



UNIVERSITY OF HAWAII SYSTEM
‘ŌNAEHANA KULANUI O HAWAII

Legislative Testimony
Hō‘ike Mana‘o I Mua O Ka ‘Aha‘ōlelo

Testimony Presented Before the
Senate Committee on Judiciary
February 23, 2023 at 9:45 a.m.

By
Jan Gouveia
Vice President for Administration
University of Hawai‘i

SB 236 – RELATING TO VICTIM-COUNSELOR PRIVILEGE

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

Thank you for the opportunity to present testimony on SB 236 – Relating to Victim-Counselor Privilege. The University of Hawai‘i (“University”) supports this bill.

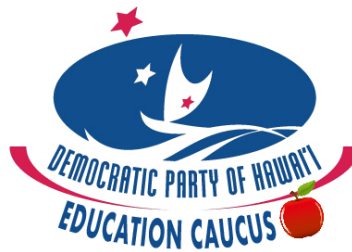
SB 236 expands the existing victim-counselor privilege held by community-based victim counseling programs to advocates employed by the University. Previously, as part of Act 208, Session Laws of Hawai‘i 2016, the Legislature required the University to designate confidential advocates at each campus to 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, overall privilege does not apply to the University based on the definition of victim counseling programs under the statute.

Since 2016, many individuals have sought help from University confidential advocates. However, one of the most important factors in deciding to not seek assistance is confidentiality concerns, out of an individual’s fear that disclosure could lead to retaliation via further abuse and harassment. This is evidenced by data showing that of the students who reported experiencing some form of sexual misconduct in the 2021 Systemwide Campus Climate Survey on Sexual Harassment & Gender-Based Violence and not seek help through the University, 22.2% purport they did not report because they feared their experiences would not be kept confidential. Furthermore, over 41% of students who experienced any type of sexual or gender-based violence reported experiencing academic or professional consequences, including reduced academic performance, dropping classes, and considering leaving the university.

The University supports expanding the victim-counselor privilege to include its University confidential advocates and the important services they provide. The University’s confidential advocates continue to ensure victims can share information and receive better support from the University. This in turn allows University community members to continue to succeed in their educational, personal, and professional goals. Absent expanding the victim-counselor privilege to include the University confidential advocates,

victims may be less likely to share information, in fear that information may be later subpoenaed for court proceedings against their wishes. A decision to not seek the support of a confidential advocate could lead to lasting negative impacts on the educational and professional lives of University community members long after an incident occurs.

Thank you for the opportunity to testify on SB 236.



SENATE BILL 236, RELATING TO VICTIM-COUNSELOR PRIVILEGE

FEBRUARY 23, 2023 · SENATE JUDICIARY
COMMITTEE · CHAIR SEN. KARL RHOADS

POSITION: Support.

RATIONALE: The Democratic Party of Hawai'i Education Caucus **supports** SB 236, relating to victim-counselor privilege, which expands the victim-counselor privilege under the Hawai'i Rules of Evidence to include confidential advocates employed by the University of Hawai'i and increases the minimum number of hours of training a domestic violence victims' counselor must complete to be considered a victim counselor.

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 2021:

- Approximately 35 percent of students at the University of Hawai'i feel that the issues of sexual assault and sexual harassment are extremely, very, or somewhat problematic.

- 9.2 percent of students at the University of Hawai'i experienced sexual harassment while at the university according to the 2021 campus climate survey.
- 18.5 percent of students at the University of Hawai'i experienced dating or domestic violence while at the university according to the 2021 campus climate survey.
- 6 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.
- 100 percent of students experiencing sexual harassment reported negative consequences from the incidents, such as emotional trauma and adverse academic impacts.

To provide UH students with the strongest possible protections from sexual and gender violence, we should ensure that confidential advocates have the legal privilege that is necessary to sustain confidential communication with survivors. If survivors can trust that an advocate to whom they report incidents of trauma will not be compelled to initiate disciplinary or legal proceedings, then they will be far more likely to seek the support they need to heal and, ultimately, if they choose, pursue a formal claim about the harm they have endured.

Kris Coffield · Chairperson, DPH Education Caucus · (808) 679-7454 · kriscoffield@gmail.com



To: Senate Committee on Judiciary
Hearing Date/Time: February 23, 2023 9:45AM
Re: Testimony in SUPPORT of SB236

Dear Chair Rhoads, Vice Chair Gabbard, and the Members of Committee,

Members of Hawaii State Democratic Women's Caucus thank you for this opportunity to testify in support of SB236 which would ensure that Confidential Advocates at the University of Hawaii have victim-counselor privileges as well as the minimum number of hours of training required for other victims advocates in Hawaii.

