



NEW JERSEY

Association of State Colleges and Universities

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**Assembly Higher Education Committee
May 8, 2014
Assembly Bill No. 2118**

A-2118 would require the Secretary of Higher Ed to impose a \$10,000 fine against an institution of higher education that fails to “appropriately respond to and investigate an allegation of sexual assault made by a student enrolled in the institution against another such student, and to impose appropriate disciplinary action against the perpetrator if the allegation is substantiated.”

The state universities support the underlying intent of this legislation, which is to protect students from sexual assaults. The safety of our students is of paramount importance to the state colleges and universities. We applaud the sponsor for his concern for students and for his efforts to protect them.

Institutions of higher education already take many steps to ensure the safety of their students, faculty, staff and visitors. Some of these requirements are mandated by federal law.

For example, the state colleges and universities diligently inform all members of the public about crimes on their campuses. Under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 USC § 1092(f)), the institutions publish an Annual Security Report by October 1 of each year, which documents three calendar years’ of campus crime statistics. Schools make the report available to all current students and employees, and institutions also notify prospective students and employees about the report and provide a copy upon request.

Campuses with a police department or security department must maintain a daily crime log that contains specified information about all crimes that occur within the jurisdiction of, and reported to, the campus police or security (34 C.F.R. § 66.46(f)). The campus must make the crime log for the most recent 60-day period open to the public, while crime logs containing material more than 60 days old must be retained for seven years for public inspection upon two days’ notice.

Sex offenses are among seven major categories of crimes that institutions must report under the Clery Act. The categories are:

- 1) Criminal Homicide
- 2) Sex Offenses
- 3) Robbery
- 4) Aggravated Assault
- 5) Burglary
- 6) Motor Vehicle Theft
- 7) Arson

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Our colleges and universities also issue timely warnings about Clery Act crimes that pose a serious or ongoing threat to students and employees. Institutions must provide timely warnings in a manner likely to reach all members of the campus community, and each institution has sophisticated warning systems, including text messaging and e-mails.

Specifically with regard to sexual assaults, Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulations, 34 C.F.R. Part 106, and the DOE "Dear Colleague" letter issued in 2011 (<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>) set forth what the campus response should be to sexual harassment, which is defined as including all forms of sexual violence. The letter identifies what the institutions should do in terms of response, required length of time of response and process, appropriate accommodations (both personal and academic) and the institution's requirement to investigate. It also discusses fairness between respondent and complainant.

The Campus Save Act (SaVE), which was enacted in March 2013, amended the Clery Act and is the most recent and far-reaching law which protects students from sexual violence and harassment. <http://clerycenter.org/campus-sexual-violence-elimination-save-act>

SaVE requires colleges and universities to disclose incidents of domestic violence, dating violence, sexual assault, and stalking in annual campus crime statistic reports. Additionally, students or employees reporting victimization will be provided with their written rights to:

- Be assisted by campus authorities if reporting a crime to law enforcement
- Change academic, living, transportation, or working situations to avoid a hostile environment
- Obtain or enforce a no contact directive or restraining order
- Have a clear description of their institution's disciplinary process and know the range of possible sanctions
- Receive contact information about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available both on-campus and in the community

SaVE also clarifies minimum standards for institutional disciplinary procedures covering domestic violence, dating violence, sexual assault, and stalking to ensure that:

- Proceedings shall provide a prompt, fair, and impartial investigation and resolution and are conducted by officials receiving annual training on domestic violence, sexual assault, and stalking
- Both parties may have others present during an institutional disciplinary proceeding and any related meeting, including an advisor of their choice
- Both parties will receive written outcomes of all disciplinary proceedings at the same time

We are also closely following the guidelines and recommendations released by the White House last week to combat sexual assaults on college campuses. These guidelines include conducting anonymous climate surveys about the prevalence of sexual assault and the perceptions of campus climate; developing a sexual misconduct policy, including implementing policies for reporting and confidentially disclosing sexual violence; and entering agreements with local law enforcement and rape crisis centers.

In addition to these federal laws and guidelines, there is also a state law which impacts institutions' responses to sexual assaults. The New Jersey Campus Sexual Assault Victim's Bill of Rights Act (N.J.S.A. 18A:61E-1 *et seq.*) states that victims of sexual assaults that occur on the campus of any institution in New Jersey have the right to be free from pressure from campus personnel to report crimes if the victim does not wish to do so.

While we applaud the sponsor's intent to strengthen the laws against sexual violence, the state colleges and universities are concerned that language in the bill will make compliance difficult. For example, questions we have include who would decide what an "appropriate response" is? If an incident between two students occurred off campus, and was never reported to the institution or came to the attention of the institution, could the institution be fined for a failure to respond? What is the definition of "substantiated?" Is it an internal finding by the institution or a court decision? What constitutes "appropriate" disciplinary action and who decides what is not appropriate? Please keep in mind that all public university conduct policies have been reviewed by the Attorney General's Office and are therefore in compliance with the law.

As we continue to review the bill, we would be grateful for more time to examine the legislation and make recommendations to increase its effectiveness. We thank you for the opportunity to appear before you today.

ASCU
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