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.