
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 730 Session of
2021

INTRODUCED BY CAPPELLETTI, COLLETT, MUTH, KANE, KEARNEY,
SANTARSIERO, FONTANA, HAYWOOD AND COSTA, JULY 1, 2021

REFERRED TO EDUCATION, JULY 1, 2021

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An
2 act relating to the public school system, including certain
3 provisions applicable as well to private and parochial
4 schools; amending, revising, consolidating and changing the
5 laws relating thereto," in sexual violence education at
6 institutions of higher education, further providing for scope
7 of article, for definitions and for education program,
8 providing for affirmative consent to sexual activity, further
9 providing for follow-up and for report and providing for
10 memoranda of understanding and for community partnerships;
11 and making an editorial change.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Article XX-G heading and sections 2001-G, 2002-G
15 and 2003-G of the act of March 10, 1949 (P.L.30, No.14), known
16 as the Public School Code of 1949, are amended to read:

17 ARTICLE XX-G

18 SEXUAL VIOLENCE, DATING VIOLENCE, DOMESTIC

19 VIOLENCE AND STALKING EDUCATION, PREVENTION AND

20 RESPONSE AT INSTITUTIONS OF HIGHER EDUCATION

21 Section 2001-G. Scope of article.

22 This article relates to college and university sexual

1 violence, dating violence, domestic violence and stalking
2 education, prevention and response.

3 Section 2002-G. Definitions.

4 The following words and phrases when used in this article
5 shall have the meanings given to them in this section unless the
6 context clearly indicates otherwise:

7 "Affirmative consent." A conscious, voluntary and mutual
8 agreement, by words or action, among all participants to engage
9 in sexual activity, provided that the words or action convey
10 clear permission regarding willingness to engage in the sexual
11 activity. The term applies regardless of a participant's sex,
12 sexual orientation, gender identity or gender expression or the
13 existence of a present or past romantic, intimate or dating
14 relationship between the participants involved. The term does
15 not include silence or lack of protest to engage in sexual
16 activity.

17 "Community entity." Local law enforcement, campus public
18 safety, a rape crisis center, a community and campus health care
19 professional, a domestic violence program or an organization
20 providing legal assistance or immigration services and any
21 entity identified as part of an institution of higher
22 education's multidisciplinary sexual assault response team or
23 similar group.

24 "Dating violence." As defined in section 1553(f).

25 "Department." The Department of Education of the
26 Commonwealth.

27 "Domestic violence." As defined in section 2333(e) of the
28 act of April 9, 1929 (P.L.177, No.175), known as The
29 Administrative Code of 1929.

30 "Domestic violence program." As defined in 23 Pa.C.S. § 6102

1 (relating to definitions).

2 "Education program." [A] An evidence-based sexual violence,
3 dating violence, domestic violence and stalking awareness
4 education program under this article.

5 "Independent institution of higher education." As defined in
6 the act of November 29, 2004 (P.L.1383, No.180), known as the
7 Uniform Crime Reporting Act.

8 "Institution of higher [education.] education" or
9 "institution." An independent institution of higher education,
10 a community college, a State-related institution or a member
11 institution of the State System of Higher Education.

12 "Matriculating." Enrolling in an institution of higher
13 education or private licensed school.

14 "Private licensed school." As defined in the act of December
15 15, 1986 (P.L.1585, No.174), known as the Private Licensed
16 Schools Act.

17 "Rape crisis center." As defined in 42 Pa.C.S. § 5945.1
18 (relating to confidential communications).

19 "Sexual violence." An act of sexual violence as defined in
20 42 Pa.C.S. § 6402 (relating to definitions).

21 "Stalking." Engaging in a course of conduct directed at a
22 specific person that would cause a reasonable person to:

23 (1) fear for the person's safety or the safety of
24 others; or

25 (2) suffer substantial emotional distress.

26 "Student." A person who is enrolled on a full-time basis at
27 an institution of higher education or private licensed school.
28 Section 2003-G. Education program.

29 (a) [General rule] Establishment.--Institutions of higher
30 education and private licensed schools shall establish [a sexual

1 violence awareness educational program. Institutions] an
2 education program for all students. In developing or
3 implementing an education program, institutions of higher
4 education and private licensed schools [may collaborate with a
5 Statewide nonprofit organization, local rape crisis center or
6 local sexual assault program that arranges for the provision of
7 services to sexual violence and rape victims in the development
8 of a sexual violence awareness education program.] shall consult
9 with a local rape crisis center and domestic violence program,
10 as well as community entities, as appropriate.

11 (a.1) Online clearinghouse.--Within 120 days of the
12 effective date of this subsection, the department, in
13 consultation with the Pennsylvania Coalition Against Rape and
14 the Pennsylvania Coalition Against Domestic Violence, shall
15 develop an online clearinghouse of model education programs and
16 other resources to aid institutions of higher education and
17 private licensed schools in fulfilling this requirement.

