



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Judiciary
January 25, 2022 at 9:30 a.m.

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

SB 832 – RELATING TO VICTIM-COUNSELOR PRIVILEGE

Chair Rhoads, Vice Chair Keohokalole, and members of the committee:

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

SB 832 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.

SB-832

Submitted on: 1/22/2022 5:43:27 PM

Testimony for JDC on 1/25/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Caroline Delsaux	Individual	Support	No

Comments:

SUBJECT : SB832 RELATING TO VICTIM - COUNSELOR PRIVILEGE

As a graduate student in social work and an intern for UH Confidential Advocacy for the University of Hawaii at Mānoa, I want to give my full support to this bill.

Given the emotional tsunami that victims must deal with in these circumstances, it seems certain that assistance that guarantees confidentiality is a primary foundation.

Unfortunately, the boundaries of their privacy have been violated. Out of respect for their experience, it is essential to guarantee them a safe place to come and share their feelings and questions in complete confidence and trust.

The many studies in this area place the rule of confidentiality at the forefront.

It is therefore with strength and conviction that I support this bill.

Thank you for your consideration,

Caroline Delsaux

January 23, 2022

TO: The Members of the Senate Judiciary Committee Chair Karl Rhoads Sen.
Donna Mercado Kim
Vice Chair Jarret Keohokalole Sen. Chris Lee
Sen. Laura Acasio Sen. Kurt Fevella
Sen. Mike Gabbard
FROM: Jojo Miller, private citizen

SUBJECT: SB832 RELATING TO VICTIM-COUNSELOR PRIVILEGE

Expands the victim-counselor privilege under Rule 505.5 of the Hawai'i Rules of Evidence to include confidential advocates employed by the University of Hawai'i.

Hearing: Tuesday, January 25, 2022 at 9:30 AM

Thank you for the opportunity to present testimony in support of SB832. I am writing in full support of this measure that would expand the Victim-Counselor Privilege rule to include confidential advocates employed by the University of Hawai'i.

As an advocate at the University of Hawai'i, my job is to support survivors of sexual assault, domestic violence, stalking, and other forms of abuse and violence. Something every advocate understands is the need for survivors to have empowerment and a sense of control over the escape and healing from violence. As advocates, when we are put in the position to break confidentiality we cause harm to survivors. Evidence shows that a lack of support for survivors increases depression, suicidality, and returning to/staying with abusers. Advocates are often the first contact for survivors, before friends and family, and if we do not have the appropriate resources and supports we are unable to properly support survivors, and can even cause them harm. As an advocate and a survivor I fully support this measure as a need of the community.

Jojo Miller

A handwritten signature in black ink, appearing to read "Jojo Miller". The signature is written in a cursive, flowing style.

January 23, 2022

TO: The Members of the Senate Judiciary Committee Chair Karl Rhoads
Sen. Donna Mercado Kim
Vice Chair Jarret Keohokalole Sen. Chris Lee
Sen. Laura Acasio Sen. Kurt Fevella
Sen. Mike Gabbard

FROM: Lea Messing, private citizen

SUBJECT: **SB832 RELATING TO VICTIM-COUNSELOR PRIVILEGE**
Expands the victim-counselor privilege under Rule 505.5 of the Hawai'i Rules of Evidence to include confidential advocates employed by the University of Hawai'i.

Hearing: Tuesday, January 25, 2022 at 9:30 AM

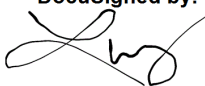
Thank you for the opportunity to present testimony in support of SB832. I am writing in full support of this measure that would expand the Victim-Counselor Privilege rule to include confidential advocates employed by the University of Hawai'i.

Confidentiality is of utmost importance when reporting sexual violence, sexual harassment and interpersonal violence, particularly in the university setting. I have held many case management positions in my career as a mental health advocate and have worked with clients that have experienced violence. I think advocacy is a tremendously difficult job and offering those working with victims more confidentiality to confirm trust is necessary. There are times that mandated reporting can hinder and cause harm instead of help, I think that this bill to extend privileges will be beneficial to both advocate and their clients. It is imperative that survivors can build trust with advocates that recognize not only the challenges they may face, but also the array of options available to them.

I write in strong support of this measure to extend the Victim-Counselor Privilege rule to confidential advocates employed by the University of Hawai'i.

Thank you for the opportunity to provide testimony.

