



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
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February 21, 2013

TO: The Honorable David Y. Ige, Chair
Senate Committee on Ways and Means

FROM: Patricia McManaman, Director

SUBJECT: **S.B. 1109, S.D. 1 – RELATING TO HOSPITAL STANDARDS FOR SEXUAL ASSAULT VICTIMS**

Hearing: Thursday, February 21, 2013; 9:00 a.m.
Conference Room 211, State Capitol

PURPOSE: The purpose of S.B. 1109, S.D. 1, is to add a new part to chapter 321, Hawaii Revised Statutes, to ensure that victims of sexual assault are provided with medically and factually unbiased information about and access to emergency contraception when receiving emergency medical care at Hawaii's hospitals for sexual assaults.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) strongly supports this bill Administration to ensure that victims of sexual assault are provided with medically and factually unbiased information about and access to emergency contraception when receiving emergency medical care at Hawaii's hospitals for sexual assaults.

In the aftermath of rape, victims find themselves dealing with a host of reproductive and sexual health issues. The physical and emotional trauma suffered by victims is compounded by the possibility of an unwanted pregnancy as a result of the rape. The average rate of pregnancy resulting from rape is between five and eight per cent with an

estimated thirty-two thousand rape-related pregnancies occurring every year in the United States.

Emergency contraception is not an abortion pill, nor does it cause any abortive process to take place. Emergency contraception is a safe and effective means of preventing pregnancy after a sexual assault. In fact, the provision of emergency contraception to victims of sexual assault is the most widely recognized and accepted standard of care for sexual assault patients. The American Medical Association and the American College of Obstetricians and Gynecologists have stated that sexual assault victims should be informed about and provided emergency contraception. However, a recent survey of emergency facilities in Hawaii revealed a lack of clear policy on the issue.

The Department of Human Services will pay for the necessary emergency contraception medications on a fee-for-service basis. It is estimated that the cost would be negligible, less than \$10,000.

Thank you for the opportunity to testify on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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**THE HONORABLE DAVID Y. IGE, CHAIR
SENATE WAYS AND MEANS COMMITTEE
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawai`i**

February 21, 2013

**RE: S.B. 1109, S.D. 1; RELATING TO HOSPITAL EMERGENCY COMPASSIONATE
CARE FOR SEXUAL ASSAULT VICTIMS.**

Chair Green, Chair Hee, Vice Chair Baker, Vice Chair Shimabukuro and members of the Senate Committees on Health, and Judiciary and Labor, the Department of the Prosecuting Attorney submits the following testimony in support of S.B. 1109, S.D. 1.

The purpose of S.B. 1109, S.D. 1 is to require that hospitals:

- (1) Provide any female sexual assault survivor with medically and factually accurate and unbiased written and oral information about emergency contraception;
- (2) Orally inform each female sexual assault survivor of the option to receive emergency contraception at the hospital;
- (3) When medically indicated, provide emergency contraception to each female sexual assault survivor who requests it, including the initial dose that can be taken at the hospital, and any further dosage as necessary; and
- (4) Ensure that each person at the hospital who may provide emergency medical care shall be trained to provide a sexual assault survivor with medically and factually accurate and unbiased written and oral information about emergency contraception and sexual assault treatment options and access to emergency contraception.

The requirements in this bill are reasonably related to addressing the acute medical, psychological, and emotional needs of sexual assault survivors. Furthermore, the provisions of this measure are consistent with the proper standard of professional care endorsed and recommended by the American Medical Association and the American College of Obstetrics and Gynecology.

Sexual assault is one of the most traumatic crimes that target Hawaii's women, and the fear of an unwanted pregnancy, as well as the potentially damaging medical and psychological effects that accompany it, can exponentially increase the level of harm that is inflicted upon victims. Those who have not experienced this horror cannot imagine the agony that victims experience. What these victims need is calm, caring, and supportive treatment that can help to lessen the traumatic effects of the sexual assault at a time when a victim may need to make many difficult decisions. Their ability to make the correct decisions for themselves is predicated on the availability of information that is accurate, thorough, and unbiased.

