

# HAWAI‘I CIVIL RIGHTS COMMISSION

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March 11, 2021  
2:00 p.m.  
via Videoconference

To: Hon. Justin Woodson, Chair  
Hon. Jean Kapela, Vice Chair  
Members of the House Committee on Education

From: Liann Ebesugawa, Chair  
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.C.R. No. 12 / H.R. No. 13

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 H.C.R. No. 12 and H.R. No. 13.**, which, if adopted, would convene a Task Force to address the implementation of the Hawai‘i state law corollary to Title IX of the federal Education Amendments of 1972, renamed in 2002 as the Patsy T. Mink Equal Opportunity in Education Act.

Act 110, L 2018, established a state corollary to Title IX by adding a new chapter to Title 20 of the Hawai‘i Revised Statutes, now HRS chapter 368D, prohibiting discrimination based on sex, including gender identity or expression, or sexual orientation in any state educational program and activity or educational program or activity that receives state financial assistance. With Act 110, the legislature adopted a two-step process: 1) enactment of the basic statutory civil rights protection effective January 1, 2020; and, 2) an LRB study and report in the interim to inform the legislature on enforcement issues and mechanisms. This approach provided both a strong statement of the State’s commitment to eliminate sex discrimination, and an opportunity to make measured and informed legislative decisions on the appropriate statutory enforcement scheme.

Effective January 1, 2020, the new statute, HRS § 368D-1, defines both “state educational programs and

activities” and “educational programs and activities that receive state financial assistance.” It was critically important to include these definitions which make it expressly clear that the legislature did not intend to exclude educational programs and activities that also receive federal funds from coverage under the new state law.

H.C.R. No. 12 and H.R. No. 13 discuss serious concerns over 2020 U.S. Department of Education rulemaking that had the intent and effect of eroding and dismantling Title IX protections against sex discrimination on the bases of sexual orientation and gender identity, and protections against sexual violence, assault, and harassment as well. That rule was entitled “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 85 Fed. Reg. 30026 (May 19, 2020),

On March 8, 2021, President Biden signed an Executive Order expressing a policy commitment that all students should be guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity, and ordering a review of all regulations, orders, guidance documents, policies, and agency actions that are inconsistent with that commitment, including the afore-mentioned 2020 USDOE rulemaking.

The shifting federal interpretation and enforcement of Title IX protections against sex discrimination, with about-face turns in conflicting rules, guidance, and executive actions and orders, serve to highlight the need for strong state law and the legislature’s wisdom in enacting the state law corollary to Title IX. Here, as a historical theme in Hawai‘i civil rights lawmaking, federal law is a “floor” beneath which state law protections against discrimination cannot drop, rather than a “ceiling” above which state law protections cannot rise. California Federal Sav. and Loan Ass’n v. Guerra, 479 US 272, 290-292 (1987).

As the legislature and the Act 110 Implementation Task Force that would be convened pursuant to this resolution address the implementation of our state corollary to Title IX, it should be noted, and we should be mindful, that Act 110 and HRS § 368D-1 already provide a basic enforcement mechanism – a direct cause of action in state court.

In relevant part, HRS§ 368D-1(a), (d) and (e) provide:

**368D-1 State educational programs and activities; discrimination prohibited.** (a) No person in the State, on the basis of sex, including gender identity or expression as defined in

section 489-2, or sexual orientation as defined in section 489-2, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under:

- (1) Any state educational program or activity; or
- (2) Any educational program or activity that receives state financial assistance.

\* \* \* \* \*

**(e) Nothing in this chapter shall preclude a student participating in any educational program or activity who is aggrieved by a violation of this chapter from filing a civil action in a court of competent jurisdiction.**

**(f) A person, or an organization or association on behalf of a person alleging a violation of this chapter may file a complaint pursuant to this chapter.**

The statute provides for more than an implied cause of action for violations of the new state Title IX corollary - it expressly provides for a statutory cause of action. In this respect, HRS chapter 368D is self-implementing, and the legislature and task force may face a challenge that is less daunting than first thought.

The HCRC supports H.C.R. No. 12 and H.R. No. 13.