Lea Messing

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January 23, 2022

TO: The Members of the Senate Judiciary Committee Chair Karl Rhoads
 Sen. Donna Mercado Kim
 Vice Chair Jarret Keohokalole Sen. Chris Lee
 Sen. Laura Acasio Sen. Kurt Fevella
 Sen. Mike Gabbard

FROM: Leslie D. Cabingabang, Graduate Student
 University of Hawai'i at Mānoa
 College of Education

SUBJECT: **SB832 RELATING TO VICTIM-COUNSELOR PRIVILEGE**
 Expands the victim-counselor privilege under Rule 505.5 of the Hawai'i Rules of
 Evidence to include confidential advocates employed by the University of
 Hawai'i.

Hearing: Tuesday, January 25, 2022 at 9:30 AM

Thank you for the opportunity to present testimony in support of SB832. I am writing in full support of this measure that would expand the Victim-Counselor Privilege rule to include confidential advocates employed by the University of Hawai'i. I have worked as a confidential advocate for the University for nearly 13 years and I recognize how important it is that an individual can confide in an advocate to support their endeavors in addressing harassment and violence. As a graduate student, I understand the necessity of advocates to help individuals facing such crises.

Confidentiality is of utmost importance when reporting sexual violence, sexual harassment and interpersonal violence, particularly in the university setting. Advocates are often the first point of contact for someone who has experienced interpersonal violence. Advocates have a unique knowledge-base and skillset to assist victims in addressing the nuances associated with their situations. Furthermore, campus employed advocates have an extensive understanding of the distinct complications that can be associated with reporting harassment by faculty. It is imperative that survivors can build trust with advocates that recognize not only the challenges they may face, but also the array of options available to them.

I write in strong support of this measure to extend the Victim-Counselor Privilege rule to confidential advocates employed by the University of Hawai'i.

Thank you for the opportunity to provide testimony.



LATE

‘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
Relating to Victim-Counselor Privilege
January 24, 2022

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

The Hawai‘i State Commission on the Status of Women supports SB832, 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.”¹ 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.

Mahalo,

Khara Jabola-Carolus

¹ 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)



LATE

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Date: January 25, 2022

To: The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair
Senate Committee on Judiciary

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, Relating to Victim-Counselor Privilege

Hearing: Tuesday, January 25, Via videoconference

Good morning Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Sex Abuse Treatment Center (SATC) is in support of SB 832, Relating to Victim-Counselor Privilege. This bill would expand the Victim-Counselor Privilege rule to include confidential advocates employed by the University of Hawaii.

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.

Written Testimony in Support of SB832

LATE

Testimony of Shannon Tran
PhD Student at the University of Hawaii at Manoa

23 January 2022

To the Distinguished Chairs of Senate Committee on Judiciary:

My name is Shannon Tran, a graduate student at UH Manoa, and I appreciate the opportunity to testify in support of SB832, which relates to victim-counselor privilege to be extended to the designated campus confidential advocates.

I am a graduate student who was sexually assaulted by a professor at the University of Hawaii at Manoa. This professor was both my teacher and employer, and over the years he forged an enmeshed relationship with my family. Because of this, I was extremely afraid to seek help and advice on how to safely leave my situation. I knew I needed a safety plan, but I was not yet prepared to file any formal reports against this professor because I felt unsafe around him. I needed to feel safe before doing anything else. Seeking help, I called the UH Manoa advocate, Jamie Newalu, but her position's incapability to promise confidentiality was the single impediment for me to tell my story and get that help. The lack of confidentiality deprived me of the safety to ask for safety itself.

It took me three fearful calls to Jamie—in which I could barely respond to any of Jamie's questions or willingness to help—and an emergency call to the fully-confidential mental health center, for me to feel comfortable to divulge my story to Jamie and ultimately file a report.

I am now in the process of going through a Title IX investigation. I only felt ready to do so after finding the courage to open up to Jamie, and later, my family. Throughout this process, Jamie has been an invaluable advocate, especially now that I freely trust her to support me. I would not be able to file a report without this trust and support. My story is also only one of many. Victims who face sex-based discrimination, harassment, DV, stalking, and retaliation each have a unique situation, which often requires confidentiality to feel safe to speak about it. Had confidentiality been a protection from the beginning, so many other victims in my position could seek the resources they need from advocates like Jamie.

