



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 03/19/2021

Time: 03:15 PM

Location: CR 229 & Videoconference

Committee: Senate Education
Senate Higher Education

Department: Education

Person Testifying: Dr. Christina M. Kishimoto, Superintendent of Education

Title of Resolution: SCR 0009 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.

Department's Position:

The Hawaii State Department of Education (Department) supports SCR 9 which proposes that a task force be convened to address potential conflicts between Hawaii's state law corollary and Title IX of the Educational Amendments of 1972 (Title IX) to the recent changes to Title IX regulations by the federal government.

The Department is deeply committed to Title IX and the tenets that it upholds. The Department currently has in place interim procedures that reflect the new federal requirements to address reports and complaints of sexual harassment while the Department drafts a new administrative rule to reflect the new federal requirements.

The Department appreciates the Legislature's efforts to bring together various stakeholder groups to work together to ensure that the state remains in compliance with Title IX.

Thank you for this opportunity to provide testimony.

The Hawai'i State Department of Education is committed to delivering on our promises to students, providing an equitable, excellent, and innovative learning environment in every school to engage and elevate our communities. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at www.hawaiipublicschools.org.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Education
and

Senate Committee on Higher Education
March 19, 2021 at 3:15 p.m.

by

Jan Gouveia, Vice President for Administration

and

Carrie Okinaga, Vice President for Legal Affairs and University General Counsel
University of Hawai'i System

SCR 9 / SR 8 – 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

Chairs Kidani and Kim and members of the Committees:

Thank you for the opportunity to present testimony on SCR 9 / SR 8 – 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 (“Regulations”). The University of Hawai'i (“University”) supports the intent of this bill and appreciates the opportunity to participate in the proposed task force. Given the rigorous mandates of the Regulations, educational institutions across the country are grappling with implementation issues whilst anticipating further rule-making under the new federal administration that may rescind some of recently-enacted substantive and procedural requirements. President Biden signed an Executive Order on March 8, 2021 that orders the Secretary of Education to review the rule, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 85 Fed. Reg. 20026 (May 19, 2020), “and any other agency actions taken pursuant to that rule, for consistency with governing law, including Title IX.” The Executive Order states that,

It is the policy of my Administration 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. For students attending schools and other educational institutions that receive Federal financial assistance, this guarantee is codified, in part, in Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in education programs or activities receiving Federal financial assistance.

Thus, it may be prudent for the task force to begin its task after the Secretary of Education concludes his review. As the Legislative Reference Bureau noted in its 2019 Report that, “[g]iven this uncertainty, it may be prudent to wait until changes to the federal Title IX

regulations are finalized before establishing and implementing a detailed enforcement infrastructure for Hawaii's Title IX corollary.” See *The Complexities of Enforcing Title IX and Related Laws: Past History, Current Status, and Future Directions*, p. 200. In order to effectuate a workable enforcement mechanism for our State’s corollary to Title IX, potential conflicts between existing state law and the Regulations must be identified. Equally important, a broader discussion amongst relevant stakeholders, such as those identified in this resolution, may provide preliminary recommendations to navigating the complicated terrain of the ever-evolving structure and framework of Title IX.

Thank you for the opportunity to testify on SCR 9 / SR 8.



of Hawaii

To: Hawaii State Senate Committee on Education and Committee on Higher Education
Hearing Date/Time: Friday March 19, 3:15PM
Place: Hawaii State Capitol, Room 229
Re: Testimony in STRONG SUPPORT of HCR9/SR8

Dear Chair Kidani, Chair Kim, and the Members of Committees,

Members of AAUW of Hawaii are grateful for this opportunity to testify in strong support of SCR9/SR8 which would convene a taskforce to address implementation of Hawaii's state law corollary to Title IX in light of recent changes to federal Title IX regulations. During last week's hearing of the House companion, HCR12/HR13, Imua Alliance and Every Voice Coalition requested for students to be invited to participate in the task force. We too believe the students' voice would be essential and request for an amendment to include students.

The U.S. Department of Education (USDOE) systematically dismantled Title IX protections. After withdrawing Title IX protection for transgender students in February 2017¹ and reversing 2011 and 2014 Title IX guidance in September 2017², the USDOE's "Final Rule" which took effect on August 14, 2020 reverses 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, and makes it harder for the students to come forward about sexual harassment or sexual assaults and receive the support they need. These changes impose harmful implications to students' civil rights.³

While Biden administration is expected to reverse the systematic dismantlement of Title IX protections, it is likely that the change will be implemented as USDOE rules or regulations, not as a federal law. It is also not guaranteed that all the protections

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/resources/policy/position-title-ix/>

provided by 2011 and 2014 Title IX guidance from USDOE will be implemented as USDOE rules or regulations.

Members of the AAUW of Hawaii are proud of our state and excited that Act 110, Session Laws of Hawaii 2018 which protects LGBT+ students under Title IX became effective January 1, 2020. Act 110, however, still needs a meaningful enforcement framework which would involve AG's office and Civil Rights Commission in addition to UH and Hawaii DOE.

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 over 3800 supporters statewide. As advocates for gender equity, AAUW of Hawaii promotes the economic, social, and physical well-being of all persons.

Please pass this important measure to ensure our students are protected from bullying, harassment, and assaults. We are also including additional information below. Mahalo.

A handwritten signature in blue ink, appearing to read 'Y. Overly', with a stylized flourish at the end.

Younghee Overly
Public Policy Chair, AAUW of Hawaii
publicpolicy-hi@aauw.net

Status on Progress Made by UH system and Hawaii DOE:

As you may already know, both UH system and Hawaii DOE have been found non-compliant with Title IX but have made progress. Since 2013, UH has been working on Voluntary Resolution Agreement it made with USDOE. UH has established Office of Institutional Equity and Title IX Offices to set and implement policies; offer trainings and resources to faculty, staff and students. UH has also conducted Campus Climate Survey. Since 2018, Hawaii DOE also has established Civil Rights Compliance Branch with Title IX coordinators, and updated its administrative rules to address bullying and harassment. Once and if implemented, USDOE's new Title IX rules would put schools in Hawaii between a rock and a hard place: between federal fund and protecting students who are assaulted and bullied, between federal fund and public backlash and lawsuits, between federal fund and progress both UH and Hawaii DOE have made, and between federal Title IX rules and Hawaii state's Title IX corollary.

