

By: Representative Cockerham

To: Judiciary B

HOUSE BILL NO. 1436

1 AN ACT TO CREATE "THE SEXUAL ASSAULT RESPONSE FOR STUDENTS IN
2 UNIVERSITIES AND COMMUNITY AND JUNIOR COLLEGES ACT"; TO DEFINE
3 CERTAIN TERMS FOR THE ACT; TO REQUIRE ALL UNIVERSITIES AND
4 COMMUNITY AND JUNIOR COLLEGES TO ADOPT A COMPREHENSIVE POLICY
5 CONCERNING SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE, AND
6 STALKING CONSISTENT WITH FEDERAL AND STATE LAW REGARDING SUCH; TO
7 LIST THE MINIMUM REQUIREMENTS OF EACH POLICY, WHICH SHALL INCLUDE
8 A DEFINITION OF CONSENT AND A PROHIBITION AGAINST RETALIATION OF A
9 VICTIM; TO REQUIRE SUCH INSTITUTIONS, AT A MINIMUM, TO PROVIDE THE
10 SURVIVOR, WHEN IDENTIFIED, WITH A CONCISE NOTIFICATION, WRITTEN IN
11 PLAIN LANGUAGE, OF THE SURVIVOR'S RIGHTS AND OPTIONS; TO REQUIRE
12 SUCH INSTITUTIONS TO RESPOND WITHIN TWELVE HOURS AFTER RECEIVING
13 AN ELECTRONIC REPORT; TO REQUIRE SUCH INSTITUTIONS TO PROVIDE
14 STUDENTS WITH ACCESS TO CONFIDENTIAL ADVISORS TO PROVIDE EMERGENCY
15 AND ONGOING SUPPORT TO SURVIVORS OF SEXUAL VIOLENCE; TO REQUIRE
16 ALL CONFIDENTIAL ADVISORS TO BE GIVEN 40 HOURS OF TRAINING; TO
17 PRESCRIBE MINIMUM REQUIREMENTS OF A CONFIDENTIAL ADVISOR IN
18 WORKING WITH A SURVIVOR; TO REQUIRE SUCH INSTITUTIONS TO CREATE A
19 COMPLAINT RESOLUTION PROCEDURE IF A STUDENT ALLEGES VIOLATION OF
20 THE COMPREHENSIVE VIOLENCE POLICY; TO PROVIDE THE MINIMUM
21 REQUIREMENTS FOR SUCH PROCEDURE; TO REQUIRE SUCH INSTITUTIONS TO
22 PROMINENTLY PUBLISH, TIMELY UPDATE, AND HAVE EASILY AVAILABLE ON
23 ITS INTERNET WEBSITE CERTAIN INFORMATION REQUIRED BY THIS ACT; TO
24 PROVIDE A LIST OF THE REQUIRED INFORMATION THAT MUST BE EASILY
25 AVAILABLE ON THE WEBSITE; AND FOR RELATED PURPOSES.

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

27 **SECTION 1.** This act shall be known and may be cited as the
28 "The Sexual Assault Response for Students in Universities and
29 Community and Junior Colleges Act."



30 **SECTION 2.** The following words shall have the following

31 meanings, unless the context indicates otherwise:

32 (a) "Awareness programming" means institutional action
33 designed to communicate the prevalence of sexual violence,
34 including, without limitation, training, poster and flyer
35 campaigns, electronic communications, films, guest speakers,
36 symposia, conferences, seminars, or panel discussions.

37 (b) "Bystander intervention" includes, without
38 limitation, the act of challenging the social norms that support,
39 condone, or permit sexual violence.

40 (c) "Complainant" means a student who files a complaint
41 alleging violation of the comprehensive policy through the higher
42 education institution's complaint resolution procedure.

43 (d) "Comprehensive policy" means a policy created and
44 implemented by a higher education institution to address student
45 allegations of sexual violence, domestic violence, dating
46 violence, and stalking.

47 (e) "Confidential advisor" means a person who is
48 employed or contracted by a higher education institution to
49 provide emergency and ongoing support to student survivors of
50 sexual violence with the training, duties, and responsibilities
51 described in this act.

52 (f) "Higher education institution" means a public
53 university, a public community college, a public junior college or



an independent, not-for-profit or for-profit higher education institution located in this state.

(g) "Primary prevention programming" means institutional action and strategies intended to prevent sexual violence before it occurs by means of changing social norms and other approaches, including, without limitation, training, poster and flyer campaigns, electronic communications, films, guest speakers, symposia, conferences, seminars, or panel discussions.

