

# SB 387

## Testimony

Measure Title:	RELATING TO AFFIRMATIVE CONSENT.
Report Title:	Affirmative Consent; University of Hawaii System
Description:	Requires 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 as a condition of receiving state funds for student assistance.
Companion:	
Package:	Women's Legislative Caucus
Current Referral:	HEA/JDL, WAM
Introducer(s):	SHIMABUKURO, CHUN OAKLAND, INOUE, KIDANI, KIM, L. THIELEN, TOKUDA, Baker



# **UNIVERSITY OF HAWAI'I SYSTEM**

## **Legislative Testimony**

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Testimony Presented Before the  
Senate Committees on Higher Education and the Arts and Judiciary and Labor  
February 5, 2015 at 1:30 p.m.

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

### **SB 387 – RELATING TO AFFIRMATIVE CONSENT**

Chairs Taniguchi and Keith-Agaran, Vice Chairs Inouye and Shimabukuro, and Members of the Committees:

Thank you for the opportunity to submit testimony on SB 387. The University of Hawai'i (University) applauds the legislature for opening the dialogue on gender and sexual violence. We further appreciate the acknowledgement that the University of Hawai'i is a key player in making advancement in these areas across the state. However, to that end, we support the spirit and intent of the bill. Regretfully, however, we are unable to support conditioning the receipt of state funds by the University on adopting the prescriptive policy language set forth in the bill.

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 the 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. Additionally, the University has a responsibility for ensuring that its policies are fair in both form and application, with regards to all stakeholders that have an interest in an affirmative consent policy. As such, we believe the appropriate forum and vehicle for achieving such outcome is through the internal process and procedures of the University of Hawai'i.

Furthermore, at this time, the University is in the process of issuing an updated policy that includes guidelines for the University of Hawai'i system regarding sexual harassment, sexual assault, domestic violence, dating violence, and stalking. These guidelines are intended to address the requirements of VAWA. The policy was carefully crafted, involving months of research and systemwide committee work, to achieve a policy with guidelines that would support 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, we appreciate and value the legislature's interest in setting the standard against sexual violence at the University of Hawai'i. However, we do not believe that conditioning the receipt of state funds upon the adoption of prescriptive policy language is the best course of action. Instead, the University requests the opportunity to develop such policies in accordance with its internal processes and procedures.

Thank you for the opportunity to testify on SB 387.

HAWAII  
STATE  
COMMISSION  
ON THE  
STATUS  
OF  
WOMEN



Chair  
LESLIE WILKINS

COMMISSIONERS:

ELENA CABATU  
CARMILLE LIM  
AMY MONK  
LISA ELLEN SMITH  
MARILYN LEE  
JUDY KERN

Executive Director  
Catherine Betts, JD

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235 S. Beretania #407  
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FAX: 808-586-5756

February 4, 2015

To: Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair  
Members of the Senate Committee on Judiciary and Labor

Senator Brian T. Taniguchi, Chair  
Senator Lorraine R. Inouye, Vice Chair  
Members of the Senate Committee on Higher Education and the Arts

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

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

Thank you for hearing SB 387 and for this opportunity for the Commission to testify in strong support of SB 387, 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 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. S.B. 387 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.

The University of Hawaii at Manoa continues to be under Title IX investigation by the United States Department of Education, Office of Civil Rights, along with more than 50 other universities nationwide. When the Commission began discussions with the UHM about the need for Title IX and VAWA compliance, a robust training process, more hiring of Title IX staff, education on sexual violence and dating violence during new student orientation, and the availability of campus crisis

services for students who experience sexual violence, the discussion was slow and much was promised in terms of compliance and movement forward.

Since the Title IX resolution passed last session which required a report back on progress made, little has been done. In its report back to the legislature a full year after the initial request, UHM provided a short report in which it details anticipatory progress and more promised focus on sexual violence. In this year that has passed, there have been more victims, more students not knowing who or where their Title IX coordinator is, more talk of the difficulty of complying with Title IX (a law that has been in place for over 40 years), and more media scrutiny on the lack of support and services for victims systemwide.