Why We Need Stronger Title IX Protection:

There is no doubt our keiki still need Title IX protection. According to CDC 2017 Youth Risk Behavior Survey⁴:

- 22.6% of middle school students in Hawaii were cyber-bullied, 40% were bullied on school property, 23.1% seriously considered suicide, and 12.4% attempted suicide during past 12 months
- 14.6% of high school students in Hawaii were cyber-bullied, 18.4% were bullied on school property, 16% seriously considered suicide, and 10% attempted suicide during past 12 months.

Youth who report frequently bullying others and youth who report being frequently bullied is at increased risk for suicide; youth who report both bullying others and being bullied have the highest risk for suicide.⁵

Students in higher education in Hawaii also still need Title IX protection. According to the recent University of Hawaii Climate Survey Report, this polled 44,671 adult students across 10 UH campuses:⁶

⁴ <https://nccd.cdc.gov/youthonline/App/Results.aspx?LID=HI>

⁵ <https://www.cdc.gov/violenceprevention/pdf/bullying-suicide-translation-final-a.pdf>

⁶ 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;
 - Graduate students are most vulnerable to sexual harassment and non-consensual sexual contact by faculty;
 - High rates of students don't know what their rights are; where resources are located, etc.
-



March 18, 2021

Aloha Chairs, Vice-Chairs, and honorable members of the Senate Committee on Education and the Committee on Higher Education,

We submit testimony in support of SCR9/SR8 and do urge you to pass this through committee, however, we do want to raise some concerns with the text as it currently stands.

According to anonymous systemwide survey results from the University of Hawai'i in 2019, 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. According to the Institutional Research, Analysis & Planning Office in fall 2019, there were 49,977 total students enrolled across UH campuses. From those survey statistics, 12.7% of students reported experiencing sexual harassment, therefore, 6,347 students are impacted. 21.3% of students reported experiencing domestic violence, therefore, 10,645 students are impacted. 7.2% of students reported experiencing domestic violence, therefore, 3,598 students are impacted.

With that, we raise concern relative to the scope of SCR9/SR8 focused solely on Title IX. Due to the complexities and roadblocks of reporting, only an estimated 10% of student survivors will come forward to report through official channels. Therefore, we must address the lack of resources readily available to ALL survivors and students both immediately and long-term following an incident of sexual violence. In that same vein, the individuals to sit on the task force do not center those most impacted: Students and survivors. 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.

We cannot address sexual violence and subsequent policy solely through the lens of Title IX; we must understand how this violence happens in the first place, how to prevent it, and the options survivors need. We request that the amendments(see attached) adopted to HCR12/HR13 are amended to SCR9/SR8 as they carry the weight and power to address this violence as it must be.

Sexual violence impacts millions of students nationwide, and thousands of students here in Hawai'i. Students here are asking for these changes. They are seeking your help. You can make your campuses safer and healthier by taking this step to adopt the amendments in HCR12/HR13.

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

HOUSE CONCURRENT RESOLUTION 12/HOUSE RESOLUTION 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~~] TO STRENGTHEN HAWAII'S EFFORTS TO END CAMPUS-BASED SEXUAL VIOLENCE AND GENDER DISCRIMINATION.

WHEREAS, Title IX of the federal Education Amendments of 1972, renamed in 2002 as the Patsy T. Mink Equal Opportunity in Education Act in honor of its principal author, former Hawaii Congresswoman Patsy Takemoto Mink, states 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"; and

WHEREAS, the Office for Civil Rights (OCR) within the United States Department of Education (USDOE) enforces Title IX by, among other things, investigating complaints and issuing informal guidance to educational programs; and

WHEREAS, in 2011, OCR issued a nineteen-page "Dear Colleague" letter clarifying that Title IX prohibits sexual harassment as well as sexual violence and setting out in detail the key requirements that must be followed by educational programs in response to complaints of sexual harassment and sexual violence; and

WHEREAS, in 2014, as a follow-up to the 2011 "Dear Colleague" letter, OCR issued a Question and Answer document further clarifying a school's obligation to respond to sexual violence under Title IX procedural requirements; and

WHEREAS, both the 2011 "Dear Colleague" letter and the 2014 Question and Answer document were disseminated in response to growing awareness of the issue of campus sexual assault and the intentional failure of institutions of higher education to respond; and

WHEREAS, in January 2017, a new president took office, and the following month, the federal government withdrew guidance documents that had extended Title IX protections to transgender students. In September 2017, USDOE also withdrew the 2011 "Dear Colleague" letter and 2014 Question and Answer document issued by OCR under the prior federal administration. At the same time, USDOE announced its intent to engage in new rulemaking on Title IX; and

WHEREAS, on November 29, 2018, USDOE issued a notice of proposed rulemaking that would significantly amend existing Title IX regulations and create new regulations. Among other things, the proposed regulations would reduce the number of complaints involving sexual

harassment and other forms of sexual misconduct that currently fall within the purview of Title IX. The proposed regulations would also limit the scope of educational institutions' liability for complaints of sexual harassment; and

WHEREAS, the proposed regulations were publicly criticized by victim advocates as "devastating" for survivors of sexual harassment and sexual assault. More specifically, commenters anticipated that the proposed regulations would have the effect of discouraging the reporting of sexual harassment and sexual assault. Further, the proposed rules were characterized as protecting schools above all, and not protecting students, accused or otherwise; and

WHEREAS, in response to the intended policy changes announced by USDOE on the scope of Title IX's application, the Hawaii Legislature passed House Bill No. 1489, House Draft 1, Senate Draft 2, Conference Draft 1, which ultimately became Act 110, Session Laws of Hawaii 2018 (Act 110). Act 110 established a state law corollary to Title IX that prohibits sex-based discrimination in state-administered or state-funded educational programs or activities, including discrimination based on sexual orientation, gender identity, and gender expression; and

WHEREAS, Act 110 also requested the Legislative Reference Bureau to study and report on the status of Title IX enforcement nationally and in other jurisdictions, and to make recommendations relevant to implementation of the state law corollary; and

WHEREAS, the Bureau's report was published in October 2019; and

WHEREAS, after receiving more than 124,000 public comments on the proposed Title IX regulations, USDOE formally published the final Title IX regulations (also known as the "Final Rule") in the *Federal Register* on May 19, 2020; and

WHEREAS, the Final Rule, which took effect on August 14, 2020, is similar in many respects to the proposed Title IX regulations but also reflects further changes made by USDOE in response to issues raised during the public comment process; and

