SENATE, No. 2478

STATE OF NEW JERSEY

216th LEGISLATURE

INTRODUCED OCTOBER 14, 2014

Sponsored by:
Senator JAMES BEACH
District 6 (Burlington and Camden)

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

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

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

2. In order to receive State funds for student assistance programs, the governing board of an institution of higher education shall adopt a policy concerning sexual assault, domestic violence, dating violence, and stalking involving a student, both on and off campus. The policy shall include all of the following:
   a. an affirmative consent standard in the determination of whether consent was given by both parties to sexual activity. “Affirmative consent” means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that the person has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.
   b. a policy that, in the evaluation of a complaint in a disciplinary process, it shall not be a valid excuse to alleged lack of affirmative consent that the accused believed that the complainant consented to the sexual activity under either of the following circumstances:
      (1) the accused’s belief in affirmative consent arose from the intoxication or recklessness of the accused; or
      (2) the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain whether the complainant affirmatively consented.
   c. a policy that the standard used in determining whether the elements of the complaint against the accused have been demonstrated is the preponderance of the evidence
   d. a policy that, in the evaluation of a complaint in a disciplinary process, it shall not be a valid excuse that the accused believed that the complainant affirmatively consented to the sexual activity if the accused knew or reasonably should have known that the complainant was unable to consent to the sexual activity under any of the following circumstances:
      (1) the complainant was asleep or unconscious;
(2) the complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the complainant could not understand the fact, nature, or extent of the sexual activity; or

(3) the complainant was unable to communicate due to a mental or physical condition.

3. In order to receive State funds for student assistance programs, the governing board of an institution of higher education shall adopt detailed and victim-centered policies and protocols regarding sexual assault, domestic violence, dating violence, and stalking involving a student that comport with best practices and current professional standards. At a minimum, the policies and protocols shall cover all of the following:

a. a policy statement on how the institution will provide appropriate protections for the privacy of individuals involved, including confidentiality;

b. initial response by the institution’s personnel to a report of an incident, including requirements specific to assisting the victim, providing information in writing about the importance of preserving evidence, and the identification and location of witnesses;

c. response to stranger and nonstranger sexual assault;

d. the preliminary victim interview, including the development of a victim interview protocol, and a comprehensive follow-up victim interview, as appropriate;

e. contacting and interviewing the accused;

f. seeking the identification and location of witnesses;

g. providing written notification to the victim about the availability of, and contact information for, on and off campus resources and services, and coordination with law enforcement, as appropriate;

h. participation of victim advocates and other supporting people;

i. investigating allegations that alcohol or drugs were involved in the incident;

j. providing that an individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary actions for a violation of the institution’s student conduct policy at or near the time of the incident, unless the institution determines that the violation was egregious including, but not limited to, an action that places the health or safety of any person at risk or involves plagiarism, cheating, or academic dishonesty;

k. the role of the institutional staff supervision;

l. a comprehensive trauma-informed training program for campus officials involved in investigating and adjudicating sexual assault, domestic violence, dating violence, and stalking cases; and

m. procedures for confidential reporting by victims and third parties.
4. In order to receive State funds for student assistance programs, the governing board of an institution of higher education shall enter into memoranda of understanding, agreements, or collaborative partnerships with existing on-campus and community-based organizations, including rape crisis centers, to refer students for assistance or make services available to students, including counseling, health, mental health, victim advocacy, and legal assistance, and including resources for the accused.

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

   A comprehensive prevention program shall include a range of prevention strategies including, but not limited to, empowerment, programming for victim prevention, awareness raising campaigns, primary prevention, bystander prevention, and risk reduction. Outreach programs shall be provided to make students aware of the institution’s policies on sexual assault, domestic violence, dating violence, and stalking. At a minimum, an outreach program shall include a process for contacting and informing the student body, campus organizations, athletic programs, and student groups about the institution’s overall sexual assault policy, the practical implications of an affirmative consent standard, and the rights and responsibilities of students under the policy. Outreach programming shall be included as part of every incoming student’s orientation.

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

STATEMENT

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

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

- an affirmative consent standard in the determination of whether consent was given by both parties to sexual activity.

“Affirmative consent” means affirmative, conscious, and voluntary agreement to engage in sexual activity;
- a policy that, in the evaluation of a complaint in a disciplinary process, it shall not be a valid excuse to alleged lack of affirmative consent that the accused believed that the complainant consented to the sexual activity under certain circumstances;

- a policy that the standard used in determining whether the elements of the complaint against the accused have been demonstrated is the preponderance of the evidence; and

- a policy that, in the evaluation of a complaint in a disciplinary process, it shall not be a valid excuse that the accused believed that the complainant affirmatively consented to the sexual activity if the accused knew or reasonably should have known that the complainant was unable to consent to the sexual activity under certain circumstances.

In order to receive State aid for student assistance programs, the governing board of each institution of higher education must also:

- adopt detailed and victim-centered policies and protocols outlined in the bill regarding sexual assault, domestic violence, dating violence, and stalking involving a student that comport with best practices and current professional standards;

- enter into memoranda of understanding, agreements, or collaborative partnerships with existing on-campus and community-based organizations to refer students for assistance or make services available to students, including counseling, health, mental health, victim advocacy, and legal assistance, and including resources for the accused; and

- implement comprehensive prevention and outreach programs addressing sexual assault, domestic violence, dating violence, and stalking.