



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
Senate Committee on Ways and Means  
February 25, 2015 at 9:00am

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

### SB 387 SD1 – RELATING TO AFFIRMATIVE CONSENT

Chair Tokuda, Vice Chair Kouchi, and Members of the Committee:

Thank you for the opportunity to submit testimony on SB 387 SD1, which mandates that the University of Hawai'i (University) adopt and implement a rather prescriptive policy and definition around affirmative consent in the context of sexual harassment and sexual violence. Within the last few weeks, the University updated its sexual harassment policy to specifically address sexual assault, domestic violence, dating violence, and stalking. As such, we believe this measure is not necessary. Furthermore, we believe that from a governance and implementability standpoint, policies of this nature are more appropriately developed through the internal process and procedures of the University.

The University of Hawai'i is comprised of 10 campuses, which supports varying programs and student populations, as well as delivering diverse services and amenities to local, national, and international students. Additionally, the University employs approximately 10,000 faculty, staff and administrators that fall under collective bargaining agreements with HGEA, UHPA, UPW, or under other board policies. To that end, any systemwide policies must follow the processes and procedures of the respective collective bargaining agreements and associative state law.

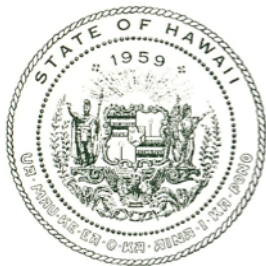
As previously mentioned, the University recently updated its sexual harassment/sexual violence policy to be both fair and balanced in its form and application, with regards to all stakeholders that have an interest in an affirmative consent policy. These guidelines are specifically intended to address the requirements of the Violence Against Women Act

(VAWA). It was carefully crafted, involving months of research and systemwide committee work, to achieve a standard that supports the University's broad mission of promoting safe, healthy campus environments ,while at the same time addressing the complex and interrelated requirements of state and federal sex discrimination and sexual violence laws and regulations that cover students, employees, and third parties.

In closing, the University respectfully opposes Senate Bill 387 SD1 on the basis that it is unnecessary and duplicative at this time. Additionally, we believe that from a governance and implementability standpoint, policies of this nature are more appropriately developed through the internal process and procedures of the University.

Thank you for the opportunity to testify on Senate Bill 387 SD1.

HAWAII  
STATE  
COMMISSION  
ON THE  
STATUS  
OF  
WOMEN



Chair  
LESLIE WILKINS

COMMISSIONERS:

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February 24, 2015

To: Senator Jill Tokuda, Chair  
Senator Ronald Kouchi, Vice Chair  
Members of the Senate Committee on Ways and Means

From: Cathy Betts, Executive Director  
Hawaii State Commission on the Status of Women

Re: Testimony in Support, SB 387, SD1, Relating to Affirmative Consent

Thank you for hearing SB 387, SD1, and for this opportunity for the Commission to testify in strong support of SB 387, SD1 which would mandate that the University of Hawaii implement an affirmative consent standard and policy for purposes of dealing with sexual assault cases, systemwide. Additionally, SB 387, SD1 contains important components, including increased sexual assault prevention and education, increased crisis intervention services, and procedural protections for both victims and the accused.

800 colleges and universities nationwide have already adopted affirmative consent policies, according to the National Center for Higher Education Risk Management. While California is the only state that has implemented a statewide law, currently 10 other states in the nation are considering affirmative consent legislation. Other universities that have implemented this policy report that an affirmative consent policy improves the campus climate. Further, victims feel more inclined to report knowing that their character, clothing, alcohol intake, or other irrelevant data about their personal life will not be called into question in order to determine whether consent was given.

Consent, viewed from a “no” standard, does not accurately capture the reality of how consent plays out in actual relationships. Consent and sexual activity, occur on a continuum. Simply because a person consents to one sexual act, obviously does not mean that he or she is consenting to all sexual acts. An affirmative consent standard allows for healthy discussion, constant checks on behavior, and requests for affirmation that there is actual consent. This bill removes ambiguity by providing that consent is characterized by “affirmative, conscious and voluntary agreement to engage in sexual activity that may be revoked at any time.” In addition, it specifies that silence, or a lack of protest or resistance, does not constitute consent. This is especially important considering the number of sexual assaults that occur after a victim has been intoxicated or drugged. This standard is consistent with Hawaii law, which provides that an incapacitated individual is incapable of consenting.