WHEREAS, on November 25, 2020, the International Day for the Elimination of Violence against Women, President-elect Joe Biden released a statement in which he pledged to "restore Title IX protections for student survivors of sexual assault, stalking, and dating violence"; [now, therefore;] and

WHEREAS, according to the Rape, Abuse, and Incest National Network, 1 in 10 students across the United States will experience sexual violence while attending an institution of higher education; and

WHEREAS, according to the United States Department of Justice, an estimated 90 percent of survivors of campus-based sexual violence do not report such violence through official

institutional or legal protocols; and

WHEREAS, according to the University of Hawaii systemwide campus climate survey of 2019, 12.7 percent of students have reported experiencing sexual harassment, 10.6 percent have experienced stalking, 21.3 percent have experienced dating violence, and 7.2 percent have experienced nonconsensual sexual contact, all of which represent significant increases from the university's campus climate survey results of 2017; now, therefore,

BE IT RESOLVED by the House of Representatives of the Thirty-first Legislature of the State of Hawaii, Regular Session of 2021, the Senate concurring, that an Act 110 Implementation Task Force be convened to address implementation of Hawaii's state law corollary to Title IX, in light of recent changes to federal Title IX regulations; and

BE IT FURTHER RESOLVED that the Act 110 Implementation Task Force is requested to recommend amendments to Hawaii's state law corollary for the purpose of addressing potential conflicts between Hawaii's law and the federal government's recent changes to the Title IX regulations, while considering the possible impacts of any restoration by the new federal administration of prior Title IX protections, and to recommend a meaningful enforcement framework for Hawaii's state law corollary to Title IX; and

BE IT FURTHER RESOLVED that the membership of the Act 110 Implementation Task Force consist of one representative from each of the following entities, and that upon convening, the members elect a chairperson from among themselves:

(1) The Office of Institutional Equity of the University of Hawaii System;

(2) The Hawaii Civil Rights Commission;

(3) The Civil Rights Compliance Branch of the Department of Education;

(4) The Department of the Attorney General;

(5) The Hawaii State Commission on the Status of Women; **[and]**

(6) The American Association of University Women of Hawaii, which shall be invited to participate[-];

(7) The Prevention, Awareness, and Understanding Violence Program of the University of Hawaii system;

(8) The Hawai'i Coalition to End Domestic Violence, which shall be invited to participate;

(9) The Sex Abuse Treatment Center, which shall be invited to participate; and (10) The

Every Voice Coalition, which shall be invited to participate; and

BE IT FURTHER RESOLVED that the Act 110 Implementation Task Force is requested to consider in its deliberations the:

(1) Availability of resources for survivors of campus-based sexual violence;

(2) Adequacy of evidence-based and trauma-informed training regarding sexual violence for faculty, staff, and students;

(3) Sufficiency of information provided to students about gender violence, including, but not limited to, information regarding student rights, institutional and legal reporting protocols, and on- and off-campus student support services;

(4) Legislation enacted in other states to strengthening protections for survivors of campus based sexual violence, including chapter 188-H, New Hampshire Revised Statutes, and Chapter 337 of the Acts of 2020 of the Commonwealth of Massachusetts;

(5) Recommendations contained in “The Complexities of Enforcing Title IX and Related Laws: Past History, Current Status, and Future Directions, which was published by the Legislative Reference Bureau in 2019; and

(6) Strategies for improving protections for transgendered students in Hawaii’s public schools; and

BE IT FURTHER RESOLVED that the members of the Act 110 Implementation Task Force serve without compensation; and

BE IT FURTHER RESOLVED that the Act 110 Implementation Task Force is requested to work with student organizations, such as the Associated Students of the University of Hawaii, to obtain feedback from survivors of campus-based sexual violence in the course of its deliberations; and

BE IT FURTHER RESOLVED that the Act 110 Implementation Task Force is requested to submit a report of its findings and recommendations, including any proposed legislation, no later than twenty days prior to the convening of the Regular Session of 2022; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Governor; Attorney General; Executive Director of the Hawaii Civil Rights Commission; President of the University of Hawaii System; Superintendent of Education; Executive Director of the Hawaii State Commission on the Status of Women; and the Board President of the American Association of University Women of Hawaii[-], the System Coordinator for the Prevention, Awareness, and Understanding Violence Program of the University of Hawaii, the Executive Director of the Hawaii Coalition to End Domestic Violence, the Executive Director of

the Sex Abuse Treatment Center, and the co-Executive Directors of the Every Voice Coalition.

SCR-9

Submitted on: 3/18/2021 11:46:38 AM

Testimony for EDU on 3/19/2021 3:15:00 PM

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

Comments:

Dear Chair, Vice-Chair, and honourable members of the committee,

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 SCR9: 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, and to urge the committee to adopt amendments similar to those made in HCR 12. I would first 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 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, it revealed 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. SCR 9 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, Herstory, SayHerName 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

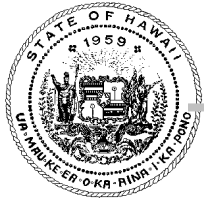
violence in all spaces while ensuring that systemic and institutionalised silencing of survivors are no longer.

Thank you for this opportunity to testify in support of SCR9.

Anna Chua

annachua@hawaii.edu

96826



HAWAI‘I CIVIL RIGHTS COMMISSION

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

March 19, 2021
3:15 p.m.
via Videoconference

To: Hon. Michelle N. Kidani, Chair
Hon. Donna Mercado Kim, Vice Chair
Members of the Senate Committee on Education

Hon. Donna Mercado Kim, Chair
Hon. Michelle N. Kidani, Vice Chair
Members of the Senate Committee on Higher Education

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

Re: S.C.R. No. 9 / S.R. No. 8

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.C.R. No. 9 and S.R. No. 8, 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.

S.C.R. No. 9 and S.R. No. 8 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, and standing to file for organizations and associations. 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 S.C.R. No. 9 and S.R. No. 8.



March 17, 2021

Senate Committee on Education Chair Michelle Kidani, Vice Chair Donna Mercado Kim, EDU Committee members, and Senate Committee on Higher Education Chair Donna Mercado Kim, Vice Chair Michelle Kidani, and HRE Committee members.

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

Subject: Testimony in SUPPORT of SCR9/SR8 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 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.

