

Charlotte A. Carter-Yamauchi
Director

Shawn K. Nakama
First Assistant

Research (808) 587-0666
Revisor (808) 587-0670
Fax (808) 587-0681



LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 446
415 S. Beretania Street
Honolulu, Hawaii 96813

Written Comments

SB1042 SD1 RELATING TO CIVIL RIGHTS

Charlotte A. Carter-Yamauchi, Director
Legislative Reference Bureau

Presented to the Senate Committee on Judiciary

Thursday, February 21, 2019, 9:00 a.m.
Conference Room 016

Chair Rhoads and Members of the Committee:

Good morning Chair Rhoads and members of the Committee, my name is Charlotte Carter-Yamauchi and I am the Director of the Legislative Reference Bureau. Thank you for providing the opportunity to submit written comments on S.B. No. 1042, S.D. 1, Relating to Civil Rights.

The purpose of this measure is to:

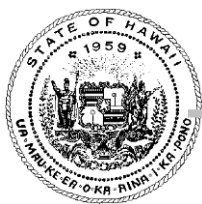
- (1) Extend the deadline for the Bureau to complete its study of existing federal Title IX procedures and enforcement, in addition to examining Title IX corollaries in other jurisdictions; and
- (2) Serve as a means for implementing the recommendations in the study.

The Bureau takes no position on this measure, but submits the following comments for your consideration.

The Bureau acknowledges that the act requiring the study, Act 110, Session Laws of Hawaii 2018, established a report due date of no later than twenty days prior to the convening of the 2019 Regular Session, which was December 27, 2018. Due to an extraordinary amount of additional work during this past interim and the substantial complexity of this study's subject matter, the Bureau has been unable to complete the Title IX

study in the time allotted to it. However, the Bureau is working diligently to complete the study as soon as possible in light of the challenges posed by, among other things; articulating the evolving nature of the federal Title IX enforcement process and the concomitant uncertainty that lies ahead; an unavoidable change to assigned Bureau personnel conducting the study during a critical time in the study process; and the Bureau's current heavy session workload.

Thank you again for the opportunity to present written comments.



HAWAI‘I CIVIL RIGHTS COMMISSION

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

February 21, 2019
Rm. 016, 9:00 a.m.

To: The Honorable Karl Rhoads, Chair
The Honorable Glenn Wakai, Vice-Chair
Members of the Senate Committee on Judiciary

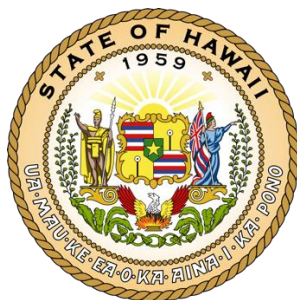
From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. No. 1042, S.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 (on the basis of disability). 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 HCRC supports S.B. No. 1042, S.D. 1, which amends Section 3 of Act 110, Session Laws of Hawaii 2018, to allow the Legislative Reference Bureau (LRB) additional time, through March 1, 2019, to complete its study of existing Title IX enforcement practices and procedures at the federal level and in other jurisdictions, and submit a report to the legislature with findings and recommendations, including proposed legislation regarding an appropriate enforcement mechanism for the newly codified HRS chapter 368D, which goes into effect on January 1, 2020.

Under Act 110, the LRB report and recommendations, including draft legislation providing for enforcement of HRS chapter 368D, was to be submitted twenty days prior to the convening of the 2019 session. S.B. No. 1042, S.D. 1, should be advanced in order to allow for substantive discussion of the LRB recommendations, keeping alive the possibility that a statutory enforcement scheme can be enacted, to provide for enforcement of HRS chapter 368D, effective January 1, 2020.



Testimony on behalf of the
Hawai'i State Commission on the Status of Women
Khara Jabola-Carolus, Executive Director

Prepared for the Senate Committee on Judiciary

In Support of SB1042 SD1
Decision Making - ONLY
Thursday, February 21, 2019, at 9:00 a.m. in Room 016

Dear Chair Rhoads, Vice Chair Wakai, and Honorable Members,

The Hawai'i State Commission on the Status of Women writes in support of SB1042 SD1, which would require the Legislative Reference Bureau to submit by 3/1/2019, a report studying how other jurisdictions oversee Title IX enforcement.

Last year, Hawai'i made history by passing HB1489 into Act 110, creating a state analog to the Patsy Mink Equal Opportunity in Education Act (Title IX). The landmark law; however, is incomplete and lacks enforcement procedures and remedies. In light of the Trump administration's revocation of more than twenty Obama-era policy guidelines on anti-discrimination laws, state action is critical. The Commission supports the extension of the LRB deadline to ensure that the new law is enforceable, and does not erode existing Hawai'i civil rights laws.

Accordingly, the Commission supports the intent of this measure and respectfully urges the Committee to pass SB1042 SD1.