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

(i) "Sexual violence" means physical sexual acts attempted or perpetrated against a person's will or when a person is incapable of giving consent, including, without limitation, rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.

(j) "Survivor" means a student who has experienced sexual violence, domestic violence, dating violence, or stalking while enrolled at a higher education institution.

(k) "Survivor-centered" means a systematic focus on the needs and concerns of a survivor of sexual violence, domestic violence, dating violence, or stalking that (i) ensures the compassionate and sensitive delivery of services in a nonjudgmental manner; (ii) ensures an understanding of how trauma affects survivor behavior; (iii) maintains survivor safety,



79 privacy, and, if possible, confidentiality; and (iv) recognizes
80 that a survivor is not responsible for the sexual violence,
81 domestic violence, dating violence, or stalking.

82 (1) "Trauma-informed response" means a response
83 involving an understanding of the complexities of sexual violence,
84 domestic violence, dating violence, or stalking through training
85 centered on the neurobiological impact of trauma, the influence of
86 societal myths and stereotypes surrounding sexual violence,
87 domestic violence, dating violence, or stalking, and understanding
88 the behavior of perpetrators.

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

95 (a) A definition of consent that, at a minimum,
96 recognizes that (i) consent is a freely given agreement to sexual
97 activity, (ii) a person's lack of verbal or physical resistance or
98 submission resulting from the use or threat of force does not
99 constitute consent, (iii) a person's manner of dress does not
100 constitute consent, (iv) a person's consent to past sexual
101 activity does not constitute consent to future sexual activity,
102 (v) a person's consent to engage in sexual activity with one (1)
103 person does not constitute consent to engage in sexual activity



with another, (vi) a person can withdraw consent at any time, and
(vii) a person cannot consent to sexual activity if that person is
unable to understand the nature of the activity or give knowing
consent due to circumstances, including, without limitation, 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 age; or
4. The person is incapacitated due to a
mental disability.

Nothing in this section prevents a higher education
institution from defining consent in a more demanding manner.

(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 violence, domestic violence, dating violence,
or stalking occurred, including all of the following:

(i) Name and contact information for the Title IX
coordinator, campus law enforcement or security, local law
enforcement, and the community-based sexual assault crisis center.

(ii) The name, title, and contact information for
confidential advisors and other confidential resources and a
description of what confidential reporting means.



(iii) Information regarding the various individuals, departments, or organizations to whom a student may report a violation of the comprehensive policy, specifying for each individual and entity 1. the extent of the individual's or entity's reporting obligation, 2. the extent of the individual's or entity's ability to protect the student's privacy, and 3. the extent of the individual's or entity's ability to have confidential communications with the student.

(iv) An option for students to electronically report.

(v) An option for students to anonymously report.

(vi) An option for students to confidentially report.

(vii) An option for reports by third parties and bystanders.

(c) The higher education institution's procedure for responding to a report of an alleged incident of sexual violence, domestic violence, dating violence, or stalking, including without limitation (i) assisting and interviewing the survivor, (ii) identifying and locating witnesses, (iii) contacting and interviewing the respondent, (iv) contacting and cooperating with law enforcement, when applicable, and (v) providing information regarding the importance of preserving physical evidence of the sexual violence and the availability of a medical forensic examination at no charge to the survivor.



(d) A statement of the higher education institution's obligation to provide survivors with concise information, written in plain language, concerning the survivor's rights and options, upon receiving a report of an alleged violation of the comprehensive policy, as described in Section 4 of this act.

(e) The name, address, and telephone number of the medical facility nearest to each campus of the higher education institution where a survivor may have a medical forensic examination completed at no cost to the survivor, pursuant to the Sexual Assault Survivors Emergency Treatment Act.

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

(g) A statement notifying survivors of the interim protective measures and accommodations reasonably available from the higher education institution that a survivor may request in response to an alleged violation of the comprehensive policy, including, without limitation, changes to academic, living, dining, transportation, and working situations, obtaining and enforcing campus no contact orders, and honoring an order of protection or no contact order entered by a state civil or criminal court.

(h) The higher education institution's complaint resolution procedures if a student alleges violation of the



comprehensive violence policy, including, at a minimum, the guidelines set forth in this act.

(i) A statement of the range of sanctions the higher education institution may impose following the implementation of its complaint resolution procedures in response to an alleged violation of the comprehensive policy. Sanctions may include, but are not limited to, suspension, expulsion, or removal of the student found, after complaint resolution procedures, to be in violation of the comprehensive policy of the higher education institution.

