

By: Representative Cockerham

To: Judiciary B

## HOUSE BILL NO. 1437

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 ASSAULT; TO REQUIRE ALL  
16 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 POLICY; TO PROVIDE THE MINIMUM REQUIREMENTS FOR  
21 SUCH PROCEDURE; TO REQUIRE SUCH INSTITUTIONS TO PROMINENTLY  
22 PUBLISH, TIMELY UPDATE, AND HAVE EASILY AVAILABLE ON ITS INTERNET  
23 WEBSITE CERTAIN INFORMATION REQUIRED BY THIS ACT; TO PROVIDE A  
24 LIST OF THE REQUIRED INFORMATION THAT MUST BE EASILY AVAILABLE ON  
25 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 assault,  
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 assault.

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 assault, domestic violence, dating violence,  
46 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 assault 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 assault 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 assault" 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 assault, 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 assault, 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 assault,  
81 domestic violence, dating violence, or stalking.

82 (1) "Trauma-informed response" means a response  
83 involving an understanding of the complexities of sexual assault,  
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 assault,  
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 assault, domestic violence, dating violence, and  
92 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.

(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) 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 assault, 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 assault 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 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



179 its complaint resolution procedures in response to an alleged  
180 violation of the comprehensive policy. Sanctions may include, but  
181 are not limited to, suspension, expulsion, or removal of the  
182 student found, after complaint resolution procedures, to be in  
183 violation of the comprehensive policy of the higher education  
184 institution.

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

196 (k) A statement of the higher education institution's  
197 prohibition on retaliation against those who, in good faith,  
198 report or disclose an alleged violation of the comprehensive  
199 policy, file a complaint, or otherwise participate in the  
200 complaint resolution procedure and available sanctions for  
201 individuals who engage in retaliatory conduct.

202 (2) (a) If a higher education institution receives a  
203 complaint alleging sexual assault and permission from the alleged





204 victim of the sexual assault, the institution shall immediately  
205 report and refer the allegation to the law enforcement agency of  
206 the local government with jurisdiction to respond to such  
207 allegations in the location of the institution.

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

220           (c) If the alleged victim denies the higher education  
221 institution permission to report the allegation to local law  
222 enforcement, the institution must determine whether or not it can  
223 honor such a request while still providing a safe and  
224 nondiscriminatory environment for all students, including the  
225 student who reported the sexual assault. When an institution is  
226 determining whether it can honor a student's request that the  
227 allegation be withheld from local law enforcement, the institution  
228 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 assault or other assault, whether the alleged perpetrator has a history of arrests or records from a prior institution of higher education indicating a history of assault, whether the alleged perpetrator is alleged to have threatened further sexual assault or other assault against the student or others, and whether the sexual assault was committed by multiple perpetrators. The institution shall also consider whether the circumstances suggest there is an increased risk of future acts of sexual assault under similar circumstances, whether the sexual assault was perpetrated with a weapon, and the age of the student allegedly subjected to the sexual assault. 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 concise notification, written in plain language, of the survivor's rights and options, including without limitation:

(a) The survivor's right to report or not report the alleged incident to the higher education institution, law



enforcement, or both, including information about the survivor'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 survivor's right to request and receive assistance from campus authorities in notifying law enforcement;

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

(e) The higher education institution's ability to provide assistance, upon the survivor's request, in accessing and navigating campus and local health and mental health services, 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 twenty-four (24) 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, complainants, respondents and survivors with access to confidential advisors to provide emergency and ongoing support to survivors of sexual assault.

(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 assault, 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 assault 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 assault, 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 assault in accordance with Section 8-804 of the Code of Civil Procedure.



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

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

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

338 (2) For each campus, a higher education institution's  
339 complaint resolution procedures for allegations of student  
340 violation of the comprehensive policy shall provide, at a minimum,  
341 all of the following:

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

346 (b) The higher education institution shall determine  
347 the individuals who will resolve complaints of alleged student  
348 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 assault, 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 investigate or 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



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

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

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

(2) (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 assault, domestic assault, 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 assault, 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.



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

478           (c) The higher education institution shall design the  
479 training to improve the trainee's ability to understand (i) the  
480 higher education institution's comprehensive policy; (ii) the  
481 relevant federal and state law concerning survivors of sexual  
482 assault, domestic violence, dating violence, and stalking at  
483 higher education institutions; (iii) the roles of the higher  
484 education institution, medical providers, law enforcement, and  
485 community agencies in ensuring a coordinated response to a  
486 reported incident of sexual assault; (iv) the effects of trauma on  
487 a survivor; (v) the types of conduct that constitute sexual  
488 assault, domestic violence, dating violence, and stalking,  
489 including same-sex assault; and (vi) consent and the role drugs  
490 and alcohol use can have on the ability to consent. The training  
491 shall also seek to improve the trainee's ability to respond with  
492 cultural sensitivity; provide services to or assist in locating  
493 services for a survivor, as appropriate; and communicate  
494 sensitively and compassionately with a survivor of sexual assault,  
495 domestic violence, dating violence, or stalking.

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

