

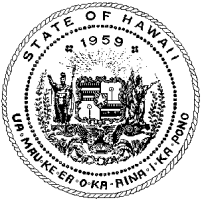
# HB1489 HD1

Measure Title: RELATING TO CIVIL RIGHTS.  
Report Title: Discrimination; Sex; Gender Identity or Expression; Sexual Orientation  
Description: Prohibits a state agency or program or activity receiving state financial assistance from excluding from participation, denying benefits to, or discriminating against a qualified individual by reason of disability, sex, including gender identity or expression, or sexual orientation. (HB1489 HD1)  
Companion: [SB1265](#)  
Package: None  
Current Referral: LBR, JDC/WAM  
Introducer(s): BELATTI, EVANS, ICHIYAMA, LOWEN, MATSUMOTO, NAKAMURA, NAKASHIMA, SAN BUENAVENTURA, DeCoite

<u>Sort by Date</u>		Status Text
1/25/2017	H	Introduced and Pass First Reading.
1/30/2017	H	Referred to LAB, JUD, referral sheet 6
2/10/2017	H	Bill scheduled to be heard by LAB on Tuesday, 02-14-17 10:00AM in House conference room 309.
2/14/2017	H	The committees on LAB recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 7 Ayes: Representative(s) Johanson, Holt, Keohokalole, Nakashima, Takumi, Yamashita, Matsumoto; Ayes with reservations: none; Noes: none; and Excused: none.
2/17/2017	H	Reported from LAB (Stand. Com. Rep. No. 693) as amended in HD 1, recommending passage on Second Reading and referral to JUD.
2/17/2017	H	Passed Second Reading as amended in HD 1 and referred to the committee(s) on JUD with none voting aye with reservations; none voting no (0) and Representative(s) DeCoite, Tokioka excused (2).
2/24/2017	H	Bill scheduled to be heard by JUD on Tuesday, 02-28-17 2:00PM in House conference room 325.
2/28/2017	H	The committees on JUD recommend that the measure be PASSED, UNAMENDED. The votes were as follows: 10 Ayes: Representative(s) Nishimoto, San Buenaventura, Belatti, Brower, Johanson, C. Lee, Morikawa, Nakashima, Oshiro, Thielen; Ayes with reservations: none; Noes: none; and 1 Excused: Representative(s) McDermott.
3/3/2017	H	Reported from JUD (Stand. Com. Rep. No. 1051), recommending passage on Third Reading.
3/7/2017	H	Passed Third Reading with Representative(s) McDermott voting aye with reservations; none voting no (0) and Representative(s) Ichiyama excused (1). Transmitted to Senate.
3/9/2017	S	Received from House (Hse. Com. No. 358).
3/9/2017	S	Passed First Reading.
3/9/2017	S	Referred to JDL, WAM.
3/17/2017	S	The committee(s) on JDL has scheduled a public hearing on 03-22-17 9:30AM in conference room 016.
3/22/2017	S	The committee on JDL deferred the measure.
11/30/2017	D	Carried over to 2018 Regular Session.
1/17/2018	S	Re-Referred to LBR/JDC, WAM.
3/16/2018	S	Re-Referred to LBR, JDC/WAM.
3/16/2018	S	The committee(s) on LBR has scheduled a public hearing on 03-20-18 2:45PM in conference room 229.

S = Senate | H = House | D = Data Systems | \$ = Appropriation measure | ConAm = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.



# HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

March 20, 2018  
Rm. 016, 9:30 a.m.

To: The Honorable Jill N. Tokuda, Chair  
Members of the Senate Committee on Labor

From: Linda Hamilton Krieger, Chair  
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.B. No. 1489, H.D.1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

The stated purpose of H.B. No. 1489, H.D.1, found in Section 1 of the bill, focuses on ensuring that the federal law protections of Title IX of the Education Act of 1972, renamed the Patsy Mink Equal Opportunity Act in 2002, be incorporated and strengthened by codification in Hawai‘i state law. **The HCRC supported H.B. 1489, H.D.1, when it was introduced and hearings held on it during the 2017 session and continues to support enactment of a strong state Title IX corollary. However, the HCRC strongly suggests that a better vehicle for a true and effective state Title IX corollary lies in H.B. No. 2139, H.D.1, which has been referred to the Senate Committees on Education and Judiciary.** H.B. No., 2139, H.D.1, amends HRS chapter 368 by adding a new section prohibiting discrimination on the basis of sex, including gender identity or gender expression, and sexual orientation in state educational programs and activities, or in any educational program or activity that receives state financial assistance.

