A BILL FOR AN ACT

RELATING TO AFFIRMATIVE CONSENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that sexual violence is prevalent on college campuses. Nationally, one in five women is sexually assaulted while in college. Approximately one-third of these sexual assaults are perpetrated on women who are firstyear students between the ages of seventeen and nineteen. Also, women aged sixteen to twenty-four are at the highest risk for experiencing abuse by an intimate partner.

8 Violence against women is a continuing problem that must be 9 addressed. Ending campus sexual violence is a combined endeavor 10 of effective response and intervention, awareness education to 11 change attitudes and behaviors, and clear policies that do not 12 tolerate such conduct.

13 The legislature finds that the effort to end sexual 14 violence and dating violence on college campuses is a matter of 15 statewide concern and falls within the jurisdiction of the 16 legislature pursuant to article X, section 6, of the Hawaii 17 State Constitution.



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1	SECTION 2. Chapter 304A, Hawaii Revised Statutes, is
2	amended by adding a new section to be appropriately designated
3	and to read as follows:
4	" <u>§304A-</u> Affirmative consent. (a) In order to receive
5	state funds, the University of Hawaii shall adopt a policy
6	concerning incidents of sexual assault, domestic violence,
7	dating violence, and stalking that are subject to the data
8	collection requirements of the federal Higher Education Act of
9	1965, 20 United States Code section 1092(f), and involve a
10	student, faculty member, or staff member, whether on or off
11	campus.
12	(b) Policies for the evaluation and disposition of reports
13	of sexual assault, domestic violence, dating violence, and
14	stalking adopted pursuant to subsection (a) shall include all of
15	the following:
16	(1) An affirmative consent standard that shall apply in
17	any determination of whether consent was given by all
18	parties to sexual activity and that specifies:
19	(A) The responsibility of each person involved in
20	sexual activity to ensure that the person has the



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1			affirmative consent of the other or others to
2			engage in the sexual activity;
3		<u>(B)</u>	That lack of protest, lack of resistance, or
4			silence on the part of any party does not
5			constitute that party's consent;
6		(C)	That the existence of a dating relationship or
7			past sexual relations between persons involved in
8			sexual activity shall never, by itself, be
9			assumed to be an indicator of consent; and
10		<u>(D)</u>	That consent must be ongoing throughout sexual
11			activity and can be revoked at any time;
12	(2)	<u>А ро</u>	licy that an accused's belief that a complainant
13		cons	ented to sexual activity shall be insufficient to
14		<u>esta</u>	blish affirmative consent if:
15		<u>(A)</u>	The accused's belief in affirmative consent arose
16			from the intoxication or recklessness of the
17			accused;
18		<u>(B)</u>	The accused did not take reasonable steps under
19			the circumstances known to the accused at the
20			time to ascertain whether the complainant
21			affirmatively consented; or



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1		(C) The	e accused knew or reasonably should have known
2		tha	at the complainant was unable to consent to the
3		sez	cual activity because the complainant was:
4		<u>(i)</u>	Asleep, unconscious, or unresponsive;
5		<u>(ii)</u>	Incapacitated due to the influence of drugs,
6			alcohol, or medication, so that the
7			complainant could not understand the fact,
8			nature, or extent of the sexual activity; or
9		<u>(iii)</u>	Unable to communicate due to a mental or
10			physical condition; and
11	<u>(3)</u>	An evide	entiary standard of a preponderance of the
12		evidence	e to determine whether the basis of a complaint
13		against	an accused has been demonstrated.
14	(c)	In order	to receive state funds, the University of
15	<u>Hawaii sh</u>	all adopt	detailed and victim-centered policies and
16	protocols	regardiı	ng sexual assault, domestic violence, dating
17	<u>violence,</u>	and stal	lking involving a student that comport with
18	best prac	tices and	d current professional standards. At a minimum,
19	the polic	ies and p	protocols shall include requirements for:



1	(1)	A policy statement on how the institution will provide
2		appropriate protections for the privacy of individuals
3		involved, including confidentiality;
4	(2)	Initial response by the institution's personnel to a
5		report of an incident, including requirements specific
6		to assisting the complainant, providing information in
7		writing about the importance of preserving evidence,
8		and identifying and locating witnesses;
9	(3)	Response to stranger and non-stranger sexual assault
10		or attempted assault;
11	(4)	Protocol for the preliminary interview of the
12		complainant and a comprehensive follow-up interview,
13		as appropriate;
14	(5)	Contact with and interview of the accused;
15	(6)	Identification and location of witnesses;
16	(7)	Notification to the complainant, as appropriate and in
17		writing of:
18		(i) The availability of, and contact information
19		for, on- and off-campus resources and
20		services; and
21		(ii) Coordination with law enforcement;



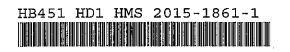
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1	(8)	Participation of victim advocates and other support
2		persons;
3	<u>(9)</u>	Investigation of allegations that alcohol, drugs, or
4		hazing were involved in the incident;
5	(10)	Exemption of an individual who participates as a
6		complainant or witness in an investigation of sexual
7		assault, domestic violence, dating violence, or
8		stalking from disciplinary sanctions for non-egregious
9		violations of the institution's student conduct policy
10		that occurred at or near the time of the incident
11		unless the institution determines that the violation
12		placed the health or safety of any other person at
13		risk or involved plagiarism, cheating, or academic
14		dishonesty;
15	(11)	The supervisory role of institutional staff;
16	(12)	A comprehensive, trauma-informed training program for
17		campus officials involved in investigating and
18		adjudicating reports of sexual assault, domestic
19		violence, dating violence, and stalking; and
20	(13)	Confidential reporting procedures for complainants and
21		third parties.



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1	(d) In order to receive state funds, the University of
2	Hawaii shall, to the extent feasible, enter into memoranda of
3	understanding, agreements, or collaborative partnerships with
4	existing on-campus and community-based organizations including
5	rape crisis centers, counseling and mental health services,
6	health services, victim advocacy, and legal assistance to
7	provide or make available services for students, including the
8	accused in proceedings for evaluation and disposition of reports
9	subject to subsection (b).
10	(e) In order to receive state funds, the University of
11	Hawaii shall implement comprehensive prevention and outreach
12	programs addressing sexual assault, domestic violence, dating
13	violence, and stalking to make students aware of institutional
14	policies and protocols. A comprehensive prevention program
15	shall include a range of prevention strategies, including but
16	not limited to empowerment programming for victim prevention,
17	awareness raising campaigns, primary prevention, bystander
18	intervention, and risk reduction.
19	At minimum, an outreach program shall include processes for
20	contacting and informing the student body, campus organizations,

21 athletic programs, and student groups about the institution's

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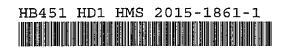
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1	overall sexual assault policy, the practical implications of an
2	affirmative consent standard, and the rights and
3	responsibilities of students under the policy.
4	Outreach programming shall be included as part of every
5	incoming student or staff member's orientation.
6	(f) For purposes of this section, "affirmative consent"
7	means affirmative, conscious, and voluntary agreement to engage
8	in sexual activity."
9	SECTION 3. New statutory material is underscored.
10	SECTION 4. This Act shall take effect on July 1, 2525.



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H.B. NO. 451 H.D. 1

Report Title: Affirmative Consent; University of Hawaii System

Description:

Requires the University of Hawaii to establish and enforce an affirmative consent standard for all policies and protocols relating to sexual assault, domestic violence, dating violence, and stalking as a condition of receiving state funds. (HB451 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

