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# SENATE RESOLUTION

CONVENING A TASK FORCE TO ADDRESS IMPLEMENTATION OF HAWAII'S  
STATE LAW COROLLARY TO TITLE IX TO STRENGTHEN HAWAII'S  
EFFORTS TO END CAMPUS-BASED SEXUAL VIOLENCE AND GENDER  
DISCRIMINATION.

1           WHEREAS, Title IX of the federal Education Amendments of  
2 1972, renamed in 2002 as the Patsy T. Mink Equal Opportunity in  
3 Education Act in honor of its principal author, former Hawaii  
4 Congresswoman Patsy Takemoto Mink, states that "[n]o person in  
5 the United States shall, on the basis of sex, be excluded from  
6 participation in, be denied the benefits of, or be subjected to  
7 discrimination under any education program or activity receiving  
8 Federal financial assistance"; and  
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10           WHEREAS, the Office for Civil Rights (OCR) within the  
11 United States Department of Education (USDOE) enforces Title IX  
12 by, among other methods, investigating complaints and issuing  
13 informal guidance to educational programs; and  
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15           WHEREAS, in 2011, OCR issued a nineteen-page "Dear  
16 Colleague" letter clarifying that Title IX prohibits sexual  
17 harassment as well as sexual violence and setting out in detail  
18 the key requirements that must be followed by educational  
19 programs in response to complaints of sexual harassment and  
20 sexual violence; and  
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22           WHEREAS, in 2014, as a follow-up to the 2011 "Dear  
23 Colleague" letter, OCR issued a Question and Answer document  
24 further clarifying a school's obligation to respond to sexual  
25 violence under Title IX procedural requirements; and  
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27           WHEREAS, both the 2011 "Dear Colleague" letter and the 2014  
28 Question and Answer document were disseminated in response to  
29 growing awareness of the issue of campus sexual assault and the  
30 intentional failure of institutions of higher education to  
31 respond; and  
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1 WHEREAS, in January 2017, a new president took office, and  
2 the following month, the federal government withdrew guidance  
3 documents that had extended Title IX protections to transgender  
4 students. In September 2017, USDOE also withdrew the 2011 "Dear  
5 Colleague" letter and 2014 Question and Answer document issued  
6 by OCR under the prior federal administration. At the same  
7 time, USDOE announced its intent to engage in new rulemaking on  
8 Title IX; and  
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10 WHEREAS, on November 29, 2018, USDOE issued a notice of  
11 proposed rulemaking that would significantly amend existing  
12 Title IX regulations and create new regulations. Among other  
13 things, the proposed regulations would reduce the number of  
14 complaints involving sexual harassment and other forms of sexual  
15 misconduct that currently fall within the purview of Title IX.  
16 The proposed regulations would also limit the scope of  
17 educational institutions' liability for complaints of sexual  
18 harassment; and  
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20 WHEREAS, the proposed regulations were publicly criticized  
21 by victim advocates as "devastating" for survivors of sexual  
22 harassment and sexual assault. More specifically, commenters  
23 anticipated that the proposed regulations would have the effect  
24 of discouraging the reporting of sexual harassment and sexual  
25 assault. Further, the proposed rules were characterized as  
26 protecting schools above all, and not protecting students,  
27 accused or otherwise; and  
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29 WHEREAS, in response to the intended policy changes  
30 announced by USDOE on the scope of Title IX's application, the  
31 Hawaii Legislature passed House Bill No. 1489, House Draft 1,  
32 Senate Draft 2, Conference Draft 1, which ultimately became Act  
33 110, Session Laws of Hawaii 2018 (Act 110). Act 110 established  
34 a state law corollary to Title IX that prohibits sex-based  
35 discrimination in state-administered or state-funded educational  
36 programs or activities, including discrimination based on sexual  
37 orientation, gender identity, and gender expression; and  
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39 WHEREAS, Act 110 also requested the Legislative Reference  
40 Bureau to study and report on the status of Title IX enforcement  
41 nationally and in other jurisdictions, and to make