Most students experiencing domestic violence or sexual assault, 5 out of 6 in case of University of Hawaii, did not use campus resources. One in five victims at the University of Hawaii did not report because they feared their experiences would not be kept confidential. SB236 would protect the privacy of student survivors and build students' trust in University of Hawaii's resources.

Please support the students by passing SB236. Thank you for your consideration.

Sincerely,

Members of Hawaii State Democratic Women's Caucus

The Hawai'i State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawai'i's women and girls.



February 23, 2023

Dear Chair Yamashita, Vice-Chair Kitagawa, and honorable members of the House Committee on Finance,

My name is Jessie and I am a student at the University of Hawai'i Hilo. I appreciate the opportunity to testify in SUPPORT of SB236 Relating to Victim-Counselor Privilege to include University of Hawai'i Confidential Advocates in having legal victim-counselor privilege as well as equal training requirements to other victims' advocates in Hawai'i.

Not providing survivors with confidential resources greatly reduces the chance that they will use the resources. Survivors should not have to worry about the circumstances under which their attack happened, or have to consider repercussions. They should be able to feel safe and protected by the programs in place and the people they are talking to. Anything else takes away from the crime at hand, causing further trauma to the survivor, and distracts from getting them justice.

The purpose of the University of Hawai'i Confidential Advocates is to open doors and clarify options for students in the process of navigating college after experiencing sexual violence. However, a Confidential Advocate without victim-counselor privilege is misleading to students and poses serious risks for survivors disclosing sensitive information. Please pass SB236 to ensure students can access truly confidential resources on campus.

Mahalo for your dedication to equity in education and the health of our campus communities in Hawai'i.

Mahalo,
Jessie Gunderman



HAWAI'I STATE
COALITION AGAINST
DOMESTIC VIOLENCE

February 23, 2023

Members of the Senate Committee on Judiciary:

Chair Karl Rhoads
Vice Chair Mike Gabbard
Sen. Brandon J.C. Elefante
Sen. Joy A. San Buenaventura
Sen. Brenton Awa

Re: SB236 Relating to Victim Counselor Privilege

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

The Hawai'i State Coalition Against Domestic Violence (HSCADV) addresses the social, political, and economic impacts of domestic violence on individuals, families, and communities. We are a statewide partnership of domestic violence programs and shelters.

On behalf of HSCADV and our 28 member programs statewide, I respectfully submit testimony in **strong support of SB236**. 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, and increases the training requirements for domestic violence advocates from 25 hours to 35 hours.

Survivors 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. This measure would enable more students and employees to 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.

Increasing the minimum number of hours of training a domestic violence advocate from 25 to 35 would better prepare them to work with survivors of domestic violence in a trauma-informed and survivor-centered manner. This requirement is overdue for an update - Hawai'i has one of the lowest training requirements in the nation, with most states requiring an average of 35 hours.

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

Sincerely,
Angelina Mercado, Executive Director



SB 236, RELATING TO VICTIM-COUNSELOR PRIVILEGE

FEBRUARY 23, 2023 · SENATE JUDICIARY
COMMITTEE · CHAIR SEN. KARL RHOADS

POSITION: Support.

RATIONALE: Imua Alliance supports SB 236, relating to victim-counselor privilege, which expands the victim-counselor privilege under the Hawai'i Rules of Evidence to include confidential advocates employed by the University of Hawai'i and increases the minimum number of hours of training a domestic violence victims' counselor must complete to be considered a victim counselor.

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 2021:

- Approximately 35 percent of students at the University of Hawai'i feel that the issues of sexual assault and sexual harassment are extremely, very, or somewhat problematic.
- 9.2 percent of students at the University of Hawai'i experienced sexual harassment while at the university according to the 2021 campus climate survey.

- 18.5 percent of students at the University of Hawai'i experienced dating or domestic violence while at the university according to the 2021 campus climate survey.
- 6 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.
- 100 percent of students experiencing sexual harassment reported negative consequences from the incidents, such as emotional trauma and adverse academic impacts.

To provide UH students with the strongest possible protections from sexual and gender violence, we should ensure that confidential advocates have the legal privilege that is necessary to sustain confidential communication with survivors. If survivors can trust that an advocate to whom they report incidents of trauma will not be compelled to initiate disciplinary or legal proceedings, then they will be far more likely to seek the support they need to heal and, ultimately, if they choose, pursue a formal claim about the harm they have endured.

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



February 22, 2023

Dear Chair Rhoads, Vice-Chair Gabbard, and honorable members of the Senate Committee on Judiciary,

My name is Anna Ezzy and I am the co-State Director of the Every Voice Coalition, a student-led organization working to end sexual violence on college campuses. I am honored to have the opportunity to submit testimony in **support of the totality of SB236: Relating to Victim-Counselor Privilege**. Passing SB236 is crucial to sustaining trust between Confidential Advocates and the campus communities they serve by ensuring Advocates are truly confidential.

