

By: Representative Currie

To: Judiciary B

HOUSE BILL NO. 1398

1 AN ACT TO CREATE THE "SEXUAL ASSAULT RESPONSE FOR STUDENTS
2 ACT"; TO DEFINE CERTAIN TERMS FOR THE ACT; TO REQUIRE ALL
3 UNIVERSITIES TO ADOPT A COMPREHENSIVE POLICY CONCERNING SEXUAL
4 ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING
5 CONSISTENT WITH FEDERAL AND STATE LAW REGARDING SUCH; TO LIST THE
6 MINIMUM REQUIREMENTS OF EACH POLICY, WHICH SHALL INCLUDE A
7 DEFINITION OF CONSENT AND A PROHIBITION AGAINST RETALIATION; TO
8 PROVIDE THE MINIMUM REQUIREMENTS FOR SUCH PROCEDURE; TO REQUIRE
9 SUCH INSTITUTIONS TO PROMINENTLY PUBLISH, TIMELY UPDATE, AND HAVE
10 EASILY AVAILABLE ON ITS INTERNET WEBSITE CERTAIN INFORMATION
11 REQUIRED BY THIS ACT; TO REQUIRE SUCH INSTITUTIONS TO PROVIDE AN
12 EXPLANATION OF THE SURVIVOR'S RIGHTS AND OPTIONS; TO REQUIRE SUCH
13 INSTITUTIONS TO PROVIDE STUDENTS WITH ACCESS TO CONFIDENTIAL
14 ADVISORS; TO REQUIRE ALL CONFIDENTIAL ADVISORS TO BE GIVEN
15 APPROPRIATE TRAINING; TO PRESCRIBE MINIMUM REQUIREMENTS OF A
16 CONFIDENTIAL ADVISOR IN WORKING WITH A SURVIVOR; TO REQUIRE SUCH
17 INSTITUTIONS TO CREATE A COMPLAINT RESOLUTION PROCEDURE IF A
18 STUDENT ALLEGES VIOLATION OF THE COMPREHENSIVE POLICY; TO MAKE AN
19 APPROPRIATION TO THE BOARD OF TRUSTEES OF THE STATE INSTITUTIONS
20 OF HIGHER LEARNING FOR THE PURPOSE OF FUNDING REQUIRED TRAINING;
21 AND FOR RELATED PURPOSES.

22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

23 **SECTION 1.** This act shall be known and may be cited as the
24 "Sexual Assault Response for Students Act."

25 **SECTION 2.** (1) The terms below shall have the following
26 meanings, described herein, unless the context indicates
27 otherwise:



28 (a) "Complainant" means a student who alleges to the
29 higher education institution that he or she has been the victim of
30 a violation of the comprehensive policy, regardless of whether the
31 complaint was initially submitted to the higher education
32 institution by him or her, or by someone else.

33 (b) "Comprehensive policy" means a policy created and
34 implemented by a higher education institution to address student
35 allegations of sexual assault, domestic violence, dating violence,
36 and stalking.

37 (c) "Confidential advisor" means a person who is
38 employed or contracted by a higher education institution to
39 provide support to student survivors, complainants, or respondents
40 in the context of an investigation of alleged violation of the
41 comprehensive policy described herein, or in seeking assistance or
42 accommodations related to such an alleged violation.

43 (d) "Confidential communication" means information
44 exchanged between a survivor, complainant, or respondent and a
45 confidential advisor during the course of the advisor providing
46 support and assistance, including all records kept by the advisor
47 concerning the survivor and services provided to the survivor,
48 complainant, or respondent, except where failure to disclose the
49 information would violate the law, would result in an imminent
50 threat of physical harm, or would violate a professional oath or
51 the requirements of a professional license.



(e) "Higher education institution" means a public university under the management and control of the Board of Trustees of State Institutions of Higher Learning.

(f) "Respondent" means a student involved in the complaint resolution procedure who has been accused of violating a higher education institution's comprehensive policy.

(g) "Sexual assault" means physical sexual contact attempted or perpetrated without a person's consent, as defined by the higher education institution's policy consistent with the requirements of this act.

(h) "Survivor" means any student who has experienced sexual assault, domestic violence, dating violence, or stalking while enrolled at a higher education institution, irrespective of whether or not he or she seeks disciplinary action under the comprehensive policy, accommodations, or confidential assistance.

(2) Nothing in this section shall require any higher education institution to use the particular terminology listed herein in its comprehensive policy, provided that the policy meets the requirements set forth in this act.