(j) A statement of the higher education institution's obligation to include an amnesty provision that provides immunity to any student who reports, in good faith, an alleged violation of the higher education institution's comprehensive policy to a responsible employee, as defined by federal law, so that the reporting student will not receive a disciplinary sanction by the institution for a student conduct violation, such as underage drinking, that is revealed in the course of such a report, unless the institution determines that the violation was egregious, including without limitation an action that places the health or safety of any other person at risk.

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



complaint resolution procedure and available sanctions for individuals who engage in retaliatory conduct.

(2) (a) If a higher education institution receives a complaint alleging sexual violence and permission from the alleged victim of the sexual violence, the institution shall immediately report and refer the allegation to the law enforcement agency of the local government with jurisdiction to respond to such allegations in the location of the institution.

(b) Before requesting an alleged victim's permission to proceed, a higher education institution must inform the student that the permission authorizes the institution to report the allegation to the local law enforcement agency in the location of the institution with jurisdiction to respond to such allegations; and that nonpunitive support services and nonpunitive accommodations shall remain available to the alleged victim regardless of whether the alleged victim provides the permission to the institution to proceed to report, but that the institution will not be able to take disciplinary actions against the accused unless the allegation is investigated by the local law enforcement agency.

(c) If the alleged victim denies the higher education institution permission to report the allegation to local law enforcement, the institution must determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the



student who reported the sexual violence. When an institution is determining whether it can honor a student's request that the allegation be withheld from local law enforcement, the institution shall consider a range of factors including whether the circumstances suggest there is an increased risk of the alleged perpetrator committing additional acts of sexual violence or other violence, whether the alleged perpetrator has a history of arrests or records from a prior institution of higher education indicating a history of violence, whether the alleged perpetrator is alleged to have threatened further sexual violence or other violence against the student or others, and whether the sexual violence was committed by multiple perpetrators. The institution shall also consider whether the circumstances suggest there is an increased risk of future acts of sexual violence under similar circumstances, whether the sexual violence was perpetrated with a weapon, and the age of the student allegedly subjected to the sexual violence. When an institution determines that it must report the covered allegation against the alleged victim's wishes, it shall notify the student of its decision and rationale in writing within twenty-four (24) hours.

SECTION 4. (1) On or before 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, at a minimum, provide the survivor, when identified, with a



251 concise notification, written in plain language, of the survivor's
252 rights and options, including without limitation:

253 (a) The survivor's right to report or not report the
254 alleged incident to the higher education institution, law
255 enforcement, or both, including information about the survivor's
256 right to privacy and which reporting methods are confidential;

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

261 (c) The survivor's right to request and receive
262 assistance from campus authorities in notifying law enforcement;

263 (d) The survivor's ability to request interim
264 protective measures and accommodations for survivors, including,
265 without limitation, changes to academic, living, dining, working,
266 and transportation situations, obtaining and enforcing a
267 campus-issued order of protection or no contact order, if such
268 protective measures and accommodations are reasonably available,
269 and an order of protection or no contact order in state court;

270 (e) The higher education institution's ability to
271 provide assistance, upon the survivor's request, in accessing and
272 navigating campus and local health and mental health services,
273 counseling, and advocacy services; and



(f) A summary of the higher education institution's complaint resolution procedures, under this act, if the survivor reports a violation of the comprehensive policy.

(2) Within twelve (12) hours after receiving an electronic report, the higher education institution shall respond to the electronic reporter and, at a minimum, provide the information described in paragraphs (a) through (f) of subsection (1) of this section and a list of available resources. The higher education institution may choose the manner in which it responds including, but not limited to, through verbal or electronic communication. Nothing in this subsection (2) limits a higher education institution's obligations under subsection (1) of this section.

SECTION 5. (1) Each higher education institution shall provide students with access to confidential advisors to provide emergency and ongoing support to survivors of sexual violence.

(2) The confidential advisors may not be individuals on campus who are designated as responsible employees under Title IX of the federal Education Amendments of 1972. 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 forty (40) hours of training on sexual violence, if they have not already completed this forty-hour training, before being designated a confidential advisor and shall attend a minimum of six (6) hours of ongoing



education training annually on issues related to sexual violence to remain a confidential advisor. Confidential advisors shall also receive periodic training on the campus administrative processes, interim protective measures and accommodations, and complaint resolution procedures.

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

(a) Inform the survivor of the survivor's choice of possible next steps regarding the survivor's reporting options and possible outcomes, including, without limitation, reporting pursuant to the higher education institution's comprehensive policy and notifying local law enforcement.