While we appreciate the opportunity for dialogue with the University that this bill represents, it is the Commission's belief that a legislative mandate is necessary to move the University forward. We strongly support SB 387 and request that the Committees move this bill. Thank you for your time.



National Association of Social Workers Hawai'i Chapter

Date: February 4, 2015

To:

[COMMITTEE ON HIGHER EDUCATION AND THE ARTS](#)

Senator Brian T. Taniguchi, Chair

Senator Lorraine R. Inouye, Vice Chair

[COMMITTEE ON JUDICIARY AND LABOR](#)

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

**The National Association of Social Workers, Hawaii Chapter (NASW) strongly supports Senate Bill 387, relating to Affirmative Consent**

The first Affirmative Consent bill was implemented in California last year, since then 9 other states are in the process of considering legislation. Affirmative Consent is an evolution from the "No mean No" ideology to state clearly that when a sexual act is being considered, both parties are clearly stating their consent to the action, and can be withdrawn at any time during the sexual act.

The establishment of a relationship does not give grounds for consent to be implied and someone who is incapacitated or inebriated is unable to give consent. Consent is determined by "affirmative, conscious and voluntary agreement to engage in sexual activity that may be revoked at any time." Silence from a participant, lack of protest or resistance does not mean consent and consent to one sexual act does not mean consent to all or future sexual acts.

Across the country, over 800 colleges and universities have already adopted affirmative consent policies (National Center for Higher Education Risk Management). Adopting these policies have lead to conversations about consent and what constitutes a healthy relationship and have lead to positive changes in campus climates. This implementation allows victims to come forward and know that there is a clear standard in place for what constitutes consent, which helps ensure their credibility and personal lives will not be under fire when determining if consent occurred.

The University of Hawai'i at Manoa is one of the 55 schools nationally under investigation for Title IX violations, it is clear that legislative mandates are required to drive the University of Hawai'i system forward. Thank you for your consideration.

Sonja Bigalke-Bannan, MSW, LSW  
Executive Director  
National Association of Social Workers, Hawaii Chapter





## HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

February 3, 2015

To: Senator, Brian T. Taniguchi, Chair  
Senator, Lorraine R Inouye, Vice Chair  
COMMITTEE ON HIGHER EDUCATION AND THE ARTS

From: Marci Lopes, Executive Director  
Hawaii State Coalition Against Domestic Violence

Hearing Date and Time: Thursday, February 05, 2015; 1:30 p.m.

Place: Conference Room 224

RE: SB 387 STRONG SUPPORT

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The Hawaii State Coalition Against Domestic Violence is a statewide partnership of domestic violence programs and shelters. Our mission is to engage communities and organizations to end domestic violence through education, advocacy, and action for social justice.

We strongly support SB 387. It is imperative that the State of Hawaii takes a strong stance in examining and improving systems to end all forms of violence against women and girls.

HSCADV is a resource for the University and the community at large to access for our expertise in the field of domestic violence, and for our training that is certified by the Department of Justice and the Office on Violence Against Women. HSCADV hopes that you will also contact the HSCADV membership who are the on the ground experts providing direct services to victims who may need counseling services, legal services or shelter, services for children exposed to violence, and also our batterer intervention programs. The Hawaii State Coalition Against Domestic Violence also has a Survivor Action Committee that works to improve system response, and to increase awareness of the services that are available to victims.

HSCADV is a resource if you have further questions or concerns.

