
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1489 Session of
2021

INTRODUCED BY SIMS, BENHAM, DALEY, LEE, HILL-EVANS, KINSEY,
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SANCHEZ, GUZMAN, WARREN, KENYATTA, CIRESI AND ZABEL,
JUNE 8, 2021

REFERRED TO COMMITTEE ON EDUCATION, JUNE 8, 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 learning, further providing for
7 heading of article, for scope of article, for definitions and
8 for education program, providing for affirmative consent to
9 sexual activity, further providing for follow-up and for
10 report, and providing for memorandum of understanding and for
11 community partnerships.

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

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

17 ARTICLE XX-G

18 SEXUAL VIOLENCE, DATING VIOLENCE AND STALKING EDUCATION,

19 PREVENTION AND RESPONSE AT

20 INSTITUTIONS OF HIGHER EDUCATION

21 Section 2001-G. Scope of article.

1 This article relates to college and university sexual
2 violence, dating violence, domestic violence and stalking
3 education, prevention and response.

4 Section 2002-G. Definitions.

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

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

18 "Community entities." Local law enforcement, campus public
19 safety, rape crisis centers, community and campus health care
20 professionals, domestic violence programs, organizations
21 providing legal assistance or immigration services and any other
22 entity identified as part of an institution of higher
23 education's multidisciplinary sexual assault response team or
24 similar group.

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

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

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

1 "Domestic violence program." As defined in 23 Pa.C.S. § 6102
2 (relating to definitions).

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

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

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

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

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

18 "Rape crisis center." As defined in 42 Pa.C.S. § 5945.1
19 (relating to confidential communications with sexual assault
20 counselors).

21 "Sexual violence." An act of sexual violence as defined in
22 42 Pa.C.S. § 6402 (relating to definitions).

23 "Stalking." Engaging in a course of conduct directed at a
24 specific individual that would cause a reasonable individual to:

25 (1) fear for the individual's safety or the safety of
26 others; or

27 (2) suffer substantial emotional distress.

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

1 (a) General rule.--Institutions of higher education and
2 private licensed schools shall establish [a sexual violence
3 awareness educational program. Institutions of higher education
4 and private licensed schools may collaborate with a Statewide
5 nonprofit organization, local rape crisis center or local sexual
6 assault program that arranges for the provision of services to
7 sexual violence and rape victims in the development of a sexual
8 violence awareness education program.] or implement an education
9 program for all students. In developing or implementing an
10 education program, institutions of higher education and private
11 licensed schools shall consult with a local rape crisis center
12 and domestic violence program, as well as community entities, as
13 appropriate. The Pennsylvania Department of Education, in
14 consultation with the Pennsylvania Coalition Against Rape and
15 the Pennsylvania Coalition Against Domestic Violence, shall,
16 within 120 days, develop an online clearinghouse of model
17 education programs and other resources to aid institutions of
18 higher education and private licensed schools in fulfilling this
19 requirement. Each education program shall 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 for victims of sexual
15 assault.]

16 (b) Student bill of rights.--Consistent with the campus
17 sexual assault victims' bill of rights under section 485(f)(8)
18 of the Higher Education Act of 1965 (Public Law 89-329, 20
19 U.S.C. § 1092(f)(8)), a student bill of rights shall be made
20 available to students.] Information regarding confidential
21 resources and services available for victims of sexual assault,
22 dating violence, domestic violence and stalking, including
23 confidential resource advisors, if applicable.

24 (c) Written notification of rights, accommodations and
25 protective measures.--A concise, written notification of rights,
26 accommodations and protective measures shall be made available
27 to students and employees, including victims of dating violence,
28 domestic violence, sexual assault and stalking, regardless of
29 where the incidences occurred, including information regarding:

30 (1) Existing counseling, mental health, healthcare,

1 victim advocacy, legal assistance, visa and immigration
2 assistance, student financial aid and other services
3 available for victims, both within the institution and in the
4 community.