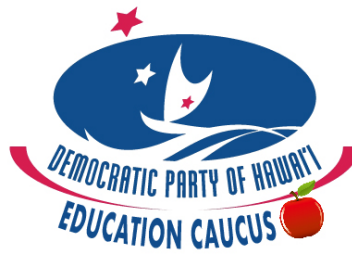
The law was only lacking the implementation and enforcement mechanism so victims of sexual harassment or assault can seek those protections assured by law. The 2019 study of the LRB did not result in any recommendations, though it did provide research on the method of implementing Title IX in other states.

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



SCR 9/SR 8, 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 19, 2021 · SENATE EDUCATION AND HIGHER
EDUCATION COMMITTEES · CHAIRS SEN. MICHELLE
N. KIDANI AND SEN. DONNA MERCADO KIM

POSITION: Support with amendments.

RATIONALE: The Democratic Party of Hawai'i Education Caucus **supports and suggests amendments** for SCR 9/SR 8, 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.

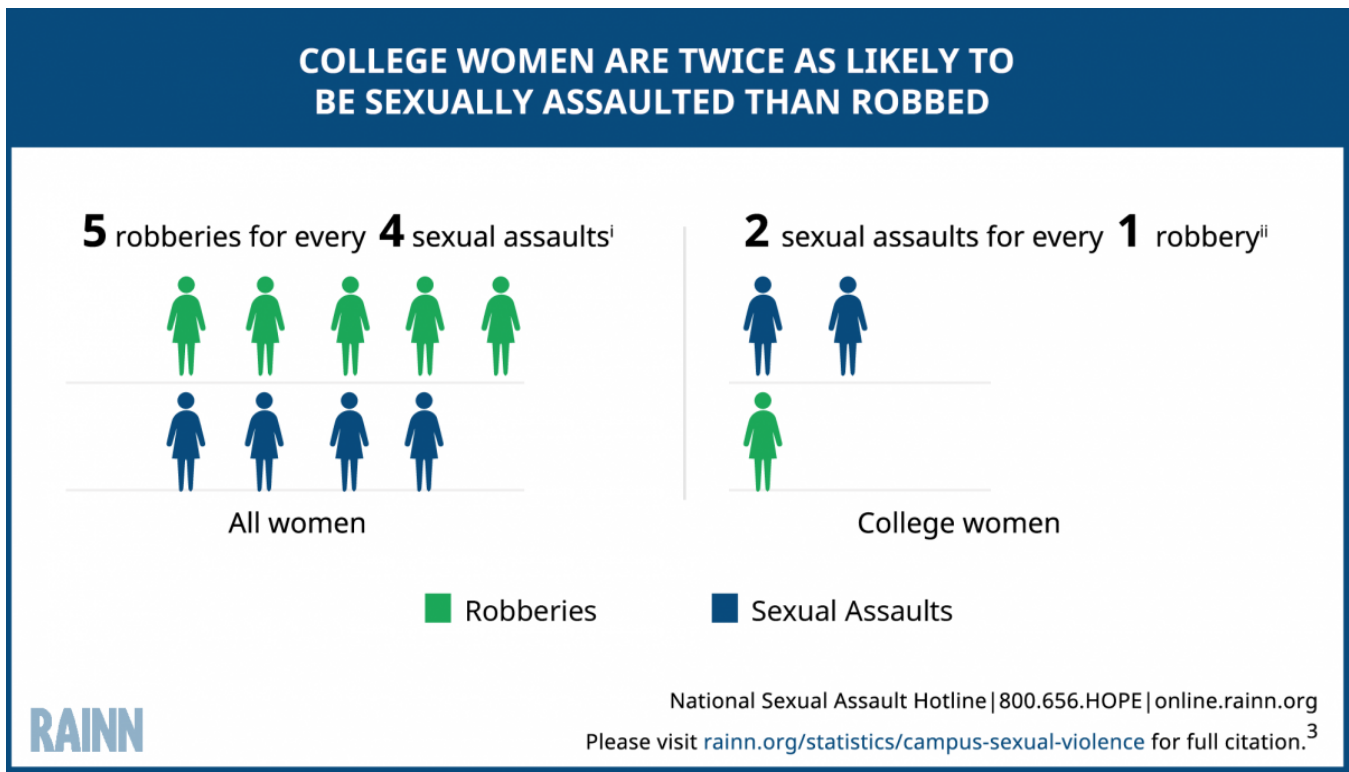
Sexual violence is pervasive on college campuses in Hawai'i. According to UH's most recent climate survey, conducted in 2019:

- 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.

Survivors of campus-based sexual violence often suffer from complex and overlapping trauma, including post-traumatic stress disorder, depression and anxiety, dissociation, parasuicidal behavior, and substance abuse. Many sex trafficking victims, moreover, are first exploited while enrolled at of Hawai'i colleges or after experiencing sexual violence during their college years. These institutions provide little information about how to receive help and fail to deliver trauma-informed care, leaving 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



That said, **we urge your committee to strengthen and clarify this proposal by adopting the amendments that were included in the House Education Committee's HD 1 version of this measure.** These amendments include expanding the list of task force members to contain service providers and organizations that work with survivors of campus-based sexual violence, adding statistics to the resolution that indicate the rapidly increasing prevalence of sexual violence at the University of Hawai'i, and specifying discussion items to focus the task force's discussions on strengthening protections for survivors of campus-based sexual violence, rather than simply evaluating differences between state law and the extremely dangerous Title IX regulations

propagated by former President Donald Trump and Education Secretary Betsy DeVos. The amendments adopted by the House earlier this month are included below.

SENATE CONCURRENT RESOLUTION 9/SENATE RESOLUTION 8

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]~~ TO STRENGTHEN HAWAII'S EFFORTS TO END CAMPUS-BASED SEXUAL VIOLENCE AND GENDER DISCRIMINATION.