SECTION 3. (1) On or before August 1, 2018, all higher education institutions shall adopt a comprehensive policy concerning sexual assault, domestic violence, dating violence and stalking consistent with federal and state law. The higher education institution's comprehensive policy shall include, at a minimum, all of the following components:



(a) A definition of consent that recognizes that (i) consent refers to words or actions that show a voluntary agreement to sexual activity, (ii) a person's lack of verbal or physical resistance or submission resulting from the use or threat of force does not constitute consent, (iii) a person's consent to past sexual activity does not constitute consent to future sexual activity, (iv) a person can withdraw consent at any time, and (v) a person cannot consent to sexual activity if that person is unable to understand the nature of the activity due to circumstances, including, but not limited to, the following:

1. The person is incapacitated due to the use or influence of alcohol or drugs;
2. The person is asleep or unconscious;
3. The person is under the applicable age of consent; or
4. The person is incapacitated due to a mental disability.

(2) Nothing in this section shall prevent any higher education institution from implementing policies that further clarify the definition of consent, or the means by which consent may or may not be obtained, provided such policies are not inconsistent with the requirements in this section.

(b) Procedures that students of the higher education institution may follow if they choose to report an alleged violation of the comprehensive policy, regardless of where the



incident of sexual assault, domestic violence, dating violence, or stalking occurred, including all of the following:

(i) All elements of the policy necessary to maintain compliance with applicable federal law, including the Jeanne Clery Act, the VAWA amendments to the Clery Act, and Title IX.

(ii) A statement of the higher education institution's obligation to provide amnesty to any student who reports or discloses an alleged violation of the comprehensive policy or participates in the complaint resolution procedure, so that the student will not receive a disciplinary sanction by the higher education institution for voluntary personal use of alcohol or voluntary personal use of drugs that would otherwise be considered a student conduct violation.

(iii) A statement of the higher education institution's prohibition on retaliation against those who report or disclose an alleged violation of the comprehensive policy, file a complaint, or otherwise participate in the complaint resolution procedure.

(3) On or before August 1, 2018, each higher education institution shall prominently publish, timely update, and have easily accessible on its Internet website:

(a) Names and contact information for the Title IX coordinator(s), campus law enforcement, or security, and local law enforcement.



127 (b) Names, titles, and contact information for
128 confidential advisors and any other confidential resources and a
129 description of what confidential reporting means.

130 (c) Information regarding the various individuals,
131 departments, or organizations to whom a student may report a
132 violation of the comprehensive policy. This information should
133 include an option for students to report to a confidential
134 advisor.

135 (d) The higher education institution's procedure for
136 responding to a report of an alleged incident of sexual assault,
137 domestic violence, dating violence, or stalking, including (i)
138 assisting and interviewing the complainant, (ii) identifying and
139 locating witnesses, (iii) contacting and interviewing the
140 respondent, (iv) cooperating with law enforcement, when
141 applicable, and (v) providing information regarding the importance
142 of preserving physical evidence of the sexual violence and
143 obtaining a medical forensic examination.

144 (e) The name, address, and telephone number of the
145 medical facility nearest to each campus of the higher education
146 institution where a complainant may have a medical forensic
147 examination completed at no cost.

148 (f) The name, telephone number, address, and website
149 URL, if available, of community-based, state, and national sexual
150 assault crisis centers.



(4) On or before January 1, 2019, the Institutions of Higher Learning (IHL) shall research and disseminate a report addressing best practices for higher education institutions to make information on sexual assault, domestic violence, dating violence and stalking easily accessible to students via their respective websites.

SECTION 4. (1) Effective August 1, 2018, upon being notified of an alleged violation of the comprehensive policy by or on behalf of a student, each higher education institution shall provide the complainant, when identified, with information about his or her rights and options, including:

(a) The right to report or not report the alleged incident to the higher education institution, law enforcement, or both, including information about the complainant's right to privacy and which reporting methods are confidential.

(b) The contact information for the higher education institution's Title IX coordinator or coordinators, confidential advisors, a community-based sexual assault crisis center, campus law enforcement, and local law enforcement.

(c) The right to request and receive assistance from campus authorities in notifying law enforcement.

(d) The ability to request interim protective measures and accommodations, including academic, living, dining, and transportation accommodations, or a campus-issued no contact order, if such protective measures and accommodations are



reasonably available, or an order of protection or no contact order in state court.

(e) The higher education institution's ability to provide assistance, upon the complainant's request, in accessing and navigating campus and local health, mental health, counseling, and advocacy services.

(f) A summary of the higher education institution's complaint resolution procedures under its comprehensive policy.

(g) A clear statement that the institution will in no way seek to impede any person from reporting an alleged violation of the comprehensive policy to any local or other law enforcement agency, and will cooperate as required by applicable law with any law enforcement investigation of an alleged violation.