If enacted, H.B. No. 1489, H.D.1, would add the protected categories “sex, including gender identity or expression, or sexual orientation,” as those terms are defined in HRS § 378-1, to HRS § 368-1.5, which now provides that:

(a) No otherwise qualified individual in the State shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by state agencies, or under any program or activity receiving state financial assistance.

(b) As used in this section, the term “disability” means the state of having a physical or mental impairment which substantially limits one or more major life activities, having a record of such an impairment, or being regarded as having such an impairment.

(c) As used in this section, “state financial assistance” means grants, purchase-of-service contracts, or any other arrangement by which the State provides or otherwise makes available assistance in the form of funds to an entity for the purpose of rendering services on behalf of the State. It does not include procurement contracts, state insurance or guaranty contracts, licenses, tax credits, or loan guarantees to private businesses of general concern that do not render services on behalf of the State.

**Amendment of HRS § 368-1.5 is no longer an effective means of enacting a state Title IX corollary, due to a recent Hawai‘i Supreme Court decision.**

On October 28, 2014, the Hawai‘i Civil Rights Commission issued a decision and order, *In the matter of L.E.*, declaring that public educational institutions, including public charter schools, department of education schools, and units of the University of Hawai‘i were state agencies or programs or activities receiving state financial assistance, covered under HRS 368-1.5, based on the plain meaning of the statute. The HCRC ruled that HRS § 368-1.5 was the state corollary to Section 504 of the Rehabilitation Act of 1974.

On July 9, 2016, the HCRC decision was reversed by a state circuit court holding that the HCRC had exceeded its statutory authority in its declaratory relief decision and order.

On December 5, 2017 the Hawai‘i Supreme Court decided *Hawai‘i Technology Academy and the Department of Education, State of Hawai‘i, v. L.E. and Hawai‘i Civil Rights Commission*, 141 Hawai‘i 147 (2017). In *HTA*, the Court held that in enacting the HRS § 368-1.5 prohibition against disability discrimination in “programs and activities receiving state financial assistance,” the legislature intended to limit jurisdiction to state agencies and other entities that do not receive federal funding.

The *HTA* decision drastically restricted and reduced the number of state and state-funded programs that are covered under § 368-1.5, as there are very few such programs or agencies that do not receive any federal funding. Under *HTA*, the HCRC and the state courts do not have jurisdiction over HRS § 368-1.5 claims against the Department of Education, public charter schools, and the University of Hawai‘i.

The legislature can address the impact of the *HTA* decision by amending HRS § 368-1.5, to clarify the jurisdiction over disability discrimination in “programs and activities receiving state financial assistance” is not limited to state agencies and other entities that do not also receive federal funding. That should be done through a bill that expressly focuses on addressing that issue, with a full discussion of the issues implicated. Without addressing that jurisdictional issue, amendment of HRS § 368-1.5 will have little to no meaningful effect.

## **CONCLUSION**

The purpose of enactment of a state Title IX corollary is better served by using the current vehicle, H.B. No. 2139, H.D.1, and not by the amendment of HRS § 368-1.5 to add sex, including gender identity or expression, or sexual orientation, the means used in H.B. No. 1489, H.D.1.

HAWAII  
STATE  
COMMISSION  
ON THE  
STATUS  
OF  
WOMEN



Chair  
LESLIE WILKINS

COMMISSIONERS:

SHERRY CAMPAGNA  
CYD HOFFELD  
MARILYN LEE  
JUDY KERN  
AMY MONK  
LISA ELLEN SMITH

Executive Director  
Khara Jabola-Carolus

Email: [kjabola-carolus@dhs.hawaii.gov](mailto:kjabola-carolus@dhs.hawaii.gov)

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Honolulu, HI 96813  
Phone: 808-586-5758  
FAX: 808-586-5756

March 19, 2018

To: Sen. Tokuda, Chair  
Sen. English, Vice Chair  
Honorable Members of the S. Committee on Labor

From: Khara Jabola-Carolus  
Executive Director  
Hawai`i State Commission on the Status of Women

Re: Testimony in Support, HB1489

On behalf of the Commission on the Status of Women, mahalo for this opportunity to testify in support of HB1489, with concerns and reservations as to the language of this measure. HB1489, if passed, would add “sex, including gender identity or expression, or sexual orientation” to HRS Sec. 368-1.5.