We understand that concerns have been raised in the past two legislative sessions regarding 45 C.F.R. §88.1 - §88.2, which were codified to enforce Church Amendments, 42 U.S.C. 300a-7, section 245 of the Public Health Service Act, 42 U.S.C. 238n, and the Weldon Amendment, Consolidated Appropriations Act, 2010, Public Law 111-117, Div. D, Sec. 508(d), 123 Stat. 3034, 3279-80, referred to collectively as the "federal health care provider conscience protection statutes."

The Church Amendment to the Public Health Service Act, among other things, prohibits entities that receive certain federal health care funding from discriminating against an individual or entity that performs or assists in the performance of or refuses to perform or assist in the performance of abortions or sterilizations if such performance or assistance "would be contrary to his religious beliefs or moral convictions."

Section 245 of the Public Health Service Act, also known as the Coats Amendment, prohibits the federal government, and state or local governments receiving federal funding, from discriminating against medical residency programs or individuals based on a refusal to provide abortion-related services or training.

The Weldon Amendment, contained in annual appropriations law, prohibits the allocation of certain funds to federal agencies or programs and state and local governments that discriminate against any health care entity (including insurers) based on a refusal to "provide, pay for, provide coverage of, or refer for abortions."

Under the plain language reading of "federal health care provider conscience protection statutes," there is no prohibition to prevent health care entities from providing medically accurate information about emergency contraception, nor from providing emergency contraception to female sexual assault survivors who request it. "Emergency contraception" is limited to

prescription drugs used for the purpose of preventing pregnancy, rather than sterilizing or aborting an existing pregnancy.

Further, sixteen (16) other states currently have statutes similar to S.B. 1109, S.D. 1, requiring that hospitals treating sexual assault survivors provide medically accurate information regarding emergency contraception. Twelve (12) states also have statutes that require hospitals to provide emergency contraception to sexual assault survivors, upon request. A number of these statutes were enacted as early as 2002, and to date, none have been struck down nor found invalid in a court of law.

The Department strongly believes that all victims of sexual assault in Hawaii should have equal access to medically accurate information and options, to facilitate their decisions regarding medical care, as these decisions may affect the victim for a lifetime. To do any less, deprives victims of the opportunity for self determination, which must be permitted to insure their ability to transition from victim to survivor. Since sexual assault survivors have a very limited window of time in which to receive effective emergency contraceptives, it is imperative that they receive access to this care upon arrival at any hospital in our state. The passage of S.B. 1109, S.D. 1 will go a long way toward fulfilling our obligation to respond to sexual assault survivors in a compassionate and medically effective manner.

For all the reasons cited above, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly support S.B. 1109, S.D. 1. Thank you for your time and consideration.

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COMMITTEE ON WAYS AND MEANS

Sen. David Ige, Chair

Sen. Michelle Kidani, Vice Chair

Thursday, February 21, 2013

9:00 a.m.

Room 211

SUPPORT FOR SB 1109 SD1 - Hospital Standards for Sexual Assault Victims

Aloha Chair Ige, Vice Chair Kidani and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered on behalf of the 5,800 Hawai'i individuals living behind bars, always mindful that approximately 1,500 individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

I have also been the Chair of the Honolulu County Committee on the Status of Women for eleven years, although I am not speaking on the City's behalf.

SB 1109 SD1 adds a new part to Chapter 321, HRS, to ensure that victims of sexual assault are provided with medically and factually unbiased information about and access to emergency contraception when receiving emergency medical care for sexual assault at Hawai'i's hospitals. The SD1 amends the bill to include only those medical staff that provide emergency care.

Community Alliance on Prisons is in strong support of this measure. Sexual assault is a life threatening event and one that causes most victims long-term trauma. Survivors often experience depression, intense fear, anxiety, and symptoms of post-traumatic stress disorder. Healing may take a lifetime. Many of our incarcerated women have been through the traumatic experience of rape, which has led many of them to use drugs to self-medicate and, sadly that path has led them to prison.

According to the U.S. Department of Justice, Criminal Justice Division information, there were 228 forcible rapes in Hawai'i in 2011.¹ Many survivors of rape require immediate medical attention at one of Hawai'i's emergency rooms.

