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

Written Comments

SB1042 **RELATING TO CIVIL RIGHTS**

Charlotte A. Carter-Yamauchi, Director
Legislative Reference Bureau

Presented to the Senate Committee on Government Operations

Tuesday, February 5, 2019, 3:15 p.m.
Conference Room 225

Chair Thielen and Members of the Committee:

Good afternoon Chair Thielen 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, 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. The Bureau also acknowledges that the January 24, 2019, deadline extension proposed in this measure has passed as well. 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.

With these factors in mind, the primary purpose of the Bureau's written comments is to provide the Committee with factual information on:

- (1) The current status of federal Title IX enforcement; and
- (2) The corollaries to Title IX ("state law corollaries") codified in other states' laws.

Federal Law and Regulations

The key provision of Title IX states, with certain exceptions, that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]"¹ The scope of Title IX's protection is very broad.² However, federal enforcement of Title IX has been in a state of flux in recent years. A recent and significant development was the November 29, 2018, publication of a Notice of Proposed Rulemaking ("NPRM") by United States Department of Education ("USDOE") that seeks to amend Title IX's implementing regulations.³ The NPRM was the result of the USDOE's determination that "current regulations and guidance do not provide appropriate standards for how recipients [of federal funding pursuant to Title IX] must respond to incidents of sexual harassment."⁴ The majority of the proposed rule changes address Title IX complaints

¹ 20 United States Code §1681(a).

² The Title IX statute and its implementing regulations, codified at 34 Code of Federal Regulations ("C.F.R.") Part 106 and often referred to as the "federal Title IX rules," aim to ensure, for example, that male and female students have equal access to classes and academic programs, regardless of the subject matter, which may have been traditionally "male" or "female"; that students are not required to participate in sex-segregated athletic or extracurricular activities without a compelling reason; that applicants for admission to a university are not treated differently on the basis of sex for financial aid, student housing benefits, or any other service or benefit provided to students; that athletic scholarships are not disproportionately available to members of one sex but not the other; that applicants for employment are not treated differently on the basis of sex; that professors are not denied promotion or tenure on the basis of sex; and so on.

³ See *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 83 Fed. Reg. 61462 (proposed November 29, 2018) (to be codified at 34 C.F.R. Part 106), *available at* <https://www.gpo.gov/fdsys/pkg/FR-2018-11-29/pdf/2018-25314.pdf>.

⁴ *Id.* at 61462 and 61464. The USDOE explained that "schools and colleges were uncertain about whether the Department's guidance was or was not legally binding" and noted that "the obligations set forth in previous guidance were issued without the benefit of notice and comment that would have permitted the public and all stakeholders to comment on the feasibility and effectiveness of the guidance."

involving sexual harassment.⁵ However, other proposed rule changes would affect Title IX complaints in a broader sense.⁶ In addition to proposing specific changes to Title IX's implementing regulations, the NPRM also sought input on specific questions formulated by the USDOE.⁷ The allotted sixty-day period for public comments ended on January 28, 2019.

The extent to which the final regulations will differ in substance from the NPRM is unknown at this time. Accordingly, there exists a degree of uncertainty with respect to any impact flowing from the amended Title IX rules on current Title IX enforcement practices of educational institutions that receive federal financial assistance ("recipient institutions") nationwide, and possibly on states' approaches to enforcing state law corollaries.

⁵ *See id.* at 61462. Generally speaking, the provisions of the NPRM seek to:

- Define the conduct constituting sexual harassment for Title IX purposes;
- Specify the conditions that activate a recipient's obligation to respond to allegations of sexual harassment and impose a general standard for the sufficiency of a recipient's response;
- Specify situations that require a recipient to initiate its grievance procedures; and
- Establish procedural safeguards that must be incorporated into a recipient's grievance procedures to ensure a fair and reliable factual determination when a recipient investigates and adjudicates a sexual harassment complaint.

⁶ *See id.* at 61462-61463. Other provisions of the NPRM seek to:

Clarify that in responding to any claim of sex discrimination under Title IX, recipients are not required to deprive an individual of rights that would be otherwise guaranteed under the U.S. Constitution; prohibit the Department's Office for Civil Rights (OCR) from requiring a recipient to pay money damages as a remedy for a violation of any Title IX regulation; and eliminate the requirement that religious institutions submit a written statement to qualify for the Title IX religious exemption.