A state corollary to the Patsy Takemoto Mink Equal Opportunity in Education Act (Title IX) is critically needed in light of the current federal administration’s overt and concerted effort to dismantle federal anti-discrimination laws. The University of Hawai`i’s recent Climate Survey Report further underscores the importance of a state analog to Title IX because it revealed the persistence of sex discrimination, including sexual harassment and violence, on Hawai`i campuses. This data is genuinely troubling given that the Hawai`i State Department of Education (DOE) is only beginning to inch in the direction of meaningful compliance with Title IX.

In January 2018, findings from U.S. Department of Education Office for Civil Rights (OCR) compliance review showed the University of Hawai`i failed its obligations under Title IX and mishandled cases of sexual harassment and violence. In regard to athletics, the DOE’s own 2016 Statewide Athletic Plan showed that fourteen (14) DOE high schools “do not have separate athletic locker facilities for girls, even when boys in those same schools do have such facilities.” DOE has not provided a plan to address these violations of Title IX. The public deserves more than assurances of compliance.

The Commission supported HB1489 during the 2017 Legislative Session and appreciates the Legislature’s efforts to address Title IX compliance through this measure. The Commission is; however, cognizant of a jurisdiction issue raised by a recent Hawai`i Supreme Court decision, which held that the Hawai`i Civil Rights Commission does not have jurisdiction over HRS Sec. 368-1.5 claims against the Department of Education, public charter schools, and the University of Hawai`i.<sup>1</sup> The Commission is also concerned with the bill’s classification of disability under sex and the lack of a private right of action.

The Commission therefore recommends that HB1489 be amended to reflect the language of HB 2139, which was crafted with the input of agency stakeholders in consideration of the *HTA* ruling and the need for a clear enforcement mechanism.

Sincerely,

Khara Jabola-Carolus

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<sup>i</sup> *Hawai‘i Technology Academy and the Department of Education, State of Hawai‘i, v. L.E. and Hawai‘i Civil Rights Commission*, 141 Hawai‘i 147 (2017)



March 15, 2018

Senate's Committee on Judiciary and Labor  
Hawaii State Capitol  
415 South Beretania Street, Room 016  
Honolulu, HI 96813

Hearing: Wednesday, March 22, 2017 – 9:30 a.m.

RE: **STRONG SUPPORT for House Bill 1489 HD 1 – RELATING TO CIVIL RIGHTS**

Aloha Chairperson Tokuda, Vice Chair English and fellow committee members,

I am writing in STRONG SUPPORT to House Bill 1489 HD 1 on behalf of the LGBT Caucus of the Democratic Party of Hawai'i. HB 1489 prohibits a state agency or program or activity receiving state financial assistance from excluding from participation, denying benefits to, or discriminating against a qualified individual by reason of disability, sex, including gender identity or expression, or sexual orientation.

The LGBT Caucus believes that any state agency or program should not be allowed to discriminate against anyone in any of the protected classes. Now with the complete uncertainty of protections the LGBTQIA community will receive at that federal level HB 1489 HD1 is so desperately needed.

The LGBTQIA community is under attack at the federal level and this bill will ensure that the Aloha State will protect not only the LGBTQIA community but all protected classes!

Thank you, Chair and Members of the Committee, for your thoughtful consideration of HB 1489 HD 1.

Mahalo nui loa,

Michael Golojuch, Jr.  
Chair and SCC Representative  
LGBT Caucus for the DPH

To: Hawaii State Senate Committee on Labor  
Hearing Date/Time: Tuesday, Mar. 20, 2018, 2:45 pm.  
Place: Hawaii State Capitol, Rm. 229  
Re: Testimony of Planned Parenthood Votes Northwest and Hawaii in strong support of  
H.B. 1489, HD1, relating to Civil Rights

Dear Chair Tokuda and Members of the Committee,

Planned Parenthood Votes Northwest and Hawaii (“PPVNH”) writes in strong support of H.B. 1489, HD1, which would prohibit discrimination on the basis of sex, gender identity and expression and sexual orientation in state-funded agencies, programs and activities.

H.B.1489 is urgently needed in light of the current federal administration’s overt and concerted effort to dismantle federal anti-discrimination laws. The current administration has reversed the federal government's previous interpretation of the prohibition against discrimination based on “sex” that included discrimination based on sexual orientation, and gender identity and expression. The administration also rescinded protections for transgendered students that had been put into effect by President Obama. In addition, USDOE rescinded its guidance on the investigation of campus sex assaults. As a result, those who have suffered sex-based harm must now contend with weaker protections from sex discrimination, including sexual harassment and sexual assault. This war on women, girls, and LGBT individuals calls upon all of us to take action. Please pass H.B. 1489 and ensure that, regardless of what happens on the federal level, Hawaii continues to promote fairness and equality.