It is unconscionable to us that women would be denied information and access to emergency contraception in the Aloha State after going through the worst trauma imaginable.

¹ FBI, 2011. "Crime in the United States." Accessed from <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-us/2011/crime-in-the-u.s.-2011/tables/table-1> on December 2, 2012.

In addition to the aftermath of rape, victims find themselves dealing with a host of reproductive and sexual health issues, including pregnancy. Statistics vary, but indicate that approximately 5% - 8% of all rapes result in pregnancy.²

In 2012, sixteen states and the District of Columbia have adopted legislation requiring the provision of information about and/or access to EC to sexual assault victims in emergency rooms.³ The federal government also has standardized rules regarding EC and requires that all military and federal hospitals stock EC.⁴ The Army Medical Command Regulations advise discussing and providing EC to sexual assault victims.⁵

Providing EC in the ER is the accepted standard of care. The American Medical Association's guidelines for treating sexual assault victims states that victims should be informed about and provided EC.⁶ The American College of Obstetrics and Gynecology also supports this standard of care.⁷

I remember the terror in my sister's voice when she called to tell me she had been raped. She was 19 years old. This traumatic and violent assault has impacted her life until this very day and she is now almost 60 years old.

Please pass this compassionate care bill. No one should be denied access and information to medical care in the Aloha State.

Mahalo for this opportunity to testify.

² Psychology Today, 2012. "Why Are Rape Victims More--Not Less--Likely to Become Pregnant?" Accessed from <http://www.psychologytoday.com/blog/animals-and-us/201208/why-are-rape-victims-more-not-less-likely-become-pregnant> on December 2, 2012.

³ National Conference of State Legislatures, 2012. "Emergency Contraception State Laws." Accessed from <http://www.ncsl.org/issuesresearch/health/emergency-contraception-state-laws.aspx> on December 2, 2012.

⁴ Department of Defense, Pharmacy and Therapeutics Committee Recommendations, November 2009, Signed February 2010.

⁵ Army Medical Command Regulation, 40-36, Part 17, January 2009.

⁶ American Medical Association, Strategies for the Treatment and Prevention of Sexual Assault (1995).

⁷ American College of Obstetricians and Gynecologists, 2004. "Violence Against Women: Acute Care of Sexual Assault Victims." at http://www.acog.org/Resources_And_Publications/Committee_Opinions/Committee_on_Health_Care_for_Underserved_Women/Sexual_Assault



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**TESTIMONY FOR SENATE BILL 1109, SENATE DRAFT 1, RELATING TO
HOSPITAL EMERGENCY COMPASSIONATE CARE FOR SEXUAL
ASSAULT VICTIMS**

**Senate Committee on Ways and Means
Hon. David Y Ige, Chair
Hon. Michelle N. Kidani, Vice Chair**

**Thursday, February 21, 2013, 9:00 AM
State Capitol, Conference Room 211**

Honorable Chair Ige and committee members:

I am Kris Coffield, representing the IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 150 local members. On behalf of our members, we offer this testimony in strong support of, with proposed amendments for SB 1109, relating to hospital emergency compassionate care for sexual assault victims.

Four decades after *Roe v. Wade*, women are facing unprecedented challenges to their reproductive rights. In Mississippi, for example, the State Legislature passed HB 1390, requiring abortion providers to gain hospital admitting privileges. This has led to the closure of all but one of the state's abortion clinics, in Jackson, because of concerns that granting admitting privileges would, to quote one hospital, "lead to both an internal and external disruption of the Hospital's function and business within this community." If the Jackson clinic closes, as seems likely at the time of this hearing, the 2,000 women who go there for abortions each year will need to travel out-of-state, being forced to pay additional money for bus fare or gas, as well as childcare, all while losing wages due to travel. There will also be hotel fees: Many nearby states require a 72-hour waiting period between a state-mandated counseling session and an abortion. On top of this, abortion procedures, in the South, can cost \$450 or more. Similarly, Virginia was one of several states, last year, to propose medically unnecessary, painful, vaginal-probe ultrasounds as a mandated precursor to abortion, bringing shame upon the state's lawmakers and executive branch. While this bill does not deal with such intrusive procedures or

cutbacks to reproductive rights, make no mistake, the opponents of this measure are, by and large, anti-rights activists seeking to compartmentalize women's health within the sphere of religious dogma.