Confidentiality is important to victims like me. It should be extended to all university affiliates, including students and employees. I support SB832 because confidentiality allows us to feel safe to speak our truth. The safety of the victim should come first, and confidentiality will allow advocates to provide this support and protection for victims who need it.

Thank you for your time,

Shannon Tran

Written Testimony in Support of SB832



Testimony of
Maile Griffin
University of Hawai'i at Manoa Graduate Student

1/24/2022

To the Distinguished Chairs of Senate Committee on Judiciary:

My name is Maile Griffin; I am a University of Hawaii Social Work Graduate Student testifying on behalf of myself. I appreciate the opportunity to testify in support of SB832, which relates to victim-counselor privilege to be extended to the designated campus confidential advocates.

Confidentiality is paramount to serving victims of sex-based discrimination, harassment, domestic/dating violence, stalking, and retaliation. From a trauma-informed standpoint, confidentiality establishes a space for (1) the safety in survivors' emotional and physical health, (2) trust that the victims' boundaries will be respected, and (3) trust in that their story will be held in confidence. As a fellow UH student, this bill would give me and other fellow classmates the assurance that if any UH faculty or staff has harmed us, we can confide to the confidential advocate without feeling scared of triggering a Title IX report before we may be ready. It would provide us the time and space to assess all our options in how we may proceed with the assault, to even possibly empower us to come forward through formal process because that choice was respected. In a traumatic experience whereby the victim's autonomy and choice were taken away, I hope you consider passing SB832 to provide the control in at least deciding how they want to pursue their healing journey.

I support SB832 because of the impact it could have on survivors seeking future help and support. Extending these privileges to confidential advocates will establish the strongest of security for victims to feel safe in seeking support and becoming survivors.

Thank you for your time.

Maile Griffin

LATE

January 24, 2022

TO: The Members of the Senate Judiciary Committee
Chair Karl Rhoads
Vice Chair Jarret Keohokalole
Sen. Donna Mercado Kim
Sen. Chris Lee
Sen. Laura Acasio
Sen. Kurt Fevella
Sen. Mike Gabbard

FROM: Jamie Newalu, LSW
Private Citizen

SUBJECT: **SB832 RELATING TO VICTIM-COUNSELOR PRIVILEGE**
Expands the victim-counselor privilege under Rule 505.5 of the Hawai'i Rules of Evidence to include confidential advocates employed by the University of Hawai'i.

Hearing: Tuesday, January 25, 2022 at 9:30 AM

I am writing to present testimony and full support of SB832, which expands the Victim-Counselor Privilege rule to include confidential advocates employed by the University of Hawai'i

It is critical for an advocate, including campus-based advocates, to be able to hold confidentiality for the victims/survivors that they serve. As a woman who identifies as a thriver and an advocate, I can speak firsthand on the importance of having full confidentiality to help promote safety, trust, and empowerment for the individuals we serve. Survivors of gender- or sex-based discrimination, harassment, sexual violence, dating/domestic violence, and stalking may often seek an advocate for assistance as a first line of contact. Many victims/survivors may have their safety and well-being on the line, and they may not know if they are ready to make a report or if their safety may be compromised. This situation is particularly difficult in a university setting, especially if their allegations are against an employee at the university who may have power over their education and career advancement.

As an advocate, I have witnessed survivors who were seeking support after experiencing gender-based harassment and/or violence, but did not feel safe to proceed with communicating with the advocate due to the limitations of the confidentiality. Many times, those individuals wanted to seek information, safety options, and support on how to navigate their particular predicaments without triggering a report; however, they felt unsafe in disclosing information to the advocate due to confidentiality not being guaranteed with allegations against an employee. This aspect makes it difficult for survivors to fully trust the advocate, which prevents thorough safety planning and authentic conversations. There have been many instances where potential

victims have recoiled because they were not ready to make a report or risk their information not being kept confidential. When working with survivors of trauma, trust and empowerment are the key to supporting victims. Thus, survivors need to determine when they are ready to move forward and make a report on their own free will, and not have a barrier to accessing confidential services out of fear of triggering an unwanted report.

Confidential campus advocates have a unique knowledge-base to assist survivors in addressing their concerns ranging from personal safety to navigating their rights and options at the university. It is imperative that survivors can build trust with the advocates in order to create a safe environment to support them through the nuances associated with their situation. Additionally, extending confidentiality to campus advocates may also elicit trust for potential victims to reach out sooner in precarious situations, thus, allowing advocates to do more preventative work and safety planning.