1 recommendations relevant to implementation of the state law  
2 corollary; and

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

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7 WHEREAS, after receiving more than one hundred twenty-four  
8 thousand public comments on the proposed Title IX regulations,  
9 USDOE formally published the final Title IX regulations (also  
10 known as the "Final Rule") in the *Federal Register* on May 19,  
11 2020; and

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

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

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24 WHEREAS, according to the Rape, Abuse, and Incest National  
25 Network, one in ten students across the United States will  
26 experience sexual violence while attending an institution of  
27 higher education; and

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

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34 WHEREAS, according to the University of Hawaii systemwide  
35 campus climate survey of 2019, 12.7 percent of students have  
36 reported experiencing sexual harassment, 10.6 percent have  
37 experienced stalking, 21.3 percent have experienced dating  
38 violence, and 7.2 percent have experienced nonconsensual sexual  
39 contact, all of which represent significant increases from the  
40 University of Hawaii's campus climate survey results of the  
41 2017; now, therefore,

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1 BE IT RESOLVED by the Senate of the Thirty-first  
2 Legislature of the State of Hawaii, Regular Session of 2021,  
3 that an Act 110 Implementation Task Force be convened to address  
4 implementation of Hawaii's state law corollary to Title IX to  
5 strengthen Hawaii's efforts to end campus-based sexual violence  
6 and gender discrimination; and  
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8 BE IT FURTHER RESOLVED that the Act 110 Implementation Task  
9 Force is requested to recommend amendments to Hawaii's state law  
10 corollary for the purpose of addressing potential conflicts  
11 between Hawaii's law and the federal government's recent changes  
12 to the Title IX regulations, while considering the possible  
13 impacts of any restoration by the new federal administration of  
14 prior Title IX protections, and to recommend a meaningful  
15 enforcement framework for Hawaii's state law corollary to Title  
16 IX; and  
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18 BE IT FURTHER RESOLVED that the membership of the Act 110  
19 Implementation Task Force consist of one representative from  
20 each of the following entities, and that upon convening, the  
21 members elect a chairperson from among themselves:  
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- 23 (1) The Office of Institutional Equity of the University  
24 of Hawaii System;
- 25  
26 (2) The Hawaii Civil Rights Commission;
- 27  
28 (3) The Civil Rights Compliance Branch of the Department  
29 of Education;
- 30  
31 (4) The Department of the Attorney General;
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33 (5) The Hawaii State Commission on the Status of Women;
- 34  
35 (6) The American Association of University Women of  
36 Hawaii, which should be invited to participate;
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38 (7) The Prevention, Awareness, and Understanding Violence  
39 Program of the University of Hawaii;
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41 (8) The Hawaii Coalition to End Domestic Violence, which  
42 should be invited to participate;



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

(10) The Every Voice Coalition, which should 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;

(4) Legislation enacted in other states to strengthening protections for survivors of campus-based sexual violence;

(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 to obtain feedback from survivors of campus-based sexual violence in the course of its deliberations; and

1 BE IT FURTHER RESOLVED that the Act 110 Implementation Task  
2 Force is requested to submit a report of its findings and  
3 recommendations, including any proposed legislation, no later  
4 than twenty days prior to the convening of the Regular Session  
5 of 2022; and  
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7 BE IT FURTHER RESOLVED that certified copies of this  
8 Resolution be transmitted to the Governor; Attorney General;  
9 Executive Director of the Hawaii Civil Rights Commission;  
10 President of the University of Hawaii System; System Coordinator  
11 for the Prevention, Awareness, and Understanding Violence  
12 Program of the University of Hawaii; Superintendent of  
13 Education; Executive Director of the Hawaii State Commission on  
14 the Status of Women; Board President of the American Association  
15 of University Women of Hawaii; Executive Director of the Hawaii  
16 Coalition to End Domestic Violence; Executive Director of the  
17 Sex Abuse Treatment Center; and Co-Executive Directors of the  
18 Every Voice Coalition.