Thank you for this opportunity to testify in support of this important measure.

Sincerely,

Laurie Field  
Hawaii Legislative Director



**HB-1489-HD-1**

Submitted on: 3/17/2018 7:07:12 AM

Testimony for LBR on 3/20/2018 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sean Taylor	Testifying for Hawaii LGBT Legal Association	Support	No

Comments:

**HB-1489-HD-1**

Submitted on: 3/17/2018 2:13:53 PM

Testimony for LBR on 3/20/2018 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
amy agbayani	Testifying for Filipina Advocacy Network FAN	Support	No

Comments:

Filipina Advocacy Network (FAN) strongly supports equal rights of all and non-discrimination of persons because of their gender identity or expression, or sexual orientation.

Please support this bill.

Amy Agbayani

# COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: (808) 927-1214 / [kat.caphi@gmail.com](mailto:kat.caphi@gmail.com)



## COMMITTEE ON LABOR

Sen. Jill Tokuda, Chair,

Sen. Kalani English, Vice Chair

Tuesday, March 20, 2018

2:45 PM

Room 229

## STRONG SUPPORT FOR HB 1489 HD1 - CIVIL RIGHTS

Aloha Chair Tokuda, Vice Chair English 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 in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the families of **ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** as well as the approximately 5,500 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that approximately 1,600 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons is in strong support of this measure. HB 1489 HD1 is important because the actions and statements of the federal government raise serious concerns about the continued enforcement of federal regulations prohibiting sex discrimination. Under the Obama Administration the regulations were interpreted as prohibiting discrimination based on sex, including gender identity and expression, and sexual orientation, in the provision of public and publicly funded programs in the areas of education, employment, health care, housing, social services, public safety, and corrections.

On February 22, 2017, Secretary of Education Betsy DeVos withdrew Department of Education guidance on the protection of transgender children in public K-12 schools, and stated that the matter should be dealt with at the state level. As federal protections against sex, gender, and sexual orientation discrimination in education weaken, the need for a state Title IX equivalent becomes increasingly important.

Please honor Patsy Mink, the author of Title IX by passing this bill and ensuring that her legacy of equality, truth, and justice are the hallmarks of Hawai'i nei!

*We have to build things that we want to see accomplished, in life and in our country, based on our own personal experiences...to make sure that others...do not have to suffer the same discrimination.*

*Patsy Mink*



March 20, 2018

To: Senator Jill Tokuda, Chair  
Senator J. Kalani English, Vice Chair and  
Members of the Committee on Labor

From: Jeanne Y. Ohta, Co-Chair

RE: HB 1489 HD1 Relating to Civil Rights  
Hearing: Tuesday, March 20, 2018, 2:45 p.m., Room 229

POSITION: Support

The Hawai'i State Democratic Women's Caucus writes in support of HB 1489 HD1 Relating to Civil Rights. Which would prohibit State agencies or programs from excluding from participation, denying benefits to, or discriminating against a qualified individual by reason of disability, sex, including gender identity or expression, or sexual orientation.

The protections of Title IX need to be extended to Hawaii law. The current federal administration has already withdrawn support opposing discrimination based on gender identify. It is because of the possible changes in federal regulations and procedures that we support this measure and believe that is critically necessary to promote inclusion of everyone in Hawaii.

The Hawai'i State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawaii's women and girls.

We ask that the committee pass this measure and we thank the committee for the opportunity to provide testimony.



## Hawaii Women's Coalition

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### COMMITTEE ON LABOR

Senator Jill N. Tokuda, Chair

Senator J. Kalani English, Vice Chair

DATE: Tuesday, March 20, 2018

TIME: 2:45 p.m.

PLACE: Conference Room 229

**STRONG SUPPORT FOR HB1489 that prohibits a state agency or program or activity receiving state financial assistance from excluding from participation, denying benefits to, or discriminating against a qualified individual by reason of disability, sex, including gender identity or expression, or sexual orientation. (HB1489 HD1)**

Aloha Chair Tokuda, Vice Chair English and members,

The Coalition is in **strong support** of this bill as a critical step in preserving the hard-won rights guaranteed under Title IX or the Patsy T. Mink Act.

