

By: Representatives Cockerham, Sykes

To: Judiciary B

HOUSE BILL NO. 1438  
(As Passed the House)

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, complainant or respondent and services  
48 provided to the survivor, complainant, or respondent, except where  
49 failure to disclose the information would violate the law, would  
50 result in an imminent threat of physical harm, or would violate a  
51 professional oath or 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, and any public community and junior college under the management and control of the Mississippi Community College Board. This phrase does not include and does not mean private colleges and universities.

(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



77 stalking consistent with federal and state law. The higher  
78 education institution's comprehensive policy shall include, at a  
79 minimum, all of the following components:

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

90 1. The person is incapacitated due to the use  
91 or influence of alcohol or drugs;

92 2. The person is asleep or unconscious;

93 3. The person is under the applicable age of  
94 consent; or

95 4. The person is incapacitated due to a  
96 mental disability.

97 (2) Nothing in this section shall prevent any higher  
98 education institution from implementing policies that further  
99 clarify the definition of consent, or the means by which consent  
100 may or may not be obtained, provided such policies are not  
101 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.

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

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

(d) 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 (i) assisting and interviewing the complainant, (ii) identifying and locating witnesses, (iii) contacting and interviewing the respondent, (iv) cooperating with law enforcement, when applicable, and (v) providing information regarding the importance of preserving physical evidence of the sexual violence and obtaining a medical forensic examination.

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



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



224 (a) Inform the survivor or complainant of his or her  
225 choice of possible next steps regarding reporting options and  
226 possible outcomes, including reporting pursuant to the higher  
227 education institution's comprehensive policy, and notifying law  
228 enforcement.

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

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

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

244 (e) With the survivor or complainant's permission and  
245 as appropriate, liaise with campus officials, community-based  
246 sexual assault crisis centers, or law enforcement and, if  
247 requested, assist the survivor or complainant with contacting and



reporting to campus officials, campus law enforcement, or other law enforcement agencies.

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

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

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

(b) Inform the respondent 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.

(c) Maintain the confidential status of communications with the respondent 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.

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



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

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

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

319 (e) Any meeting, hearing or proceeding held to  
320 investigate or resolve complaints of alleged student violations of  
321 the comprehensive policy shall protect the privacy of the  
322 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



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

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

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

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

369 (l) The complainant and the respondent shall have the  
370 right to timely appeal the complaint resolution procedure's  
371 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





396 can be given effect without the preempted or invalid provision or  
397 application.

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

401       **SECTION 9.** Nothing in this act shall be construed to  
402 prohibit any higher education institution from instituting any  
403 rules or regulations to comply with Title IX, nor authorize any  
404 higher education institution to create any policies or procedures  
405 that conflict with Title IX rules or regulations.

406       **SECTION 10.** This act shall take effect and be in force from  
407 and after July 1, 2018.

