

ACT 76

H.B. NO. 554

A Bill for an Act Relating to Campus Safety.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that college campuses should be safe from sexual and domestic violence. According to the Rape, Abuse & Incest National Network, the nation's largest anti-sexual violence organization, thirteen per cent of all college students experience rape or sexual assault through physical force, violence, or incapacitation. Among undergraduate students, 26.4 per cent of females and 6.8 per cent of males experience rape or sexual assault through physical force, violence, or incapacitation.

The legislature further finds that incidents of sexual and domestic violence are also pervasive on college campuses in the State. More than nineteen per cent of students who were in a partnered relationship while enrolled at the University of Hawaii reported having experienced dating violence or domestic violence. In addition, about ten per cent said they had been sexually harassed or stalked, and 6.3 per cent reported nonconsensual sexual contact, according to a survey of students released by the university in January 2018.

The legislature additionally finds that a study released in the journal *Radiology* in August 2020 found a higher incidence of physical intimate partner violence, both in numbers and proportion, and that the injuries that victims suffered were much more severe.

Given the already elevated prevalence of sexual and domestic violence on college campuses, the legislature finds that strengthening campus safety protocols to ensure that students are adequately protected from escalating incidents of abuse is a matter of statewide concern.

The purpose of this Act is to expand protections for victims of sexual and domestic violence at the University of Hawaii by:

- (1) Requiring the university to ensure that any individual who participates in implementing the university's disciplinary process has training or experience in handling sexual misconduct complaints and the university's disciplinary process;
- (2) Requiring that the university provide mandatory annual, trauma-informed, gender-inclusive, LGBTQ+-inclusive sexual misconduct primary prevention and awareness programming for all students and employees of the university;
- (3) Prohibiting the university from taking certain disciplinary action against individuals reporting sexual misconduct unless certain exceptions apply; and
- (4) Establishing positions and appropriating funds.

SECTION 2. Section 304A-120, Hawaii Revised Statutes, is amended to read as follows:

“§304A-120 Campus safety and accountability. (a) The University of Hawaii shall:

- (1) Train all University of Hawaii students enrolled at least part-time and employees, including campus safety and security personnel, Title IX coordinators, confidential advocates, and residential advisors, on:
 - (A) Public Law 92-318, Title IX of the federal Education Amendments of 1972, as amended;
 - (B) The Violence Against Women Act of 1994, as amended; and
 - (C) University of Hawaii executive policies on sexual ~~[harassment, sexual assault, domestic violence, dating violence, and stalking]~~ misconduct;
- (2) Provide all existing University of Hawaii employees with the training described in paragraph (1) by ~~[July 1, 2017,]~~ December 31, 2023, and every two years thereafter;
- (3) Provide all new University of Hawaii employees with the training described in paragraph (1) no later than thirty days after the date of first employment;
- (4) Provide all students with the training described in paragraph (1) annually;
- (5) Ensure that any individual who participates in the implementation of the University of Hawaii's disciplinary process, including confidential advocates; individuals responsible for resolving complaints

- of reported incidents; and individuals responsible for conducting a meeting, hearing, or other disciplinary proceeding or informal resolution process, has training or experience in handling sexual misconduct complaints and the university's disciplinary process; provided that the training shall include:
- (A) The effects of trauma, including any neurobiological and physical impact trauma, on a person;
 - (B) Cultural competence training regarding how sexual misconduct may impact individuals differently depending on factors related to an individual's cultural background, including race; color; national origin; ethnicity; religion; economic status; disability; and sex, which includes gender identity, gender expression, sexual orientation, and pregnancy or parenting status;
 - (C) Ways to communicate sensitively and compassionately with a reporting party, including an awareness of responding with consideration of the reporting party's cultural background and providing services to the reporting party or assisting the reporting party in locating services; and
 - (D) Training and information regarding the possible impact of sexual misconduct on individuals having disabilities;
- [(5)] (6) At each campus of the University of Hawaii system, designate a confidential advocate for students to confidentially discuss incidents of, and obtain information on, sexual [harassment, sexual assault, domestic violence, dating violence, stalking,] misconduct and related issues; provided that confidential advocates and communications received by confidential advocates shall not be exempt from any otherwise applicable mandatory reporting requirements for child and vulnerable adult neglect and abuse as provided by chapters 346 and 350;
- [(6)] (7) Publicize the name, location, phone number, and [e-mail] electronic mail address of the confidential advocate on the website of each respective campus;
- [(7)] (8) Make available to students and employees written and electronic materials and training programs concerning Title IX of the [Higher] federal Education Amendments of 1972[;], as amended; the Violence Against Women Act of 1994[;], as amended; and University of Hawaii policies concerning sexual [harassment, sexual assault, domestic violence, dating violence, and stalking; and] misconduct;
- [(8)] (9) Inform victims in writing of the right to file a police report with the appropriate county police department for investigation and assist victims in submitting the police report[-]; and
- (10) With guidance from the office of institutional equity, confidential advocates, prevention educators, local law enforcement, and local sexual and domestic violence advocacy organizations, provide mandatory annual trauma-informed, gender-inclusive, LGBTQ+-inclusive sexual misconduct primary prevention and awareness programming for all students enrolled at least part-time and employees of the university; provided that the programming shall include:
- (A) An explanation of consent as it applies to sexual activity and sexual relationships;
 - (B) The effect of drugs and alcohol on an individual's ability to consent;