The Trump administration has demonstrated its pervasive and pernicious misogyny in reversing the federal government's previous interpretation of the prohibition against discrimination based on "sex" that included discrimination based on sexual orientation, and gender identity and expression. The administration also rescinded protections for transgendered students that had been put into effect by President Obama.

What is most egregious is that USDOE rescinded its guidance on the investigation of campus sex assaults. As a result, those who have suffered sex-based harm must now contend with weaker protections from sex discrimination, including sexual harassment and sexual assault. If you have doubts as to the pervasiveness of sex assault on campus we recommend you view "**The Hunting Ground**" now streaming on Amazon and Netflix:

Please note the recent University of Hawaii Climate Survey Report, which polled 44,671 adult students across ten UH campuses, further reveals the necessity for a state-level solution. **For example, 1 in 8 students felt that it was likely that they would experience sexual assault or sexual harassment while on campus, while 1 in 4 felt that an off-campus, university-sponsored event incident was likely.** In addition, 1 in 16 UH survey participants system-wide reported non-consensual sexual contact at any time while enrolled at UH.

**As a 2<sup>nd</sup> wave feminist who has spent the bulk of her life fighting to achieve equity and safety for women I fervently request that you take this step to protect Hawaii from the sickening onslaught against women that is fostered by the current climate of hate-filled politics sweeping our country.**

Mahalo for the opportunity to testify,

Ann S. Freed Co-Chair, Hawai'i Women's Coalition

Contact: [annsfreed@gmail.com](mailto:annsfreed@gmail.com)



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46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Executive Director

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**TESTIMONY FOR HOUSE BILL 1489, HOUSE DRAFT 1, RELATING TO CIVIL RIGHTS**

**Senate Committee on Labor  
Hon. Jill N. Tokuda, Chair  
Hon. J. Kalani English, Vice Chair**

**Tuesday, March 20, 2018, 2:45 PM  
State Capitol, Conference Room 229**

Honorable Chair Tokuda and committee members:

I am Kris Coffield, representing IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 400 members. On behalf of our members, we offer this testimony in strong support of House Bill 1489, HD1, relating to civil rights.

On February 22, 2017, the administration of President Donald Trump revoked Obama-era protections that allowed transgender students to use bathrooms and facilities corresponding with their gender identity in public schools. Education and LGBT advocacy groups quickly and correctly denounced the revocation as a politically motivated attack that will endanger transgender children and sow confusion over the federal government's role in enforcing civil rights. As attacks on minorities escalate across the country following Donald Trump's election to the nation's highest political office, the President and his executive team have demonstrated a willingness to violate civil liberties with reckless abandon, from banning Islamic individuals from entering the United States to threatening immigrant communities with deportation to appointing a Secretary of Education descended from an anti-LGBT dynasty that promotes conversion therapy to "cure LGBT children of same-sex attractions."

Amending HRS §368 to defend against discrimination based on gender, gender expression, or sexual orientation, then, codifies into state law what exists at the federal level under Title IX of the Education Amendments Act of 1972, redesignated in 2002 as the Patsy Mink Equal Opportunity in Education Act. While the applicability of protections articulated under HRS § 368-1.5 to educational institutions is currently the subject of a pending appeal before the Hawai'i Supreme Court in *Hawaii Technology Academy v. Elento and the Hawai'i Civil Rights Commission*, the actions of the Trump administration mandate greater state protections for LGBT individuals in education, employment, health care, housing, social services, public safety, and

corrections, among other areas, as federal protections appear on the cusp of elimination. Under Obama, the Equal Employment Opportunity Commission broadened the scope of existing employment nondiscrimination law to encompass LGBT people by interpreting Title VII's ban on workplace "sex discrimination" to include discrimination based on sexual orientation and gender identity. EEOC officials reasoned that discrimination against LGBT people is rooted in stereotypical beliefs about gender expression, biology, and romantic attraction, which directly connect to beliefs about sex. The commission's 2015 decision that antigay discrimination is sex discrimination was 3–2; the majority was composed entirely of Obama appointees.

More controversially, the U.S. Department of Education borrowed the EEOC's logic to interpret Title IX as banning sex discrimination in any educational institution or program that receives federal funds, unless the institution receives an explicit waiver for religious purposes. In 2014, under Obama's purview, the DOE announced that Title IX's sex discrimination provision bans LGBT discrimination (while also holding that excluding transgender students from the bathroom that corresponds to their gender identity constitutes illegal sex discrimination). When religious schools swiftly moved to obtain a waiver from the new rules, the DOE responded by providing a public list of the exempted institutions, which were previously permitted to exempt themselves in secrecy. We must call to mind children like Ash Whitaker, who sued his transphobic school after it banished him from the boys' bathroom and considered making him wear a bright green wristband so the staff could monitor his restroom use. In September of 2016, Whitaker won an emphatic ruling forbidding his school from discriminating against him. In the Trump Era, however, one can easily imagine progressive anti-discrimination policies being repealed.