(2) Nothing in this act shall be construed to affect or restrict other obligations under federal law for a higher education institution to report threats to the community to law enforcement.

SECTION 5. (1) Each higher education institution shall provide complainants, respondents, and/or survivors with access to a confidential advisor, whose role is to provide support. Communication with such an advisor shall not constitute reporting an alleged violation to the higher education institution for purposes of triggering the complaint resolution procedure described in this act.



(2) Persons designated as confidential advisors, while serving in that capacity, shall not be assigned any job duties that would trigger any requirement to report or disclose any alleged violation of the comprehensive policy under Title IX of the Education Amendments of 1972 or any other law. Nothing in this act shall affect any duty to report or disclose information, or refrain from reporting or disclosing information, arising directly as a result of a professional oath or license. Nothing in this section precludes a higher education institution from partnering with a community-based sexual assault crisis center to provide confidential advisors.

(3) All confidential advisors shall receive training on the comprehensive policy, on the rights and options for survivors, complainants, and respondents, on the effects of trauma, and on the appropriate methods to communicate with students subjected to sexual violence, before being designated a confidential advisor. Confidential advisors shall also receive periodic training on campus administrative processes, interim protective measures and accommodations, and complaint resolution procedures.

(4) In the course of working with a survivor or complainant, each confidential advisor shall do all of the following:

(a) Inform the survivor or complainant of his or her choice of possible next steps regarding reporting options and possible outcomes, including reporting pursuant to the higher



education institution's comprehensive policy, and notifying law enforcement.

(b) Notify the survivor or complainant of available resources and services, which may include, but are not limited to student services available on campus, community-based resources, sexual assault crisis centers, medical treatment facilities, counseling services, and mental health services.

(c) Inform the survivor or complainant of his or her rights and the higher education institution's responsibilities regarding the complaint resolution process, no contact orders, or similar lawful orders issued by the higher education institution or a court.

(d) Maintain the confidential status of communications with the survivor or complainant in all cases except where failure to disclose information would violate the law, likely result in an imminent threat of physical harm, or otherwise violate a professional oath or the requirements of a professional license.

(e) With the survivor or complainant's permission and as appropriate, liaise with campus officials, community-based sexual assault crisis centers, or law enforcement and, if requested, assist the survivor or complainant with contacting and reporting to campus officials, campus law enforcement, or other law enforcement agencies.



247 (f) Upon the survivor or complainant's request, liaise
248 with the necessary campus authorities to seek interim measures and
249 accommodations.

250 (5) In the course of working with a respondent, each
251 confidential advisor shall do all of the following:

252 (a) Notify the respondent of available resources and
253 services, which may include, but are not limited to student
254 services available on campus, community-based resources,
255 counseling services, and mental health services.

256 (b) Inform the respondent of his or her rights and the
257 higher education institution's responsibilities regarding the
258 complaint resolution process, no contact orders, or similar lawful
259 orders issued by the higher education institution or a court.

260 (c) Maintain the confidential status of communications
261 with the respondent in all cases except where failure to disclose
262 information would violate the law, likely result in an imminent
263 threat of physical harm, or otherwise violate a professional oath
264 or the requirements of a professional license.

265 (d) With the respondent's permission and as
266 appropriate, liaise with campus officials, community-based sexual
267 assault crisis centers, or law enforcement and, if requested,
268 assist the respondent with campus law enforcement, or other law
269 enforcement agencies.



(e) Upon the respondent's request, liaise with the necessary campus authorities to seek interim measures or accommodations.

SECTION 6. (1) On or before August 1, 2018, each campus of a higher education institution shall adopt one (1) procedure to resolve complaints of alleged student violations of the comprehensive policy.

(2) For each campus, a higher education institution's complaint resolution procedure for allegations of student violation of the comprehensive policy shall provide all of the following:

(a) Complainants and respondents shall have the opportunity to request that the complaint resolution procedure begin promptly and proceed in a timely manner.

(b) All employees, officials, or agents of a higher education institution who are involved in the investigation or resolution of alleged violations of the comprehensive policy shall receive training on the policy, on the rights and options for complainants and respondents, on the importance of due process and fairness for all parties, on the effects of trauma, and on the appropriate methods to communicate with students subjected to sexual violence, before participating in these processes. Such employees, officials, or agents shall also receive periodic training on campus administrative processes, interim protective measures and accommodations, and complaint resolution procedures.



295 The higher education institution shall have a sufficient number of
296 individuals trained to resolve complaints so that (i) a
297 substitution can occur in the case of a conflict of interest or
298 recusal and (ii) an individual or individuals with no prior
299 involvement in the initial determination or finding may hear any
300 appeal brought by a party.

