

By: Representatives Cockerham, McLean,
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To: Judiciary B

HOUSE BILL NO. 581

1 AN ACT TO CREATE THE "SEXUAL ASSAULT RESPONSE FOR COLLEGE
2 STUDENTS ACT"; TO PROVIDE CERTAIN DEFINITIONS FOR THE ACT; TO
3 REQUIRE ALL HIGHER EDUCATION INSTITUTIONS TO ADOPT A COMPREHENSIVE
4 POLICY THAT IS CONSISTENT WITH FEDERAL AND STATE LAW REGARDING THE
5 INSTITUTION'S RESPONSE TO ALLEGATIONS OF SEXUAL ASSAULT, DOMESTIC
6 VIOLENCE, DATING VIOLENCE, SEXUAL EXPLOITATION AND STALKING; TO
7 LIST THE MINIMUM REQUIREMENTS TO BE INCLUDED IN SUCH POLICY; TO
8 REQUIRE EACH HIGHER EDUCATION INSTITUTION TO PROMINENTLY PUBLISH,
9 TIMELY UPDATE, AND HAVE EASILY ACCESSIBLE ON ITS OFFICIAL SCHOOL
10 WEBSITE SUCH POLICY; TO REQUIRE EACH HIGHER EDUCATION INSTITUTION
11 TO HAVE ACCESS TO AN ON-CAMPUS CONFIDENTIAL ADVISOR TO PROVIDE
12 COUNSELING, MENTAL HEALTH SUPPORT AND PHYSICAL HEALTH SUPPORT TO
13 COMPLAINANTS, RESPONDENTS, AND SURVIVORS; TO REQUIRE THE HIGHER
14 EDUCATION INSTITUTION TO TRAIN ALL EMPLOYEES, STUDENT EMPLOYEES
15 AND PERSONS WITH SUPERVISING AUTHORITY REGARDING STANDARDS TO
16 ASSIST ANY STUDENT WHO ALLEGES A VIOLATION OF THE COMPREHENSIVE
17 POLICY DESCRIBED BY THIS ACT; TO REQUIRE ALL HIGHER EDUCATION
18 INSTITUTIONS TO ADOPT PROCEDURES TO RESOLVE COMPLAINTS OF ALLEGED
19 VIOLATIONS OF SUCH POLICY; AND FOR RELATED PURPOSES.

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

21 **SECTION 1.** This act shall be known and may be cited as "The
22 Sexual Assault Response for College Students Act."

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



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

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

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

41 (d) "Confidential communication" means information
42 exchanged between a survivor, complainant, or respondent and a
43 confidential advisor during the course of the advisor providing
44 support and assistance, including all records kept by the advisor
45 concerning the survivor, complainant or respondent and services
46 provided to the survivor, complainant, or respondent, except where
47 failure to disclose the information would violate the law, would
48 result in an imminent threat of physical harm, or would violate a
49 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 the State Institutions of Higher Learning, any public community and junior college under the management and control of the Mississippi Community College Board and any post secondary institution of higher learning, both public and private.

(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, sexual exploitation 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. On or before August 1, 2022, all higher education institutions shall adopt a comprehensive policy that is consistent



75 with federal and state law regarding the institution's response to
76 allegations of sexual assault, domestic violence, dating violence,
77 sexual exploitation and stalking. The policy shall govern the
78 conduct of all students and employees, which includes contractual
79 and non-contractual employees with teaching or supervisory
80 authority at the higher education institution. The comprehensive
81 policy shall include, at a minimum, all of the following:

82 (a) A definition of consent that recognizes that:

83 (i) Consent refers to words or actions that show a
84 voluntary agreement to sexual activity,

85 (ii) A person's lack of verbal or physical
86 resistance or submission resulting from the use or threat of force
87 does not constitute consent,

88 (iii) A person's consent to past sexual activity
89 does not constitute consent to future sexual activity,

90 (iv) A person can withdraw consent at any time,

91 (v) The use of force to cause someone to engage in
92 sexual activity is never consent, and

93 (vi) A person cannot consent to sexual activity if
94 that person is unable to understand the nature of the activity due
95 to circumstances, including, but not limited to, the following:

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

98 2. The person is asleep or unconscious;



99 3. The person is under the applicable age of
100 consent; or

101 4. The person is incapacitated due to a
102 mental disability.

