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## A BILL FOR AN ACT

RELATING TO AFFIRMATIVE CONSENT.

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

1           SECTION 1. Chapter 304A, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§304A-       Affirmative consent. (a) In order to receive  
5 state funds for student financial assistance, the governing  
6 board of each community college district, the trustees of the  
7 University of Hawaii, and the regents of the University of  
8 Hawaii shall adopt a policy concerning incidents of sexual  
9 assault, domestic violence, dating violence, and stalking that  
10 are subject to the data collection requirements of the federal  
11 Higher Education Act of 1965, 20 United States Code section.  
12 1092(f), and involve a student, faculty member, or staff member,  
13 whether on or off campus.

14           (b) Policies for the evaluation and disposition of reports  
15 of sexual assault, domestic violence, dating violence, and  
16 stalking adopted pursuant to subsection (a) shall include all of  
17 the following:



- 1        (1) An affirmative consent standard that shall apply in  
2        any determination of whether consent was given by all  
3        parties to sexual activity and that specifies:
- 4        (A) The responsibility of each person involved in  
5        sexual activity to ensure that the person has the  
6        affirmative consent of the other or others to  
7        engage in the sexual activity;
- 8        (B) That lack of protest, lack of resistance, or  
9        silence on the part of any party does not  
10       constitute that party's consent;
- 11       (C) That the existence of a dating relationship or  
12       past sexual relations between persons involved in  
13       sexual activity shall never, by itself, be  
14       assumed to be an indicator of consent; and
- 15       (D) That consent must be ongoing throughout sexual  
16       activity and can be revoked at any time;
- 17       (2) A policy that an accused's belief that a complainant  
18       consented to sexual activity shall be insufficient to  
19       establish affirmative consent if:



- 1           (A) The accused's belief in affirmative consent arose  
2                           from the intoxication or recklessness of the  
3                           accused;
- 4           (B) The accused did not take reasonable steps under  
5                           the circumstances known to the accused at the  
6                           time to ascertain whether the complainant  
7                           affirmatively consented; or
- 8           (C) The accused knew or reasonably should have known  
9                           that the complainant was unable to consent to the  
10                          sexual activity because the complainant was:
- 11                          (i) Asleep, unconscious, or unresponsive;  
12                          (ii) Incapacitated due to the influence of drugs,  
13                           alcohol, or medication, so that the  
14                           complainant could not understand the fact,  
15                           nature, or extent of the sexual activity; or
- 16                          (iii) Unable to communicate due to a mental or  
17                           physical condition; and
- 18           (3) An evidentiary standard of a preponderance of the  
19                           evidence to determine whether the basis of a complaint  
20                           against an accused has been demonstrated.



1        (c) In order to receive state funds for student financial  
2 assistance, the governing board of each community college  
3 district, the trustees of the University of Hawaii, and the  
4 regents of the University of Hawaii shall adopt detailed and  
5 victim-centered policies and protocols regarding sexual assault,  
6 domestic violence, dating violence, and stalking involving a  
7 student that comport with best practices and current  
8 professional standards. At a minimum, the policies and protocols  
9 shall include requirements for:

- 10        (1) A policy statement on how the institution will provide  
11 appropriate protections for the privacy of individuals  
12 involved, including confidentiality;  
13        (2) Initial response by the institution's personnel to a  
14 report of an incident, including requirements specific  
15 to assisting the complainant, providing information in  
16 writing about the importance of preserving evidence,  
17 and identifying and locating witnesses;  
18        (3) Response to stranger and non-stranger sexual assault  
19 or attempted assault;



- 1        (4) Protocol for the preliminary interview of the  
2                    complainant and a comprehensive follow-up interview,  
3                    as appropriate;
- 4        (5) Contact with and interview of the accused;
- 5        (6) Identification and location of witnesses;
- 6        (7) Notification to the complainant, as appropriate and in  
7                    writing of:
- 8                    (i) The availability of, and contact information  
9                    for, on- and off-campus resources and  
10                   services; and
- 11                   (ii) Coordination with law enforcement;
- 12        (8) Participation of victim advocates and other support  
13                   persons;
- 14        (9) Investigation of allegations that alcohol, drugs, or  
15                   hazing were involved in the incident;
- 16        (10) Exemption of an individual who participates as a  
17                   complainant or witness in an investigation of sexual  
18                   assault, domestic violence, dating violence, or  
19                   stalking from disciplinary sanctions for non-egregious  
20                   violations of the institution's student conduct policy  
21                   that occurred at or near the time of the incident



1 unless the institution determines that the violation  
2 placed the health or safety of any other person at  
3 risk or involved plagiarism, cheating, or academic  
4 dishonesty;

5 (11) The supervisory role of institutional staff;

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

10 (13) Confidential reporting procedures for complainants and  
11 third parties.

12 (d) In order to receive state funds for student financial  
13 assistance, the governing board of each community college  
14 district, the trustees of the University of Hawaii, and the  
15 regents of the University of Hawaii shall, to the extent  
16 feasible, enter into memoranda of understanding, agreements, or  
17 collaborative partnerships with existing on-campus and  
18 community-based organizations including rape crisis centers,  
19 counseling and mental health services, health services, victim  
20 advocacy, and legal assistance to provide or make available



1 services for students, including the accused in proceedings for  
2 evaluation and disposition of reports subject to subsection (b).

3 (e) In order to receive state funds for student financial  
4 assistance, the governing board of each community college  
5 district, the trustees of the University of Hawaii, and the  
6 regents of the University of Hawaii shall implement  
7 comprehensive prevention and outreach programs addressing sexual  
8 violence, domestic violence, dating violence, and stalking to  
9 make students aware of institutional policies and protocols. A  
10 comprehensive prevention program shall include a range of  
11 prevention strategies, including but not limited to empowerment  
12 programming for victim prevention, awareness raising campaigns,  
13 primary prevention, bystander intervention, and risk reduction.

14 At minimum, an outreach program shall include processes for  
15 contacting and informing the student body, campus organizations,  
16 athletic programs, and student groups about the institution's  
17 overall sexual assault policy, the practical implications of an  
18 affirmative consent standard, and the rights and  
19 responsibilities of students under the policy.

20 Outreach programming shall be included as part of every  
21 incoming student or staff member's orientation.







# H.B. NO. 451

**Report Title:**

Affirmative Consent; University of Hawaii System

**Description:**

Requires the University of Hawaii system 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 for student assistance.

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

