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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1755 Session of  
2018

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INTRODUCED BY DALEY, DONATUCCI, DEAN, MURT, SCHLOSSBERG,  
DRISCOLL, DERMODY, KIRKLAND, DAVIS, FRANKEL, READSHAW,  
CALTAGIRONE, J. McNEILL, SCHWEYER, ROZZI, McCLINTON AND  
KINSEY, MARCH 26, 2018

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REFERRED TO COMMITTEE ON EDUCATION, MARCH 26, 2018

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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, providing for affirmative consent to sexual  
8 activity and making an editorial change.

9 The General Assembly of the Commonwealth of Pennsylvania  
10 hereby enacts as follows:

11 Section 1. Article XX-G heading and section 2001-G of the  
12 act of March 10, 1949 (P.L.30, No.14), known as the Public  
13 School Code of 1949, are amended to read:

14 ARTICLE XX-G

15 SEXUAL VIOLENCE EDUCATION AND PREVENTION AT

16 INSTITUTIONS OF HIGHER EDUCATION

17 Section 2001-G. Scope of article.

18 This article relates to college and university sexual  
19 violence education and prevention.

20 Section 2. The act is amended by adding a section to read:

1 Section 2007-G. Affirmative consent to sexual activity.

2 (a) General rule.--Each institution of higher education  
3 shall adopt the following definition of affirmative consent as  
4 part of the institution's code of conduct: "Affirmative consent  
5 is a conscious, voluntary and mutual agreement among all  
6 participants to engage in sexual activity. Words or actions may  
7 constitute affirmative consent as long as those words or actions  
8 convey clear permission regarding willingness to engage in the  
9 sexual activity. Silence or lack of protest does not demonstrate  
10 affirmative consent in and of itself. The definition of  
11 affirmative consent does not vary based upon a participant's  
12 sex, sexual orientation, gender identity or gender expression,  
13 nor based on the existence of a present or past romantic,  
14 intimate or dating relationship between the individuals  
15 involved."

16 (b) Conduct.--Each institution of higher education's code of  
17 conduct shall reflect the following principles as guidance for  
18 the institution's community:

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

22 (2) Affirmative consent to a sexual act does not imply  
23 affirmative consent to other sexual acts or other forms of  
24 sexual activity.

25 (3) Affirmative consent is required regardless of  
26 whether the person initiating the act is under the influence  
27 of drugs or alcohol.

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

29 (5) Affirmative consent cannot be given when an  
30 individual is incapacitated. For purposes of this paragraph,

1 incapacitation occurs when an individual lacks the ability to  
2 knowingly choose to participate in sexual activity.

3 Incapacitation may be caused by the lack of consciousness or  
4 by being asleep, being involuntarily restrained or if an  
5 individual otherwise cannot give affirmative consent, such as  
6 an individual who is physically or mentally impaired.

7 Depending on the degree of intoxication, someone who is under  
8 the influence of alcohol, drugs or other intoxicants may be  
9 incapacitated and unable to give affirmative consent.

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

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

14 Section 3. The addition of section 2007-G of the act shall  
15 apply to school years that begin after the effective date of  
16 this section.

17 Section 4. This act shall take effect August 1, 2019.