

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.



1 AN ACT concerning sexual assault and other violence at
2 institutions of higher education and supplementing chapter 61E
3 of Title 18A 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 disciplinary
31 process, it shall not be a valid excuse to alleged lack of affirmative
32 consent that the accused believed that the complainant consented to
33 the sexual activity under either of the following circumstances:

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

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

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

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

48 (1) the complainant was asleep or unconscious;

S2478 BEACH

1 (2) the complainant was incapacitated due to the influence of
2 drugs, alcohol, or medication, so that the complainant could not
3 understand the fact, nature, or extent of the sexual activity; or

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

6
7 3. In order to receive State funds for student assistance
8 programs, the governing board of an institution of higher education
9 shall adopt detailed and victim-centered policies and protocols
10 regarding sexual assault, domestic violence, dating violence, and
11 stalking involving a student that comport with best practices and
12 current professional standards. At a minimum, the policies and
13 protocols shall cover all of the following:

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

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

21 c. response to stranger and nonstranger sexual assault;

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

25 e. contacting and interviewing the accused;

26 f. seeking the identification and location of witnesses;

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

31 h. participation of victim advocates and other supporting people;

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

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

42 k. the role of the institutional staff supervision;

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

46 m. procedures for confidential reporting by victims and third
47 parties.

S2478 BEACH

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

9
10 5. In order to receive State funds for student assistance
11 programs, the governing board of an institution of higher education
12 shall implement comprehensive prevention and outreach programs
13 addressing sexual assault, domestic violence, dating violence, and
14 stalking.

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

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

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

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34 STATEMENT

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

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

- 45 - an affirmative consent standard in the determination of
46 whether consent was given by both parties to sexual activity.
47 "Affirmative consent" means affirmative, conscious, and voluntary
48 agreement to engage in sexual activity;

S2478 BEACH

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