2 to improve the morale of the health care workforce and retain
3 health care workers in an employment sector that is experiencing
4 shortages due to a very competitive labor market.

5 Ensuring the safety of the health care workforce is not
6 only important for employees, but also important for everyone
7 who needs the services of the health care workforce. Any
8 facility, institution, or health care setting should be a safe
9 environment for everyone in the community, patients, visitors,
10 and health care workers alike.

11 All health care workers should be included in the
12 protections currently afforded to other workers who are
13 vulnerable to attack, not just those in the emergency room.
14 Currently, the charge for assaulting a health care worker in
15 Hawaii is a misdemeanor, which often means that perpetrators do
16 not receive a satisfactory penalty, if any at all. If the
17 potential charge is a felony, then attacks against health care
18 workers will be taken more seriously. Classifying attacks on
19 health care workers as assault in the second degree will bring
20 parity under the law for this vulnerable class and protect all
21 health care workers as emergency service workers are protected.



1 The legislature finds that extending protections for health
2 care workers is in the best interest of the community, and will
3 assist in retaining needed health care professionals and provide
4 needed protections for vulnerable employees. Further, by
5 including health care workers in the current statute relating to
6 the offense of assault in the second degree, ensures that only
7 those individuals who are capable of forming an intent to cause
8 substantial bodily injury to a health care worker are included.
9 Notably, eight other states consider assault against any
10 healthcare worker a felony.

11 SECTION 2. Section 707-711, Hawaii Revised Statutes, is
12 amended by amending subsection (1) to read as follows:

13 "**§707-711 Assault in the second degree.** (1) A person
14 commits the offense of assault in the second degree if:

15 (a) The person intentionally, knowingly, or recklessly
16 causes substantial bodily injury to another;

17 (b) The person recklessly causes serious bodily injury to
18 another;

19 (c) The person intentionally or knowingly causes bodily
20 injury to a correctional worker, as defined in section



1 710-1031(2), who is engaged in the performance of duty
2 or who is within a correctional facility;

3 (d) The person intentionally or knowingly causes bodily
4 injury to another with a dangerous instrument;

5 (e) The person intentionally or knowingly causes bodily
6 injury to an educational worker who is engaged in the
7 performance of duty or who is within an educational
8 facility. For the purposes of this paragraph,

9 "educational worker" means any administrator,
10 specialist, counselor, teacher, or employee of the
11 department of education or an employee of a charter
12 school; a person who is a volunteer, as defined in
13 section 90-1, in a school program, activity, or
14 function that is established, sanctioned, or approved
15 by the department of education; or a person hired by
16 the department of education on a contractual basis and
17 engaged in carrying out an educational function;

18 (f) The person intentionally or knowingly causes bodily
19 injury to any emergency medical services provider who
20 is engaged in the performance of duty. For the
21 purposes of this paragraph, "emergency medical



S.B. NO. 2491

1 services provider" means emergency medical services
2 personnel, as defined in section 321-222, and
3 physicians, physician's assistants, nurses, nurse
4 practitioners, certified registered nurse
5 anesthetists, respiratory therapists, laboratory
6 technicians, radiology technicians, and social
7 workers, providing services in the emergency room of a
8 hospital;

9 (g) The person intentionally or knowingly causes bodily
10 injury to a person employed at a state-operated or
11 -contracted mental health facility. For the purposes
12 of this paragraph, "a person employed at a state-
13 operated or -contracted mental health facility"
14 includes health care professionals as defined in
15 section 451D-2, administrators, orderlies, security
16 personnel, volunteers, and any other person who is
17 engaged in the performance of a duty at a state-
18 operated or -contracted mental health facility;

19 (h) The person intentionally or knowingly causes bodily
20 injury to a person who:



1 (i) The defendant has been restrained from, by order
2 of any court, including an ex parte order,
3 contacting, threatening, or physically abusing
4 pursuant to chapter 586; or

5 (ii) Is being protected by a police officer ordering
6 the defendant to leave the premises of that
7 protected person pursuant to section 709-906(4),
8 during the effective period of that order; [~~or~~]

9 (i) The person intentionally or knowingly causes bodily
10 injury to any firefighter or water safety officer who
11 is engaged in the performance of duty. For the
12 purposes of this paragraph, "firefighter" has the same
13 meaning as in section 710-1012 and "water safety
14 officer" means any public servant employed by the
15 United States, the State, or any county as a lifeguard
16 or person authorized to conduct water rescue or ocean
17 safety functions[~~-~~];

18 (j) The person intentionally or knowingly causes bodily
19 injury to a person who is engaged in the performance
20 of duty at a health care facility as defined in
21 section 323D-2. For purposes of this paragraph, "a



1 person who is engaged in the performance of duty at a
2 health care facility" shall include health care
3 professionals as defined in section 451D-2,
4 administrators, students, volunteers, and any other
5 workers who support the functions of the health care
6 facility;

7 (k) The person intentionally or knowingly causes bodily
8 injury to a person who is engaged in providing home
9 health care services, as defined in section 431:10H-
10 201; or

11 (l) The person intentionally or knowingly causes bodily
12 injury to a person employed or contracted to work by a
13 mutual benefit society, as defined in section 432:1-
14 104, who provides case management services to an
15 individual in a hospital or in the home who is engaged
16 in the performance of duty."

17 SECTION 3. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

20 SECTION 4. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



S.B. NO. 2491

1 SECTION 5. This Act shall take effect upon its approval.

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S.B. NO. 2491

Report Title:

Health Care Worker; Intentionally Cause Bodily Injury; Felony
Penalty

Description:

Makes intentionally or knowingly causing bodily injury to a
health care worker a Class C felony.

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not legislation or evidence of legislative intent.*

