

ASSEMBLY, No. 4736

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED SEPTEMBER 24, 2020

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

Requires institutions of higher education to adopt affirmative consent standard and other policies regarding sexual assault, domestic violence, dating violence, and stalking.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning sexual assault and other violence at institutions
2 of higher education and supplementing chapter 61E of Title 18A
3 of the New Jersey Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

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8 1. As used in this act, “sexual assault,” “domestic violence,”
9 “dating violence,” and “stalking” shall have the same meaning as
10 set forth in section 485(f) of the federal “Higher Education Act of
11 1965” (20 U.S.C. s.1092(f)).

12
13 2. In order to receive State funds for student assistance
14 programs, the governing board of an institution of higher education
15 shall adopt a policy concerning sexual assault, domestic violence,
16 dating violence, and stalking involving a student, both on and off
17 campus. The policy shall include all of the following:

18 a. an affirmative consent standard in the determination of
19 whether consent was given by both parties to sexual activity.
20 “Affirmative consent” means affirmative, conscious, and voluntary
21 agreement to engage in sexual activity. It is the responsibility of
22 each person involved in the sexual activity to ensure that the person
23 has the affirmative consent of the other or others to engage in the
24 sexual activity. Lack of protest or resistance does not mean
25 consent, nor does silence mean consent. Affirmative consent must
26 be ongoing throughout a sexual activity and can be revoked at any
27 time. The existence of a dating relationship between the persons
28 involved, or the fact of past sexual relations between them, should
29 never by itself be assumed to be an indicator of consent.

30 b. a policy that, in the evaluation of a complaint in a
31 disciplinary process, it shall not be a valid excuse to alleged lack of
32 affirmative consent that the accused believed that the complainant
33 consented to the sexual activity under either of the following
34 circumstances:

35 (1) the accused’s belief in affirmative consent arose from the
36 intoxication or recklessness of the accused; or

37 (2) the accused did not take reasonable steps, in the
38 circumstances known to the accused at the time, to ascertain
39 whether the complainant affirmatively consented.

40 c. a policy that the standard used in determining whether the
41 elements of the complaint against the accused have been
42 demonstrated is the preponderance of the evidence

43 d. a policy that, in the evaluation of a complaint in a
44 disciplinary process, it shall not be a valid excuse that the accused
45 believed that the complainant affirmatively consented to the sexual
46 activity if the accused knew or reasonably should have known that
47 the complainant was unable to consent to the sexual activity under
48 any of the following circumstances:

- 1 (1) the complainant was asleep or unconscious;
- 2 (2) the complainant was incapacitated due to the influence of
- 3 drugs, alcohol, or medication, so that the complainant could not
- 4 understand the fact, nature, or extent of the sexual activity; or
- 5 (3) the complainant was unable to communicate due to a mental
- 6 or physical condition.

7

8 3. In order to receive State funds for student assistance

9 programs, the governing board of an institution of higher education

10 shall adopt detailed and victim-centered policies and protocols

11 regarding sexual assault, domestic violence, dating violence, and

12 stalking involving a student that comport with best practices and

13 current professional standards. At a minimum, the policies and

14 protocols shall cover all of the following:

- 15 a. a policy statement on how the institution will provide
- 16 appropriate protections for the privacy of individuals involved,
- 17 including confidentiality;
- 18 b. initial response by the institution's personnel to a report of
- 19 an incident, including requirements specific to assisting the victim,
- 20 providing information in writing about the importance of preserving
- 21 evidence, and the identification and location of witnesses;
- 22 c. response to stranger and nonstranger sexual assault;
- 23 d. the preliminary victim interview, including the development
- 24 of a victim interview protocol, and a comprehensive follow-up
- 25 victim interview, as appropriate;
- 26 e. contacting and interviewing the accused;
- 27 f. seeking the identification and location of witnesses;
- 28 g. providing written notification to the victim about the
- 29 availability of, and contact information for, on and off campus
- 30 resources and services, and coordination with law enforcement, as
- 31 appropriate;
- 32 h. participation of victim advocates and other supporting
- 33 people;
- 34 i. investigating allegations that alcohol or drugs were involved
- 35 in the incident;
- 36 j. providing that an individual who participates as a
- 37 complainant or witness in an investigation of sexual assault,
- 38 domestic violence, dating violence, or stalking will not be subject to
- 39 disciplinary actions for a violation of the institution's student
- 40 conduct policy at or near the time of the incident, unless the
- 41 institution determines that the violation was egregious including,
- 42 but not limited to, an action that places the health or safety of any
- 43 person at risk or involves plagiarism, cheating, or academic
- 44 dishonesty;
- 45 k. the role of the institutional staff supervision;
- 46 l. a comprehensive trauma-informed training program for
- 47 campus officials involved in investigating and adjudicating sexual
- 48 assault, domestic violence, dating violence, and stalking cases; and