103 (b) Step by step procedures for students of the higher
104 education institution to follow if they choose to report an
105 alleged violation of the comprehensive policy, regardless of where
106 the violation occurred. The procedure shall explain how to report
107 student to student complaints and student to employee complaints.

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

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

119 (e) A statement of the higher education institution's
120 prohibition against retaliation upon any person who reports or
121 discloses an alleged violation of the comprehensive policy, files
122 a complaint, or otherwise participates in the complaint resolution
123 procedure.



124 (f) A description of prohibited conduct covered by the
125 comprehensive policy, including, but not limited to, sexual
126 assault, domestic violence, dating violence, sexual exploitation
127 and stalking.

128 (g) A clear statement that the comprehensive policy
129 applies on-campus and off-campus.

130 (h) A clear detailed description of how to report a
131 violation whether on-campus or off-campus of the comprehensive
132 policy, including a description of the persons, agencies or groups
133 to whom a report may be made. The description shall include the
134 contact information of the institution's Title IX coordinator or
135 coordinators, confidential advisors, on-campus resources for
136 mental or physical assistance or exams, off-campus resources for
137 mental or physical assistance or exams, which shall include the
138 nearest community-based sexual assault crisis center, campus law
139 enforcement, and local law enforcement. For purposes of this
140 paragraph, the phrase "contact information" means, phone number,
141 email address, and physical address, if applicable.

142 (i) The higher education institution's procedure for
143 responding to a report of any violation of the policy including,
144 but not limited to, (i) assisting and interviewing the
145 complainant, (ii) identifying and locating witnesses, (iii)
146 contacting and interviewing the respondent, (iv) cooperating with
147 law enforcement, when applicable, (v) seeking medical assistance,
148 (vi) providing information regarding the importance of preserving



149 physical evidence of the sexual violence and obtaining a medical
150 forensic examination, and (vi) providing interim protective
151 measures and accommodations, including academic, living, dining,
152 and transportation accommodations, or a campus-issued no contact
153 order, if such protective measures and accommodations are
154 reasonably available, or an order of protection or no contact
155 order in state court.

156 (j) A statement regarding the obligation and
157 requirement of all employees, student employees and contractual or
158 non-contractual employees with teaching or supervisory authority
159 to report any violation of the policy to the Title IX Coordinator
160 or member of the Title IX team, unless such employee is a
161 confidential advisor or counselor who is required to keep
162 information confidential.

163 (k) A list of rights for any complainant, including,
164 but not limited to the right:

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

169 (ii) To receive the contact information of the
170 institution's Title IX coordinator or coordinators, confidential
171 advisors, and any community-based sexual assault crisis center,
172 campus law enforcement, and local law enforcement.



(iii) To request and receive assistance from campus authorities in notifying law enforcement.

(iv) 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.

(v) To provide assistance, upon the complainant's request, in accessing and navigating campus and local health, mental health, counseling, and advocacy services.

(vi) To receive a detailed copy of the higher education institution's complaint resolution procedures under its comprehensive policy.

(vii) To not be impeded by any employee, student or third party contractor of the institution 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.

(viii) To request and receive assistance from campus authorities without a requirement to file a complaint.

(l) A detailed list of school penalties for violating the policy.

(m) A clear statement that the policy governs the conduct of all students and employees, which shall include



contractual and non-contractual employees with teaching or
supervisory authority.

SECTION 4. (1) On or before August 1, 2022, each higher
education institution shall prominently publish and have easily
accessible on its official school Internet website:

(a) The full comprehensive policy required by Section 3
of this act.

(b) The contact information for the Title IX
coordinator(s), on-campus law enforcement, or security, and local
law enforcement, confidential advisors, which shall include at a
minimum: an email address, phone number and physical address.

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

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

The higher education institution shall update the information
required by subsection (1) in a timely manner from any changes.



SECTION 5.

(1) Each higher education institution shall have access to a confidential advisor to provide resources, counseling, mental health support and physical health support to complainants, respondents, and survivors. Communication with such a confidential advisor shall not constitute reporting an alleged violation to the higher education institution for purposes of this act, nor trigger 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.

SECTION 6.

The higher education institution shall train and inform all employees, student employees and persons with supervising authority how to assist any student who alleges a violation of the comprehensive policy described by this act.

SECTION 7.

(1) All higher education institutions shall adopt procedures to resolve complaints of alleged violations of



the comprehensive policy, which shall provide at a minimum, the following:

(a) The opportunity for complainants and respondents to have the complaint resolution procedure begin confidentially, promptly and proceed in a timely manner with defined timelines for filing, responding and resolving complaints.