Contrary to the views of its opponents, HB 411 does not impugn religious liberty. Instead this bill requires emergency rooms to provide all sexual assault survivors with medically accurate information about emergency contraceptives and administer such contraceptives *if, and only if, a victim chooses, acting out of their personal volition and beliefs about reproductive health.* In 2011, 18.3 percent of women over 18-years-old reported being sexually assaulted in their lifetime, according to research conducted by the American Statistical Association. By comparison, only 17.4 percent of women reported smoking. Allow us to restate that comparison in stark terms: In the United States, rape may be more common than smoking. Other statistics similarly evince the troubling frequency of sexual assault. In 2009, 125,910 rape cases were reported in the United States. Crime In Hawaii reports that, in 2011, there were 434 forcible rapes in Hawaii, victims of which were often in need of medical care at local hospitals and emergency rooms. Finally, a famous study of rape-resultant pregnancy, entitled “Are per-incident pregnancy rates higher than per-incident consensual pregnancy rates?” and published in the peer-reviewed science journal *Human Nature*, found that 6.4 percent of women suffering a single incident of forcible rape (in a given year) became pregnant after being victimized, compared with only 3.1 percent of women who experienced a single incident of consensual sex. Thus, rape may result in pregnancy at double the rate of consensual sex, making the provision of contraception upon request mandated by this bill all the more urgent.

That said, the definition of “sexual assault” currently contained in this bill is extremely problematic, potentially jeopardizing the measure's purpose. The current definition refers to HRS 707-700, yet HRS 707-700 contains no definition of sexual assault. In fact, no definition of sexual assault using the exact language specified in this bill exists in Hawaii's criminal code. Instead, *penetrative* sexual assault is primarily criminalized under HRS 707-730 (first degree), as well as HRS 707-731 (second degree), and HRS 707-732 (third degree). Given the hostility of the opposition to this measure and the general importance of accurate legal language (again, a faulty definition of sexual assault could invalidate the bill's purpose), we suggest incorporating the following definition of sexual assault into the bill: **“Sexual assault” means an act of sexual penetration pursuant to the provisions in 707-730, 707-731, and 707-732.** This definition carries the ancillary benefit of ensuring that all victims of sexual assault are offered emergency

reproductive care. Studies have shown that rape victims are often traumatized and, at times, have trouble remembering details of their assault or admitting the extent of their attack. Thus, the only way to ensure that all sexual assault victims receive reproductive care is to ensure that all victims of sexual assault are offered contraception. Additionally, our amendment would extend the bill's care requirement to cover victims of statutory rape, who may not be covered by the phrase “vaginal penetration without the person's consent,” since statutory rape is defined by age limitations to which *consent* is the philosophical predicate, but not an explicitly defined component of the crime. Under HRS 707-730 and HRS 707-732, sexually penetrative statutory rape applies to anyone who engages in sexual penetration with a person below fourteen-years-old, and anyone who engages in sexual penetration with a minor who is at least fourteen years old but less than sixteen years old, provided that the assailant is not less than five years older than and not legally married to the minor. These victims, too, should be offered compassionate care.

Similarly, we encourage you to amend proposed subsection §321-B(a)(5) to read: “(5) Ensure that each person at the hospital who may ~~provide and~~ **prescribe or dispense** emergency medical care shall be trained to provide a sexual assault victim with medically and factually accurate and unbiased written and oral information about emergency contraception and sexual assault treatment options and access to emergency contraception.” This amendment would clarify that all medical personnel with whom a sexual assault victim may interact, including emergency care physicians and nurses, are required to provide medically accurate contraceptive information—not just the individual providing the contraceptives to the patient—thereby safeguarding against potential circumvention of the law by medical professionals who interact with sexual assault patients, but are not responsible for administering contraceptive pills.

Mahalo for the opportunity to testify in strong support of this bill.