WHEREAS, Title IX of the federal Education Amendments of 1972, renamed in 2002 as the Patsy T. Mink Equal Opportunity in Education Act in honor of its principal author, former Hawaii Congresswoman Patsy Takemoto Mink, states 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"; and

WHEREAS, the Office for Civil Rights (OCR) within the United States Department of Education (USDOE) enforces Title IX by, among other things, investigating complaints and issuing informal guidance to educational programs; and

WHEREAS, in 2011, OCR issued a nineteen-page "Dear Colleague" letter clarifying that Title IX prohibits sexual harassment as well as sexual violence and setting out in detail the key requirements that must be followed by educational programs in response to complaints of sexual harassment and sexual violence; and

WHEREAS, in 2014, as a follow-up to the 2011 "Dear Colleague" letter, OCR issued a Question and Answer document further clarifying a school's obligation to respond to sexual violence under Title IX procedural requirements; and

WHEREAS, both the 2011 "Dear Colleague" letter and the 2014 Question and Answer document were disseminated in response to growing awareness of the issue of campus sexual assault and the intentional failure of institutions of higher education to respond; and

WHEREAS, in January 2017, a new president took office, and the following month, the federal government withdrew guidance documents that had extended Title IX protections to transgender students. In September 2017, USDOE also withdrew the 2011 "Dear Colleague" letter and 2014 Question and Answer document issued by OCR under the prior federal administration. At the same time, USDOE announced its intent to engage in new rulemaking on Title IX; and

WHEREAS, on November 29, 2018, USDOE issued a notice of proposed rulemaking that would significantly amend existing Title IX regulations and create new regulations. Among other things, the proposed regulations would reduce the number of complaints involving sexual harassment and other forms of sexual misconduct that currently fall within the purview of Title IX. The proposed regulations would also limit the scope of educational institutions' liability for complaints of sexual harassment; and

WHEREAS, the proposed regulations were publicly criticized by victim advocates as "devastating" for survivors of sexual harassment and sexual assault. More specifically, commenters anticipated that the proposed regulations would have the effect of discouraging the reporting of sexual harassment and sexual assault. Further, the proposed rules were characterized as protecting schools above all, and not protecting students, accused or otherwise; and

WHEREAS, in response to the intended policy changes announced by USDOE on the scope of Title IX's application, the Hawaii Legislature passed House Bill No. 1489, House Draft 1, Senate Draft 2, Conference Draft 1, which ultimately became Act 110, Session Laws of Hawaii 2018 (Act 110). Act 110 established a state law corollary to Title IX that prohibits sex-based discrimination in state-administered or state-funded educational programs or activities, including discrimination based on sexual orientation, gender identity, and gender expression; and

WHEREAS, Act 110 also requested the Legislative Reference Bureau to study and report on the status of Title IX enforcement nationally and in other jurisdictions, and to make recommendations relevant to implementation of the state law corollary; and

WHEREAS, the Bureau's report was published in October 2019; and

WHEREAS, after receiving more than 124,000 public comments on the proposed Title IX regulations, USDOE formally published the final Title IX regulations (also known as the "Final Rule") in the *Federal Register* on May 19, 2020; and

WHEREAS, the Final Rule, which took effect on August 14, 2020, is similar in many respects to the proposed Title IX regulations but also reflects further changes made by USDOE in response to issues raised during the public comment process; and

WHEREAS, [on November 25, 2020, the International Day for the Elimination of Violence against Women, President-elect Joe Biden released a statement in which he pledged to "restore Title IX protections for student survivors of sexual assault, stalking, and dating violence";](#) [~~now, therefore,~~] [and](#)

[WHEREAS, according to the Rape, Abuse, and Incest National Network, 1 in 10 students across the United States will experience sexual violence while attending an institution of higher education; and](#)

[WHEREAS, according to the United States Department of Justice, an estimated 90 percent of survivors of campus-based sexual violence do not report such violence through official institutional or legal protocols; and](#)

[WHEREAS, according to the University of Hawaii systemwide campus climate survey of 2019, 12.7 percent of students have reported experiencing sexual harassment, 10.6 percent have experienced stalking, 21.3 percent have experienced dating violence, and 7.2 percent have experienced nonconsensual sexual contact, all of which represent significant increases from the university's campus climate survey results of 2017; now, therefore,](#)

BE IT RESOLVED by the House of Representatives of the Thirty-first Legislature of the State of Hawaii, Regular Session of 2021, the Senate concurring, that an Act 110 Implementation Task Force be convened to address implementation of Hawaii's state law corollary to Title IX, in light of recent changes to federal Title IX regulations; and

BE IT FURTHER RESOLVED that the Act 110 Implementation Task Force is requested to recommend amendments to Hawaii's state law corollary for the purpose of addressing potential conflicts between Hawaii's law and the federal government's recent changes to the Title IX regulations, while considering the possible impacts of any restoration by the new federal administration of prior Title IX protections, and to recommend a meaningful enforcement framework for Hawaii's state law corollary to Title IX; and

BE IT FURTHER RESOLVED that the membership of the Act 110 Implementation Task Force consist of one representative from each of the following entities, and that upon convening, the members elect a chairperson from among themselves:

- (1) The Office of Institutional Equity of the University of Hawaii System;
- (2) The Hawaii Civil Rights Commission;
- (3) The Civil Rights Compliance Branch of the Department of Education;
- (4) The Department of the Attorney General;
- (5) The Hawaii State Commission on the Status of Women; ~~and~~
- (6) The American Association of University Women of Hawaii, which shall be invited to participate[-];
- (7) The Prevention, Awareness, and Understanding Violence Program of the University of Hawaii system;
- (8) The Hawai'i Coalition to End Domestic Violence, which shall be invited to participate;
- (9) The Sex Abuse Treatment Center, which shall be invited to participate; and
- (10) The Every Voice Coalition, which shall be invited to participate; and

BE IT FURTHER RESOLVED that the Act 110 Implementation Task Force is requested to consider in its deliberations the:

(1) Availability of resources for survivors of campus-based sexual violence;

(2) Adequacy of evidence-based and trauma-informed training regarding sexual violence for faculty, staff, and students;

(3) Sufficiency of information provided to students about gender violence, including, but not limited to, information regarding student rights, institutional and legal reporting protocols, and on- and off-campus student support services;

(4) Legislation enacted in other states to strengthening protections for survivors of campus-based sexual violence, including chapter 188-H, New Hampshire Revised Statutes, and Chapter 337 of the Acts of 2020 of the Commonwealth of Massachusetts;

(5) Recommendations contained in “The Complexities of Enforcing Title IX and Related Laws: Past History, Current Status, and Future Directions, which was published by the Legislative Reference Bureau in 2019; and

(6) Strategies for improving protections for transgendered students in Hawaii’s public schools; and

BE IT FURTHER RESOLVED that the members of the Act 110 Implementation Task Force serve without compensation; and

BE IT FURTHER RESOLVED that the Act 110 Implementation Task Force is requested to work with student organizations, such as the Associated Students of the University of Hawaii, to obtain feedback from survivors of campus-based sexual violence in the course of its deliberations; and

