



‘O kēia ‘ōlelo hō’ike no ke  
**Komikina Kūlana Olakino o Nā Wāhine**

Testimony on behalf of the  
**Hawai‘i State Commission on the Status of  
Women**

IN SUPPORT OF SB832 SD1  
Relating to Victim-Counselor Privilege  
March 15, 2022

Dear Chair Takayama and Honorable Members,

The Hawai‘i State Commission on the Status of Women supports SB832 SD1, which expands the victim-counselor privilege under Rule 505.5 of the Hawaii Rules of Evidence to include confidential advocates employed by the University of Hawai‘i

Violence against women and gender diverse people has increased during the COVID-19 pandemic. Students and employees victimized by gender-based violence need immediate access to confidential advocates. Confidential advocates are one of the key contributions of the women’s equality movement and “have proven a decisive factor for many ambivalent victims struggling with the decision whether to report a crime.”<sup>1</sup> Campus advocates do critical work and should be supported in taking an empowerment-based and victim-centered approach. Survivors on college campuses should be afforded the same protections for confidentiality as they would receive from community advocates.

Accordingly, the Commission asks the Committee pass SB832 SD1.

Mahalo,

Khara Jabola-Carolus

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<sup>1</sup> Perla P. Flores, *Victim, Witness, Pawn & Icon Navigating the Paradoxically Coercive Relationship Between the Criminal Justice System and Victims of Gender-Based Violence*, 44 Lincoln L. Rev. 21 (2017)



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
House Committee on Higher Education and Technology  
March 16, 2022 at 2:00 p.m.

by  
Jan Gouveia  
Vice President for Administration  
University of Hawai'i

### SB 832 SD1 – RELATING TO VICTIM-COUNSELOR PRIVILEGE

Chair Takayama, Vice Chair Clark, and members of the committee:

Thank you for the opportunity to present testimony on SB 832 SD1 – Relating to Victim-Counselor Privilege. The University of Hawai'i ("University") supports this bill.

SB 832 SD1 expands the existing victim-counselor privilege held by community-based victim counseling programs to advocates employed by the University. Previously, as part of Act 208, Session Laws of Hawai'i 2016, the Legislature required the University to designate confidential advocates at each campus to provide confidential advocacy support to victims of sexual harassment, sexual assault, domestic violence, dating violence, and stalking. However, the law did not provide a mechanism to guarantee confidentiality to students and employees seeking services of campus-based advocates. Additionally, the existing victim-counselor privilege under Hawai'i Revised Statutes Section 626-1 only covers services relating to domestic violence and sexual assault. Further, overall privilege does not apply to the University based on the definition of victim counseling programs under the statute.

Expanding the victim-counselor privilege by giving additional legal protections to information that victims share with the University's confidential advocates allows victims to share more information in confidence and receive better support from the University. Protecting survivor information is critical to developing trust between advocate and survivor and makes survivors more likely to share information that is necessary for effective safety planning and response. Absent these additional legal protections, victims may be less likely to share information, in fear that information may be later subpoenaed for court proceedings against their wishes.

Thank you for the opportunity to testify on SB 832 SD1.



*The Judiciary, State of Hawai`i*

**Testimony to the House Committee on Higher Education and Technology**

Representative Gregg Takayama, Chair

Representative Linda Clark, Vice Chair

March 16, 2022 at 2:00 p.m.

Via Videoconference

**WRITTEN TESTIMONY ONLY**

Hawai`i Supreme Court Standing Committee

on the Hawai`i Rules of Evidence

Catherine H. Remigio, Chair



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**Bill No. and Title:** Senate Bill No. 832, S.D. 1 - Relating to Victim-Counselor Privilege

**Purpose:** Expands the victim-counselor privilege under Hawai`i Rules of Evidence Rule 505.5 to include confidential advocates employed by the University of Hawai`i. Designates the privilege extended to victim-counselors as "semiabsolute". Extends the privilege to victims seeking assistance for situations involving dating violence, stalking, and sexual harassment.