Marci Lopes  
Executive Director





February 5, 2015

To: Senator Brian T. Taniguchi, Chair  
Senator Lorraine Inouye, Vice Chair and  
Members of the Committee on Higher Education and the Arts

To: Senator Gilbert Keith-Agaran, Chair  
Senator Maile Shimabukuro, Vice Chair and  
Members of the Committee on Judiciary and Labor

From: Jeanne Y. Ohta, Co-Chair

RE: SB 387 Relating to Affirmative Consent  
Hearing: Thursday, February 5, 2015, 1:30 p.m., Room 224

POSITION: Strong Support

The Hawai'i State Democratic Women's Caucus (HSDWC) writes in strong support of SB 387 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 as a condition of receiving state funds for student assistance.

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 by the University of Hawaii system to comply with Title IX and VAWA requirements; and by the 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.

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 legislative action to hold the UH administration accountable for implementing needed policies and procedures.

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 Committees on Higher Education and the Arts and Judiciary and Labor  
Hearing Date/Time: Thursday, February 5, 2015, 1:30 p.m.  
Place: Hawaii State Capitol, Rm. 224  
Re: Testimony of Planned Parenthood of Hawaii in support of S.B. 387

Dear Chairs Taniguchi and Keith-Agaran and Members of the Committees on Higher Education and the Arts and Judiciary and Labor,

Planned Parenthood of Hawaii (“PPHI”) writes in support of S.B. 387, which seeks to require the University of Hawaii system to establish and reinforce 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.

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.

**HONOLULU**  
1350 S. King Street, Suite 310  
Honolulu, HI 96814  
808-589-1149

**KAUAI**  
Education & Outreach  
808-482-2756

**KONA**  
Education & Outreach  
808-442-4243

**MAUI**  
Kahului Office Center  
140 Ho’ohana Street, Suite 303  
Kahului, HI 96732  
808-871-1176



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

# HAWAII YOUTH SERVICES NETWORK

677 Ala Moana Boulevard, Suite 702 Honolulu, Hawaii 96813

Phone: (808) 531-2198 Fax: (808) 534-1199

Web site: <http://www.hysn.org> E-mail: [info@hysn.org](mailto:info@hysn.org)

Daryl Selman, President

Judith F. Clark, Executive Director

Aloha House

American Civil Liberties Union of Hawaii

Bay Clinic, Inc.

Big Brothers Big Sisters of Honolulu

Big Island Substance Abuse Council

Blueprint for Change

Bobby Benson Center

Catholic Charities Hawaii

Child and Family Service

Coalition for a Drug Free Hawaii

Courage House Hawaii

Domestic Violence Action Center

EPIC, Inc.

Family Programs Hawaii

Family Support Hawaii

Hale Kipa, Inc.

Hale 'Opio Kauai, Inc.

Hawaii Behavioral Health

Hawaii Student Television

Healthy Mothers Healthy Babies Coalition

Hina Mauka Teen Care

Hui Malama Learning Center

Kaanalike

Kahi Mohala Behavioral Health

KEY (Kualoa-Heeia Ecumenical Youth)

Project

Kids Hurt Too

Kokua Kalihi Valley

Life Foundation

Marimed Foundation

Maui Youth and Family Services

Palama Settlement

P.A.R.E.N.T.S., Inc.

Parents and Children Together (PACT)

Planned Parenthood of Hawaii

REAL

Salvation Army Family Intervention Svcs.

Salvation Army Family Treatment Svcs.

Sex Abuse Treatment Center

Susannah Wesley Community Center

The Catalyst Group

The Children's Alliance of Hawaii

Waikiki Health Center

Women Helping Women

YWCA of Kauai

February 3, 2015

To: Senator Brian Taniguchi, Chair  
And members of the Committee on Higher Education

Senator Gilbert Keith-Agaran, Chair  
And members of the Committee on Judiciary and Labor

## **TESTIMONY IN SUPPORT OF SB 387 RELATING TO AFFIRMATIVE CONSENT**

Hawaii Youth Services Network (HYSN), a statewide coalition of youth-serving organizations, supports SB 9387 Relating to Affirmative Consent.