**HR-13**

Submitted on: 3/9/2021 12:57:14 PM

Testimony for EDN on 3/11/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Laurie Field	Planned Parenthood Votes Northwest and Hawaii	Support	No

Comments:

Planned Parenthood Votes Northwest and Hawaii supports HR 13. Thank you!



March 10, 2021

House Committee on Education Chair Justin Woodson, Vice Chair Jeanne Kapela and Committee members

From: Amy Monk, Co-Chair, Women's Caucus of the Democratic Party of Hawai'i

Subject: Testimony in SUPPORT of HR13 Re a Task Force to Address Implementation of Hawai'i's Title IX Law

Thank you for the opportunity to provide testimony in SUPPORT.

We were pleased with the passage of a Hawaii Title IX law in 2019 which includes prohibits discrimination on the basis of sex, but also, first in the nation, discrimination on the basis of gender identity, sexual orientation, and gender expression.

The law was only lacking the implementation and enforcement mechanism so victims of sexual harassment or assault can seek those protections assured by law. You will recall, the 2019 study of the LRB did not result in any recommendations, though it did provide research on the method of implementing Title IX in other states.

What is needed is a task force to recommend an effective implementation and enforcement framework in light of the State law passed in 2019 and the various Federal rule changes which took place in the interim.

Therefore, we strongly support the prompt convening of a task force to work on implementation recommendations.

Me ke aloha pumehana,

*Amy Monk,*  
Hawai'i State Democratic Women's Caucus





March 11, 2021

Aloha Chair Woodson, Vice-Chair Kapela, and honorable members of the House Committee on Education,

It is with gratitude that I testify in support of HCR12/HR13: Convening a task force to address implementation of Hawaii's state law corollary to Title IX in light of recent changes to federal Title IX regulations.

In the summer of 2020, the final rule sparked broad, sweeping rollbacks for students, survivors, and schools across the country. Within campus communities and institutional structures, these setbacks imposed by these new guidelines manifested themselves differently. Universities face unique challenges in implementing these new guidelines to their Title IX processes -- yet, the focus there remains, per usual, on schools. This leaves out whole campus communities with students directly impacted by sexual violence out of the conversation. As much as it is important to understand the impact of a new rule on current state law, it is far more important to turn your heads to the students living through these times.

1 in 10 students will experience sexual violence by the time they leave college. According to recent anonymous systemwide survey results from the University of Hawai'i, approximately 60% of students reported that sexual violence at the university is problematic AND reported an increase in students experiencing sexual assault and harassment since 2017.

This is clearly an issue that is happening here, and broad sweeping changes directly supporting student survivors must happen now. However, the continued centralization of Institutions of Higher Education in these conversations does not allow this movement to effectively impact change. With that, I raise concern relative to the scope of the conversation solely on the State Law corollary to Title IX, as we know, only an estimated 10% of student survivors will come forward to report through official channels. Without addressing the complexities of reporting and the roadblocks of achieving justice through reporting, we are simply continuing a decades-old conversation where the needle has not moved. Addressing the issue must expand into addressing the lack of options available to survivors. Therefore, I request the framework of amendments and legislation to be addressed by the taskforce be broadened to further address the following: Resources that must be readily and transparently available to students on campus; trauma-informed, evidence-based prevention and awareness programming; and information shared transparently between students and institutions.

As it currently stands, the individuals to be on the task force do not center those most impacted: Students and survivors. And, nor does it offer a solid platform for experts in survivor advocacy and victim services to offer recommendations to what can and should be done for survivors. Therefore, I request the following positions are established within the resolution: experts in sexual violence and domestic violence prevention and response, and survivor-centered



March 11, 2021

advocacy; student and survivor voices to truly voice the scope of the problem on Hawai'i campuses and what they need; and positions for experts in policy external to investigatory processes.

We cannot address sexual violence and subsequent policy solely through the lens of an adjudicatory process; we must broaden the scope to understand how this violence happens in the first place, how to prevent it, and the multitude of ways we can respond to offer options to achieve justice through other avenues. Students are living this on your campuses every day. The clock is ticking, and time must not be wasted in seeking solid solutions.

Thank you for the opportunity to offer testimony in support of HCR12/HR13.

