

Introduced by Senators De León and Jackson

(Principal coauthor: Assembly Member Lowenthal)

(Coauthors: Senators Beall, Evans, Galgiani, Pavley, and Torres)

(Coauthors: Assembly Members Gonzalez and Williams)

February 10, 2014

An act to add Section 67386 to the Education Code, relating to student safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 967, as introduced, De León. Student safety: sexual assault.

Existing law, the Kristin Smart Campus Safety Act of 1998, requires the governing boards of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions to adopt rules requiring each of their respective campuses to enter into a written agreement with local law enforcement agencies relating to certain violent crimes. Existing law also requires those governing boards to adopt and implement written procedures or protocols to ensure that students, faculty, and staff who are victims of sexual assault on the grounds or facilities of their institutions receive treatment and information, including a description of on-campus and off-campus resources.

This bill would require these governing boards to adopt policies concerning campus sexual violence, domestic violence, dating violence, and stalking that include certain elements, including an affirmative consent standard in the determination of whether consent was given by a complainant. The bill would require these governing boards to adopt certain sexual assault policies and protocols, as specified, and would require the governing boards, to the extent feasible, to enter into

memoranda of understanding or other agreements with on-campus and community-based organizations to make services available to victims. The bill would also require the governing boards to implement comprehensive prevention programs addressing sexual assault, domestic violence, dating violence, and stalking. By requiring community college districts to adopt or modify certain policies and protocols, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 67386 is added to the Education Code,
2 to read:
3 67386. (a) The governing board of each community college
4 district, the Trustees of the California State University, the Regents
5 of the University of California, and the governing board of
6 independent postsecondary institutions, as defined in paragraph
7 (3) of subdivision (i) of Section 67381, shall adopt a policy
8 concerning campus sexual violence, domestic violence, dating
9 violence, and stalking that includes all of the following:
10 (1) An affirmative consent standard in the determination of
11 whether consent was given by a complainant. “Affirmative
12 consent” is a freely and affirmatively communicated willingness
13 to participate in particular sexual activity or behavior, expressed
14 either by words or clear, unambiguous actions. It is the
15 responsibility of the person who wants to engage in the sexual
16 activity to ensure that he or she has the consent of the other person
17 to engage in the sexual activity. Lack of protest or resistance does
18 not mean consent, nor does silence mean consent. For that reason,
19 relying solely on nonverbal communication can lead to
20 misunderstanding. The existence of a dating relationship between
21 the persons involved, or the fact of a past sexual relationship, shall

1 not provide the basis for an assumption of consent. Consent must
2 be present throughout sexual activity, and at any time, a participant
3 can communicate that he or she no longer consents to continuing
4 the sexual activity. If there is confusion as to whether a person has
5 consented or continues to consent to sexual activity, it is essential
6 that the participants stop the activity until the confusion can be
7 clearly resolved.

8 (2) In the evaluation of complaints in the disciplinary process,
9 it shall not be a defense that the accused believed that the
10 complainant consented to the sexual activity under either of the
11 following circumstances:

12 (A) The accused's belief in consent arose from the self-induced
13 intoxication or recklessness of the accused.

14 (B) The accused did not take reasonable steps, in the
15 circumstances known to the accused at the time, to ascertain that
16 the complainant was consenting.

17 (3) A preponderance of the evidence standard in the
18 determination of disciplinary action.

19 (4) In the evaluation of complaints in the disciplinary process,
20 an individual under any of the following conditions is unable to
21 consent to the sexual activity:

22 (A) Asleep or unconscious.

23 (B) Incapacitated due to the influence of drugs, alcohol, or
24 medication.

25 (C) Unable to communicate due to a mental or physical
26 condition.

27 (b) The governing board of each community college district,
28 the Trustees of the California State University, the Regents of the
29 University of California, and the governing board of independent
30 postsecondary institutions, as defined in paragraph (3) of
31 subdivision (i) of Section 67381, shall adopt detailed and
32 victim-centered sexual assault policies and protocols that comport
33 with best practices and current professional standards. At a
34 minimum, the policies and protocols shall cover all of the
35 following:

36 (1) A policy statement on how the institution will protect the
37 confidentiality of victims.

38 (2) Initial officer response to a report of sexual assault, including
39 requirements specific to assisting the victim, evidence collection,
40 and the identification and location of witnesses.

- 1 (3) Response to stranger and nonstranger sexual assault.
- 2 (4) The preliminary victim interview, including the development
- 3 of a victim interview protocol, and a comprehensive followup
- 4 victim interview.
- 5 (5) Contacting and interviewing the accused.
- 6 (6) Medical forensic examinations and coordination with the
- 7 forensic examiner.
- 8 (7) Participation of victim advocates.
- 9 (8) Investigative considerations regarding alcohol- and
- 10 drug-facilitated sexual assault, including requirements specific to
- 11 evidence collection and forensic examination of victims.
- 12 (9) The role of the institutional staff supervision.
- 13 (10) Procedures for anonymous reporting of sexual assault.

14 (c) To the extent feasible, the governing board of each
 15 community college district, the Trustees of the California State
 16 University, the Regents of the University of California, and the
 17 governing board of independent postsecondary institutions, as
 18 defined in paragraph (3) of subdivision (i) of Section 67381, shall
 19 enter into memoranda of understanding, agreements, or similar
 20 partnerships with existing on-campus and community-based
 21 organizations, including rape crisis centers, to make services
 22 available to victims, including counseling, health, mental health,
 23 victim advocacy, and legal assistance.

24 (d) The governing board of each community college district,
 25 the Trustees of the California State University, the Regents of the
 26 University of California, and the governing board of independent
 27 postsecondary institutions, as defined in paragraph (3) of
 28 subdivision (i) of Section 67381, shall implement comprehensive
 29 prevention programs addressing sexual violence, domestic violence,
 30 dating violence, and stalking. A comprehensive prevention program
 31 shall include a range of prevention strategies, including, but not
 32 limited to, women’s empowerment programming, awareness raising
 33 campaigns, primary prevention, bystander intervention, and risk
 34 reduction.

35 SEC. 2. If the Commission on State Mandates determines that
 36 this act contains costs mandated by the state, reimbursement to
 37 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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