Education has long been recognized as the great equalizer in America. The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime. Studies show that about one in five women is a survivor of attempted or completed sexual violence while in college. In the great majority of cases (75-80%), she knows her attacker, whether as an acquaintance, classmate, friend or (ex)boyfriend. Many are survivors of what's called "incapacitated assault" in that they are sexually abused while drugged, drunk, passed out, or otherwise incapacitated. In addition, a substantial number of men experience sexual violence during college. Although schools have made progress in addressing rape and sexual assault, more needs to be done to ensure safe, secure environments for students of higher education.

U.S. Department of Education Office for Civil Rights and the U.S. Department of Justice provide general guidance for colleges and universities on how to protect and provide services and support for sexual assault victims; however, there is currently a lack of uniform standards. The inconsistent and in too many cases inadequate application of federal law was highlighted by President Barack Obama's formation of a White House Task Force to Protect Students from Sexual Assault.

The Affirmative Consent Standard strengthens protections for victims of sexual assault on Hawaii college campuses by requiring campuses to adopt an affirmative consent standard for the evaluation of complaints, implement comprehensive prevention programs and victim-centered sexual assault response policies and protocols, and form partnerships with on campus and community-based organizations to assist victims with connecting to services.

Affirmative Consent eliminates ambiguity and serves to educate students about appropriate sexual interactions. This will begin to change the culture of acceptance of sexual activity under certain circumstances, such as when students are intoxicated, and create an environment in which clear affirmative consent is the standard.

Campus sexual assault is a complicated, multidimensional problem with no easy or quick solutions. By passing Affirmative Consent we demonstrate Hawaii's commitment to youth and providing an education free from discrimination.

Thank you for this opportunity to testify.

Sincerely,

A handwritten signature in black ink, reading "Judith F. Clark". The signature is fluid and cursive, with the first name "Judith" being the most prominent.

Judith F. Clark  
Executive Director



## **COMMITTEE ON HIGHER EDUCATION AND THE ARTS**

Senator Brian T. Taniguchi, Chair

Senator Lorraine R. Inouye, Vice Chair

## **COMMITTEE ON JUDICIARY AND LABOR**

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

**DATE:** Thursday, February 05, 2015

**TIME:** 1:30 P.M.

**PLACE:** Conference Room 224

Aloha Chairs Taniguchi and Keith-Agaran,

### **STRONG SUPPORT FOR SB 387 requiring affirmative consent**

We in the Coalition have long supported initiatives to empower women and girls at work, at home and at school. The most fundamental condition for that empowerment is the right to physical and emotional safety. Yet sadly violence against women and girls is still pervasive in our society. Our institutions seem to be riddled with it and our universities are no exception. The University of Hawaii is under investigation, along with many others, for not complying with the Violence Against Women Act, that dovetails with the provisions of Title IX.

In our University, sex assault is under-reported, mishandled and too often swept under the rug in order for the system to save face.

One state, California, has required its university system to implement an affirmative consent standard for campus procedures involving sexual assault as a step towards moving the onus away from the victim. Nine other states are actively considering legislation.

"Affirmative Consent" makes a clearer definition of what sex assault actually is. What this standard does is make "consent" less ambiguous. Specifically, it provides that consent be 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. This is important since perpetrators often cite lack of protest as evidence that she (or he) wanted it.



If this bill becomes law we can hope for a healthier campus climate that would result in more victims coming forward if they know their personal life and credibility will not be called into question when determining whether consent occurred.

Moreover, there is precedent for "yes means yes." 800 colleges and universities across the nation already have adopted affirmative consent policies, according to the National Center for Higher Education Risk Management. Universities that have adopted this standard report that this policy has improved campus climate and changed the dialogue about healthy relationships and consent.

Finally, why do we need a law? Well, the last several decades show that our University system has been unmotivated to meaningfully address the problem of rape on campus. Therefore, legislative mandates are needed to propel the University system forward and make it a safe place in which young women (and men) can achieve their full potential.