Since the initial hearing on this measure, UH Manoa announced that it would be implementing an affirmative consent standard within its policies. The Commission recognizes this as an important first step. Legislative assistance, as found in SB 387, SD1, would assist the University in moving forward with full implementation and successful adoption of this standard. We strongly support SB 387 and request that the Committees move this bill. Thank you for your time.



February 25, 2015

To: Senator Jill Tokuda, Chair  
Senator Ronald Kouchi, Vice Chair and  
Members of the Committee on Ways and Means

From: Jeanne Y. Ohta, Co-Chair

RE: SB 387 SB1 Relating to Affirmative Consent  
Hearing: Wednesday, February 25, 2015, 9:00 a.m., Room 211

POSITION: Strong Support

The Hawai'i State Democratic Women's Caucus (HSDWC) writes in strong support of SB 387 HD1 Relating to Affirmative Consent which would require the University of Hawaii system to establish and enforce an affirmative consent standard for all policies and protocols relating to sexual assault, domestic violence, dating violence, and stalking.

The Hawai'i State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawaii's women and girls it is because of this mission that that the caucus strongly supports this measure.

HSDWC is concerned about the lack of effort, lack of urgency, and overall foot dragging by the University of Hawaii system to comply with Title IX and VAWA requirements; and by the UH administration's excuse that they lack resources to follow these laws. UH is responsible for maintaining a safe environment free from violence for all students. This requirement is not new and must be implemented, there is no room for excuses.

California has recently implemented an affirmative consent standard for campus procedures involving sexual assault; and 9 other states are actively considering legislation. In addition, 800 colleges and universities across the nation already have adopted affirmative consent policies.<sup>1</sup>

Affirmative consent provides for a clearer definition of what sex assault is and provides for less ambiguity. Further, it provides that consent is determined by an "affirmative, conscious and voluntary agreement to engage in sexual activity that may be revoked at any time." In addition, it specifies that silence, or a lack of protest or resistance, does not constitute consent, and consenting to one sexual act does not mean consenting to all sexual acts.

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<sup>1</sup> National Center for Higher Education Risk Management  
Hawai'i State Democratic Women's Caucus, 404 Ward Avenue Suite 200, Honolulu, HI 96814  
hidemwomen@gmail.com

Establishing an affirmative consent policy can lead to healthier campus climate and allow more victims to come forward if they know their personal life and credibility will not be called into question when determining whether consent occurred.

Other universities report that this policy has improved campus climate and changed the dialogue about healthy relationships and consent

According to campus reports issued in compliance with the Clery Act, UH Manoa reported 11 forcible sex offenses in 2012. Systemwide, the number was 11. In 2011, Manoa reported 12 assaults and systemwide there were 16 reported. The Clery Act requires annual reporting of statistics for various criminal offenses including sexual assault, however, Kauai and Leeward campuses did not issue reports the last two years.

The Caucus has been concerned about violence against women on the UH campuses for almost a decade and has advocated for the improvement of campus policies and procedures. We have found the UH administration to be unresponsive to our concerns. This is why we strongly support a legislative mandate to hold the UH administration accountable for implementing needed policies and procedures and to ensure that real progress is made. We believe that despite the recent revelation of a brand new policy, and because of the lack of progress over the last decade, this legislation is necessary.

We ask that the committee pass this measure and we thank the committee for the opportunity to provide testimony.



Planned Parenthood of Hawaii

To: Hawaii State Senate Committee on Ways and Means  
Hearing Date/Time: Wednesday, February 25, 2015, 9:00 a.m.  
Place: Hawaii State Capitol, Rm. 211  
Re: Testimony of Planned Parenthood of Hawaii in support of S.B. 387, SD1

Dear Chair Tokuda and Members of the Committee on Ways and Means,

Planned Parenthood of Hawaii (“PPHI”) writes in support of S.B. 387, SD1, which seeks to require the University of Hawaii to act jointly with the board of regents to establish and enforce an affirmative consent standard for all policies and protocols relating to sexual assault, domestic violence, dating violence and stalking.

