

By: Representatives Cockerham, Sykes,
Mickens

To: Judiciary B

HOUSE BILL NO. 1300
(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.



52 (e) "Higher education institution" means a public
53 university under the management and control of the Board of
54 Trustees of State Institutions of Higher Learning, and any public
55 community and junior college under the management and control of
56 the Mississippi Community College Board. This phrase does not
57 include and does not mean private colleges and universities.

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

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

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

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

74 **SECTION 3.** (1) On or before August 1, 2019, all higher
75 education institutions shall adopt a comprehensive policy
76 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.



102 (b) Procedures that students of the higher education
103 institution may follow if they choose to report an alleged
104 violation of the comprehensive policy, regardless of where the
105 incident of sexual assault, domestic violence, dating violence, or
106 stalking occurred, including all of the following:

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

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

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

124 (3) On or before August 1, 2019, each higher education
125 institution shall prominently publish, timely update, and have
126 easily accessible on its Internet website:



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

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

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

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

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



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

154 (4) On or before January 1, 2020, the Institutions of Higher
155 Learning (IHL) shall research and disseminate a report addressing
156 best practices for higher education institutions to make
157 information on sexual assault, domestic violence, dating violence
158 and stalking easily accessible to students via their respective
159 websites.

160 **SECTION 4.** (1) Effective August 1, 2019, upon being
161 notified of an alleged violation of the comprehensive policy by or
162 on behalf of a student, each higher education institution shall
163 provide the complainant, when identified, with information about
164 his or her rights and options, including:

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

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

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



175 (d) The ability to request interim protective measures
176 and accommodations, including academic, living, dining, and
177 transportation accommodations, or a campus-issued no contact
178 order, if such protective measures and accommodations are
179 reasonably available, or an order of protection or no contact
180 order in state court.

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

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

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

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

196 **SECTION 5.** (1) Each higher education institution shall
197 provide complainants, respondents, and/or survivors with access to
198 a confidential advisor, whose role is to provide support.
199 Communication with such an advisor shall not constitute reporting



200 an alleged violation to the higher education institution for
201 purposes of triggering the complaint resolution procedure
202 described in this act.

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

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

222 (4) In the course of working with a survivor or complainant,
223 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



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

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

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

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

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

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

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



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

276 **SECTION 6.** (1) On or before August 1, 2019, each campus of
277 a higher education institution shall adopt one (1) procedure to
278 resolve complaints of alleged student violations of the
279 comprehensive policy.

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

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

287 (b) All employees, officials, or agents of a higher
288 education institution who are involved in the investigation or
289 resolution of alleged violations of the comprehensive policy shall
290 receive training on the policy, on the rights and options for
291 complainants and respondents, on the importance of due process and
292 fairness for all parties, on the effects of trauma, and on the
293 appropriate methods to communicate with students subjected to
294 sexual violence, before participating in these processes. Such
295 employees, officials, or agents shall also receive periodic
296 training on campus administrative processes, interim protective
297 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



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

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

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

338 (h) Prior to any hearing or proceeding to determine
339 whether a violation of the comprehensive policy has occurred
340 and/or to impose sanctions for such a violation, the complainant
341 and the respondent shall be notified of the date, time, and
342 location of the hearing or proceeding, the specific charge to be
343 considered, the identity of any witness whose statement or
344 testimony may be introduced, and shall be notified of and afforded
345 a reasonable opportunity to review any evidence that may be
346 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



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

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

389 **SECTION 7.** The provisions of this act shall apply only to
390 the extent they are not preempted by, or in conflict with, federal
391 statutes, regulations or agency guidance. Each provision of this
392 act is declared to be severable from the remainder of the act. If
393 any provision of this act or any application thereof is held to be
394 preempted or otherwise invalid, the preemption or invalidity shall
395 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, 2019.