BE IT FURTHER RESOLVED that the Act 110 Implementation Task Force is requested to submit a report of its findings and recommendations, including any proposed legislation, no later than twenty days prior to the convening of the Regular Session of 2022; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Governor; Attorney General; Executive Director of the Hawaii Civil Rights Commission; President of the University of Hawaii System; Superintendent of Education; Executive Director of the Hawaii State Commission on the Status of Women; and the Board President of the American Association of University Women of Hawaii[.], [the System Coordinator for the Prevention, Awareness, and Understanding Violence Program of the University of Hawaii, the Executive Director of the Hawaii Coalition to End Domestic Violence, the Executive Director of the Sex Abuse Treatment Center, and the co-Executive Directors of the Every Voice Coalition.](#)

Kris Coffield · Chairperson, Democratic Party of Hawai'i Education Caucus ·

(808) 679-7454 · kriscoffield@gmail.com



Hawaii Women's Coalition

To: Hawaii State Senate Committee on Education and Committee on Higher Education

Hearing Date/Time: Friday March 19, 3:15PM

Place: Hawaii State Capitol, Room 229

Re:

Testimony in STRONG SUPPORT of SCR9/SR8

Dear Chair Kidani, Chair Kim, and the Members of Committees,

Members of Hawaii Women's Coalition are grateful for this opportunity to testify in strong support of SCR9/SR8 which would convene a taskforce to address implementation of Hawaii's state law corollary to Title IX in light of recent changes to federal Title IX regulations. During last week's hearing of the House companion, HCR12/HR13, Imua Alliance and Every Voice Coalition requested for students to be invited to participate in the task force. We too believe the students' voice would be essential and request for an amendment to include students.

The U.S. Department of Education (USDOE) systematically dismantled Title IX protections provided by the 2011 and 2014 Title IX guidance from USDOE. These changes impose harmful implications to students' civil rights.

While Biden administration is expected to reverse the systematic dismantlement of Title IX protections, it is likely that the change will be implemented as USDOE rules or regulations, not as a federal law. It is also not guaranteed that all the protections provided by 2011 and 2014 Title IX guidance from USDOE will be implemented as USDOE rules or regulations.

We are very proud of our state and excited that Act 110, Session Laws of Hawaii 2018 which protects LGBT+ students under Title IX became effective January 1, 2020. Act 110, however, still needs a meaningful enforcement framework which would involve AG's office and Civil Rights Commission in addition to UH and Hawaii DOE.

The Hawai'i Women's Coalition is a catalyst for progressive, social, economic and political change through action on critical issues facing Hawaii's women and girls. Members currently include 29 organizations and agencies (private, public, membership) as well as individuals. The coalition encourages the inclusion of interested parties and in achieving equitable representation.

Please pass this important measure for our keiki. Thank you for your consideration.

Younghee Overly (on behalf of Hawaii Women's Coalition)



AMERICANS FOR DEMOCRATIC ACTION

OFFICERS	DIRECTORS		MAILING ADDRESS	
John Bickel, President	Melodie Aduja	John Miller	Bill South	P.O. Box 23404
Alan Burdick, Vice President	Juliet Begley	Jenny Nomura	Zahava Zaidoff	Honolulu
Dave Nagajji, Treasurer	Stephanie Fitzpatrick	Stephen O'Harrow		Hawaii 96823
Doug Pyle, Secretary	Jan Lubin	Lyn Pyle		

March 17, 2021

TO: Chairs Kidani and Kim and members of EDU/HRE Committees

RE: SCR 9 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.

Support for hearing on March 19

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support SCR 9 as we support the implementation of our corollary to Title IX. We are pleased with Act 110 of 2018 which protects LGBT+ students under Title IX. It needs meaningful enforcement and should involve the offices of the Attorney General and the Civil Rights Commission in addition to public education representatives from K – University. We believe this task force would help ensure our students are protected from bullying, harassment, and assault.

Thank you for your favorable consideration.

Sincerely,
John Bickel, President





SCR 9/SR 8, 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 19, 2021 · SENATE EDUCATION AND HIGHER EDUCATION COMMITTEES · CHAIRS SEN. MICHELLE N. KIDANI AND SEN. DONNA MERCADO KIM

POSITION: Support with amendments.

RATIONALE: Imua Alliance supports and suggests amendments for SCR 9/SR 8, 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.

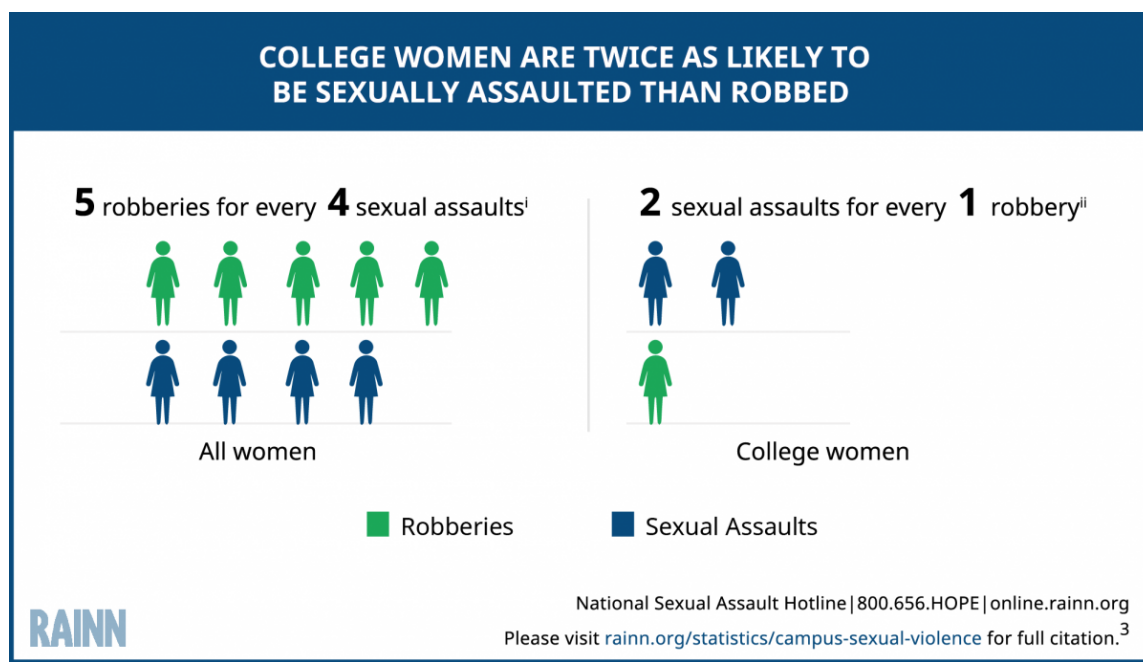
- 12.7 percent of students at the University of Hawai'i experienced sexual harassment while at the university according to the 2019 campus climate survey, an increase of 37 percent since 2017.
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- 7.2 percent of students at the University of Hawai'i 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