Planned Parenthood of Hawaii is dedicated to providing Hawaii’s people with high quality, affordable and confidential sexual and reproductive health care, education, and advocacy. We are proud to stand in support of this legislation and to offer our support as a leading sexual and reproductive health care provider. The intersections of gender-based violence and reproductive health are clear. At PPHI, we work to meet the needs of survivors—and to prevent sexual assault from ever happening—in all areas of our work, from screening for intimate partner violence, to advocating for policies that support comprehensive sexual education, including teaching about healthy relationships and consent.

The need for action on college sexual assault in Hawaii is urgent. An estimated one in four women and three percent of men in the United States experience an attempted or completed rape while in college. Moreover, the University of Hawaii system is under federal investigation for Title IX violations and sexual violence case mishandling. This is unacceptable.

S.B. 387 would help strengthen campus resources and supportive services for college students. PPHI is especially pleased that the legislation would establish an education program for students and faculty to learn about affirmative consent, bystander intervention, and how to handle sexual assault cases.

But education about healthy relationships and consent needs to start much earlier than college. In addition to these efforts, we need comprehensive sexual education in every school, starting in kindergarten, to make sure students learn about healthy relationships many years before they even think about going to college or entering into intimate relationships. The gaps that remain in Hawaii’s sexual health education have a significant impact on young people's well-being and future relationships.

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We urge the legislature to pass S.B. 387, and we also call on the Hawaii State Department of Education to ensure that comprehensive, age-appropriate sexual health education is provided to every student, every year, from kindergarten through 12th grade.

Thank you for this opportunity to testify in support of S.B. 387.

Sincerely,

Laurie Field  
Director of Public Affairs & Government Relations



# THE SEX ABUSE TREATMENT CENTER

*A Program of Kapi'olani Medical Center for Women & Children*

*Executive Director*  
Adriana Ramelli

DATE: February 25, 2015

*Advisory Board*

TO: The Honorable Jill Tokuda, Chair  
The Honorable Ronald Kouchi, Vice Chair  
Senate Committee on Ways and Means

*President*  
Mimi Beams

*Vice President*  
Peter Van Zile

FROM: Adriana Ramelli, Executive Director  
The Sex Abuse Treatment Center

Joanne H. Arizumi

Mark J. Bennett

Andre Bisquera

RE: Testimony in Support of Senate Bill 387, Senate Draft 1  
Relating to Affirmative Consent

Marilyn Carlsmith

*Senator*  
Suzanne Chun Oakland

Monica Cobb-Adams

Donne Dawson

Dennis Dunn

*Councilmember*  
Carol Fukunaga

David I. Haverly

Linda Jameson

Michael P. Matsumoto

Gidget Ruscetta

Joshua A. Wisch

I would like to thank the Committee for this opportunity to provide testimony on behalf of The Sex Abuse Treatment Center, a program of Kapi'olani Medical Center for Women & Children, in support of Senate Bill 387, Senate Draft 1 (S.B. 387, S.D. 1).

S.B. 387, S.D. 1 would strengthen protections for survivors of sexual assault on college campuses within the University of Hawai'i system (UH) by placing the force of law behind adoption of an affirmative consent standard for the evaluation of complaints. S.B. 387, S.D. 1 would further require UH to implement a comprehensive prevention and outreach program; adopt survivor-centered sexual assault response policies and protocols; and form partnerships with on campus and community-based organizations to assist survivors with connecting to services.

Sexual assault remains epidemic on college campuses: 1 in 5 women and 1 in 16 men are sexually assaulted during college. Moreover, 90% of these assaults go unreported and, of reported assaults, only 30% of perpetrators who are found guilty are expelled. This has triggered sweeping federal countermeasures, including strict annual reporting requirements. Notably, UH was recently placed under investigation by the U.S. Department of Education for possible violations of federal law over the handling of sexual violence complaints.

