

---

---

## A BILL FOR AN ACT

RELATING TO STUDENT SAFETY.

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

1           SECTION 1. The legislature finds that the University of  
2 Hawaii must provide consistency across its several campuses in  
3 how it investigates and responds to reports of campus violence,  
4 particularly, sexual assault. Presently, determining whether a  
5 person consented to sexual activity may be difficult when it is  
6 unclear whether consent was willingly given or whether it was  
7 given while under the influence of drugs, alcohol, or  
8 medication. Accordingly, the legislature finds that affirmative  
9 consent language should be made a central principle of school  
10 sexual assault policies. Use of an affirmative consent standard  
11 to determine whether or not consent was given will change how  
12 campus officials investigate sexual assault allegations.

13           The purpose of this Act is to require the board of regents  
14 of the University of Hawaii to adopt policies for investigating  
15 and responding to reports of sexual assault, domestic violence,  
16 dating violence, and stalking, involving a student that include



1 among other things, the use of affirmative consent as a standard  
2 for determining whether persons consented to sexual activity.

3 SECTION 2. Chapter 304A, Hawaii Revised Statutes, is  
4 amended by adding a new subpart to part II to be appropriately  
5 designated and to read as follows:

6 " . Student Safety

7 §304A- Student safety. (a) The board of regents shall  
8 adopt policies concerning sexual assault, domestic violence,  
9 dating violence, and stalking, involving a student, both on and  
10 off campus. The policies shall include all of the following:

11 (1) An affirmative consent standard in the determination  
12 of whether consent was given by both parties to sexual  
13 activity. It shall be the responsibility of each  
14 person involved in the sexual activity to ensure that  
15 the person has the affirmative consent of the other or  
16 others to engage in the sexual activity;

17 (2) A policy that, in the evaluation of complaints in any  
18 disciplinary process, it shall not be a valid excuse  
19 for an alleged lack of affirmative consent that the  
20 accused believed that the complainant consented to the



1           sexual activity under either of the following  
2           circumstances:

3           (A) The accused's belief in affirmative consent arose  
4           from the intoxication or recklessness of the  
5           accused; or

6           (B) The accused did not take reasonable steps, in the  
7           circumstances known to the accused at the time,  
8           to ascertain whether the complainant  
9           affirmatively consented;

10          (3) A policy that the standard used in determining whether  
11          the elements of the complaint against the accused have  
12          been demonstrated shall be the preponderance of the  
13          evidence standard;

14          (4) A policy that, in the evaluation of complaints in the  
15          disciplinary process, it shall not be a valid excuse  
16          that the accused believed that the complainant  
17          affirmatively consented to the sexual activity if the  
18          accused knew or reasonably should have known that the  
19          complainant was unable to consent to the sexual  
20          activity under any of the following circumstances:

21          (A) The complainant was asleep or unconscious;



1           (B) The complainant was incapacitated due to the  
2           influence of drugs, alcohol, or medication, such  
3           that the complainant could not understand the  
4           fact, nature, or extent of the sexual activity;  
5           or

6           (C) The complainant was unable to communicate due to  
7           a mental or physical condition.

8           (b) The board of regents shall adopt detailed and victim-  
9           centered policies and protocols regarding sexual assault,  
10          domestic violence, dating violence, and stalking involving a  
11          student that comport with best practices and current  
12          professional standards. At a minimum, the policies and  
13          protocols shall cover all of the following:

14          (1) A policy statement on how the university will provide  
15          appropriate protections for the privacy of individuals  
16          involved, including confidentiality;

17          (2) The initial response by university personnel to a  
18          report of an incident, including requirements specific  
19          to assisting the victim, providing information in  
20          writing about the importance of preserving evidence,  
21          and the identification and location of witnesses;



- 1        (3) Response to stranger and nonstranger sexual assault;
- 2        (4) The preliminary victim interview, including the  
3        development of a victim interview protocol, and a  
4        comprehensive follow up victim interview, as  
5        appropriate;
- 6        (5) Contacting and interviewing the accused;
- 7        (6) Seeking the identification and location of witnesses;
- 8        (7) Providing written notification to the victim about the  
9        availability of, and contact information for, on- and  
10       off-campus resources and services, and coordination  
11       with law enforcement, as appropriate;
- 12       (8) Participation of victim advocates and other supporting  
13       people;
- 14       (9) Investigating allegations that alcohol or drugs were  
15       involved in the incident;
- 16       (10) Providing that an individual who participates as a  
17       complainant or witness in an investigation of sexual  
18       assault, domestic violence, dating violence, or  
19       stalking will not be subject to disciplinary sanctions  
20       for a violation of the university's student conduct  
21       policy at or near the time of the incident, unless the



1 university determines that the violation was  
2 egregious, including an action that places the health  
3 or safety of any other person at risk or involves  
4 plagiarism, cheating, or academic dishonesty;

5 (11) The role of university staff supervision;

6 (12) A comprehensive, trauma-informed training program for  
7 campus officials involved in investigating and  
8 adjudicating sexual assault, domestic violence, dating  
9 violence, and stalking cases; and

10 (13) Procedures for confidential reporting by victims and  
11 third parties.

12 (c) The board of regents, to the extent feasible, shall  
13 enter into memoranda of understanding, agreements, or  
14 collaborative partnerships with existing on-campus and  
15 community-based organizations, including rape crisis centers, to  
16 refer students for assistance or make services available to  
17 students, including counseling, health, mental health, victim  
18 advocacy, and legal assistance, and including resources for the  
19 accused.

20 (d) The board of regents shall implement comprehensive  
21 prevention and outreach programs addressing sexual violence,



1 domestic violence, dating violence, and stalking. A  
2 comprehensive prevention program shall include a range of  
3 prevention strategies, including empowerment programming for  
4 victim prevention, awareness raising campaigns, primary  
5 prevention, bystander intervention, and risk reduction.  
6 Outreach programs shall be provided to make students aware of  
7 the university's policy on sexual assault, domestic violence,  
8 dating violence, and stalking. At a minimum, an outreach  
9 program shall include a process for contacting and informing the  
10 student body, campus organizations, athletic programs, and  
11 student groups about the university's overall sexual assault  
12 policy, the practical implications of an affirmative consent  
13 standard, and the rights and responsibilities of students under  
14 the policy.

15 (e) Outreach programming shall be included as part of  
16 every incoming student's orientation.

17 (f) For the purposes of this section, "affirmative  
18 consent" means affirmative, conscious, and voluntary agreement  
19 to engage in sexual activity. Silence, the lack of protest, or  
20 the lack of resistance shall not mean consent. Affirmative  
21 consent shall be required throughout a sexual activity and may







# H.B. NO. 1249

**Report Title:**

Student Safety; Sexual Assault; Violence; Policies

**Description:**

Requires the BOR to adopt policies concerning student safety, sexual assault, and violence.

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