That said, **we urge your committee to strengthen and clarify this proposal by adopting the amendments that were included in the House Education Committee's HD 1 version of this measure.** These amendments include expanding the list of task force members to contain service providers and organizations that work with survivors of campus-based sexual violence, adding statistics to the resolution that indicate the rapidly increasing prevalence of sexual violence at the University of Hawai'i, and specifying discussion items to focus the task force's discussions on

strengthening protections for survivors of campus-based sexual violence, rather than simply evaluating differences between state law and the extremely dangerous Title IX regulations propagated by former President Donald Trump and Education Secretary Betsy DeVos. The amendments adopted by the House earlier this month are included at the end of our testimony.

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.

SENATE CONCURRENT RESOLUTION 9/SENATE RESOLUTION 8

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~~] TO STRENGTHEN HAWAII'S EFFORTS TO END CAMPUS-BASED SEXUAL VIOLENCE AND GENDER DISCRIMINATION.

WHEREAS, Title IX of the federal Education Amendments of 1972, renamed in 2002 as the Patsy T. Mink Equal Opportunity in Education Act in honor of its principal author, former Hawaii Congresswoman Patsy Takemoto Mink, states 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"; and

WHEREAS, the Office for Civil Rights (OCR) within the United States Department of Education (USDOE) enforces Title IX by, among other things, investigating complaints and issuing informal guidance to educational programs; and

WHEREAS, in 2011, OCR issued a nineteen-page "Dear Colleague" letter clarifying that Title IX prohibits sexual harassment as well as sexual violence and setting out in detail the key requirements that must be followed by educational programs in response to complaints of sexual harassment and sexual violence; and

WHEREAS, in 2014, as a follow-up to the 2011 "Dear Colleague" letter, OCR issued a Question and Answer document further clarifying a school's obligation to respond to sexual violence under Title IX procedural requirements; and

WHEREAS, both the 2011 "Dear Colleague" letter and the 2014 Question and Answer document were disseminated in response to growing awareness of the issue of campus sexual assault and the intentional failure of institutions of higher education to respond; and

WHEREAS, in January 2017, a new president took office, and the following month, the federal government withdrew guidance documents that had extended Title IX protections to transgender students. In September 2017, USDOE also withdrew the 2011 "Dear Colleague" letter and 2014 Question and Answer document issued by OCR under the prior federal administration. At the same time, USDOE announced its intent to engage in new rulemaking on Title IX; and

WHEREAS, on November 29, 2018, USDOE issued a notice of proposed rulemaking that would significantly amend existing Title IX regulations and create new regulations. Among other things, the proposed regulations would reduce the number of complaints involving sexual harassment and other forms of sexual misconduct that currently fall within the purview of Title IX. The proposed regulations would also limit the scope of educational institutions' liability for complaints of sexual harassment; and

WHEREAS, the proposed regulations were publicly criticized by victim advocates as "devastating" for survivors of sexual harassment and sexual assault. More specifically, commenters anticipated that the proposed regulations would have the effect of discouraging the reporting of sexual harassment and sexual assault. Further, the proposed rules were characterized as protecting schools above all, and not protecting students, accused or otherwise; and

WHEREAS, in response to the intended policy changes announced by USDOE on the scope of Title IX's application, the Hawaii Legislature passed House Bill No. 1489, House Draft 1, Senate Draft 2, Conference Draft 1, which ultimately became Act 110, Session Laws of Hawaii 2018 (Act 110). Act 110 established a state law corollary to Title IX that prohibits sex-based discrimination in state-administered or state-funded educational programs or activities, including discrimination based on sexual orientation, gender identity, and gender expression; and

WHEREAS, Act 110 also requested the Legislative Reference Bureau to study and report on the status of Title IX enforcement nationally and in other jurisdictions, and to make recommendations relevant to implementation of the state law corollary; and

WHEREAS, the Bureau's report was published in October 2019; and

WHEREAS, after receiving more than 124,000 public comments on the proposed Title IX regulations, USDOE formally published the final Title IX regulations (also known as the "Final Rule") in the *Federal Register* on May 19, 2020; and

WHEREAS, the Final Rule, which took effect on August 14, 2020, is similar in many respects to the proposed Title IX regulations but also reflects further changes made by USDOE in response to issues raised during the public comment process; and

WHEREAS, on November 25, 2020, the International Day for the Elimination of Violence against Women, President-elect Joe Biden released a statement in which he pledged to "restore Title IX protections for student survivors of sexual assault, stalking, and dating violence"; [~~now, therefore,~~] and

WHEREAS, according to the Rape, Abuse, and Incest National Network, 1 in 10 students across the United States will experience sexual violence while attending an institution of higher education; and

WHEREAS, according to the United States Department of Justice, an estimated 90 percent of survivors of campus-based sexual violence do not report such violence through official institutional or legal protocols; and

WHEREAS, according to the University of Hawaii systemwide campus climate survey of 2019, 12.7 percent of students have reported experiencing sexual harassment, 10.6 percent have experienced stalking, 21.3 percent have experienced dating violence, and 7.2 percent have experienced nonconsensual sexual contact, all of which represent significant increases from the university's campus climate survey results of 2017; now, therefore,

BE IT RESOLVED by the House of Representatives of the Thirty-first Legislature of the State of Hawaii, Regular Session of 2021, the Senate concurring, that an Act 110 Implementation Task Force be convened to address implementation of Hawaii's state law corollary to Title IX, in light of recent changes to federal Title IX regulations; and

BE IT FURTHER RESOLVED that the Act 110 Implementation Task Force is requested to recommend amendments to Hawaii's state law corollary for the purpose of addressing potential conflicts between Hawaii's law and the federal government's recent changes to the Title IX regulations, while considering the possible impacts of any restoration by the new federal administration of prior Title IX protections, and to recommend a meaningful enforcement framework for Hawaii's state law corollary to Title IX; and