- (C) Strategies for bystander and upstander intervention and risk reduction education that include recognition of individual biases and attitudes;
- (D) Methods to access supportive measures for reporting parties; and
- (E) Culturally responsive methods to address the unique experiences and challenges faced by individuals based on race; color; national origin; ethnicity; religion; economic status; disability; and sex, which includes gender identity, gender expression, sexual orientation, and pregnancy or parenting status.

(b) All University of Hawaii faculty members are designated as “responsible employees” under Public Law 92-318, Title IX of the federal Education Amendments of 1972, as amended, and shall report any violations of University of Hawaii executive policies regarding sexual ~~[harassment, sexual assault, domestic violence, dating violence, and stalking]~~ misconduct to the Title IX coordinator of the faculty member’s campus; provided that any faculty member designated as a confidential advocate pursuant to subsection ~~[(a)(5)]~~ (a)(6) shall not be a “responsible employee”; provided further that the confidential advocate shall annually provide general statistics to the Title IX coordinator about the number and type of incidents received by the confidential advocate.

(c) All University of Hawaii students and employees shall complete the training required under subsection (a)(1), (a)(2), (a)(3), ~~[and]~~ (a)(4), and (a)(10) or may be subject to fines, sanctions, or other discipline, as deemed appropriate by the University of Hawaii.

(d) The University of Hawaii shall not subject a reporting party or witness who asks for an investigation of sexual misconduct to a disciplinary proceeding or sanction for a violation of the university’s policy related to drug or alcohol use unless the university determines that the report of sexual misconduct was not made in good faith.

(e) If the University of Hawaii’s code of conduct prohibits sexual activity or certain forms of sexual activity, including same-gender relationships or sexual activity, the university shall not take disciplinary action against individuals reporting sexual misconduct or non-harassing sexual activity related to the incident or other non-harassing sexual activity discovered during an investigation into the reported incident.

(f) The University of Hawaii shall review any disciplinary action taken against a reporting party to determine if there is a link between the disclosed sexual misconduct and the misconduct that led to the reporting party being disciplined.

(g) Nothing in this section shall be construed to limit the University of Hawaii’s ability to establish an immunity policy for student conduct violations not mentioned in this section.

~~[(d)]~~ (h) No later than March 31, 2017, and every two years thereafter, the University of Hawaii shall conduct a campus climate survey of all students. The University of Hawaii shall submit a report to the legislature no later than twenty days before the convening of each regular session that ~~[shall include:]~~ includes:

- (1) A summary of the most recent campus climate survey results;
- (2) Information on the number of sexual assaults that occurred on a University of Hawaii system campus within the past five years; and
- (3) Recommendations and efforts to improve campus safety and accountability.

~~[(e)]~~ (i) The University of Hawaii shall establish policies and procedures to effectuate this section.

(j) For purposes of this section:

“Reporting party” means a student or employee who reports to the University of Hawaii as having experienced an incident of sexual misconduct.

“Sexual harassment” means unwelcome conduct of a sexual nature.

“Sexual misconduct” means an incident of sex-based discrimination, sexual harassment, sexual violence, intimate partner violence, domestic violence, dating violence, sexual exploitation, or violence based on sexual orientation or gender identity or expression.

“Trauma-informed” means an understanding of the complexities of sexual misconduct through training centered on the neurobiological impact of trauma, symptoms of trauma, effective and supportive techniques to address trauma, the influence of societal myths and stereotypes surrounding the causes and impacts of trauma, perpetration methodology, and techniques for conducting an effective investigation.”

SECTION 3. There is appropriated out of the University of Hawaii tuition and fees special fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2023-2024 and the same sum or so much thereof as may be necessary for fiscal year 2024-2025 for the establishment of four full-time equivalent (4.0 FTE) administrative, professional, and technical positions to enable the University of Hawaii to fulfill the requirements of this Act.

The sums appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval; provided that section 3 shall take effect on July 1, 2023.

(Approved June 14, 2023.)