Every Hawai'i anti-discrimination statute prohibits discrimination based on sex, gender identity and expression, and sexual orientation, except for HRS §368. According to researchers at the Williams Institute, Hawai'i maintains the highest percentage of persons who identify as transgender individuals. Hawai'i also has a long history of guarding against discrimination toward our LGBT community, beginning with the landmark *Baehr v. Miike* ruling in 1993 that initiated the legal battle for marriage equality in the United States. When it comes to education specifically, Board of Education Policy 305.10 prohibits discrimination under any DOE program and HRS Chapter 489 bans discrimination in public accommodations, including on the basis of gender expression or sexual orientation. Thus, this bill amplifies protections already established in state law, board policy, and administrative rules.

Hawai'i prides itself on being a paradise for all. To keep the arc of the islands' history bending toward justice, we ask your committee to support this bill.

Sincerely,  
Kris Coffield  
*Executive Director*  
IMUAlliance

**HB-1489-HD-1**

Submitted on: 3/19/2018 9:36:20 AM

Testimony for LBR on 3/20/2018 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Younghi Overly	Testifying for American Association of University Women Hawaii	Support	No

Comments:

Chair Tokuda, Vice-Chair English, and Members of the Senate Committee on Labor,

I would like to thank you for the opportunity to testify in SUPPORT of H.B. 1489, which would enact a state version of Title IX by prohibiting discrimination on the basis of sex in schools and workplace that receive state financial assistance.

H.B. 1489 is urgently needed in light of the current federal administration’s overt and concerted effort to dismantle federal anti-discrimination laws. The current federal administration has reversed the federal government’s previous interpretation of the prohibition against discrimination based on "sex" that included discrimination based on sexual orientation, and gender identity and expression. The administration also rescinded protections for transgendered students that had been put into effect by President Obama.

In addition, USDOE rescinded its guidance on the investigation of campus sex assaults. As a result, those who have suffered sex-based harm must now contend with weaker protections from sex discrimination, including sexual harassment and sexual assault. I would request that H.B. 1489 be amended to include protections from sex discrimination, including sexual harassment and sexual assault.

Based on a nationally representative survey of 1,965 students in grades 7–12 conducted by American Association of University Women (AAUW), sexual harassment is part of everyday life in middle and high schools: (Source: Hill, C., “Crossing the Line: Sexual Harassment at School,” Nov. 2011)

- Nearly half (48 percent) of the students surveyed experienced some form of sexual harassment in the 2010–11 school year, and the majority of those students (87 percent) said it had a negative effect on them;
- Girls were more likely than boys to be sexually harassed, by a significant margin (56 percent versus 40 percent);
- Being called “gay” or “lesbian” in a negative way is sexual harassment that girls and boys reported in equal numbers (18 percent of students).



Despite overwhelming evidence of sexual harassment in schools, the Civil Rights Data Collection (CRDC) revealed that more than three-fourths (79) of all public school grades 7-12 reported zero incidents of sexual harassment. The math does not add up. (Source: Yuen, P., "Three-Fourths of Schools Report Zero Incidents of Sexual Harassment in Grades 7-12," Oct. 24, 2017)

According to the recent University of Hawai'i Climate Survey Report, which polled 44,671 adult students across 10 UH campuses: (Source: Loui, P. "University of Hawai'i Student Campus Climate Survey on Sexual Harassment and Gender-Based Violence: Executive Summary," Sept. 11, 2017)

- - Native Hawaiian students are particularly vulnerable to all forms of gender violence on campus;
  - 1 in 10 students reported experiencing sexual harassment at any time while enrolled at UH;
  - 14.7% percent of students at UH perceive sexual assault and harassment to be extremely problematic at UH;
  - 1 in 8 students felt that it was likely that they would experience sexual assault or sexual harassment while on campus, with 1 in 4 feel that an off-campus, university-sponsored event incident was likely;
  - 46% of students perceived that campus officials would treat students who experience sexually harassment or gender violence respectfully, and 49% believed their safety would not be protected;
  - 1 in 16 UH survey participants system-wide reported non-consensual sexual contact at any time while enrolled at UH;
  - Lesbian/gay/bisexual students had significantly higher rates of all forms of gender violence than those in other sexual orientation groups;
  - Transgender, genderqueer and non-conforming students were, by a large margin, the most likely to experience nonconsensual sexual contact.