⁷ *See id.* at 61482-61483. The questions include: (1) whether any of the proposed changes to the regulations would be inappropriate if applied to elementary and secondary schools, given the age and development abilities of their students; (2) whether the proposed new regulations that apply specifically to complaints of sexual harassment would be "unworkable" if applied to employees of recipient institutions who are accused of sexual harassment; and (3) whether requiring a uniform standard of evidence in all Title IX cases would be preferable to allowing recipient institutions to choose which standard to apply and, if so, what standard would be the "most appropriate."

Title IX State Law Corollaries

Alaska, California, Kentucky, Maine, Nebraska, New York, Rhode Island, and Washington are among the states besides Hawaii that have enacted state law corollaries. Each state law examined by the Bureau prohibits sex discrimination for educational institutions that receive state financial assistance. Other common key features include provisions that: (1) delegate enforcement and rulemaking authority, and require that rules be promulgated; (2) require that specific antidiscrimination policies and enforcement regimes be implemented; (3) provide for oversight and reporting; and (4) provide language to clarify how the state antidiscrimination law is to be enforced by legal action and constructed with other laws.

Depending on the state, enforcement responsibility generally rests with a state board of education, a commissioner or superintendent of K-12 education in conjunction with the president of each public institution of higher education in the state, or a human rights commission or division.

The majority of the states examined give enforcement and rulemaking authority to a governing body in the area of education, at the state or school district level, and require that rules be promulgated. For elementary and secondary education, Alaska gives oversight authority to its Board of Education and Early Development, but enforcement responsibility rests primarily with the governing body of each school district; enforcement at post-secondary institutions is handled at the school level. Similarly, California tasks its Department of Education with oversight, but each school district is responsible for local enforcement. Rhode Island places enforcement responsibility with its Commissioner of Elementary and Secondary Education, with each local education agency responsible for overseeing compliance within its district, whereas its Board of Education oversees compliance at public institutions of higher learning. Kentucky gives enforcement authority to the state departments and agencies that extend state financial assistance to education programs or activities. In Nebraska, enforcement rests with the governing boards of educational institutions.

Other states enforce their state law corollaries wholly or partly through a human rights commission or division. Maine gives enforcement authority to the Maine Human Rights Commission, a quasi-independent state agency, but allows its Commissioner of Education to participate in the Commission's predetermination resolution and conciliation efforts. New York has codified gender antidiscrimination in education in its human rights law and vests enforcement authority with the New York Human Rights Division, which is a division of the New York Executive Department. New York has a separate law prescribing policies to combat gender violence at the university level that is enforced by school officials. Washington has separate laws that respectively prohibit sex discrimination at elementary and secondary schools and at institutions of higher education; the former is enforced by the Superintendent of Public Instruction and the latter by the Student Achievement Council, a state agency with jurisdiction over higher education, in conjunction with the Washington State Human Rights Commission.

The California and New York laws appear to be among the most comprehensive (in the sense of how much of the process it articulates) of the state laws examined. California's law creates a detailed framework for the development of a grievance process, model policies, a student's bill of rights, state evaluation and oversight, and data and reporting requirements. New York's human rights law is similarly comprehensive in prescribing a grievance process. Both New York and California's laws require the development of data relating to gender discrimination and evaluation and reporting regimes to track the performance of the laws.

Six of the states examined expressly provide for a private right of action (Alaska, California, Maine, Nebraska, New York, and Washington), while the remaining state statutes examined are silent on a right of action (Kentucky and Rhode Island). All of the states examined, except for Rhode Island, provide express language clarifying the intent of the law's construction with other laws.