Mahalo for the opportunity to testify,

Ann S. Freed Co-Chair, Hawai'i Women's Coalition

Contact: [annsfreed@gmail.com](mailto:annsfreed@gmail.com) Phone: 808-623-5676





February 5, 2015

To: Senators Brian T. Taniguchi, Lorraine R. Inouye, Gilbert S. C. Keith Agaran,  
and Maile S. L. Shimabukuro, Chairs,  
and  
Members of the **Committee on Higher Education and the Arts, and the  
Committee on Judiciary and Labor**

From: Dr. Susan J. Wurtzburg  
Policy Chair, American Association of University Women – Hawaii

Re. **Testimony in Support, SB 387, Relating to Affirmative Consent**

I am grateful for this opportunity to testify in strong support of SB 387, relating to affirmative consent. My testimony is on behalf of the approximately 400 members of the American Association of University Women (AAUW) in Hawai'i, who list violence against women as their most important current concern. This testimony is also informed by five years experience of teaching undergraduate and graduate students at the University of Hawai'i at Manoa, which has provided insight into the disturbing levels of sexual violence occurring on the state university's flagship campus. In addition, my area of expertise is gender violence, and I worked for many years with survivors of violence in New Zealand.

On behalf of all these constituents, I argue strongly that SB 387 should be approved today for a number of reasons. (1) University campuses are not safe places for women currently, and this situation needs to change. (2) Universities in Hawai'i need over-arching legislation to assist the campus change process, since the current laws are deficient. (3) A legal code stating that an "affirmative, conscious and voluntary agreement" must be obtained prior to sexual contact creates a new social norm, encouraging respectful communication, and penalizing those who deviate from this standard. (4) This bill also recognizes the ongoing nature of consent, namely that a "yes" involving one type of sexual activity may not imply consent for a different activity. (5) These concepts are clear and unambiguous, clarifying the boundary between sexual consent and sexual assault, in a manner that has not been provided by previous legislation, perhaps resulting in better police and court situations for women. (6) Similar laws are under consideration or have been passed in other states. (7) This information can be communicated to staff, faculty, and students easily and clearly, without ambiguity.

Thank you for the opportunity to testify.

# TRANSMITTAL

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**DATE:** February 4, 2015

**TO:** The Honorable Brian Taniguchi, Chair  
The Honorable Lorraine Inouye, Vice Chair  
Senate Committee on Higher Education and the Arts

The Honorable Gilbert Keith-Agaran, Chair  
The Honorable Maile Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor

**FROM:** Adriana Ramelli  
The Sex Abuse Treatment Center

**RE:** S.B. 387 Relating to Affirmative Consent

**Hearing:** 02/05/15, 1:30 P.M.

This transmittal consists of 3 pages including this cover sheet.

**Sender:** Justin Murakami  
**Please call 535-7158 if you do not receive all of the pages.**



# THE SEX ABUSE TREATMENT CENTER

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

*Executive Director*  
Adriana Ramelli

*Advisory Board*

*President*  
Mimi Beams

*Vice President*  
Peter Van Zile

Joanne H. Arizumi

Mark J. Bennett

Andre Bisquera

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

DATE: February 5, 2015

TO: The Honorable Brian Taniguchi, Chair  
The Honorable Lorraine Inouye, Vice Chair  
Senate Committee on Higher Education and the Arts

The Honorable Gilbert Keith-Agaran, Chair  
The Honorable Maile Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor

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

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

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 (S.B. 387).

S.B. 387 would strengthen protections for survivors of sexual assault on college campuses within the University of Hawai'i system (UH) by requiring it to adopt an affirmative consent standard for the evaluation of complaints, implement comprehensive prevention programs and 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 and has garnered national attention. 1 in 5 women and 1 in 16 men are sexually assaulted during college. Moreover, 90% of these assaults go unreported, and, even of reported assaults, only 30% of perpetrators who are actually found guilty are expelled by schools.