Sincerely,
Kris Coffield
Legislative Director
IMUAlliance



THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

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DATE: February 21, 2013

TO: The Honorable David Y. Ige, Chair
The Honorable Michelle N. Kidani, Vice Chair
Senate Committee on Ways and Means

FROM: Adriana Ramelli, Executive Director
The Sex Abuse Treatment Center

RE: S.B. 1109, S.D. 1
Relating to Hospital Standards for Sexual Assault Victims

Good morning Chair Ige, Vice Chair Kidani and members of the Senate Committee on Ways and Means. My name is Adriana Ramelli and I am the Executive Director of the Sex Abuse Treatment Center (SATC), a program of the Kapi'olani Medical Center for Women & Children (KMCWC), an affiliate of Hawai'i Pacific Health.

SATC strongly supports S.B. 1109, S.D. 1 to ensure sexual assault survivors are provided information about and access to emergency contraception.

Sexual violence remains a major public health issue here in Hawai'i. According to the Attorney General's report, *Crime in Hawai'i*, there were 353 reported forcible rapes in 2011.¹ However, sexual violence is severely underreported. The Department of Justice concluded that between 2006-2010 sixty-five percent (65%) of rapes and sexual assaults went unreported.²

The impact of sexual violence is significant. Survivors face not only emotional trauma, but very real physical consequences. According to one survey, becoming pregnant was a concern to more survivors than contracting sexually transmitted diseases or HIV/AIDS.³

Currently, there are hospitals in Hawai'i that do not provide information about emergency contraception or dispense emergency contraception to survivors of sexual assault. The American Medical Association,⁴ American College of Obstetricians and Gynecologists,⁵ and American College of Emergency Physicians⁶ all recommend that a survivor should be provided with information regarding emergency contraception and/or provided with treatment if indicated. With the passage of this legislation, a sexual assault survivor can be guaranteed to receive the same level of medical care regardless of what facility she presents at and the standard of care recommended by leading medical organizations.

As part of medical treatment provided to female survivors of sexual assault, we firmly believe survivors should be offered medically and factually accurate information (both oral and written) on emergency contraception and be provided with contraception if the

survivor so requests and if medically indicated. It is also important that medical staff serving female sexual assault survivors be adequately trained to provide complete, accurate and unbiased information on emergency contraception.

On O'ahu, those who seek services at SATC are provided the option of a comprehensive medical-legal examination, which is performed at KMCWC. As part of this examination, the attending physician offers female survivors information about emergency contraception. If the survivor is concerned about or at risk of an unwanted pregnancy, the physician can provide contraceptives if they are requested and medically indicated.

If a survivor does not want the comprehensive medical-legal examination, the survivor has the right to decline that examination. Thus, it is not always necessary or appropriate for medical facilities to refer a survivor to SATC for services. However, the survivor's immediate needs must still be met. Pregnancy prevention is a time sensitive issue, as emergency contraception is most effective when taken within 72 after an assault. Therefore, all hospitals in Hawai'i must commit to offering emergency contraception information to the sexual assault survivors they serve and to providing contraceptives to those who choose them.

We urge you to pass S.B. 1109, S.D. 1. It is truly sound, compassionate legislation that underscores a woman's right to choose contraception when faced with the possibility of an unwanted pregnancy resulting from a sexual assault.

Thank you for this opportunity to testify.

¹ State of Hawai'i, Attorney General, Crime Prevention & Justice Assistance Division, Research & Statistics Branch, *Crime in Hawai'i: 2011*, at 4 (Nov. 2012), available at http://hawaii.gov/ag/cpja/main/rs/crimeinhawaii/CIH2011/Crime_in_Hawaii_2011.pdf

² U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Victimizations Not Reported to the Police, 2006-2010 National Crime Victimization Survey*, at 4, available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/vnrp0610.pdf>.

³ National Victim Center, *Rape in America: A Report to the Nation* (1992).

⁴ American Medical Association, Policy H-75.985 *Access to Emergency Contraception*.

⁵ American College of Obstetricians and Gynecologists, Committee on Health Care for Underserved Women, *Committee Opinion: Access to Emergency Contraception*, No. 542, at 1 (Nov. 2012).

⁶ American College of Emergency Physicians, *Management of the Patient with the Complaint of Sexual Assault* (reaffirmed Oct. 2008).