More detailed information on the state law corollaries is presented below in chart form:

	<u>State</u>	<u>Statute</u>	<u>Enforcement Responsibility</u>	<u>Enforcement Procedures Prescribed</u>	<u>Private Right of Action Explicitly Allowed</u>	<u>Relief in Statutory Language</u>
1.	AK	Alaska Stat. Title 14, Chapter 8. Prohibition Against Discrimination Based on Sex or Race in Public Education.	The Alaska Board of Education and Early Development has rulemaking authority, the authority to conduct hearings, find violations, take corrective action, and withhold state funding. The governing body of each school district has primary enforcement responsibility.	Yes.	Yes.	Independent right of action in superior court for civil damages and for such equitable relief as the court may determine.
2.	CA	Cal. Educ. Code, Title 1, Division 1, Part 1, Chapter 2. Educational Equity.	The State Department of Education provides oversight; the governing boards of school districts are primarily responsible for enforcement.	Yes, policies and minimum requirements for procedure prescribed.	Yes.	The law may be enforced by civil action after appeals are made to the State Department of Education. Civil law remedies include "injunctions, restraining orders, or other remedies or orders."
3.	KY	Ky. Rev. Stat. §344.550-344.575. Equity in Education.	Agencies providing funding that comprises 2% or more of an educational institution's state assistance have rulemaking authority and may discontinue state assistance, with legislative oversight and judicial review.	Hearing and notice requirements mandated.	Statute silent.	N/A.

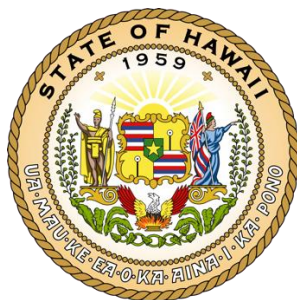
	<u>State</u>	<u>Statute</u>	<u>Enforcement Responsibility</u>	<u>Enforcement Procedures Prescribed</u>	<u>Private Right of Action Explicitly Allowed</u>	<u>Relief in Statutory Language</u>
4.	ME	Me. Rev. Stat. Title 5, Chapter 337. Human Rights Act.	The Maine Human Rights Commission, with the participation of the Commissioner of Education.	Yes.	Yes.	Civil damages and equitable relief, including reasonable attorneys' fees and costs, through an action filed with the superior court.
5.	NE	Neb. Rev. Stat. §79-2,114. Equal Opportunity in Education.	The governing boards of educational institutions, with technical assistance from the Nebraska State Department of Education.	Yes.	Yes.	Equitable relief and compensatory money damages through an original action in the district court.
6.	NY					
	A.	N.Y. State Executive Law, Article 15. Human Rights Law.	The New York Human Rights Division.	Yes (division rules).	Yes.	Cause of action in any court of appropriate jurisdiction for damages and such other remedies as may be appropriate, including fines and penalties.
	B.	N.Y. Education Law Art. 129-B. "Enough is Enough."	The New York State Department of Education.	Yes.	No.	N/A.
7.	RI	R.I. Gen. Laws §16-38-1.1. Discrimination Because of Sex.	Commissioner of elementary and secondary education; the president of each public college, community college, university, and other public institution of higher learning in the state.	Not detailed in statute; rulemaking authority given to Commissioners and school Presidents.	Statute silent.	N/A.

	<u>State</u>	<u>Statute</u>	<u>Enforcement Responsibility</u>	<u>Enforcement Procedures Prescribed</u>	<u>Private Right of Action Explicitly Allowed</u>	<u>Relief in Statutory Language</u>
8.	WA					
	A.	Wash. Rev. Code, Title 28A, Chapter 640. Sexual Equality.	The Office of the Superintendent of Public Instruction.	Yes.	Yes.	Right of action in superior court for civil damages and such equitable relief as the court may determine.
	B.	Wash. Rev. Code, Title 28B, Chapter 110. Gender Equality in Higher Education.	The Student Achievement Council and the Washington State Human Rights Commission.	No.	Yes.	Enjoinment of further violation and actual damages and cost of suit, including reasonable attorneys fees, in a civil action in a court of competent jurisdiction.

Summary

In summary, a number of states have enacted state law corollaries to Title IX, with somewhat differing enforcement approaches, which are to be explained and analyzed in the Bureau's forthcoming report. At this time, however, the Bureau is unable to comment on any conclusions or recommendations that may be contained in the report, particularly with respect to the question of an appropriate enforcement mechanism for chapter 368D, Hawaii Revised Statutes (Discrimination in State Educational Programs and Activities).