Findings like these have triggered sweeping federal countermeasures, including strict mandates for annual reporting by schools about specific features of their sexual assault programs. Additionally, 55 colleges nationwide, including UH, are under federal investigation for their handling of sexual assault allegations.

Although the federal government has provided some guidance for colleges, a lack of uniform standards has meant that schools continue to struggle to implement policies and programs to prevent sexual assault and provide adequate support to survivors. This is unacceptable, as schools have a universal responsibility to provide a safe and secure campus where students are able to pursue their educational goals, and sexual

assault can have devastating effects that interfere with survivors' physical, emotional, social, and academic functioning.

S.B. 387 assists the UH system to resolve one of the most difficult problems faced by schools attempting to identify acts of sexual assault: determining whether consent existed for a sexual act. S.B. 387 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, and consenting to one sexual act does not mean consenting to all sexual acts.

Moreover, S.B. 387 requires that UH schools implement comprehensive training of students with regard to the affirmative consent standard and UH's overall sexual assault policy. This ensures that all students will be aware that one standard for determining if consent exists shall apply across the UH system.

Finally, S.B. 387 encourages survivors to report assaults and obtain necessary medical, emotional and legal help, as it specifically requires survivor-centered policies and procedures, including a standard protocol for receiving and investigating complaints, retaining services to care for survivors, coordination with law enforcement, trauma-informed training of school staff, and confidential reporting procedures.

By providing the UH system an unambiguous standard of affirmative consent, and by empowering survivors to report sexual assaults and obtain help, your support of S.B. 387 protects Hawai'i's college students and takes an important step towards ensuring a safe and respectful learning environment.



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Executive Director

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## TESTIMONY FOR SENATE BILL 387, RELATING TO AFFIRMATIVE CONSENT

**Senate Committee on Higher Education and the Arts**

**Hon. Brian T. Taniguchi, Chair**

**Hon. Lorraine R. Inouye, Vice Chair**

**Senate Committee on Judiciary and labor**

**Hon. Gilbert S.C. Keith-Agaran, Chair**

**Hon. Maile S.L. Shimabukuro, Vice Chair**

**Thursday, February 5, 2015, 1:30 PM**

**State Capitol, Conference Room 224**

Honorable Chair Taniguchi, Chair Keith-Agaran, and committee members:

I am Kris Coffield, representing the IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 300 local members. On behalf of our members, we offer this testimony in strong support of SB 387, relating to affirmative consent.

In its 2010 Sexual/Relationship Violence Survey, the University of Hawai'i found that 54 female UH-Manoa students noted being raped or sexually assaulted out of a sample size of 565 respondents, an approximately 10 percent per-population average, which comports with national averages. Out of 2,700 respondents, though, only 9 percent of students who noted sexual assault during their time at UH actually reported it, while just 7 percent who said they were raped reported the incidents. Moreover, in 2014, UH-Manoa was named one of 55 colleges under federal scrutiny for its handling of sexual assault and gender-based violence. Roughly 1 in 4 female students around the country are likely to be sexually assaulted as undergraduates, according to national figures, with the Department of Justice finding that 80 percent of campus rapes went unreported between 1995 and 2013.

Enacting a “yes means yes” policy for UH campuses—all of which were declared as “rape free zones” in 2005—will encourage university administrators to take a vigorous stand against sexual assault. While critics argue that “yes means yes” policies are difficult to enforce, the safety of our students demands action. This bill will not “turn people into unwitting rapists,” as *Reason Magazine* argued, but would instead establish clear boundaries for what does not qualify as consent for a sexual encounter, including intoxication, pharmaceutical impairment, and sleep. Strange as it may seem to elucidate such limits in law, college students, today, are routinely faced with situations in which expressions of voluntary agreement to sexual conduct are unsolicited or