18 (a.2) Requirements of program.--Each education program shall
19 provide the following:

20 (1) A discussion of sexual violence, dating violence,
21 domestic violence and stalking.

22 (2) A discussion of affirmative consent, including an
23 explanation that the victim is not at fault.

24 (3) A discussion of drug and alcohol-facilitated sexual
25 violence.

26 (4) Information relating to risk education and personal
27 protection.

28 (5) Information on where and how to get assistance,
29 including the importance of medical treatment and evidence
30 collection, and how to report sexual violence to campus

1 authorities and local law enforcement.

2 (6) The possibility of pregnancy and transmission of
3 sexual diseases.

4 (7) Introduction of members of the educational community
5 from:

6 (i) Campus police or security and local law
7 enforcement.

8 (ii) Campus health center, women's center and rape
9 crisis center.

10 (iii) Campus counseling service or any service
11 responsible for psychological counseling and student
12 affairs.

13 (8) A promise of discretion and dignity.

14 (9) [A promise of confidentiality] Information regarding
15 confidential resources and services available for victims of
16 sexual assault, dating violence, domestic violence and
17 stalking, including confidential resource advisors, if
18 applicable.

19 [(b) Student bill of rights.--Consistent with the campus
20 sexual assault victims' bill of rights under section 485(f)(8)
21 of the Higher Education Act of 1965 (Public Law 89-329, 20
22 U.S.C. § 1092(f)(8)), a student bill of rights shall be made
23 available to students.]

24 (c) Written notification of rights, accommodations and
25 protective measures.--An institution of higher education shall
26 develop a concise, written notification of rights,
27 accommodations, and protective measures and make the
28 notification available to students and employees, including
29 victims of dating violence, domestic violence, sexual assault,
30 and stalking, regardless of where the incidences occurred,

1 including information regarding:

2 (1) Existing counseling, mental health, healthcare,
3 victim advocacy, legal assistance, visa and immigration
4 assistance, student financial aid and other services
5 available for victims, both within the institution and in the
6 community.

7 (2) Available options and assistance regarding how to
8 report to the institution, how to report to law enforcement,
9 obtain protections from abuse and sexual violence protection
10 orders, file for crime victims' compensation and assistance
11 program, request protective measures or changes to academic,
12 living, transportation, working situations or other
13 educational activities.

14 (d) Compliance.--The written notification of rights,
15 accommodations, and protective measures required under the
16 Higher Education Act of 1965 (Public Law 89-329, 79 Stat. 1219)
17 shall satisfy the requirements of subsection (c).

18 (e) Accommodations and protective measures.--The institution
19 shall make such accommodations or provide protective measures if
20 the victim requests them and if they are reasonably available,
21 regardless of whether the victim chooses to report the crime to
22 campus police or local law enforcement, and regardless of where
23 the incidences occur.

24 Section 2. The act is amended by adding a section to read:
25 Section 2003.1-G. Affirmative consent to sexual activity.

26 (a) General rule.--An institution of higher education and
27 private licensed school shall adopt the definition of
28 "affirmative consent" from section 2002-G as part of the
29 institution's or school's code of conduct.

30 (b) Code of conduct.--The code of conduct of an institution

1 of higher education and a private licensed school shall include
2 the following principles:

3 (1) It is the responsibility of each individual who
4 wants to engage in sexual activity with another individual to
5 obtain affirmative consent from the other individual.

6 (2) Affirmative consent to a sexual act does not imply
7 affirmative consent to other sexual acts or other forms of
8 sexual activity now or in the future.

9 (3) Affirmative consent is required regardless of
10 whether the person initiating the act is under the influence
11 of drugs or alcohol.

12 (4) Affirmative consent may be withdrawn at any time.

13 (5) Affirmative consent cannot be given when an
14 individual is incapacitated. For purposes of this paragraph,
15 incapacitation occurs when an individual lacks the ability to
16 knowingly choose to participate in sexual activity.

17 Incapacitation may be caused by the lack of consciousness or
18 by being asleep, being involuntarily restrained or if an
19 individual otherwise cannot give affirmative consent, such as
20 an individual who has a physical or cognitive or
21 developmental disability. Depending on the degree of
22 intoxication, someone who is under the influence of alcohol,
23 drugs or other intoxicants may be incapacitated and unable to
24 give affirmative consent.

25 (6) Affirmative consent cannot be given when it is the
26 result of coercion, intimidation, force or threat of harm.

27 (7) When affirmative consent is withdrawn or can no
28 longer be given, sexual activity must cease.