Thank you again for the opportunity to present written comments.



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

Prepared for the S. Cmtee. on GOV

In Support of SB1042
Tuesday, February 5, 2019, at 3:15 p.m. in Room 225

Dear Chair Thielen, Vice Chair Inouye, and Honorable Members,

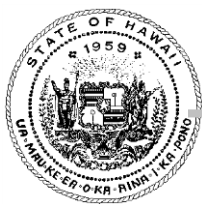
The Hawai'i State Commission on the Status of Women writes in **support** of SB1042 which would require the Legislative Reference Bureau to submit by 1/24/2019, a report studying how other jurisdictions oversee Title IX enforcement.

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.

Sincerely,

Khara Jabola-Carolus



HAWAI‘I CIVIL RIGHTS COMMISSION

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

February 5, 2019
Rm. 225, 3:15 p.m.

To: Senator Laura H. Thielen, Chair
Members of the Senate Committee on Government Operations

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

Re: S.B. No. 1042

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, which amends Section 3 of Act 110, Session Laws of Hawaii 2018, to allow the Legislative Reference Bureau (LRB) additional time, through January 21, 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 20, 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 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.

SB-1042

Submitted on: 2/1/2019 4:25:13 PM

Testimony for GVO on 2/5/2019 3:15:00 PM

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 HB 1042.

Mahalo for your consideration and for the opportunity to testify.

Mahalo,

Michael Golojuch, Jr.

Chair

LGBT Caucus of the Democratic Party of Hawaii

To: Hawaii State Senate Committee on Government Operations
Hearing Date/Time: Tuesday, February 5, 2019, 3:15 pm.
Place: Hawaii State Capitol, Rm. 225
Re: Testimony of Planned Parenthood Votes Northwest and Hawaii in strong support of S.B. 1042, relating to Civil Rights

Dear Chair Thielen and Members of the Committee,

Planned Parenthood Votes Northwest and Hawaii (“PPVNH”) writes in strong support of S.B. 1042, which requires the Legislative Reference Bureau to submit by 1/24/2019 a report studying how other jurisdictions oversee Title IX enforcement.

Enforcement of Title IX is urgently needed in light of the current federal administration’s overt and concerted effort to dismantle federal anti-discrimination laws. 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 most 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.¹ In addition, 1 in 16 UH survey participants system-wide reported non-consensual sexual contact at any time while enrolled at UH.²

Please pass S.B. 1042 to take a step closer to ensuring that our state Title X law adequately protects victims of sexual assault and harassment on campus and provides them with the care and justice they deserve.

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

Sincerely,
Laurie Field
Hawaii State Director

¹ Loui, P. “University of Hawaii Student Campus Climate Survey on Sexual Harassment and Gender-Based Violence: Executive Summary,” Sept. 11, 2017.

² Id.

SB-1042

Submitted on: 2/2/2019 5:16:35 AM

Testimony for GVO on 2/5/2019 3:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Kunitake	Individual	Support	No

Comments:

Please support SB 1042. We need to improve the efficacy of Title IX and implement recommendations determined by the study.

After being stalked at an out of state graduate school for five month, I learned how important it is for educational institutions to support and protect their students, faculty and staff in matters relating to sexual harrassment, sexual violence and other unwanted behaviors.

We need the State of Hawaii to step up and support SB 1042 to protect victims and create a culture of transparency and accountability of those who are accused.

Mahalo,

Caroline Kunitake



of Hawaii

February 2, 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 Government Operations

Hearing Date/Time: February 5, 2019 3:15PM

Place: Hawaii State Capitol, Rm. 225

Re: Testimony in SUPPORT of SB1042

Dear Chair Thielen, Vice-Chair Inouye, and Members of the Committee,

Thank you for this opportunity to testify in in strong support of SB1042, which would provide further protection to students based on sex and gender under Title IX.

- 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.¹
- 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.

Given these troubling findings, AAUW Hawaii humbly asks that the Committee consider:

- 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.

¹ Yuen, P., "Three-Fourths of Schools Report Zero Incidents of Sexual Harassment in Grades 7-12," Oct. 24, 2017.

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

- 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,

A handwritten signature in blue ink, appearing to read 'Hannah Liebreich', written in a cursive style.