(b) Notify the survivor of resources and services for survivors of sexual violence, including, but not limited to, student services available on campus and through community-based resources, including without limitation sexual assault crisis centers, medical treatment facilities, counseling services, legal resources, medical forensic services, and mental health services.

(c) Inform the survivor of the survivor's rights and the higher education institution's responsibilities regarding orders of protection, no contact orders, or similar lawful orders issued by the higher education institution or a criminal or civil court.

(d) Provide confidential services to and have privileged, confidential communications with survivors of sexual



violence in accordance with Section 8-804 of the Code of Civil Procedure.

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

(f) Upon the survivor's request, liaise with the necessary campus authorities to secure interim protective measures and accommodations for the survivor.

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 procedures for allegations of student violation of the comprehensive policy shall provide, at a minimum, all of the following:

(a) Complainants alleging student violation of the comprehensive policy shall have the opportunity to request that the complaint resolution procedure begin promptly and proceed in a timely manner.

(b) The higher education institution shall determine the individuals who will resolve complaints of alleged student violations of the comprehensive policy.



349 (c) All individuals whose duties include resolution of
350 complaints of student violations of the comprehensive policy shall
351 receive a minimum of eight (8) to ten (10) hours of annual
352 training on issues related to sexual violence, domestic violence,
353 dating violence, and stalking and how to conduct the higher
354 education institution's complaint resolution procedures, in
355 addition to the annual training required for employees as provided
356 in subsection (3) of Section 7 of this act.

357 (d) The higher education institution shall have a
358 sufficient number of individuals trained to resolve complaints so
359 that (i) a substitution can occur in the case of a conflict of
360 interest or recusal and (ii) an individual or individuals with no
361 prior involvement in the initial determination or finding may hear
362 any appeal brought by a party.

363 (e) The individual or individuals resolving a complaint
364 shall use a clear and convincing evidence standard to determine
365 whether the alleged violation of the comprehensive policy
366 occurred.

367 (f) The complainant and respondent shall (i) receive
368 notice of the individual or individuals with authority to make a
369 finding or impose a sanction in their proceeding before the
370 individual or individuals initiate contact with either party and
371 (ii) have the opportunity to request a substitution if the
372 participation of an individual with authority to make a finding or
373 impose a sanction poses a conflict of interest.



(g) The higher education institution shall have a procedure to determine interim protective measures and accommodations available pending the resolution of the complaint.

(h) Any proceeding, meeting, or hearing held to resolve complaints of alleged student violations of the comprehensive policy shall protect the privacy of the participating parties and witnesses.

(i) The complainant, regardless of this person's level of involvement in the complaint resolution procedure, and the respondent shall have the opportunity to provide or present evidence and witnesses on their behalf during the complaint resolution procedure.

(j) The complainant and the respondent may not directly cross examine one another, but may, at the discretion and direction of the individual or individuals resolving the complaint, suggest questions to be posed by the individual or individuals resolving the complaint and respond to the other party.

(k) Both parties may request and must be allowed to have an advisor of their choice accompany them to any meeting or proceeding related to an alleged violation of the comprehensive policy, provided that the involvement of the advisor does not result in undue delay of the meeting or proceeding. The advisor must comply with any rules in the higher education institution's complaint resolution procedure regarding the advisor's role. If



399 the advisor violates the rules or engages in behavior or advocacy
400 that harasses, abuses, or intimidates either party, a witness, or
401 an individual resolving the complaint, that advisor may be
402 prohibited from further participation.

403 (l) The complainant and the respondent may not be
404 compelled to testify, if the complaint resolution procedure
405 involves a hearing, in the presence of the other party. If a
406 party invokes this right, the higher education institution shall
407 provide a procedure by which each party can, at a minimum, hear
408 the other party's testimony.

409 (m) The complainant and the respondent are entitled to
410 simultaneous, written notification of the results of the complaint
411 resolution procedure, including information regarding appeal
412 rights, within seven (7) days of a decision or sooner if required
413 by state or federal law.

414 (n) The complainant and the respondent shall, at a
415 minimum, have the right to timely appeal the complaint resolution
416 procedure's findings or imposed sanctions if the party alleges (i)
417 a procedural error occurred, (ii) new information exists that
418 would substantially change the outcome of the finding, or (iii)
419 the sanction is disproportionate with the violation. The
420 individual or individuals reviewing the findings or imposed
421 sanctions shall not have participated previously in the complaint
422 resolution procedure and shall not have a conflict of interest
423 with either party. The complainant and the respondent shall



receive the appeal decision in writing within seven (7) days after the conclusion of the review of findings or sanctions or sooner if required by federal or state law.