29 Section 3. Sections 2004-G and 2006-G of the act are amended
30 to read:

1 Section 2004-G. Follow-up.

2 An institution of higher education and private licensed
3 school shall conduct [a] at least one follow-up program for [the
4 duration of the school year for new] students participating in
5 the education program. The follow-up program may consist of the
6 following:

7 (1) Lecturers and interactive learning programs relating
8 to sexual violence, dating violence, domestic violence and
9 stalking prevention and awareness.

10 (2) Institutional activities relating to sexual
11 violence, dating violence, domestic violence and stalking
12 prevention and awareness.

13 (3) Videos and other educational materials relating to
14 sexual violence, dating violence, domestic violence and
15 stalking prevention and awareness.

16 Section 2006-G. Report.

17 An institution of higher education and a private licensed
18 school shall report to the department on the implementation of
19 the education program under section 2003-G, the memoranda of
20 understanding under section 2007-G and the community
21 partnerships under section 2008-G by the institution or school.

22 Section 4. The act is amended by adding sections to read:
23 Section 2007-G. Memoranda of understanding.

24 (a) General rule.--An institution of higher education shall
25 enter into and maintain a memorandum of understanding with at
26 least one rape crisis center and one domestic violence program
27 to:

28 (1) Assist in developing the institution's policies,
29 programming and training regarding sexual misconduct and
30 other prohibited behavior, such as sexual assault, dating

1 violence, domestic violence and stalking, involving students
2 and employees.

3 (2) Provide an off-campus alternative for students and
4 employees of the institution to receive free and confidential
5 services:

6 (i) to address sexual harassment and assault and
7 dating and domestic violence, including crisis and
8 longer-term counseling;

9 (ii) for support in navigating campus and community
10 reporting options;

11 (iii) for access to legal assistance, sexual
12 violence protection and protection from intimidation
13 orders, crime victims' compensation, a forensic rape exam
14 conducted by a sexual assault nurse examiner, if
15 available, and other services.

16 (3) Ensure that a student or employee of the institution
17 is notified of free and confidential sources of support,
18 counseling and advocacy services and how to access the
19 services both on-campus and off-campus.

20 (4) Ensure cooperation and cross-training between the
21 institution and the rape crisis center and domestic violence
22 center to ensure an understanding of the roles that each
23 respectively should play in responding to reports and
24 disclosures of sexual misconduct and other prohibited
25 behavior, such as dating violence, domestic violence and
26 stalking, against students and employees of the institution
27 and the institution's protocols for investigating and
28 adjudicating the misconduct and for providing support and
29 services to students and employees.

30 (5) Consult in the development or implementation of an

1 education program under section 2003-G.

2 (b) Confidential victim services.--Each memorandum of
3 understanding may include an agreement, including a fee
4 structure, between the rape crisis center and domestic violence
5 program and the institution of higher education to provide
6 confidential victim services. Confidential victim services may
7 include:

8 (1) Consultation fees for the development and
9 implementation of student education and prevention programs.

10 (2) The development of staff training and prevention
11 curriculum.

12 (3) Confidential on-site office space for an advocate
13 from a rape crisis center and domestic violence program to
14 meet with students or employees.

15 (c) Waiver.--The department may waive the requirements of
16 this section in the case of an institution that demonstrates
17 that the institution acted in good faith but was unable to
18 obtain a signed memorandum.

19 Section 2008-G. Community partnerships.

20 (a) General rule.--An institution of higher education may
21 establish a partnership with community entities to assist
22 students who have experienced sexual violence, dating violence,
23 domestic violence or stalking.

24 (b) Consultation.--In establishing a community partnership
25 under subsection (a), an institution of higher education shall
26 consult the following in the development of the partnership:

27 (1) The institution's Title IX coordinator.

28 (2) The institution's public safety or law enforcement
29 officials, if applicable.

30 (3) Students, including representatives from student

1 leadership organizations. Representatives from student
2 leadership organizations may include representatives of
3 student government, resident assistants, members of
4 fraternities or sororities, student athletes or
5 representatives from student conduct boards.

6 (4) Faculty representatives.

7 (5) The institution's counseling or mental health
8 professionals.

9 (c) Multidisciplinary sexual assault response teams.--An
10 institution of higher education may establish and utilize a
11 multidisciplinary sexual assault response team or similar group
12 comprised of on-campus and community-based representatives that
13 convenes regularly to monitor and provide a coordinated response
14 to incidents of sexual violence, dating violence, domestic
15 violence and stalking.

16 Section 5. The addition of section 2003.1-G of the act shall
17 apply to school years that begin after the effective date of
18 this section.

19 Section 6. This act shall take effect as follows:

20 (1) The addition of section 2007-G of the act and this
21 section shall take effect immediately.

22 (2) The remainder of this act shall take effect August
23 1, 2022.