Sincerely,

Khara Jabola-Carolus

SB-1042-SD-1

Submitted on: 2/16/2019 4:10:42 PM

Testimony for JDC on 2/21/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	Testifying for LGBT Caucus of the Democratic Party of Hawaii	Support	No

Comments:

Aloha Senators,

The LGBT Caucus of the Democratic Party of Hawaii supports the passage of SB 1042 SD1.

Mahalo for your consideration and for the opportunity to testify.

Mahalo,

Michael Golojuch, Jr.
Chair
LGBT Caucus of the Democratic Party of Hawaii

SB-1042-SD-1

Submitted on: 2/17/2019 9:27:03 AM

Testimony for JDC on 2/21/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch	Testifying for Palehua Townhouse Association	Support	No

Comments:



Hawaii Women's Coalition

COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Glenn Wakai, Vice Chair

DATE: Thursday, February 21, 2019

TIME: 9:00am

PLACE: Conference Room 016

STRONG SUPPORT FOR SB1042 that requires the Legislative Reference Bureau to submit by 3/1/2019, a report studying how other jurisdictions oversee Title IX enforcement. (SD1)

Aloha Chair Rhoads, Vice Chair Waikai and members,

We fully support moving this critical study up to this date. We feel this is matter of some urgency as the Betsy Devos agenda of eliminating rights and protections guaranteed to students under the Patsy T. Mink act are being eroded day by day. The abuse of civil rights in our classrooms was bad before Devos, but under her the threats are greater.

In the 50 years since this landmark legislation was passed our public education system has made only a token effort at compliance. For example, DOE's 2016 statewide athletic plan shows there were 14 schools that have male athletic locker rooms, but no facilities for females. That does even address the inequity of funding for girls athletics. In addition, a lawsuit was filed in 2018 alleging that "Hawaii's public school administrators have systematically failed to protect students from bullying and harassment, leading to violent attacks." Unequal and hostile educational environment indeed.

Here are the facts:

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. This is clearly a cover-up, a case of institutions protecting themselves at the expense of students (as was found by the filmmakers of "The Hunting Ground".)

According to the recent University of Hawaii Climate Survey Report, which polled 44,671 adult students across 10 UH campuses:

- 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;
- 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;
- Lesbian/gay/bisexual students had significantly higher rates of all forms of gender violence than those in other sexual orientation groups;
- And, graduate students are most vulnerable to sexual harassment and non-consensual sexual contact by faculty.

And as to our DOE public schools a 2014-15 federal compliance review on bullying that included nearly 70,00 students found the following:

- Nearly **40 percent of students** said incidents of bullying they'd experienced or witnessed made them feel unsafe at school.
- The majority of students who reported being bullied at school said that they were harassed based on race, national origin, **sex** or because of a disability.
- More than half of bullying incidents were reported to a teacher or other school employee. Schools took no action to stop the bullying in 15 percent of cases.
- And over half of students who said they reported bullying or harassment were **victimized again** after the initial incident.

In light of these findings, we are asking for:

- A Hawaii State Corollary providing Title IX protection like those provided by 2011 and 2014 Title IX guidance from U.S. Department of Education (USDOE).
- A Hawaii State Title IX Corollary, UH and Hawaii DOE regulation which would also provide:
 - More explicit process for notifying parties involved with complaints.
 - More explicit directions regarding how to notifying students of their rights and resources... without being overly prescriptive.
 - Better protections for vulnerable populations identified in 2017 UH Climate Survey Report.
 - Clear definition of "notice" and expectations for reporting (responsible employees)
 - Allocation of funds to create equitable locker rooms and other athletic related spaces at Hawaii DOE schools and across UH System.
 - Allocation of funds for additional support services (i.e. mental health counselors, advocates and educators).

Mahalo for the opportunity to testify,

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



of Hawaii

February 19, 2019

From: Hannah Liebreich, Title IX Specialist, Public Policy Committee, AAUW Hawaii
Younghee Overly, Public Policy Chair, AAUW Hawaii

To: Hawaii State Senate Committee on Judiciary
Hearing Date/Time: February 21, 2019 9:00 AM
Place: Hawaii State Capitol, Rm. 016
Re: Testimony in SUPPORT of SB1042 SD1

Dear Chair Rhoads, Vice-Chair Wakai, and Members of the Committee,

Thank you for this opportunity to testify in in **strong support** of SB1042 SD1. SB1042 SD1 extended the deadline for the legislative reference bureau to complete the study on Title IX directed by Act 110, Session Laws of Hawaii 2018, from 20 days before the start of the 2019 Hawaii legislative session to March 1, 2019.

With recent dramatic changes to US DOE's Title IX regulation, we need this study which would provide analysis of Title IX enforcement practices and procedures on the federal level and other jurisdictions, and recommendations on the foregoing issues, including a proposed legislation. The findings and recommendations from the study are critical input to propose a Title IX bill for the 2020 Hawaii state legislative session.