Sincerely,  
Nora Gallo  
*co-Executive Director, The Every Voice Coalition*





## HCR 12/HR 13, CONVENING A TASK FORCE TO ADDRESS IMPLEMENTATION OF HAWAII'S STATE LAW COROLLARY TO TITLE IX IN LIGHT OF RECENT CHANGES TO FEDERAL TITLE IX REGULATIONS.

MARCH 11, 2021 · HOUSE EDUCATION COMMITTEE  
· CHAIR REP. JUSTIN WOODSON

**POSITION:** Support.

**RATIONALE:** Imua Alliance supports HCR 12/HR 13, convening a task force to address implementation of Hawai'i's state law corollary to Title IX in light of recent changes to federal Title IX regulations.

According to the Rape, Abuse and Incest National Network, the nation's largest anti-sexual violence organization, 11.2 percent of all college students experience rape or sexual assault through physical force, violence, or incapacitation. Among undergraduate students, 23.1 percent of females experience rape or sexual assault through physical force, violence, or incapacitation. This issue is not specific to women, either. Male college-aged students (18-24) are 78 percent more likely than non-students of the same age to be a victim of rape or sexual assault.

Sexual violence is pervasive on college campuses in Hawai'i. According to UH's most recent climate survey, conducted in 2019:

- Approximately 60 percent of students at the University of Hawai'i feel that the issues of sexual assault and sexual harassment are problematic.

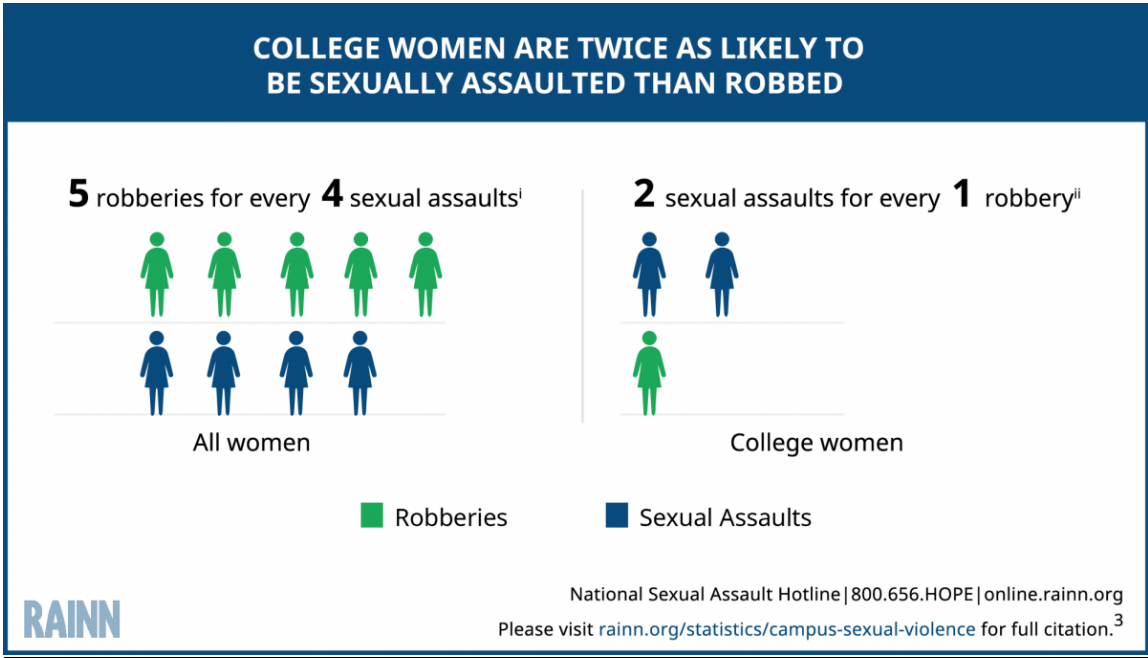
- 12.7 percent of students at the University of Hawai'i experienced sexual harassment while at the university according to the 2019 campus climate survey, an increase of 37 percent since 2017.
- 21.3 percent of students at the University of Hawai'i experienced dating or domestic violence while at the university according to the 2019 campus climate survey, an increase of 11.5 percent since 2017.
- 7.2 percent of students at the University of Hawai'i experienced nonconsensual sexual contact while at the university according to the 2019 campus climate survey, an increase of 14 percent since 2017. **That equates to 3,598 students experiencing sexual assault at the University of Hawai'i systemwide.**
- 100 percent of students experiencing sexual harassment, 74 percent of those experiencing stalking, 77 percent of those subjected to stalking, and 59 percent of those subjected to nonconsensual sexual contact reported enduring serious consequences from the incidents, the most common of which were emotional trauma, social consequences, and adverse academic impacts.