I write in strong support of this measure to extend the Victim-Counselor Privilege rule to confidential advocates employed by the University of Hawai'i.

Thank you for the opportunity to provide testimony.

A handwritten signature in black ink, appearing to read 'Jamie Newalu', with a stylized, cursive script.

Jamie Newalu



HAWAI'I STATE
COALITION AGAINST
DOMESTIC VIOLENCE

LATE

January 25, 2022

Members of the Senate Committee on Judiciary:

Chair Karl Rhoads
Vice Chair Jarrett Keohokalole
Sen. Laura Acasio
Sen. Chris Lee
Sen. Mike Gabbard
Sen. Kurt Fevella
Sen. Donna Mercado Kim

Re: SB832 Relating to Victim-Counselor Privilege

Dear Chair Rhoads, Vice Chair Keohokalole, and Members of the Senate Committee on Judiciary:

The Hawai'i State Coalition Against Domestic Violence (HSCADV) advances the safety and healing of victims, survivors and their families. We are the collective voice of a diverse network of organizations and individuals, working to eliminate all forms of domestic violence in Hawai'i by fostering partnership, increasing awareness of domestic violence, developing the capacity our member programs and community partners to address the needs of survivors and their families, and advocating for social justice and change. On behalf of HSCADV and our 25 member programs statewide, I respectfully submit testimony in support of SB832.

This bill expands the victim-counselor privilege under Rule 505.5 of the Hawai'i Rules of Evidence to include confidential advocates employed by the University of Hawai'i. Survivors on within the University of Hawai'i system, whether they are students or employees, should be afforded the same confidentiality protections as they would receive from community advocates and other service providers.

With this new rule in place, more students and employees would be willing to disclose their victimization and in doing so, the opportunity to receive critical services such as safety planning. Currently, there are gaps in confidentiality and for many survivors in higher education, it can dissuade them from seeking the appropriate assistance, access to justice and resources to heal from their trauma.

Thank you for the opportunity to testify on this important matter.

Sincerely,

Angelina Mercado
Executive Director, HSCADV

January 23, 2022

LATE

TO: The Members of the Senate Judiciary Committee
Chair Karl Rhoads Sen. Donna Mercado Kim
Vice Chair Jarret Keohokalole Sen. Chris Lee
Sen. Laura Acasio Sen. Kurt Fevella
Sen. Mike Gabbard

FROM: Stewart J. Silva, Student
University of Hawai'i at Manoa

SUBJECT: **SB832 RELATING TO VICTIM-COUNSELOR PRIVILEGE**
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Confidentiality is of utmost importance when reporting sexual violence, sexual harassment and interpersonal violence, particularly in the university setting. Advocates are often the first point of contact for someone who has experienced interpersonal violence. Advocates have a unique knowledge-base and skillset to assist victims in addressing the nuances associated with their situations. Furthermore, campus employed advocates have an extensive understanding of the distinct complications that can be associated with reporting harassment by faculty. It is imperative that survivors can build trust with advocates that recognize not only the challenges they may face, but also the array of options available to them.

I write in strong support of this measure to extend the Victim-Counselor Privilege rule to confidential advocates employed by the University of Hawai'i.

Thank you for the opportunity to provide testimony.

Stewart J. Silva
Stewart J. Silva

Written Testimony in Support of SB832

Written Testimony in Support of SB832

Testimony of Claire Chun
University of Hawai'i System
Administrator

1/25/22

To the Distinguished Chairs of Senate Committee on Judiciary:

My name is Claire Chun. I am with the University of Hawai'i System testifying on behalf of myself. I appreciate the opportunity to testify against/in support of SB832, which relates to victim-counselor privilege to be extended to the designated campus confidential advocates.

Confidentiality for campus advocates is paramount to serving victims like myself of sex-based discrimination, harassment, DV, stalking, and retaliation. Confidentiality can be applied to a report against another University employee and had guaranteed confidentiality been in place, I would have not only sought support sooner but would have been more apt to share information that could have helped me as a victim. As many victims, like myself, are hesitant to file a claim, confidentiality is integral in helping victims overcome the amount of psychological stress and self-sabotaging behaviors that deter one from reporting their claim in the first place.

I support SB832 because of the impact it could have on survivors seeking future help and support with guaranteed confidentiality.

Thank you for your time,
Claire Chun