



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 240

132nd General Assembly

(As Reported by H. Higher Education & Workforce Development)

**Reps.** Barnes, Duffey, Perales

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## BILL SUMMARY

- Requires each state institution of higher education to adopt a policy with regard to dating violence, domestic violence, sexual assault, stalking, and rape on campus, including a procedure for reporting, and consequences for committing, such acts.
- Requires each state institution of higher education to keep a record of all reports of incidents that it receives.
- Requires each state institution of higher education annually to distribute copies of its policy during student orientation and other appropriate events and to post copies of the policy in multiple, prominent locations across campus and on the institution's website.
- Designates the month of April as "Respect Your Date Month" to increase public awareness of dating violence, domestic violence, sexual assault, stalking, and rape on college campuses.
- Entitles the act the "Respect Your Date Act."
- Declares an emergency.

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## CONTENT AND OPERATION

### Policy on dating violence and rape on college campuses

The bill requires each state institution of higher education to adopt a policy with regard to dating violence, domestic violence, sexual assault, stalking, and rape on

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\* This analysis correctly reflects the bill as reported in the House Journal.

campus and to keep a record of all reports of such incidents that it receives.<sup>1</sup> It also permits each institution to include other related incidents in the policy.

The adopted policy must include all of the following:

- (1) The procedure for reporting such incidents;
- (2) The institutional plan for investigating and responding to such incidents;
- (3) A description of the consequences for committing such an incident, including the institution's disciplinary proceedings and possible penalties; and
- (4) The definitions for the terms used in the policy. (See below.)

The bill further specifies that each institution's policy be developed with the goal of enhancing due process and to better define the protocols provided for under both (1) the federal "Clery Act," which requires institutions to have policies for reporting and responding to reports of criminal activities on campus, including sex offenses, and (2) Title IX, which prohibits discrimination based upon sex and requires institutions to prevent and respond to sexual harassment.<sup>2</sup> (See "**Background on federal law**," below.)

### **Terms used in the policy**

For purposes of the policy, the bill specifies that "dating violence," "domestic violence," "sexual assault," and "stalking" have the same meanings as under the federal "Violence Against Women Act."<sup>3</sup> Additionally, for the purpose of these definitions and the definition of rape,<sup>4</sup> under the policy, the bill specifies that "consent" must have the same meaning as in the federal Uniform Code of Military Justice.<sup>5</sup> Under the latter, consent is a "freely given agreement to the conduct at issue by a competent person." The federal statute goes on to state that a sleeping, unconscious, or incompetent person cannot consent. It also states that the lack of consent may be inferred from the circumstances.

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<sup>1</sup> R.C. 3345.43(A).

<sup>2</sup> R.C. 3345.43(A)(2).

<sup>3</sup> See 42 United States Code (U.S.C.) 13925(a)(8), (10), (29), and (30).

<sup>4</sup> See R.C. 2907.02, not in the bill.

<sup>5</sup> See 10 U.S.C. 920(g)(8).



Each institution may expand upon the bill's definitions to address additional situations and instances.<sup>6</sup>

These definitions must be included in each institution's adopted policy.<sup>7</sup>

### **Distribution of policy**

Under the bill, each institution must annually distribute copies of the policy during student orientation and at "other appropriate events." Moreover, each institution must post copies of the policy in multiple, prominent locations across campus, as well as in a prominent location on the institution's website. At a minimum, copies posted across campus must be posted during the month of April to coincide with "Respect Your Date Month," as designated by the bill.<sup>8</sup>

### **Designation**

The bill designates the month of April as "Respect Your Date Month" to increase public awareness of dating violence, domestic violence, sexual assault, stalking, and rape on college campuses.<sup>9</sup>

### **Background on federal law**

#### **Clery Act**

The federal Clery Act requires all institutions of higher education that receive federal aid to have policies in place for receiving and responding to reports of criminal activities on campus. The law also requires those institutions to submit to the U.S. Justice Department statistics on "sex offenses, forcible or nonforcible," and other crimes that are reported to campus or local police.<sup>10</sup> The statistics indicate the number of offenses of different types that are *reported*, not the number of arrests or convictions.

#### **Title IX**

Title IX of the Education Amendments of 1972 specifies that "no person . . . on the basis of sex, [may] be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal

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<sup>6</sup> R.C. 3345.43(C).

<sup>7</sup> R.C. 3345.43(A)(3).

<sup>8</sup> R.C. 3345.43(B).

<sup>9</sup> R.C. 5.236.

<sup>10</sup> 20 U.S.C. 1092(f).



financial assistance."<sup>11</sup> Accordingly, Title IX requires schools to prevent and respond to sexual harassment. Sexual assault, in at least some cases, might be a form of sexual harassment. Federal implementing regulations further provide that recipients of federal funding must have in place "grievance procedures providing for prompt and equitable resolution of student and employee complaints" alleging acts that are not permitted under Title IX.<sup>12</sup>

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## HISTORY

ACTION	DATE
Introduced	05-24-17
Reported, H. Higher Education & Workforce Development	04-12-18

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<sup>11</sup> 20 U.S.C. 1681.

<sup>12</sup> 34 Code of Federal Regulations 106.8.

