
A BILL FOR AN ACT

RELATING TO AFFIRMATIVE CONSENT.

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

1 SECTION 1. The legislature finds that sexual violence is
2 prevalent on college campuses. Nationally, one in five women is
3 sexually assaulted while in college. Approximately one-third of
4 these sexual assaults are perpetrated on women who are first-
5 year students between the ages of seventeen and nineteen. Also,
6 women aged sixteen to twenty-four are at the highest risk for
7 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.



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 "§304A- 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



1 affirmative consent of the other or others to
2 engage in the sexual activity;

3 (B) 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 (D) That consent must be ongoing throughout sexual
11 activity and can be revoked at any time;

12 (2) A policy that an accused's belief that a complainant
13 consented to sexual activity shall be insufficient to
14 establish affirmative consent if:

15 (A) The accused's belief in affirmative consent arose
16 from the intoxication or recklessness of the
17 accused;

18 (B) 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



1 (C) The accused knew or reasonably should have known
2 that the complainant was unable to consent to the
3 sexual activity because the complainant was:

- 4 (i) Asleep, unconscious, or unresponsive;
5 (ii) 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 (iii) Unable to communicate due to a mental or
10 physical condition; and

11 (3) An evidentiary standard of a preponderance of the
12 evidence 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 Hawaii shall adopt detailed and victim-centered policies and
16 protocols regarding sexual assault, domestic violence, dating
17 violence, and stalking involving a student that comport with
18 best practices and current professional standards. At a minimum,
19 the policies and 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;



- 1 (8) Participation of victim advocates and other support
2 persons;
- 3 (9) 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.



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



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.



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.