Imua Alliance is one of the state's largest victim service providers for survivors of sex trafficking. Over the past 10 years, we have provided comprehensive direct intervention (victim rescue) services to 160 victims, successfully emancipating them from slavery and assisting in their restoration, while providing a range of targeted services to over 1,000 victims and individuals at risk of sexual exploitation. Each of the victims we have assisted has suffered from complex and overlapping trauma, including post-traumatic stress disorder, depression and anxiety, dissociation, parasuicidal behavior, and substance abuse. Trafficking-related trauma can lead to a complete loss of identity. A victim we cared for in 2016, for example, had become so heavily trauma bonded to her pimp that while under his grasp, she couldn't remember her own name.

**Many of the victims with whom we work were first exploited while enrolled at of Hawai'i colleges or after experiencing sexual violence during their college years.** These institutions provided little information about how to receive help and failed to deliver trauma-informed care,

leaving our survivors to fend for themselves after being victimized. While the University of Hawai'i has taken small steps to improve its response to sexual violence in the last few years, its services remain inadequate, information sharing remains spotty (most students do not receive a copy of the Title IX handbook published by the university, for example), and personnel tasked with managing its sexual misconduct protocols remain badly in need of training in trauma-informed care, something that should be required for all staff tasked with handling cases of campus violence. Students at other universities, including Chaminade, BYU-Hawai'i, and Hawai'i Pacific University, deserve the same protections and reporting opportunities (including anonymous campus safety surveys regarding sexual violence), which this measure's revisions to HRS §305J-8 would require to the greatest extent possible.

**COLLEGE WOMEN MORE LIKELY TO BE SEXUALLY ASSAULTED THAN ROBBED**



Finally, on a personal note I, Kris Coffield, Executive Director of Imua Alliance, am heavily invested in this measure's success. When I was a student at the University of Hawai'i, in early 2008, I was violently, penetratively raped by a professor and three graduate students. It happened during a late-night study session to which I was invited by someone who, at the time, I believed to be an academic mentor. I may have been drugged, given that I couldn't move as it happened, though I also could have experienced involuntary paralysis, my body reeling from the shock of the assault.

During the attack, I was beaten with a belt, held down forcefully by the men involved, called an assortment of vulgar names (the *least* offensive of which were “f\*\*\* whore,” “sex slave,” and “rape slut”), and deliberately misgendered—I was referred to as female throughout the assault in an attempt to further degrade me—as they took turns orally and anally raping me.

I attempted to report the assault to a UH administrator. I was informed at the time, however, that the university wasn't prepared to take action on my case. When I asked why, I was told, "You're a political science major. You should understand that some people have more power than others." Since then, I've struggled with a persistent feeling of powerlessness. I've fought for years to overcome lingering depression and anxiety, along with the fear that my assailants will, at some point, come back to harm me.

To be clear, I don't blame the current UHM administration for what happened to me. In fact, I applaud the university's leadership for taking steps to address sexual assault and sexual harassment on campus, following an audit by the U.S. Department of Education that revealed serious gaps in the school's compliance with Title IX's requirements for handling reports of sexual violence. Additionally, I'm not seeking anything, monetary or otherwise, from UH the university, or anyone involved in the incident.

I simply can no longer be silent. My justice must be obtained by sharing my story, so that other victims may feel less alone. I can be a lamppost in a dark and thorny forest, shining a light that makes trauma a little more bearable and hope a little easier to find for those who, like me, have suffered the pain of sexual violence. But I am no longer a rape victim. **I am a survivor.** I, and my organization, humbly ask you to validate the experiences of survivors by passing this measure and working to end the rape culture that continues to infect our state's college campuses.