(b) Training that conforms to federal and state law regarding confidentiality for all employees, officials, or agents of the higher education institution who are involved in the investigation or resolution of alleged violations of the comprehensive policy.

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

(d) In adjudicating whether an alleged violation of the comprehensive policy occurred, a higher education institution shall apply a preponderance of the evidence standard.

(e) The complainant and respondent shall, be provided defined days by the higher education institution before the investigation begins, (i) receive notice of the individual or individuals with authority to make a final determination of responsibility or impose a sanction in advance of any meeting,



273 hearing, or proceeding before such individuals, and (ii) have
274 reasonable opportunity to request a trained substitute if the
275 participation of an individual with authority to make a final
276 determination of responsibility or impose a sanction poses a
277 conflict of interest.

278 (f) Any meeting, hearing or proceeding held to
279 investigate or resolve complaints of alleged student violations of
280 the comprehensive policy shall protect the privacy of the
281 participating parties and witnesses to the greatest extent
282 feasible. All meetings, hearings or proceeding described in this
283 paragraph shall be closed to the public.

284 (g) The complainant and the respondent shall have the
285 opportunity to present arguments, information, evidence, and/or
286 witnesses on their behalf during the complaint resolution
287 procedure, and to respond and to cross-examine regarding any
288 argument, information, evidence, and/or testimony that is
289 introduced against them.

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



298 (i) The complainant and the respondent shall be
299 notified of the date, time, and location of the hearing or
300 proceeding, the specific charge to be considered, the identity of
301 any witness whose statement or testimony may be introduced, and
302 shall be notified of and afforded a reasonable opportunity to
303 review any evidence that may be introduced before any hearing or
304 proceeding at a time defined by the higher education institution.

305 (j) Both parties may request and must be allowed to
306 have an advisor and/or an attorney of their choice to accompany
307 them for support and consultation to any meeting, hearing, or
308 proceeding related to an alleged violation of the comprehensive
309 policy, provided that the involvement of the advisor or attorney
310 does not result in an undue delay of the meeting, hearing, or
311 proceeding.

312 (k) Neither the complainant nor the respondent will be
313 compelled to testify in person. Upon request by the complainant
314 or the respondent, the institution of higher education shall make
315 available an option to testify remotely, such that the testimony
316 can be heard by all parties involved.

317 (l) The complainant and the respondent shall be
318 provided simultaneous, written notification of the results of the
319 complaint resolution procedure, including information regarding
320 appeal rights, with a specific timeline defined by the higher
321 education institution of a decision or sooner if required by
322 applicable law.



323 (m) The complainant and the respondent shall have the
324 right to appeal the complaint resolution procedure's findings or
325 imposed sanctions. The higher education institution shall define
326 the timeline for appeals.

327 (n) The higher education institution shall not disclose
328 the identity of the complainant or the respondent without express
329 permission from the complainant or respondent, except as necessary
330 to investigate or resolve the complaint or to implement interim
331 protective measures and accommodations or when provided by state
332 or federal law.

333 (o) Either the respondent or complainant may request a
334 privacy screen or some other appropriate means to assure the
335 parties do not personally confront each other. The higher
336 education institution may provide such non-confrontational means
337 without request of either party.

338 (2) No student or student employees shall be involved in any
339 part of the investigation or resolution of alleged violations of
340 the comprehensive policy.

341 **SECTION 8.** (1) The provisions of this act shall apply only
342 to the extent they are not preempted by, or in conflict with,
343 federal statutes, regulations or agency guidance. Each provision
344 of this act is declared to be severable from the remainder of the
345 act. If any provision of this act or any application thereof is
346 held to be preempted or otherwise invalid, the preemption or
347 invalidity shall not affect the other provisions or applications



of the act that can be given effect without the preempted or
invalid provision or application.

(2) Nothing in this act is intended to be construed to
create a private right of action against any institution of higher
education, nor any official, employee, or agent thereof.

(3) Nothing in this act shall be construed to prohibit any
higher education institution from instituting any rules or
regulations to comply with Title IX, nor authorize any higher
education institution to create any policies or procedures that
conflict with Title IX rules or regulations.

(4) 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 or to law
enforcement.

SECTION 9. This act shall take effect and be in force from
and after July 1, 2021.

