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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) The board of regents  
5 and the University of Hawaii shall jointly 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:



- 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) The board of regents and the University of Hawaii  
2 shall jointly adopt detailed and victim-centered policies and  
3 protocols regarding sexual assault, domestic violence, dating  
4 violence, and stalking involving a student that comport with  
5 best practices and current professional standards. At a  
6 minimum, the policies and protocols shall include requirements  
7 for:

8        (1) A policy statement on how the institution will provide  
9 appropriate protections for the privacy of individuals  
10 involved, including confidentiality;

11        (2) Initial response by the institution's personnel to a  
12 report of an incident, including requirements specific  
13 to assisting the complainant, providing information in  
14 writing about the importance of preserving evidence,  
15 and identifying and locating witnesses;

16        (3) Response to stranger and non-stranger sexual assault  
17 or attempted assault;

18        (4) Protocol for the preliminary interview of the  
19 complainant and a comprehensive follow-up interview,  
20 as appropriate;

21        (5) Contact with and interview of the accused;



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



- 1        (11) The supervisory role of institutional staff;
- 2        (12) A comprehensive, trauma-informed training program for
- 3                campus officials involved in investigating and
- 4                adjudicating reports of sexual assault, domestic
- 5                violence, dating violence, and stalking; and
- 6        (13) Confidential reporting procedures for complainants and
- 7                third parties.
  
- 8        (d) The board of regents and the University of Hawaii
- 9        shall jointly, to the extent feasible, enter into memoranda of
- 10        understanding, agreements, or collaborative partnerships with
- 11        existing on-campus and community-based organizations including
- 12        rape crisis centers, counseling and mental health services,
- 13        health services, victim advocacy, and legal assistance to
- 14        provide or make available services for students, including the
- 15        accused in proceedings for evaluation and disposition of reports
- 16        subject to subsection (b).
  
- 17        (e) The board of regents and the University of Hawaii
- 18        shall jointly implement comprehensive prevention and outreach
- 19        programs addressing sexual violence, domestic violence, dating
- 20        violence, and stalking to make students aware of institutional
- 21        policies and protocols. A comprehensive prevention program



1 shall include a range of prevention strategies, including but  
2 not limited to empowerment programming for victim prevention,  
3 awareness raising campaigns, primary prevention, bystander  
4 intervention, and risk reduction.

5 At minimum, an outreach program shall include processes for  
6 contacting and informing the student body, campus organizations,  
7 athletic programs, and student groups about the institution's  
8 overall sexual assault policy, the practical implications of an  
9 affirmative consent standard, and the rights and  
10 responsibilities of students under the policy.

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

13 (f) For purposes of this section, "affirmative consent"  
14 means affirmative, conscious, and voluntary agreement to engage  
15 in sexual activity."

16 SECTION 2. New statutory material is underscored.

17 SECTION 3. This Act shall take effect upon its approval.



**Report Title:**

Affirmative Consent; University of Hawaii System; Board of Regents

**Description:**

Requires the University of Hawaii to act jointly with the board of regents to establish and enforce an affirmative consent standard for all policies and protocols relating to sexual assault, domestic violence, dating violence, and stalking.  
(SD1)

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