**Kris Coffield · Executive Director, Imua Alliance · (808) 679-7454 · [kris@imuaalliance.org](mailto:kris@imuaalliance.org)**

**HR-13**

Submitted on: 3/10/2021 1:47:45 PM

Testimony for EDN on 3/11/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Anna Chua	Individual	Support	No

Comments:

**Dear Chair Woodson, Vice-Chair Kapela, and honourable members of the House Committee on Education,**

**My name is Anna Chua and I am an undergraduate student at the University of Hawai'i at Mānoa, majoring in Peace & Conflict Studies and Psychology. I am writing today in support of HCR12/HR13: Convening a task force to address the implementation of Hawai'i's state law corollary to Title IX in light of recent changes to federal Title IX regulations. I would like to commend the work being done to address the changes happening on federal and state levels that significantly impact students and survivors of sexual violence and assault.**

**Trump's administration set significant setbacks to the protections that Title IX provided, but beyond that, it also ensured that those whose lives are most impacted by these decisions and policies are silenced and their experiences erased or diminished.**

**HB 691 and SB 727 provided opportunities to increase trauma-informed awareness and resources to support survivors of sexual assault and violence while reducing incidence rates. While it is disappointing that those bills did not move forward, they reveal larger cracks in our system whereby there is perpetual marginalisation of survivors and lack of care for those vulnerable to the shortcomings of federal regulation. HCR 12 is a window to centre student needs and ensure that trauma-informed and survivor-centred care and support are institutionalised. The implementation of a task force may not end rape culture and sexual violence that has become endemic on our college campuses, but it will make it loud and clear that violence and assault that occur in public and private spheres will be prioritised on a systemic level.**

**The need for systemic changes in regulations, perceptions and narratives towards ending sexual violence and protecting survivors call for discourse that goes beyond laws and institutional voice. While addressing Hawai'i's state law corollary to federal Title IX regulations is integral seeing as it directly impacts procedures surrounding cases of sexual violence, it is imperative to note that beyond Title IX, there are myriad layers of barriers and stigmas that complicate the process of reporting and attaining justice for survivors. The fact that such rampant and prevalent cases of sexual violence occur on college campuses— which, according to the 2019 UH Student Climate Survey on Sexual Harassment and Gender Violence, increased by 37% systemwide—shows that spaces where students should feel protected, supported and cared for and within which they should foster healthy community relationships are ironically, where immense violations are experienced. That same survey found that 100% of students who experienced sexual harassment reported enduring serious consequences from the incidents; commonly noted as emotional trauma, social consequences, and adverse academic impacts. It is no surprise that the convoluted and traumatising process of reporting, ensuring accountability on the end of the perpetrator and justice for the survivor results in the absence of official reports being made. As a woman of colour international student and survivor, the possibilities of undergoing heightened social and academic strains and the emotionally scarring process of recounting traumatic experiences upon entering the process of reporting are sufficient fears to avoid reporting. I know that my fears parallel many of my peers, thus, there must be a concerted effort to address and change the web of bureaucratic hurdles, lack of trauma-informed awareness and education, lack of transparency and open access to resources of support and care, all of which perpetuate the normalisation of sexual violence and rape culture on our college campuses.**

**In line with that, it is imperative that the Act 110 Task Force includes the voices of those directly affected and most impacted, that is, students and survivors of sexual violence. In a place where sexual violence occurs, survivors and students need to be centred in order for solutions that uphold justice to be carved out. Additionally, this means that experts from sexual and domestic violence prevention centres, coalitions that work to end rape culture and sexual violence, trauma-informed therapy and awareness, and cultural-sensitive forms of justice must also be included.**

**In our world today where movements such as MeToo and Herstory have pushed the prevailing force of centring survivors, womxn, LGBTQ+ folx and those vulnerable to deeply rooted issues of heteropatriarchy, sexism, racism and more in the discourse of ending sexual violence and rape culture, we must look beyond policies and legal procedures. We must move beyond being reactionary and instead push to uproot the multilayered sources of sexual and gender-based**

**violence in all spaces while ensuring that systemic and institutionalised silencing of survivors are no longer.**

**Thank you for this opportunity to testify in support of HR13.**

**Anna Chua**

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