**Judiciary's Position:**

The Hawai`i Supreme Court's Standing Committee on Rules of Evidence respectfully takes no position on Senate Bill No. 832, S.D. 1, but offers the following comments:

Hawai`i Rules of Evidence ("HRE") Rule 505.5 is housed in HRE Article V - Pertaining to Privileges. Under HRE 501, no person has the privilege to:

- (1) Refuse to be a witness; or
- (2) Refuse to disclose any matter; or
- (3) Refuse to produce any object or writing; or
- (4) Prevent another from being a witness or disclosing any matter or producing any object or writing.



Senate Bill No. 832, S.D. 1 - Relating to Victim-Counselor Privilege  
House Committee on Higher Education and Technology

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The only exceptions are those recognized by the U.S. or Hawai`i Constitutions, an Act of Congress or Hawai`i statute, the **Hawai`i Rules of Evidence** or other rules adopted by the Supreme Court of the State of Hawai`i. HRE 501. Emphasis added.

HRE 505.5 recognizes a "victim-counselor privilege" exception to the mandates of HRE 501.

The current version of the "victim-counselor privilege" states its "General rule of privilege" in HRE 505.5(b). This implies a rule that is generally applicable.

Under SB 832, S.D.1, the general rule of privilege identified in HRE 505.5(b) would become "semiabsolute." The term "semiabsolute" is not defined in HRE 505.5. If "semiabsolute" means the privilege may not always be available to a victim-counselor, then it is not a general rule. If there are limits to the privilege, those limits must be made clear. HRE 505.5(d) already lists eight exceptions to the victim-counselor privilege. Circumstances that would render the privilege inapplicable (or not absolute) should be listed as an exception.

The need for clarification is emphasized by the fact that none of Hawaii's current statutory privileges uses the term "semiabsolute."

If the victim-counselor privilege is to be "semiabsolute," without more, the victim counselors who provide treatment or services would not know at the outset whether their communications would be deemed privileged. This could make it difficult to provide the assistance sought by the victims whose communications are the subject of HRE 505.5.

If the victim-counselor privilege is to be "semiabsolute," without more, trial courts would have no guidance to determine when the victim-counsel privilege exists in any given case.

Thank you for the opportunity to comment on SB 832, S.D.1.



To: House Committee on Higher Education and Technology  
Hearing Date/Time: March 16, 2022 2:00PM  
Re: Testimony in SUPPORT of SB832 SD1

Dear Chair Takayama, Vice Chair Clark, and the Members of Committee,

Members of AAUW of Hawaii thank you for this opportunity to testify in support of SB832 SD1 which would expand the victim-counselor privilege to confidential advocates employed by the University of Hawaii.

Confidentiality is of utmost importance when reporting sexual violence, sexual harassment and interpersonal violence. The Victim-Counselor Privilege has been effective in protecting trauma victims and plays a big role in the survivor's recovery process.

The American Association of University Women (AAUW) of Hawaii is an all volunteer, statewide chapter of a national organization and is made up of six branches: Hilo, Honolulu, Kua'i, Kona, Maui, and Windward Oahu. UH Hilo, UH Manoa, UH Maui College, and Windward Community College are also AAUW partners. AAUW's mission is to advance gender equity for equal opportunities in education, at workplace and for economic security, and in leadership.

Sincerely,  
Younghee Overly

A handwritten signature in blue ink, appearing to read "Y. Overly", is positioned below the typed name.

Public Policy Committee, AAUW of Hawaii  
publicpolicy-hi@aauw.net



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Date: March 16, 2022

To: Representative Gregg Takayama, Chair  
Representative Linda Clark, Vice Chair

From: Lynn Costales Matsuoka, Associate Director  
The Sex Abuse Treatment Center  
A Program of Kapi'olani Medical Center for Women & Children

RE: Testimony in Support of SB 832 SD1  
Relating to Victim-Counselor Privilege

Hearing: March 16, 2022 at 2:00 pm

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Good Morning Chair Takayama, Vice Chair Clark, and Members of the Committee on Higher Education and Technology:

The Sex Abuse Treatment Center (SATC) is in support of SB 832 SD1, Relating to Victim-Counselor Privilege.