disregarded. In a “no means no” juridical setting, the burden of proof falls on the sex assault victim to prove that s/he has been assaulted, with cases often devolving into “he said, she said” debates. While this bill will not resolve all ambiguities in determining whether or not verbal or nonverbal communication of consent was obtained, it will create a victim-centered approach to sexual assault cases, whereby the victim's medical and psychological needs are the first priority of administrators. Perhaps most importantly, this bill mandates the provision of information regarding sexual assault counseling to potential victims, exactly the kind of services needed to make victims feel safe and incentivize reporting. Of equal significance is this bill's emphasis that consent “may be revoked at any time,” meaning that consent must be maintained throughout a sexual act. Thus, a victim for whom a “kiss was just a kiss” will be protected from having the initial physical gesture used as evidence that “s/he wanted it,” a particularly insidious and common way of shaming victims into silence.

Passionate trysts will not be criminalized under this law. If both or all partners to sexual conduct are enthusiastic about the encounter, they will have no reason to file a complaint. Some naysayers contend that one partner could feel ambivalent about the act after the fact and reinterpret the act as assault, but this is, yet again, little more than a hyperbolic attempt to blame victims for their assaults. According to the Department of Justice and City University of New York School of Law dean Michelle Anderson, false rape accusations occur at a rate of merely 2 percent, a similar rate of false accusations for other violent crimes. **Therefore, it is unlikely that this or any other anti-rape measure will lead to increased persecutions of innocent students.**

Could a student infer consent from a prospective sexual partner pulling them down on a dorm room bed and motioning to remove their clothes? Perhaps. In light of the high rate of sexual assaults on our campuses, however, isn't it more important to protect against sexual violence? More simply, does it hurt our students to ask? We would strongly answer, “no.” We hope that you do the same.

Mahalo for the opportunity to testify in strong support of this bill.

Sincerely,  
Kris Coffield  
*Executive Director*  
IMUAlliance

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**Subject:** \*Submitted testimony for SB387 on Feb 5, 2015 13:30PM\*  
**Date:** Monday, February 02, 2015 3:04:44 PM

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**SB387**

Submitted on: 2/2/2015

Testimony for HEA/JDL on Feb 5, 2015 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

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Date: February 4, 2015

Message To: Chair Brian T. Taniguchi, Vice Chair Sen. Lorraine R. Inouye and committee members of the Senate Committee on Higher Education and the Arts, and Chair Gilbert S.C. Keith-Agaran, Vice Chair Maile S.L. Shimabukuro, and committee members of the Senate Committee on Judiciary and Labor.

From: Amy Monk, Commissioner, Hawaii State Commission on the Status of Women

Re: Testimony in support of SB 387 referring to Affirmative Consent

I strongly support the passage of SB 387 which introduces an affirmative consent standard for campus procedures involving sexual assault.

On Monday, Feb 2, 2015 the Star Advertiser published "It's View" editorial titled "UH must step up against sex assault." The Star Advertiser stated that one out of four female college students in the U.S. would likely be assaulted as an undergraduate. Last year, President Obama said one out of five women would be assaulted while in college. It's no wonder that California, the state with the nation's largest state university system was the first to pass "affirmative consent," and 800 other colleges and universities have already adopted affirmative consent policies. \*

While we are proud that the UH system has nearly 59,000 undergraduates and 55% are women, it is alarming to think those numbers translate into over 6,000 sexual assaults, in other words over 1,500 per year. We acknowledge that most victims are women, but women and men are victims of sexual assault, and most of these campus crimes go unreported.

Affirmative consent as a campus policy would emphasize reduction of sexual assault, before students are hurt, and before college careers are damaged or ended. It provides for less ambiguity in interactions and emphasizes healthy, voluntary and open relationships and communication before a sexual act rather than emphasizing investigation, victim counseling and perpetrator prosecution after.

Affirmative consent is one part of a comprehensive approach to reducing assault on our campuses.