Hawaii needs a state law which would provide further protection to students from discrimination and harassment based on sex and gender under Title IX.

- Based on 2014 USDOE OCR's Hawaii state-wide survey of 66.07% or 69,905 Hawaii DOE students:¹
 - Nearly one-third of students surveyed have been personally bullied or harassed at school or school related activities during the 2014-2015 school year
 - 61.7% of those who indicated that they were bullied or harassed believe it was because of their race, sex, and/or disability
 - Over half of those who indicated that they were bullied or harassed reported the incident to a teacher or other school employee
 - In 14.6% of cases where the incident was reported, the school took no action in response
 - Over half of those who reported the initial incident to a school official indicated that they were bullied or harassed again
 - More than half of students surveyed had personally witnessed another student being bullied or harassed within a past school year
 - Of those who had witnessed, three-fourths believed the bullying or harassment was because of the victim's race, sex, and/or disability
 - Nearly 40% of all students surveyed the bullying or harassment that they had either experienced or witnessed made them feel unsafe at school

¹ <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/10115003-a.pdf>

- According to the recent University of Hawai'i Climate Survey Report, which polled 44,671 adult students across 10 UH campuses:²
 - 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;
 - 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;
 - Lesbian/gay/bisexual students had significantly higher rates of all forms of gender violence than those in other sexual orientation groups;
 - And, graduate students are most vulnerable to sexual harassment and non-consensual sexual contact by faculty.
- Both UH system and Hawaii DOE were found non-compliant to current federal Title IX law. UH Manoa is under entered Voluntary Resolution Agreement with OCR³ and Hawaii DOE has been sued by ACLU for its discrimination against girls.⁴

Given these troubling findings, AAUW Hawaii humbly recommends:

- Hawaii State Corollary providing Title IX protection which were provided by 2011 and 2014 Title IX guidance from U.S. Department of Education (USDOE).
- Hawaii State Title IX Corollary, UH and Hawaii DOE regulation which would also provide:
 - More explicit process for notifying parties involved with complaints.
 - More explicit directions regarding how to notifying students of their rights and resources... without being overly prescriptive.
 - Better protections for vulnerable populations identified in 2017 UH Climate Survey Report.
 - Clear definition of "notice" and expectations for reporting (responsible employees)
- Allocation of funds to create equitable locker rooms and other athletic related spaces at Hawaii DOE schools and across UH System.
- Allocation of funds for additional support services (i.e. mental health counselors, advocates and educators).

The American Association of University Women (AAUW) of Hawaii is a state-wide organization made up of six branches (Hilo, Honolulu, Kauai, Kona, Maui, and Windward Oahu) and includes just over 450 active members with over 1700 supporters statewide. As advocates for gender equity, AAUW of Hawaii promotes the economic, social, and physical well-being of all persons.

Thank you for your time and consideration regarding this important issue.

Sincerely,



Hannah Liebreich

² Loui, P. "University of Hawai'i Student Campus Climate Survey on Sexual Harassment and Gender-Based Violence: Executive Summary," Sept. 11, 2017.

³ <https://www.hawaii.edu/news/2018/03/02/title-ix-compliance-review-of-uh-manoa-resolved/>

⁴ <https://www.kitv.com/story/39652078/the-history-of-title-ix-compliance-in-hawaiis-public-schools>

SB-1042-SD-1

Submitted on: 2/19/2019 10:38:54 PM

Testimony for JDC on 2/21/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:



Executive Director
Adriana Ramelli

ADVISORY BOARD

President
Mimi Beams

Joanne H. Arizumi

Andre Bisquera

Kristen Bonilla

Marilyn Carlsmith

Dawn Ching

Senator (ret.)
Suzanne Chun Oakland

Monica Cobb-Adams

Donne Dawson

Dennis Dunn

Steven T. Emura, M.D.

Councilmember
Carol Fukunaga

David I. Haverly

Linda Jameson

Michael P. Matsumoto

Lindsay Norcross Mist

Nadine Tenn Salle, M.D.

Joshua A. Wisch

Date: February 21, 2019

To: The Honorable Karl Rhoads, Chair
The Honorable Glenn Wakai, Vice Chair
Senate Committee on Judiciary

From: Justin Murakami, Manager, Prevention Education and Public Policy
The Sex Abuse Treatment Center
A Program of Kapi'olani Medical Center for Women & Children

RE: Testimony in Support of S.B. 1042 S.D. 1
Relating to Civil Rights

Good morning Chair Rhoads, Vice Chair Wakai, and members of the Senate Committee on Judiciary:

The Sex Abuse Treatment Center (SATC) supports S.B. 1042 S.D. 1.

