

ASSEMBLY BILL

No. 1466

Introduced by Assembly Member Burke

February 27, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1466, as introduced, Burke. Student safety: sexual assault.

Existing law 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 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.

Existing law also 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, in order to receive state funds for student financial assistance, to adopt policies concerning sexual assault, 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. Existing law also requires these governing boards, in order to receive those state funds, to adopt certain sexual assault policies and protocols, as specified, and requires the governing boards, to the extent feasible, to enter into memoranda of understanding or other agreements or collaborative

partnerships with on-campus and community-based organizations to refer students for assistance or make services available to students. Existing law also requires the governing boards, in order to receive those state funds, to implement comprehensive prevention and outreach programs addressing sexual assault, domestic violence, dating violence, and stalking.

This bill would make nonsubstantive changes in this provision.

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

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

1 SECTION 1. Section 67386 of the Education Code is amended
2 to read:

3 67386. (a) In order to receive state funds for student financial
4 assistance, the governing board of each community college district,
5 the Trustees of the California State University, the Regents of the
6 University of California, and the governing ~~boards of~~ *board of*
7 ~~each independent postsecondary institutions~~ *institution* shall adopt
8 a policy concerning sexual assault, domestic violence, dating
9 violence, and stalking, as defined in the federal Higher Education
10 Act of 1965 (20 U.S.C. Sec. 1092(f)) involving a student, both on
11 and off campus. The policy shall include all of the following:

12 (1) An affirmative consent standard in the determination of
13 whether consent was given by both parties to sexual activity.
14 “Affirmative consent” means affirmative, conscious, and voluntary
15 agreement to engage in sexual activity. It is the responsibility of
16 each person involved in the sexual activity to ensure that he or she
17 has the affirmative consent of the other or others to engage in the
18 sexual activity. Lack of protest or resistance does not mean consent,
19 nor does silence mean consent. Affirmative consent must be
20 ongoing throughout a sexual activity, and can be revoked at any
21 time. The existence of a dating relationship between the persons
22 involved, or the fact of past sexual relations between them, should
23 never by itself be assumed to be an indicator of consent.

24 (2) A policy that, in the evaluation of complaints in any
25 disciplinary process, it shall not be a valid excuse to alleged lack
26 of affirmative consent that the accused believed that the
27 complainant consented to the sexual activity under either of the
28 following circumstances:

1 (A) The accused’s belief in affirmative consent arose from the
2 intoxication or recklessness of the accused.

3 (B) The accused did not take reasonable steps, in the
4 circumstances known to the accused at the time, to ascertain
5 whether the complainant affirmatively consented.

6 (3) A policy that the standard used in determining whether the
7 elements of the complaint against the accused have been
8 demonstrated is the preponderance of the evidence.

9 (4) A policy that, in the evaluation of complaints in the
10 disciplinary process, it shall not be a valid excuse that the accused
11 believed that the complainant affirmatively consented to the sexual
12 activity if the accused knew or reasonably should have known that
13 the complainant was unable to consent to the sexual activity under
14 any of the following circumstances:

15 (A) The complainant was asleep or unconscious.

16 (B) The complainant was incapacitated due to the influence of
17 drugs, alcohol, or medication, so that the complainant could not
18 understand the fact, nature, or extent of the sexual activity.

19 (C) The complainant was unable to communicate due to a mental
20 or physical condition.

21 (b) In order to receive state funds for student financial assistance,
22 the governing board of each community college district, the
23 Trustees of the California State University, the Regents of the
24 University of California, and the governing ~~boards of~~ *board of*
25 ~~each independent postsecondary institutions~~ *institution* shall adopt
26 detailed and victim-centered policies and protocols regarding
27 sexual assault, domestic violence, dating violence, and stalking
28 involving a student that comport with best practices and current
29 professional standards. At a minimum, the policies and protocols
30 shall cover all of the following:

31 (1) A policy statement on how the institution will provide
32 appropriate protections for the privacy of individuals involved,
33 including confidentiality.

34 (2) Initial response by the institution’s personnel to a report of
35 an incident, including requirements specific to assisting the victim,
36 providing information in writing about the importance of preserving
37 evidence, and the identification and location of witnesses.

38 (3) Response to stranger and nonstranger sexual assault.

- 1 (4) The preliminary victim interview, including the development
2 of a victim interview protocol, and a comprehensive followup
3 victim interview, as appropriate.
- 4 (5) Contacting and interviewing the accused.
- 5 (6) Seeking the identification and location of witnesses.
- 6 (7) Providing written notification to the victim about the
7 availability of, and contact information for, on- and off-campus
8 resources and services, and coordination with law enforcement,
9 as appropriate.
- 10 (8) Participation of victim advocates and other supporting
11 people.
- 12 (9) Investigating allegations that alcohol or drugs were involved
13 in the incident.
- 14 (10) Providing that an individual who participates as a
15 complainant or witness in an investigation of sexual assault,
16 domestic violence, dating violence, or stalking will not be subject
17 to disciplinary sanctions for a violation of the institution's student
18 conduct policy at or near the time of the incident, unless the
19 institution determines that the violation was egregious, including,
20 but not limited to, an action that places the health or safety of any
21 other person at risk or involves plagiarism, cheating, or academic
22 dishonesty.
- 23 (11) The role of the institutional staff supervision.
- 24 (12) A comprehensive, trauma-informed training program for
25 campus officials involved in investigating and adjudicating sexual
26 assault, domestic violence, dating violence, and stalking cases.
- 27 (13) Procedures for confidential reporting by victims and third
28 parties.
- 29 (c) In order to receive state funds for student financial assistance,
30 the governing board of each community college district, the
31 Trustees of the California State University, the Regents of the
32 University of California, and the governing ~~boards of~~ *board of*
33 *each* independent postsecondary ~~institutions~~ *institution* shall, to
34 the extent feasible, enter into memoranda of understanding,
35 agreements, or collaborative partnerships with existing on-campus
36 and community-based organizations, including rape crisis centers,
37 to refer students for assistance or make services available to
38 students, including counseling, health, mental health, victim
39 advocacy, and legal assistance, and including resources for the
40 accused.

1 (d) In order to receive state funds for student financial assistance,
2 the governing board of each community college district, the
3 Trustees of the California State University, the Regents of the
4 University of California, and the governing ~~boards of~~ *board of*
5 *each* independent postsecondary ~~institutions~~ *institution* shall
6 implement comprehensive prevention and outreach programs
7 addressing sexual violence, domestic violence, dating violence,
8 and stalking. A comprehensive prevention program shall include
9 a range of prevention strategies, including, but not limited to,
10 empowerment programming for victim prevention, awareness
11 raising campaigns, primary prevention, bystander intervention,
12 and risk reduction. Outreach programs shall be provided to make
13 students aware of the institution's policy on sexual assault,
14 domestic violence, dating violence, and stalking. At a minimum,
15 an outreach program shall include a process for contacting and
16 informing the student body, campus organizations, athletic
17 programs, and student groups about the institution's overall sexual
18 assault policy, the practical implications of an affirmative consent
19 standard, and the rights and responsibilities of students under the
20 policy.
21 (e) Outreach programming shall be included as part of every
22 incoming student's orientation.