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

12 (d) Written notification.--The written notification of
13 rights, accommodations and protective measures required under
14 the Higher Education Act of 1965 (Public Law 89-329, 20 U.S.C. §
15 1092(f)(8)) shall satisfy the requirements of subsection (c).

16 (e) Accommodations and protective measures.--An institution
17 shall make accommodations or provide protective measures, as
18 necessary and reasonably available, at the victim's request,
19 regardless of whether the victim chooses to report the crime to
20 campus police or local law enforcement and regardless of where
21 an incidence occurred.

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

24 (a) General rule.--Each institution of higher education and
25 private licensed school shall adopt the definition of
26 affirmative consent, as defined in this article, as part of the
27 institution's or school's code of conduct.

28 (b) Conduct.--The code of conduct of an institution of
29 higher education and a private licensed school shall include the
30 following principles:

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

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

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

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

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

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

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

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

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

29 Section 2004-G. Follow-up.

30 An institution of higher education and private licensed

1 school shall conduct [a] at least one follow-up program for the
2 [duration of the school year for new] students participating in
3 the education program. The follow-up program may consist of the
4 following:

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

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

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

14 Section 2006-G. Report.

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

20 Section 4. The act is amended by adding a sections to read:
21 Section 2007-G. Memorandum of understanding.

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

26 (1) Assist in developing the institution's policies,
27 programming and training regarding sexual misconduct and
28 other prohibited behavior, such as sexual assault, dating
29 violence, domestic violence and stalking, involving students
30 and employees.

1 (2) Provide an off-campus alternative for students and
2 employees of the institution to receive free and confidential
3 services to address sexual harassment and assault and dating
4 and domestic violence, including:

5 (i) crisis and longer-term counseling;

6 (ii) support in navigating campus and community
7 reporting options; and

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

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

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

27 (5) Consult in the development or implementation of an
28 education program under section 2003-G.

29 (b) Agreement to provide services.--Each memorandum of
30 understanding may include an agreement, including a fee

1 structure, between the rape crisis center and domestic violence
2 program and the institution of higher education to provide
3 confidential victim services. Confidential victim services may
4 include consultation fees for the development and implementation
5 of student education and prevention programs, the development of
6 staff training and prevention curriculum and confidential on-
7 site office space for an advocate from a rape crisis center or
8 domestic violence program to meet with students or employees.

9 (c) Good-faith waiver.--The department may waive the
10 requirements of this section in the case of an institution that
11 demonstrates that it acted in good faith but was unable to
12 obtain a signed memorandum.

13 Section 2008-G. Community partnerships.

14 (a) General rule.--Institutions of higher education may also
15 establish partnerships with community entities to assist
16 students who have experienced sexual violence, dating violence,
17 domestic violence or stalking.

18 (b) Development of community partnership.--In establishing a
19 community partnership under subsection (a), an institution of
20 higher education shall consult the following in the development
21 of the partnership:

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

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

25 (3) Students, including representatives from student
26 leadership organizations. Representatives from student
27 leadership organizations may include representatives of
28 student government, resident assistants, members of
29 fraternities or sororities, student athletes or
30 representatives from student conduct boards.

1 (4) Faculty representatives.

2 (5) The institution's counseling or mental health
3 professionals.

4 (c) Response team.--An institution of higher education may
5 establish and utilize a multidisciplinary sexual assault
6 response team or similar group comprised of on-campus and
7 community-based representatives that convenes regularly to
8 monitor and provide a coordinated response to incidents of
9 sexual violence, dating violence, domestic violence and
10 stalking.

11 Section 5. The addition of section 2003.1-G of the act shall
12 apply to school years that begin after the effective date of
13 this section.

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

15 (1) The following shall take effect immediately:

16 (i) The addition of section 2007-G.

17 (ii) This section.

18 (2) The remainder of this act shall take effect August
19 1, 2022.