Hannah Liebreich

SB-1042

Submitted on: 2/3/2019 11:15:27 AM

Testimony for GVO on 2/5/2019 3:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Jo Morrow	Individual	Support	No

Comments:

Why wouldn't women have equal rights? This to me is the main question? We are the breadwinners in most families. We are the "mothers" that nourish, nurture, and educate the children. We are the voters? Just because we do not have the same physical equipment as a male, why are we being discriminated against? Are men jealous of the progress women have made and are trying to hang on to a "1950's" version of America, where the woman in the house did not work and mainly served the men in the house? This is the question that should be asked!

SB-1042

Submitted on: 2/3/2019 6:16:25 PM

Testimony for GVO on 2/5/2019 3:15:00 PM

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

Comments:

It is imperative we push toward upholding Title XI as originally intended, especially in light of the current DC administration pushing against Title XI and the protections and enforcement of the rights of our children.

SB-1042

Submitted on: 2/3/2019 7:35:07 PM

Testimony for GVO on 2/5/2019 3:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
elizabeth hansen	Individual	Support	No

Comments:

Aloha Legistors: As a social worker with a Masters Degree in Social Work, and have worked in the schools for 20 years, I have seen the need for IX protection for students. So this is a bill I support and hope you will also.

We need to have allocation of funds to create equitable locker rooms and other athletic related spaces at Hawaii DOE schools and across UH System.

Also needed is allocation of funds for additional support services (i.e. mental health counselors, advocates and educators).

Mahalo,

Elizabeth Hansen, Hakalau HI 96710

SB-1042

Submitted on: 2/4/2019 8:58:24 AM

Testimony for GVO on 2/5/2019 3:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Monk	Individual	Support	No

Comments:

I strongly support this measure. Act 110 is a much needed law that will protect Hawaii's students. However, I believe that LRB should take the time necessary to craft well-reasoned enforcement and implementation recommendations.

SB-1042

Submitted on: 2/4/2019 11:52:37 AM

Testimony for GVO on 2/5/2019 3:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Younghi Overly	Individual	Comments	No

Comments:

Dear Chair Thielen, Vice Chair Inouye, and members of GVO Committee,

Thank you for this opportunity to submit a comment for SB1042. As you know, Act 110 of Session Laws of Hawaii 2018 prohibits, effective January 1, 2020, discrimination on the basis of sex, including sexual orientation, gender identity, or gender expression, in any state educational program or activity, or in any educational program or activity that receives state financial assistance. Act 110 also directs the LRB to conduct a study of existing federal Title IX procedures and enforcement in addition to examining Title IX corollaries in other jurisdictions.

Meanwhile, the U.S. Department of Education (USDOE) is working to systematically dismantle Title IX protections. After withdrawing Title IX protection for transgender students in February 2017^[1] and reversing 2011 and 2014 Title IX guidance in September 2017^[2], the USDOE announced in November 2018 Notice of Proposed Rulemaking (NPRM), a plan to reverse 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. USDOE also rescinded its guidance on the investigation of campus sex assaults.^[3]

On one hand, I am eager to see Hawaii's Title IX corollary to provide the protection our keiki need from sexual harassment and assault immediately. On the other hand, I am concerned that Act 110 would cause unnecessary confusion and delay without the explicit process and support resources, especially given the new US DOE Title IX regulations. We need LRB's study as directed by Act 110, input from community (students, teachers, parents, etc), and then state corollary with explicit process and support.

Please delay the effective date of Act 110 to July 1, 2020 and please instruct LRB to complete the study by March 1, 2019.

Mahalo for your consideration.

[1] <https://www.ed.gov/news/press-releases/us-secretary-education-betsy-devos-issues-statement-new-title-ix-guidance>

[2] <https://www.ed.gov/news/press-releases/department-education-issues-new-interim-guidance-campus-sexual-misconduct>

[3] <https://www.aauw.org/article/the-attack-on-title-ix/>

To: Senate Committee on Government Relations
Chair Laura Thielen, Vice Chair Lorraine Inouye

Re: SB 1042 LRB; Education; Civil Rights; Discrimination; Sex; Sexual Orientation; Gender Identity; Gender Expression; Study; Requires the Legislative Reference Bureau to submit by 1/24/2019, a report studying how other jurisdictions oversee Title IX enforcement.