Weakening of protection from sex discrimination including sexual harassment and sexual assault will only worsen a problem that is already bad.

Please pass this important measure and protect our keiki.



March 19, 2018

Senator Jill N. Tokuda, Chair  
Senator J. Kalani English Vice Chair  
Senate Committee on Labor

**Re: H.B. 1489, H.D. 1 Relating to Civil Rights**

**Hearing: Tuesday March 20, 2018, 2:45 pm, Room 229**

Dear Chair Luke, Vice Chair Cullen and Members of the Committee on Finance:

Hawaii Women Lawyers submits testimony in **support** of H.B. 1489, H.D.1. This measure prohibits a state agency or program or activity receiving state financial assistance from excluding from participation, denying benefits to, or discriminating against a qualified individual by reason of disability, sex, including gender identity or expression, or sexual orientation.

The mission of Hawaii Women Lawyers is to improve the lives and careers of women in all aspects of the legal profession, influence the future of the legal profession, and enhance the status of women and promote equal opportunities for all.

Despite much work and progress towards equality, discrimination still exists towards women, as well as others. Today's federal administration has shown its broad intent to dismantle or decline to enforce anti-discrimination laws and programs, to include Title IX. It is imperative that Hawaii take care of its vulnerable, and at-risk citizens.

Hawaii Women Lawyers supports this measure because it continues to show our commitment to gender equity, and continue to enforce anti-discrimination in Hawaii. It also embraces the legacy of Congresswoman Patsy Mink. We understand that H.B. 1489, H.D. 1 is a broader bill than H.B. 2139 H.D.1 Relating to Discrimination in Women, and that the Committee might prefer the latter; however, it is imperative that at least one movers forward and is enacted this session. For this reason, we respectfully request that the Committee pass H.B. 1489, H.D.1.

Thank you for the opportunity to testify in strong support of this measure.

Executive Director  
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Dennis Dunn

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Linda Jameson

Michael P. Matsumoto

Nadine Tenn Salle, MD

Deane Salter

Joshua A. Wisch

Date: March 20, 2018

To: The Honorable Jill N. Tokuda, Chair  
The Honorable J. Kalani English, Vice Chair  
Senate Committee on Labor

From: Justin Murakami, Policy Research Associate  
The Sex Abuse Treatment Center  
A Program of Kapi'olani Medical Center for Women & Children

RE: Testimony in Support of H.B. 1489 H.D. 1 with Amendments  
Relating to Discrimination in Education

Good afternoon Chair Tokuda, Vice Chair English, and members of the Senate Committee on Labor:

The Sex Abuse Treatment Center (SATC) supports H.B. 1489 H.D. 1 with amendments.

As noted in Section 1 of the bill, the intent of this measure is to extend the protections of the federal Patsy Mink Equal Opportunity in Education Act, also known as Title IX of the Education Amendments of 1972 (Title IX), to state agencies and programs and activities that receive state funds.

National and local surveys of educational institutions receiving public funds support that such protections are badly needed. In one study conducted by the American Association of University Women, it was found that sexual harassment is a part of everyday life in middle and high schools, with 48% of students surveyed reporting that they experienced some form of sexual harassment during the school year (56% of female students and 40% of male students). In Hawai'i, the University of Hawai'i System recently reported its Climate Survey Report, which revealed that many students experienced harassment and gender violence on campus, and have come to expect that it will be a part of their school experience.

Unfortunately, over the past year, the current presidential administration and members of its cabinet have worked to dismantle or weaken many of the protections against sex-based discrimination in federally funded education programs previously afforded under Title IX. This includes reversing the interpretation of 'sex' to exclude sexual orientation and gender identity and expression, reducing protections for LGBTQ individuals. Moreover, the US Department of Education, under the current administration, rescinded guidance on the investigation of campus incidents of gender-based violence, including sexual assault, weakening systems for holding offenders accountable and providing victims relief.

We respectfully ask that the Committee please further amend H.B. 1489 H.D. 1 by adopting the language provided in H.B. 2139 H.D. 1, an updated version of this measure introduced, with its Senate Companion, S.B. 2353, for consideration earlier this year. It is our understanding that this would:

- Express additional legislative findings that expand upon the reasons that a state corollary to Title IX is warranted at this time, including specific reference to sexual harassment and sexual assault as forms of sex discrimination; and
- Align the focus of this measure with Title IX, protecting students and others who are involved with education programs and activities that receive public funds from discrimination on the basis of sex.