BE IT FURTHER RESOLVED that the membership of the Act 110 Implementation Task Force consist of one representative from each of the following entities, and that upon convening, the members elect a chairperson from among themselves:

- (1) The Office of Institutional Equity of the University of Hawaii System;
- (2) The Hawaii Civil Rights Commission;
- (3) The Civil Rights Compliance Branch of the Department of Education;
- (4) The Department of the Attorney General;
- (5) The Hawaii State Commission on the Status of Women; **[and]**
- (6) The American Association of University Women of Hawaii, which shall be invited to participate[-];
- (7) The Prevention, Awareness, and Understanding Violence Program of the University of Hawaii system;
- (8) The Hawai'i Coalition to End Domestic Violence, which shall be invited to participate;

(9) The Sex Abuse Treatment Center, which shall be invited to participate; and

(10) The Every Voice Coalition, which shall be invited to participate; and

BE IT FURTHER RESOLVED that the Act 110 Implementation Task Force is requested to consider in its deliberations the:

(1) Availability of resources for survivors of campus-based sexual violence;

(2) Adequacy of evidence-based and trauma-informed training regarding sexual violence for faculty, staff, and students;

(3) Sufficiency of information provided to students about gender violence, including, but not limited to, information regarding student rights, institutional and legal reporting protocols, and on- and off-campus student support services;

(4) Legislation enacted in other states to strengthening protections for survivors of campus-based sexual violence, including chapter 188-H, New Hampshire Revised Statutes, and Chapter 337 of the Acts of 2020 of the Commonwealth of Massachusetts;

(5) Recommendations contained in “The Complexities of Enforcing Title IX and Related Laws: Past History, Current Status, and Future Directions, which was published by the Legislative Reference Bureau in 2019; and

(6) Strategies for improving protections for transgendered students in Hawaii’s public schools; and

BE IT FURTHER RESOLVED that the members of the Act 110 Implementation Task Force serve without compensation; and

BE IT FURTHER RESOLVED that the Act 110 Implementation Task Force is requested to work with student organizations, such as the Associated Students of the University of Hawaii, to obtain feedback from survivors of campus-based sexual violence in the course of its deliberations; and

BE IT FURTHER RESOLVED that the Act 110 Implementation Task Force is requested to submit a report of its findings and recommendations, including any proposed legislation, no later than twenty days prior to the convening of the Regular Session of 2022; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Governor; Attorney General; Executive Director of the Hawaii Civil Rights Commission; President of the University of Hawaii System; Superintendent of Education; Executive Director of the Hawaii State Commission on the Status of Women; and the Board President of the American Association of University Women of Hawaii[.], [the System Coordinator for the Prevention, Awareness, and Understanding Violence Program of the University of Hawaii, the Executive Director of the Hawaii Coalition to End Domestic Violence, the Executive Director of the Sex Abuse Treatment Center, and the co-Executive Directors of the Every Voice Coalition.](#)

Kris Coffield · Executive Director, Imua Alliance · (808) 679-7454 · kris@imuaalliance.org

SCR-9

Submitted on: 3/17/2021 12:34:56 PM

Testimony for EDU on 3/19/2021 3:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jasmine Slovak	Individual	Support	No

Comments:

Aloha e,

My name is Jasmine Slovak. I am strongly in favor of Bill/ SCR9. We are letting our women, and un-gendered community members down. Outside of the western white lens provides space for a spectrum of orientations, this is well acknowledged by Hawaiian culture. In this place, Hawai'i, as a democracy we can uphold and perpetuate both the culture of this place and our society's values by ensuring that all people have access to a safe learning environment. The appropriate institutions should be encouraged and given the means to prioritize safety for all attending through education of respectful and safe communication, enforcement of no tolerance of harassment.

Mahalo for your service.

SCR-9

Submitted on: 3/18/2021 9:38:25 AM

Testimony for EDU on 3/19/2021 3:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Donavan Albano	Individual	Support	No

Comments:

Aloha e Members of the Senate Committees on Education and Higher Education,

My name is Donovan Kamakani Albano, and I am a full-time undergraduate student at the University of Hawai'i at Mānoa and a resident of Kalihi, O'ahu. I am submitting testimony to express my support of and comments on SCR 9.

As a student at the UH Mānoa, I am in support of the Hawai'i State Legislature 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. Gender-based discrimination must continue to be prohibited, especially as we continue to operate using cisheteronormative practices, and it must be ensured that inclusivity and intersectionality are approaches when addressing issues of gender-based discrimination.

While I am grateful that the task force is proposed to be convened and will include representatives from the Hawai'i State Commission on the Status of Women and the American Association of University Women of Hawai'i, I am, however, concerned that the task force proposed in the resolution does not include student voices. Additionally, I think that the Hawai'i State Legislature should be taking active actions to protect and support victims of sexual and domestic violence at higher education institutions.

I am deeply disappointed that HB691/SB727 died during the 2021 legislative session. This sets a strong precedent for Hawai'i's college students that protecting survivors on campuses are not of significant priority when during the COVID pandemic, gender-based, domestic, and sexual violence have been exacerbated, even if folx are not physically on campus. I think that most people would agree that these issues are not up for debate - students should have access to protective services at all times, and I personally believe this is linked to the broader systemic oppressions, such as misogyny, colonialism, imperialism and settler-state sanctioned violence. I urge the legislature to think critically about how injustices are being upheld against women, LGBTQ+, gender non-conforming and queer folx, and folx who have been impacted by this type of violence.

This being said, by passing this resolution through, you, our legislators, have the opportunity to show students that this is an issue of concern and that Title IX protections

specifically must continue to be evaluated and supported for students. While it does not necessarily move the needle on what directly needs to change, this is a great opportunity to have conversations that need to happen, although I do hope that amendments can be made to be inclusive of student voices and voices of those directly affected by these injustices.

Mahalo nui for the opportunity to submit testimony, and I appreciate your time and consideration.

Me ke aloha,

Donavan Kamakani Albano

albanodc@hawaii.edu

SCR-9

Submitted on: 3/18/2021 11:49:02 AM

Testimony for EDU on 3/19/2021 3:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Patricia Bilyk	Individual	Support	No

Comments:

I Support SCR 9 to establish a Task Force to reinstate the Title IX provisions in our State

Patricia L Bilyk RN, MPH, MSN