Despite nationwide focus on this issue, schools continue to struggle to implement policies and programs to prevent sexual assault and adequately support survivors. This is unacceptable, as schools have a duty to provide safety and security, allowing students to pursue their educational goals free from the devastating physical, emotional, and social effects of sexual assault.

We note that the UH system recently published a revised policy concerning sexual assault which includes a definition of affirmative consent. While this is an important first step that deserves recognition, the SATC is concerned that the specific affirmative consent standard defined in the revised policy lacks key elements of the one that S.B. 387, S.D. 1 would require. Notably absent is unambiguous, plain language informing



students and other members of the UH community of their individual accountability for ascertaining the existence of affirmative consent on the part of all other involved persons to engage in a sexual activity.

We also observe that inclusion of a definition for affirmative consent in written policy is not equivalent to successful adoption of that standard. Rather, adoption must be demonstrated by the standard's consistent application in practice. S.B. 387, S.D. 1 would place the force of statutory law behind the requirement that UH follow through on its commitment to implement an affirmative consent standard when handling complaints of sexual assault, in practice and permanently.

Moreover, S.B. 387, S.D. 1 requires that UH implement a comprehensive outreach and prevention program, educating UH students and staff members about the affirmative consent standard and UH's overall sexual assault policy. This ensures that all members of the UH community will be aware that one standard for determining if consent exists shall apply, system wide. The education and training elements of the revised policy recently published by UH would not satisfy this crucial requirement.

Finally, S.B. 387, S.D. 1 encourages survivors to report assaults and obtain necessary medical, emotional and legal help. It specifically requires that UH adopt survivor-centered policies and procedures, including, but not limited to, standard protocols for receiving and investigating complaints; retaining services to care for survivors; coordination with law enforcement; participation of victim advocates and other support persons; investigation of allegations that alcohol, drugs, or hazing were involved in an incident; protections for individuals who participate in the process as complainants or witnesses; and trauma-informed training of school staff. The revised policy recently published by UH provides none of these survivor-centered protections.

By ensuring UH's implementation of an unabridged affirmative consent standard, and by empowering survivors to report sexual assaults and obtain help, your support of S.B. 387 safeguards Hawai'i's college students and takes an important step towards ensuring them a secure and respectful learning environment.

Date: Wednesday, February 25, 2015

Time: 9:00 AM

Place: Conference Room 211

To: Senate Committee on Higher Education  
Senator Jill Tokuda, Chair  
Senator Ronald Kouchi, Vice Chair

Re: Support of SB387 SD1 Relating to Affirmative Consent

My name is Kristine Jan Espinoza and I am a higher education graduate student at the University of Hawai'i (UH) at Mānoa. I am writing in strong support of SB387 SD1, which requires the University of Hawai'i system to establish and enforce an affirmative consent standard for all policies and protocols relating to sexual assault, domestic violence, dating violence, and stalking as a condition of receiving state funds for student assistance. While I support the amendments made to the original measure for purposes of clarity and consistency, there is **an additional suggestion** I would like to offer.

To address **§304A- (e)** regarding how the Board of Regents and the University of Hawai'i shall jointly implement comprehensive prevention and outreach programs, an additional recommendation for the legislature is to ensure dedicated funding for existing prevention and outreach programs. While the current bill language calls for the UH System to implement comprehensive prevention and outreach programs, these **already exist** at the UH campuses with the PAU Violence Program, or **Prevention Awareness Understanding Violence** Program, that has in place a UH system-wide network developing infrastructure to provide awareness and education, as well as academic, personal, and mental health support for survivors. However, the PAU Violence Program does not have sustained/dedicated funding.

Especially with how the UH Mānoa campus continues to be under Title IX investigation along with other universities nationwide, it is clear that legislative mandates are required to push the UH System forward. However, it is also just as important that in order for the UH System to move forward, appropriations must follow suit.

Respectfully submitted,  
Kristine Jan Espinoza  
kjespino@hawaii.edu