Passage of H.B. 1489 H.D. 1 with the above suggested amendments would be a powerful affirmation that the State of Hawai'i is aligned with the historical objectives of Title IX to reject sex discrimination and all forms of gender-based harassment and violence in education programs and activities that receive public funding.

We appreciate the opportunity to provide testimony concerning this important measure.

**HB-1489-HD-1**

Submitted on: 3/19/2018 2:28:18 PM

Testimony for LBR on 3/20/2018 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	Testifying for Oahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i	Support	No

Comments:

TESTIMONY IN SUPPORT OF  
H.B. 1489, H.D. 1– RELATING TO CIVIL RIGHTS

Senate Committee on Labor  
March 20, 2018, 2:45pm, Conference Room 229

Dear Chair Tokuda, Vice Chair English and Members of the Committee:

I would like to thank the Committee for the opportunity to testify in SUPPORT of H.B. 1489, H.D. 1 and provide COMMENTS. H.B. 1489, H.D. 1 would enact a state version of Title IX by prohibiting discrimination on the basis of sex in programs and activities that receive state financial assistance.

We urgently need a state corollary of Title IX and appreciate the Legislature's efforts to protect our students against sex discrimination through this measure. The Trump administration has reversed the federal government's previous interpretation of the prohibition against discrimination based on "sex" that included discrimination based on sexual orientation, and gender identity and expression. The administration also rescinded protections for transgendered students that had been put into effect by President Obama. In addition, USDOE rescinded its guidance on the investigation of campus sex assaults. As a result, those who have suffered sex-based harm must now contend with weaker protections from sex discrimination, including sexual harassment and sexual assault. This war on women, girls, and LGBT individuals calls upon all of us to take action.

The recent University of Hawai'i Climate Survey Report, which polled 44,671 adult students across ten UH campuses, further reveals the necessity for a state-level solution. For example, 1 in 8 students felt that it was likely that they would experience sexual assault or sexual harassment while on campus, while 1 in 4 felt that an off-campus, university-sponsored event incident was likely. In addition, 1 in 16 UH survey participants system-wide reported non-consensual sexual contact at any time while enrolled at UH.

The University survey also confirms that LGBTQ students are the most vulnerable, and experience the highest rates of gender violence and sexual harassment, as compared to their male/female counterparts and students identifying as heterosexual. For example, while there was a troubling, high prevalence of intimate partner violence across the University system with 19.1% of student respondents reporting intimate partner violence (~ 1 in 10 students), transgender and gender non-conforming (TGQN) students had the highest rate of dating and domestic violence with 40.3% of undergrad TGQN students and 29.6% of TGQN community college students reporting IPV. The alarming prevalence of gender violence against our LGBTQ students exemplifies the need to expand statutory protection and legal recourse against discrimination of sex to include, gender identity/expression and sexual orientation.

While we support this bill, **we strongly urge you to consider the language of H.B. 2139, HD1 and would like to submit the following comments for your consideration.** H.B. 2139, HD 1, provides greater protections and rights to students affected by sex and gender discrimination than H.B. 1489, H.D. 1.

Comparatively, H.B. 1489, H.D. 1 does not provide a private right of action for victims of sex discrimination by a state-funded agency. This effectively makes H.B.1489, H.D. 1 a broad policy measure, which is important in light of the current federal administration's overt and concerted effort to dismantle federal anti-discrimination laws, but does not provide a clear and secure safety vehicle for victims as provided under H.B. 2139, HD 1.

Additionally, we agree that the recognition of disability as a protected class is necessary. However, the classification of disability under sex may lead to future confusion when the law is being applied. In this regard, we recommend that the language relating to disability be amended, as to reflect the scope of sex discrimination in H.B. 2139, HD1.

Accordingly, I SUPPORT H.B. 1489, H.D. 1, but respectfully urge your Committee to consider and pass the language of H.B. 2139 HD 1. Thank you for the opportunity to provide testimony.

Sincerely,

Cu Ri Lee  
AF3IRM Hawai'i

**HB-1489-HD-1**

Submitted on: 3/16/2018 8:29:11 PM

Testimony for LBR on 3/20/2018 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joshua Kay	Individual	Support	No

Comments:

This isn't already a law? I strongly support HB1489 HD1. Let's get going on this already!