1 m. procedures for confidential reporting by victims and third
2 parties.

3
4 4. In order to receive State funds for student assistance
5 programs, the governing board of an institution of higher education
6 shall enter into memoranda of understanding, agreements, or
7 collaborative partnerships with existing on-campus and community-
8 based organizations, including rape crisis centers, to refer students
9 for assistance or make services available to students, including
10 counseling, health, mental health, victim advocacy, and legal
11 assistance, and including resources for the accused.

12
13 5. In order to receive State funds for student assistance
14 programs, the governing board of an institution of higher education
15 shall implement comprehensive prevention and outreach programs
16 addressing sexual assault, domestic violence, dating violence, and
17 stalking.

18 A comprehensive prevention program shall include a range of
19 prevention strategies including, but not limited to, empowerment,
20 programming for victim prevention, awareness raising campaigns,
21 primary prevention, bystander prevention, and risk reduction.

22 Outreach programs shall be provided to make students aware of
23 the institution's policies on sexual assault, domestic violence,
24 dating violence, and stalking. At a minimum, an outreach program
25 shall include a process for contacting and informing the student
26 body, campus organizations, athletic programs, and student groups
27 about the institution's overall sexual assault policy, the practical
28 implications of an affirmative consent standard, and the rights and
29 responsibilities of students under the policy. Outreach
30 programming shall be included as part of every incoming student's
31 orientation.

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33 6. This act shall take effect on the 90th day after the date of
34 enactment.

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STATEMENT

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39 This bill requires institutions of higher education to adopt an
40 affirmative consent standard and numerous other policies regarding
41 sexual assault, domestic violence, dating violence, and stalking.

42 Under the bill, in order to receive State funds for student
43 assistance programs, the governing board of each institution of
44 higher education must adopt a policy concerning sexual assault,
45 domestic violence, dating violence, and stalking involving a
46 student, both on and off campus. The policy must include all of the
47 following:

- 1 - an affirmative consent standard in the determination of whether
- 2 consent was given by both parties to sexual activity. “Affirmative
- 3 consent” means affirmative, conscious, and voluntary agreement to
- 4 engage in sexual activity;
- 5 - a policy that, in the evaluation of a complaint in a disciplinary
- 6 process, it shall not be a valid excuse to alleged lack of affirmative
- 7 consent that the accused believed that the complainant consented to
- 8 the sexual activity under certain circumstances;
- 9 - a policy that the standard used in determining whether the
- 10 elements of the complaint against the accused have been
- 11 demonstrated is the preponderance of the evidence; and
- 12 - a policy that, in the evaluation of a complaint in a disciplinary
- 13 process, it shall not be a valid excuse that the accused believed that
- 14 the complainant affirmatively consented to the sexual activity if the
- 15 accused knew or reasonably should have known that the
- 16 complainant was unable to consent to the sexual activity under
- 17 certain circumstances.
- 18 In order to receive State aid for student assistance programs, the
- 19 governing board of each institution of higher education must also:
- 20 - adopt detailed and victim-centered policies and protocols
- 21 outlined in the bill regarding sexual assault, domestic violence,
- 22 dating violence, and stalking involving a student that comport with
- 23 best practices and current professional standards;
- 24 - enter into memoranda of understanding, agreements, or
- 25 collaborative partnerships with existing on-campus and community-
- 26 based organizations to refer students for assistance or make services
- 27 available to students, including counseling, health, mental health,
- 28 victim advocacy, and legal assistance, and including resources for
- 29 the accused; and
- 30 - implement comprehensive prevention and outreach programs
- 31 addressing sexual assault, domestic violence, dating violence, and
- 32 stalking.