National and local surveys of educational institutions that receive public funds support that protections against gender-based discrimination, including sexual harassment and violence, 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 harassment during the school year (56% of female students and 40% of male students). In Hawaii, the University of Hawaii System reported its Climate Survey Report in 2018, which revealed that many students experienced harassment and violence on campus, and have come to expect that it will be a part of their school experience.

Gender-based discrimination in educational programs is a significant barrier to academic, professional, and personal success. Students who experience harassment and sexual violence, in particular, can suffer from stress and trauma that results in poor academic performance, negative health consequences, social withdrawal, and the decision to defer or discontinue their education altogether.

Act 110 (2018) extended the anti-discrimination rule of the federal Patsy Mink Equal Opportunity in Education Act (Title IX), to state agencies and activities that receive state funds, and directed the Legislative Reference Bureau to perform a study in order to provide guidance and make recommendations as to effective enforcement and remedies. However, the Legislative Reference Bureau was unable to complete the study prior to the 2019 Session.

We therefore ask that the Committee please pass S.B. 1042 S.D. 1 to provide a reasonable and limited extension for the completion of the study, consistent with the recommendation of the American Association of University Women of Hawaii, so that input from students and other community stakeholders concerning the study findings and recommendations may be sought in advance of the 2020 Legislative Session.

Thank you for this opportunity to testify in support of S.B. 1042 S.D. 1.

SB-1042-SD-1

Submitted on: 2/17/2019 4:18:42 PM

Testimony for JDC on 2/21/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rosemarie Muller	Individual	Support	No

Comments:

To: Hawaii State Senate Committee on Judiciary
Hearing Date/Time: Thursday, 02-21-2019 at 9:00am
Place: Hawaii State Capitol, Room 016
Re: Judith Ann Armstrong is in support of SB1041 SD1

Dear Members of the Committees,

Thank you for this opportunity to testify in in **strong support** of SB1042 SD1. SB1042 SD1 extended the deadline for the legislative reference bureau to complete the study on Title IX directed by Act 110, Session Laws of Hawaii 2018, from 20 days before the start of the 2019 Hawaii legislative session to March 1, 2019.

With recent dramatic changes to US DOE's Title IX regulation, we need this study which would provide analysis of Title IX enforcement practices and procedures on the federal level and other jurisdictions, and recommendations on the foregoing issues, including a proposed legislation. The findings and recommendations from the study are critical input to propose a Title IX bill for the 2020 Hawaii state legislative session. Hawaii needs a state law which would provide further protection to students from discrimination and harassment based on sex and gender under Title IX

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

Sincerely,
Judith Ann Armstrong
1717 Ala Wai Blvd
Apt 3006
Honolulu, HI 96815

SB-1042-SD-1

Submitted on: 2/19/2019 6:06:03 PM

Testimony for JDC on 2/21/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Eileen M Gawrys	Individual	Support	Yes

Comments:

SB-1042-SD-1

Submitted on: 2/19/2019 6:17:29 PM

Testimony for JDC on 2/21/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Younghi Overly	Individual	Support	Yes

Comments:

Dear Chair Rhoads, Vice-Chair Wakai, and Members of the Senate Committee on Judiciary,

Thank you for this opportunity to submit a testimony in strong support for SB1042 SD1, which extends the deadline for the legislative reference bureau to complete the study on Title IX directed by Act 110, Session Laws of Hawaii 2018, from 20 days before the start of the 2019 Hawaii legislative session to March 1, 2019.

With recent dramatic changes to US DOE's Title IX regulation, we need this study which would provide analysis of Title IX enforcement practices and procedures on the federal level and other jurisdictions, and recommendations on the foregoing issues, including a proposed legislation. The findings and recommendations from the study are critical input to propose a Title IX bill for the 2020 Hawaii state legislative session.

Both UH system and Hawaii DOE were found non-compliant to current federal Title IX law. UH Manoa is under entered Voluntary Resolution Agreement with OCR^[1] and Hawaii DOE has been sued by ACLU for its discrimination against girls.^[2] Hawaii more than ever before needs a state law which would provide further protection to students from discrimination and harassment based on sex and gender under Title IX.

[1] <https://www.hawaii.edu/news/2018/03/02/title-ix-compliance-review-of-uh-manoa-resolved/>

[2] <https://www.kitv.com/story/39652078/the-history-of-title-ix-compliance-in-hawaiis-public-schools>

SB-1042-SD-1

Submitted on: 2/20/2019 10:10:02 AM

Testimony for JDC on 2/21/2019 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Kaia Eagle	Individual	Support	No

Comments:

SB-1042-SD-1

Submitted on: 2/20/2019 10:57:43 AM

Testimony for JDC on 2/21/2019 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara J. Service	Individual	Support	No

Comments:

Please ensure that the Legislative Reference Bureau completes its study on Title IX by 8/31/19.

Mdahalol