301 (c) In adjudicating whether an alleged violation of the
302 comprehensive policy occurred, a higher education institution
303 shall employ such standard of proof as may be prescribed by
304 applicable federal laws, regulations, or agency guidance. Where
305 no such law, regulation, or guidance applies, the institution
306 shall employ the same standard of proof it employs in adjudicating
307 other alleged violations of its student conduct policies.

308 (d) The complainant and respondent shall (i) receive
309 notice of the individual or individuals with authority to make a
310 final determination of responsibility or impose a sanction in
311 advance of any meeting, hearing, or proceeding before such
312 individuals, and (ii) have reasonable opportunity to request a
313 trained substitute if the participation of an individual with
314 authority to make a final determination of responsibility or
315 impose a sanction poses a conflict of interest.

316 (e) Any meeting, hearing or proceeding held to
317 investigate or resolve complaints of alleged student violations of
318 the comprehensive policy shall protect the privacy of the
319 participating parties and witnesses to the greatest extent



feasible while keeping other parties, witnesses and officials apprised of relevant information.

(f) The complainant and the respondent shall have the opportunity to present arguments, information, evidence, and/or witnesses on their behalf during the complaint resolution procedure, and to respond to any argument, information, evidence, and/or testimony that is introduced against them.

(g) In any hearing or proceeding on an alleged violation of the comprehensive policy, an institution may, at its discretion, limit or prohibit direct cross-examination of the complainant and respondent. Any such limitation or prohibition must apply equally to both the complainant and the respondent, and the institution must provide some alternative means, such as the submission of written questions, by which the complainant and respondent may pose questions to one another.

(h) Prior to any hearing or proceeding to determine whether a violation of the comprehensive policy has occurred and/or to impose sanctions for such a violation, the complainant and the respondent shall be notified of the date, time, and location of the hearing or proceeding, the specific charge to be considered, the identity of any witness whose statement or testimony may be introduced, and shall be notified of and afforded a reasonable opportunity to review any evidence that may be introduced. This notification shall be provided at least three



344 (3) business days prior to any such hearing or proceeding, or
345 farther in advance if required by applicable law.

346 (i) Both parties may request and must be allowed to
347 have an advisor of their choice accompany them to any meeting,
348 hearing, or proceeding related to an alleged violation of the
349 comprehensive policy, provided that the involvement of the advisor
350 does not result in undue delay of the meeting, hearing, or
351 proceeding. The advisor must comply with any rules in the higher
352 education institution's complaint resolution procedure regarding
353 the advisor's role. If the advisor violates the rules or engages
354 in behavior or advocacy that harasses, abuses, or intimidates
355 either party, a witness, or an individual resolving the complaint,
356 that advisor may be prohibited from further participation.

357 (j) Neither the complainant nor the respondent will be
358 compelled to testify in person. Upon request, the institution of
359 higher education shall make available a means to testify remotely,
360 such that the testimony can be heard by all parties involved.

361 (k) The complainant and the respondent are entitled to
362 simultaneous, written notification of the results of the complaint
363 resolution procedure, including information regarding appeal
364 rights, within seven (7) business days of a decision or sooner if
365 required by applicable law.

366 (l) The complainant and the respondent shall have the
367 right to timely appeal the complaint resolution procedure's
368 findings or imposed sanctions if the party asserts (i) a



procedural error occurred or (ii) new information exists that was not reasonably available at the time of the resolution, and that the error or omission would substantially change the outcome. Nothing in this section shall prohibit any higher education institution from providing additional grounds for appeal. The individual or individuals reviewing the findings or imposed sanctions shall not have participated previously in the complaint investigation or resolution procedure and shall not have a conflict of interest with respect to either party. The complainant and the respondent shall receive the appeal decision in writing after the conclusion of the review of findings or sanctions.

(m) The higher education institution shall not disclose the identity of the complainant or the respondent without said party's express permission, except as necessary to investigate or resolve the complaint or to implement interim protective measures and accommodations or when provided by state or federal law.

SECTION 7. The provisions of this act shall apply only to the extent they are not preempted by, or in conflict with, federal statutes, regulations or agency guidance. Each provision of this act is declared to be severable from the remainder of the act. If any provision of this act or any application thereof is held to be preempted or otherwise invalid, the preemption or invalidity shall not affect the other provisions or applications of the act that



393 can be given effect without the preempted or invalid provision or
394 application.

395 **SECTION 8.** Nothing in this act is intended to be construed
396 to create a private right of action against any institution of
397 higher education, nor any official, employee, or agent thereof.

398 **SECTION 9.** This act shall take effect and be in force from
399 and after July 1, 2018.