The Victim-Counselor Privilege has been effective in protecting trauma victims as it provides privilege status to their confidential communications. Survivors of sexual assault often face extreme difficulty and fear when disclosing their experience. The relationship between a counselor and a survivor is critical, and requires trust and safety. The Victim-Counselor Privilege promotes this, and as a result, plays a big role in the survivor's recovery process.

The SATC supports this measure as it will protect the confidentiality of sexual assault survivors accessing care within the University of Hawai'i system.

Thank you for the opportunity to provide testimony.

**SB-832-SD-1**

Submitted on: 3/12/2022 4:01:00 PM

Testimony for HET on 3/16/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in Support.

March 13, 2022

Representative Gregg Takayama, Chair  
Representative Linda Clark, Vice Chair  
Committee on Higher Education and Technology

RE: Wednesday, March 16, 2022 Hearing

**Support of SB 832 SD1 – Relating to Victim/Counselor Privilege**

Chair Takayama, Vice-chair Clark, and members of Higher Education and Technology Committee,

My name is Angie Lanier, and I am a social work student with the University of Hawaii at Manoa. Today I submit testimony in strong support of expanding the victim/counselor privilege relationship protections at UH Manoa. Since the enactment of the original bill, it has gone a long way in addressing the need for confidential support of students who are under extreme duress due to victimization. But over time, it's been discovered that the bill should offer more, and I am excited that we are taking steps to strengthen its protections. I believe adding this second layer of protected communications will be well-received by the student body.

As someone who is becoming a counselor, I understand the importance of confidentiality and creating a safe space for clients to share. When a client doesn't feel secure that their communications are legally protected, it has the potential to do great harm to the therapeutic relationship and jeopardize any progress moving forward.

Adding these amendments will strengthen the bonds of trust on both sides. As counselors, we never want to "over-promise" or understate the limitations of confidentiality to our clients, and this improved bill will go a long way in closing some of those loopholes – ultimately providing peace of mind to those who need services.

Therefore, I urge the committee to pass SB 832 SD1. Thank you for the opportunity to testify.

Sincerely,

Angie Lanier



Date: March 14, 2022

To: The Honorable Representative, Gregg Takayama, Chair  
House Committee on Higher Education & Technology

The Honorable Representative, Linda Clark, Vice Chair  
House Committee on Higher Education & Technology

**Subject: SB832, RELATING TO VICTIM-COUNSELOR PRIVILEGE**

My name is Jennifer Jung, and I write my full support of SB832 as a graduate student in social work attending The University of Hawai‘i at Manoa (University). My experience as a former intern within the PAU Violence program at the University as well as my ongoing legal advocacy on behalf of survivors of serious crimes help inform my strong support of the expansion of the victim-counselor privilege. This bill proposes to expand the victim-counselor privilege rule to cover University of Hawai‘i confidential advocates.

Survivors of sexual assault, domestic violence, stalking, and other forms of abuse and violence need safety and trust as they often must navigate multiple systems, including the University, in determining the next best steps for their wellbeing. Trust is critical in establishing a safe rapport between advocate and survivor. Systems that empower and equip survivors to have control over the vulnerable information they share help create a safer environment. By expanding the victim-counselor privilege rule, the confidential advocacy provided by the University becomes a safer system for survivors to engage.

In closing, I support SB832 and recommend its passing to increase safety for survivors across the state attending the University by ensuring access to campus advocates covered by the victim-counselor privilege.

Thank you for this opportunity to provide testimony.

Sincerely,

Jennifer Jung, Esq.

**SB-832-SD-1**

Submitted on: 3/14/2022 2:14:48 PM

Testimony for HET on 3/16/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Andrea Nandoskar	Individual	Support	Written Testimony Only

Comments:

Support.