Confidentiality is a substantial barrier for victims to access help after experiencing sexual violence; in 2021, one in five victims at the University of Hawai'i shared that they did not report their experiences because they feared it would not be kept confidential (2021 UH Campus Climate Survey). As a student at the University of Hawai'i as well as a survivor of campus sexual violence, I personally understand the importance of confidential resources for victims getting the support they need to heal and continue in their education. Campus survivors often do not have the information they need to make informed decisions that will impact their educational, personal, and professional trajectories, and almost 50% of sexual violence survivors at UH in 2021 reported negative academic and/or professional consequences, a significant increase from 2019.

Confidential Advocates fill a crucial role on University of Hawai'i campuses as a safe place for students to learn their options for support, both on campus and off campus. However, 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. No victim should be barred from accessing a Confidential Advocate because they fear losing control over their story by having it shared without their consent.

Thank you for the opportunity to submit testimony in support of SB236 and mahalo for all you do to support the health and safety of Hawai'i's students.

Sincerely,

A handwritten signature in cursive script that reads 'Anna Ezzy'.

Anna Nalani Ezzy

State Director

Every Voice Coalition Hawai'i



To: Senate Committee on Judiciary
Hearing Date/Time: February 23, 2023 at 9:45AM
Place: Hawai'i State Capitol, Conference Room 016
Re: Testimony in STRONG SUPPORT of SB236

Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Committee,

Members of AAUW of Hawaii thank you for this opportunity to testify in strong support of SB236 which would ensure that Confidential Advocates at the University of Hawai'i have victim-counselor privilege as well as equal training requirements to other victims-advocates in Hawai'i. These actions are needed to protect the privacy of student survivors and build campus community trust in University of Hawai'i's supportive resources.

AAUW research shows that nearly two-thirds of college students nationally experience some type of sexual harassment. The repercussions of campus violence are serious: the 2021 Campus Climate Survey of the University of Hawai'i showed 46% of students reported negative academic or professional consequences after experiencing gender violence, a significant increase in percentage from 2019. Yet 5 out of 6 of students experiencing gender violence did not access campus resources post-incident. Confidentiality is a substantial barrier to getting help: one in five victims at the University of Hawai'i shared that they did not report their experiences because they feared it would not be kept confidential.

The purpose of a Confidential Advocate is extremely important, as they open doors and clarify options for students in the process of navigating college after experiencing sexual violence. SB236 is a crucial measure to guarantee true confidentiality for advocates who have access to sensitive information about the experiences of survivors. Without privilege, confidential advocates could serve as an easily accessible repository for defendants who want to devalue the perspective of a survivor by accessing this information through legal means. No victim should have to avoid accessing a Confidential Advocate for fears of confidentiality. Now is the time more than ever to act and support students by passing SB236.

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, Kaua'i, Kona, Maui, and Windward O'ahu. UH Hilo, UH Mānoa, 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.

with Aloha,
Public Policy Committee, AAUW of Hawaii
publicpolicy-hi@auw.net

SB-236

Submitted on: 2/21/2023 12:42:51 PM

Testimony for JDC on 2/23/2023 9:45:00 AM

Submitted By	Organization	Testifier Position	Testify
audrey metzman	Individual	Support	Written Testimony Only

Comments:

Aloha,

My name is Audrey Metzman and I am a graduate student at the University of Hawai'i Hilo. I appreciate the opportunity to testify in SUPPORT of SB236 Relating to Victim-Counselor Privilege to include University of Hawai'i Confidential Advocates in having legal victim-counselor privilege as well as equal training requirements to other victims' advocates in Hawai'i.

The purpose of the University of Hawai'i Confidential Advocates to open doors and clarify options for students in the process of navigating college after experiencing sexual violence. However, a Confidential Advocate without victim-counselor privilege is misleading to students and poses serious risks for survivors disclosing sensitive information. Please pass SB236 to ensure students can access truly confidential resources on campus.

Mahalo for your dedication to equity in education and the health of our campus communities in Hawai'i.

Signed,

Audrey Metzman

SB-236

Submitted on: 2/21/2023 7:27:15 PM

Testimony for JDC on 2/23/2023 9:45:00 AM

Submitted By	Organization	Testifier Position	Testify
Deanna Espinas	Individual	Support	Written Testimony Only

Comments:

Please support this bill.

SB-236

Submitted on: 2/21/2023 9:27:42 PM

Testimony for JDC on 2/23/2023 9:45:00 AM

Submitted By	Organization	Testifier Position	Testify
Younghee Overly	Individual	Support	Written Testimony Only

Comments:

Please pass SB236 to protect the privacy of the student survivors of gender based violenc at University of Hawaii. Mahalo.