\*National Center for Higher Education Risk Management s





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**Subject:** \*Submitted testimony for SB387 on Feb 5, 2015 13:30PM\*  
**Date:** Tuesday, February 03, 2015 10:32:09 AM

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**SB387**

Submitted on: 2/3/2015

Testimony for HEA/JDL on Feb 5, 2015 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
chris johnson	Individual	Support	No

Comments:

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**SB387**

Submitted on: 2/2/2015

Testimony for HEA/JDL on Feb 5, 2015 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Elena Cabatu	Individual	Support	No

Comments: I wholeheartedly support this bill. Yes means yes!

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**SB387**

Submitted on: 2/3/2015

Testimony for HEA/JDL on Feb 5, 2015 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
John Bickel	Individual	Support	No

Comments: As a teacher, I understand the importance of drawing a clear line to protect girls from unwanted sexual advances. This law would send a strong message to boys that they need to get clear affirmative consent before engaging in sex. As I tell my students, if you are not comfortable talking about sex with a partner, you are not ready for sex with that partner. This bill promotes discussion. Please support it.

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IN **STRONG SUPPORT** of SB387

My name is Katie Caldwell and I am a former graduate student of UH Manoa and am additionally an adjunct faculty lecturer for UH Manoa. The University of Hawai'i has recently been the subject of much embarrassing, bad press for Hawai'i, with good reason. The university has had a long-standing problem with sexual violence, from professors preying on graduate assistants to student-on-student sexual assault and rape. There is little support for victims, most of which are female. The school also has a history of gender discrimination; paying its female faculty less than male faculty in the same departments, and not supporting Mothers with maternity leave, breastfeeding locations, or childcare. I mention these issues in conjunction with this bill because it is clear to me that UH has a gender problem. UH has received national attention for its poor sexual violence policies and it is time to pay attention and to protect the victims of these heinous acts.

I am a social worker that has worked in the field of domestic violence, rape, trafficking, and other sexual violence for over a decade. Having worked in multiple other fields such as incarceration, homelessness, and drug addiction, I can tell you sincerely that without a doubt, sexual violence is one of the most difficult things a person can endure. I see whole lives and identities destroyed by it. I see strong, smart girls and women crumble over it. I see dreams dashed and futures ruined. This happens because of how we perceive sexual violence as a society. We are immediately suspicious of victims, judging them for what they were wearing, their sexual history, their alcohol intake, or how late they were staying out. We police girls' behavior to a level of absurdity, never switching this kind of scrutiny or focus on the perpetrator's choices or behavior. It's this "Was-she-asking-for-it?" mentality combined with nearly non-existent school support that paralyzes victims with fear, that prohibits them from reporting, and that stops them from acquiring a modicum of justice. We essentially want rape and sexual assault survivors to be "perfect" victims; with an unstained record of sexual purity, good grades, careful choices involving conservative dress, never staying out past 11pm, and coming from a middle-class white, wholesome family. Perfect victims do not exist for one simple reason: victims are human. Females are human.

Universities across the country are adopting consent policies, as a way to not only prevent sexual assault, but as a means to educate others about what actually constitutes as rape or sexual assault. It also helps to place the onus on the perpetrator instead of the victim, as it draws clear lines of what consent actually entails. This can be especially helpful to the victim if one decides to press charges. This also helps to identify otherwise "blurry" ideas of consent that were created by the "no means no" campaign...finally bringing to light the notion that sexual assault can happen because of intense coercion or without outwardly extreme physical violence. This is important. This is needed. Students...ALL students, deserve to be protected and supported by their educational institution. This is where they live, this is where they learn, this is where they grow and change, and become adults. Let's make the University of Hawai'i a safe place for everyone.

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**Subject:** \*Submitted testimony for SB387 on Feb 5, 2015 13:30PM\*  
**Date:** Wednesday, February 04, 2015 10:01:10 PM

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**SB387**

Submitted on: 2/4/2015

Testimony for HEA/JDL on Feb 5, 2015 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Teri Heede	Individual	Support	No

Comments:

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