(o) The higher education institution shall not disclose the identity of the survivor or the respondent, except as necessary to resolve the complaint or to implement interim protective measures and accommodations or when provided by state or federal law.

SECTION 7. (1) On or before August 1, 2018, a higher education institution shall prominently publish, timely update, and have easily available on its Internet website all of the following information:

(a) The higher education institution's comprehensive policy, as well as options and resources available to survivors.

(b) The higher education institution's student notification of rights and options described in this act.

(c) The name and contact information for all of the higher education institution's Title IX coordinators.

(d) An explanation of the role of (i) Title IX coordinators, including deputy or assistant Title IX coordinators, under Title IX of the federal Education Amendments of 1972, (ii) responsible employees under Title IX of the federal Education Amendments of 1972, (iii) campus security authorities under the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and (iv) mandated reporters under the



449 Abused and Neglected Child Reporting Act and the reporting
450 obligations of each, as well as the level of confidentiality each
451 is allowed to provide to reporting students under relevant federal
452 and state law.

453 (e) The name, title, and contact information for all
454 confidential advisors, counseling services, and confidential
455 resources that can provide a confidential response to a report and
456 a description of what confidential reporting means.

457 (f) The telephone number and website URL for
458 community-based, state, and national hotlines providing
459 information to sexual violence survivors.

460 (2) Beginning with the 2018-2019 academic year, each higher
461 education institution shall provide sexual violence primary
462 prevention and awareness programming for all students who attend
463 one or more classes on campus, which shall include, at a minimum,
464 annual training as described in this subsection. Nothing in this
465 section shall be construed to limit the higher education
466 institution's ability to conduct additional ongoing sexual
467 violence primary prevention and awareness programming.

468 Each higher education institution's annual training shall, at
469 a minimum, provide each student who attends one or more classes on
470 campus information regarding the higher education institution's
471 comprehensive policy, including without limitation the following:

472 (a) The institution's definitions of consent, inability
473 to consent, and retaliation as they relate to sexual violence;



(b) Reporting to the higher education institution,
campus law enforcement, and local law enforcement;

(c) Reporting to the confidential advisor or other
confidential resources;

(d) Available survivor services; and

(e) Strategies for bystander intervention and risk
reduction.

At the beginning of each academic year, each higher education
institution shall provide each student of the higher education
institution with an electronic copy or hard copy of its
comprehensive policy, procedures, and related protocols.

(3) (a) Beginning in the 2018-2019 academic year, a higher
education institution shall provide annual survivor-centered and
trauma-informed response training to any employee of the higher
education institution who is involved in (i) the receipt of a
student report of an alleged incident of sexual violence, domestic
violence, dating violence, or stalking, (ii) the referral or
provision of services to a survivor, or (iii) any campus complaint
resolution procedure that results from an alleged incident of
sexual violence, domestic violence, dating violence, or stalking.
Employees falling under this description include without
limitation the Title IX coordinator, members of the higher
education institution's campus law enforcement, and campus
security.



498 (b) An enrolled student at or a contracted service
499 provider of the higher education institution with the employee
500 responsibilities outlined in subsection (3)(a)(i) through (iii)
501 shall also receive annual survivor-centered and trauma-informed
502 response training.

503 (c) The higher education institution shall design the
504 training to improve the trainee's ability to understand (i) the
505 higher education institution's comprehensive policy; (ii) the
506 relevant federal and state law concerning survivors of sexual
507 violence, domestic violence, dating violence, and stalking at
508 higher education institutions; (iii) the roles of the higher
509 education institution, medical providers, law enforcement, and
510 community agencies in ensuring a coordinated response to a
511 reported incident of sexual violence; (iv) the effects of trauma
512 on a survivor; (v) the types of conduct that constitute sexual
513 violence, domestic violence, dating violence, and stalking,
514 including same-sex violence; and (vi) consent and the role drugs
515 and alcohol use can have on the ability to consent. The training
516 shall also seek to improve the trainee's ability to respond with
517 cultural sensitivity; provide services to or assist in locating
518 services for a survivor, as appropriate; and communicate
519 sensitively and compassionately with a survivor of sexual
520 violence, domestic violence, dating violence, or stalking.

521 **SECTION 8.** This act shall take effect and be in force from
522 and after July 1, 2018.