February 5, 2019

Chair Thielen and Vice Chair Inouye-

The National Association of Social Workers- Hawai'i is in strong support of SB 1042. Watching the systematic dismantling of the Title IX protections by the US department of Education at the national level has made it abundantly clear that we need to institute protections on the state level. Gender based violence and discrimination continue to be prevalent, with data showing sexual harassment as young as middle school for nearly 48% of students (AAUW, 2011).

Discrimination and harassment continue through the college years, with 1 in 10 UH students experiencing harassment while enrolled, with Native Hawaiian and gender non-conforming students experiencing the highest rates of gender violence.

This is where we need your help. We are requesting an LRB report to study how other places enforce Title IX.

- Enforcement by the Hawaii State Corollary of the Title IX protections that were spelled out in 2011 and 2014 Title IX guidance from the 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 resource, without being overly prescriptive.



National Association of Social Workers

- 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
- Hawaii DOE schools and across UH System.
- Allocation of funds for additional support services (i.e. mental health counselors, advocates and educators).

Sonja Bigalke-Bannan, MSW, LSW

Executive Director

National Association of Social Workers- Hawai'i

SB-1042

Submitted on: 2/4/2019 7:29:25 PM

Testimony for GVO on 2/5/2019 3:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Midwives Alliance of Hawaii	Testifying for Midwives Alliance of Hawaii	Support	No

Comments:

We strongly support SB1042.

SB-1042

Submitted on: 2/4/2019 7:30:05 PM

Testimony for GVO on 2/5/2019 3:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lea Minton	Individual	Support	No

Comments:

LATE

Submitted For Public Testimony
Tuesday, February 5, 2019
Session 30 of the Hawaii State Legislature
PM Azinga

Title IX is a federal civil rights law in the United States of America that was passed as part of the Education Amendments of 1972. It was specifically prohibited discrimination on the basis of “sex” by any education programs of activity receiving federal funding. In May 2016 the Obama administration submitted guidance letter to the Title IX of the Civil Rights Act informing those institution that received federal funding should interpret “sex” as “gender identity”. The Obama Administration did this without notice and comment. Without the opportunity for the public to respond. Which constituted a violation of the Administrative Procedural Act and interpreting sex to mean “gender identity” placing females, women & girls at risk. This would have obliterated regulations of sex segregated space for female, women & girls i.e. colleges, sports, dormitories, restrooms, lockers, & showers. On Thursday February 23, 2017 the Trump Administration withdrew that guidance laws that said Title IX of the Civil Rights Acts applied to discrimination based on gender identity.

In addition with regard to SB 1042/HB483 Legislative Reference Bureau report studying how other jurisdictions overseeing Title IX enforcement should also reflect the Supremacy Clause of the **United State Constitution (Article VI, Clause 2)** which establishes that the Constitution, federal laws made pursuant to it and treaties made under its authority, constitute the supreme law of the land. Even state constitutions are subordinate to **federal law**.

As well as the Preemption Doctrine originates from the Supremacy Clause of Article 6 of the U.S. Constitution. This doctrine **states** that any **federal law**, even if it is only a regulation from a **federal** agency, **supersedes** any conflicting **state law**, even if that **law** is part of the **state's** constitution.

SB 1042/HB483 should not misconstrue the use of sex with gender identification as interchangeable.

SB1042/HB483 should not misinterpret that it is possible to both enshrine “gender identity” in civil rights laws & also protect females, girls & women as a distinctive legally protected category.

SB1042/HB483 should not mistranslate biology as bigotry.

SB1042/HB483 should not misalign sex to be gender identity which in essence for female threatens the 1972 Title 9 that protects women & girls in the educational arena segregated sex spaces colleges, dormitories, sports, restrooms, showers, & locker.

SB1042/HB483 should not mistakenly promote extreme individualism which may be narcissist based misogyny.

SB1042/HB483 should not misguidedly identifying “gender identity” as being one of the three sexuality for it is neither hetero-sexuality, homo-sexuality, nor bi-sexuality.