**SB-832-SD-1**

Submitted on: 3/14/2022 4:29:15 PM

Testimony for HET on 3/16/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Tamara Swift	Individual	Support	Written Testimony Only

Comments:

I support expanding the victim-counselor privilege under Rule 505.5 of the Hawaii Rules of Evidence to include confidential advocates employed by the University of Hawaii because they may have important relationships with the victims that need to be represented.

**SB-832-SD-1**

Submitted on: 3/15/2022 8:34:20 AM

Testimony for HET on 3/16/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Kaylie Keim	The Every Voice Coalition Hawai'i	Support	Written Testimony Only

Comments:

House Committee on Higher Education & Technology

March 16th, 2022

Testimony of Kaylie Keim

State Director

Every Voice Coalition Hawai'i

Dear Chair Takayama, Vice Chair Clark and members of the Committee,

My name is Kaylie Keim and I am a student at UH Mānoa, and the State Director for the Every Voice Coalition and I am asking you to SUPPORT SB832.

The purpose of a confidential or campus advocate is extremely important, as it opens doors and clarifies options for students as they step into the process of navigating college after experiencing sexual violence. Students who have experienced campus sexual violence, dating/domestic violence, and stalking should have the opportunity to have someone they trust guide them through the complexities of college. Campus survivors often do not have the information they need to make informed decisions that will impact their educational, personal, and professional trajectories, as we have seen in climate survey data. Additionally, we see that 22.2% of students at UH did not report their experience because they feared it would not be kept confidential.

A confidential advocate without confidentiality privilege is misleading to students, poses additional risks for survivors, and increases institutional distrust. As a single person on campus that has access to the experiences of survivors, confidential advocates are holders of sensitive information. Without privilege, confidential advocates would serve as an easily accessible repository for defendants who want to devalue the perspective of a survivor by accessing this information through legal means. Without privilege, confidential advocates do much more harm to survivors than good.

There are a growing number of states that understand the importance of campus advocate privilege, such as Illinois, Massachusetts, New Hampshire, Nevada, Indiana, California, Oregon, and Utah. Based on our state statistics around sexual violence, now is the time more than ever to act and protect students.

Thank you for the opportunity to testify on SB832.

**Testimony in support of SB832 Relating To Victim-counselor Privilege  
House Committee on Higher Education & Technology  
March 16th, 2022**

Testimony of Anna Ezzy

Dear Chair Takayama, Vice Chair Clark and members of the Committee,

My name is Anna Ezzy, I am an incoming graduate student at the University of Hawai'i and resident of Haiku, Maui and I am asking you to SUPPORT HB1775.

The purpose of a confidential or campus advocate is extremely important, as they open doors and clarify options for students in the process of navigating college after experiencing sexual violence. Students who have experienced campus sexual violence, dating/domestic violence, and stalking should have the opportunity to have someone they trust guide them through the complexities of college. Campus survivors often do not have the information they need to make informed decisions that will impact their educational, personal, and professional trajectories, as we have seen in climate survey data. Additionally, we see that 22.2% of students at UH did not report their experience because they feared it would not be kept confidential.

A confidential advocate *without* confidentiality privilege is misleading to students, poses additional risks for survivors, and increases institutional distrust. As a single person on campus that has access to the experiences of survivors, confidential advocates are holders of sensitive information. Without privilege, confidential advocates would serve as an easily accessible repository for defendants who want to devalue the perspective of a survivor by accessing this information through legal means. Without privilege, confidential advocates do much more harm to survivors than good.

There are a growing number of states that understand the importance of campus advocate privilege, such as Illinois, Massachusetts, New Hampshire, Nevada, Indiana, California, Oregon, and Utah. Based on our state statistics around sexual violence, now is the time more than ever to act and support students.

Thank you for the opportunity to testify on SB832.

Mahalo nui,  
Anna Ezzy