

By: Howard

H.B. No. 3818

A BILL TO BE ENTITLED

AN ACT

relating to a sexual assault policy at public and private institutions of higher education.

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

SECTION 1. Section 51.9363, Education Code, is amended to read as follows:

Sec. 51.9363. [~~CAMPUS~~] SEXUAL ASSAULT POLICY. (a) In this section, "postsecondary educational institution" means an institution of higher education or a private or independent institution of higher education, as those terms are defined [~~"has the meaning assigned]~~ by Section 61.003.

(b) Each postsecondary educational institution [~~of higher education]~~ shall adopt a policy on [~~campus~~] sexual assault applicable to any person employed by the institution and to each student enrolled in the institution. The policy must:

(1) incorporate an affirmative consent standard for determining consent to engage in sexual activity, including by reflecting the affirmative consent principles described by Subsection (b-1);

(2) include:

- (A) definitions of prohibited behavior;
- (B) sanctions for violations; and
- (C) the protocol for reporting and responding to reports of [~~campus~~] sexual assault; and

1 (3) [~~2~~] be approved by the institution's governing
2 board before final adoption by the institution.

3 (b-1) Each postsecondary educational institution shall
4 ensure the institution's sexual assault policy reflects the
5 following principles regarding affirmative consent to engage in
6 sexual activity:

7 (1) affirmative consent requires words or actions that
8 clearly demonstrate a knowing and voluntary agreement to engage in
9 sexual activity;

10 (2) a person's silence or the absence of the words "no"
11 or "stop" is not sufficient to establish affirmative consent to
12 engage in sexual activity;

13 (3) the requirement to obtain affirmative consent to
14 engage in sexual activity applies to each student enrolled at the
15 institution regardless of whether the sexual activity occurs on or
16 off campus;

17 (4) each participant is responsible for obtaining
18 affirmative consent and ensuring that the affirmative consent
19 continues throughout the duration of the sexual activity;

20 (5) affirmative consent to engage in a sexual act or
21 prior consensual sexual activity with any person does not
22 constitute affirmative consent to engage in any other sexual act;

23 (6) affirmative consent may be withdrawn at any time;

24 (7) a person cannot affirmatively consent to engage in
25 sexual activity if it is the result of any coercion, intimidation,
26 force or threat of harm;

27 (8) a person cannot affirmatively consent to engage in

1 sexual activity when the person is incapacitated or otherwise lacks
2 the ability to knowingly choose to engage in the activity,
3 regardless of whether the person is incapacitated due to any
4 physical or mental condition, lack of consciousness, being asleep,
5 being involuntarily restrained, being under the influence of drugs
6 or alcohol to the level of incapacitation, or for any other reason;
7 and

8 (9) an accused person will not be excused for
9 believing the complainant affirmatively consented to engage in
10 sexual activity if:

11 (A) the accused person knew or reasonably should
12 have known that the complainant was incapacitated as described by
13 Subdivision (7); or

14 (B) the accused believed that the complainant
15 affirmatively consented to engage in the sexual activity and the
16 belief is based upon:

17 (i) the accused's intoxication; or

18 (ii) the accused failing to take reasonable
19 steps to ascertain whether the complainant affirmatively consented
20 to engage in the sexual activity.

21 (c) Each postsecondary educational institution [~~of higher~~
22 ~~education~~] shall make the institution's [~~campus~~] sexual assault
23 policy available to students, faculty, and staff members by:

24 (1) including the policy in the institution's student
25 handbook and personnel handbook; [~~and~~]

26 (2) creating and maintaining a web page on the
27 institution's Internet website dedicated solely to the

1 policy~~[-]~~; and

2 (3) develop and implement a public awareness campaign
3 informing students, staff, and faculty of the affirmative consent
4 standard implemented by the institution, including that the
5 affirmative consent standard shall be applied in alleged violations
6 of the sexual assault policy of the institution.

7 (d) Each postsecondary educational institution [~~of higher~~
8 ~~education~~] shall require each entering freshman or undergraduate
9 transfer student to attend an orientation on the institution's
10 [~~campus~~] sexual assault policy before or during the first semester
11 or term in which the student is enrolled at the institution. The
12 institution shall establish the format and content of the
13 orientation.

14 (e) Each biennium, each postsecondary educational
15 institution [~~of higher education~~] shall review the institution's
16 [~~campus~~] sexual assault policy and, with approval of the
17 institution's governing board, revise the policy as necessary.

18 SECTION 2. Section 51.9363, Education Code, as amended by
19 this Act, applies beginning with the 2017 fall semester.

20 SECTION 3. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2017.