

GOVERNOR'S PROGRAM BILL

2015

MEMORANDUM

AN ACT to amend the education law, in relation to the implementation by colleges and universities of sexual assault, dating violence, domestic violence and stalking prevention and response policies and procedures; and to amend the civil practice law and rules, in relation to privacy of name in certain legal challenges to college/university disciplinary findings; and making appropriations therefor

Purpose:

This bill would require all colleges and universities in the State of New York (“institutions”) to implement uniform prevention and response policies and procedures relating to sexual assault, domestic violence, dating violence, and stalking.

Summary of Provisions:

Section 1 of the bill would amend the education law by adding a new article 129-B that provides the following:

A Statewide Uniform Definition of Affirmative Consent to Sexual Activity: This legislation implements a statewide definition of affirmative consent to read as follows:

“Affirmative consent is a knowing, voluntary and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity, or gender expression.”

Policy for Alcohol and/or Drug Use Amnesty: Provides that no bystander or victim that reports, in good faith, any incident of sexual assault, domestic violence, dating violence, and stalking, will be charged with an alcohol or drug use violation of the institution’s code of conduct.

Students' Bill of Rights: Requires that an institution adopt and implement a "Students' Bill of Rights" as part of its code of conduct. The Bill of Rights shall include, but is not limited to, the opportunity to report a sexual assault to law enforcement or the institution, to be protected from retaliation, and to access services and resources. The Bill of Rights shall be distributed widely to students and college community members and shall be sent electronically to students at least once annually.

Response to Reports: Requires institutions to notify students about rights and resources available to them and how the institution will respond to reports of sexual assault, domestic violence, dating violence and stalking. In addition, this section requires that victims receive a short statement of their rights at the first instance of disclosure of a sexual assault: "You have the right to make a report to university police or campus security, local law enforcement, and/or state police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution."

Campus Climate Assessments: Requires institutions to conduct a campus climate assessment developed using standard and commonly recognized research methods, and to conduct such assessment no less than every other year. Each institution shall ensure that answers to such surveys remain anonymous and no individual respondent is identified. Each institution shall also publish the high-level results of such surveys on their website provided that no personally identifiable information shall be shared.

Options for Confidential Disclosure: Requires institutions to utilize plain language to notify students about the laws surrounding confidentiality and privacy, to list confidential and private resources that students can reach out to, and to provide technical information about how institutions will respond to requests for confidentiality.

Student Onboarding and Ongoing Education Campaign: Requires institutions to develop and implement a year-around, ongoing campaign on sexual assault, domestic violence, dating violence and stalking education and prevention.

Privacy in Legal Challenges to Conduct Findings: Requires that absent a waiver or court determination, a student's identifying information is deemed presumptively confidential and shall not be included in any proceedings brought against an institution which seeks to vacate or modify a finding that a student was responsible for violating the institution's rules.

Reporting Aggregate Data to the State Education Department: Requires institutions to annually report aggregate data and information about reports of domestic violence, dating violence, stalking, or sexual assault. This shall include the total number of reports received, open and closed investigations, outcomes of such investigations, and penalties imposed on perpetrators.

Section 2 of the bill would make conforming changes to the civil practice law and rules to protect the privacy of reporting individuals.

Sections 3 and 4 of the bill would establish and fund a new Sexual Assault Victims Unit within the Division of State Police.

Section 5 of the bill would provide a new \$4.5 million appropriation to support services and expenses of rape crisis centers, including but not limited to prevention, education, and victim services on campuses across the State.

Section 6 of the bill would provide a \$1 million appropriation for college campuses to support training and other expenses related to this legislation.

Section 7 of the bill would provide that the bill take effect in 90 days, except for provisions related to campus climate assessment and reporting of aggregate data which shall take place after a year. The appropriations added in sections 4, 5 and 6 of the bill would take effect immediately.

Existing Law:

These provisions are new.

Statement in Support:

Sexual assault, domestic violence, dating violence and stalking affect thousands of college students in New York State and across the nation. In addition to the trauma caused by such violence, many victims drop out of school, experience difficulty working, and see promising opportunities cut short. While it is not just college and university students that experience these crimes, these institutions have unique opportunities to educate members of their communities about these crimes and incidents so that we may better safeguard students.

Institutions can act to lessen the incidence of these crimes and respond strongly when they learn of such incidents. This legislation would build on the reforms already made within the public university system by enacting similar policies in all colleges and universities across the State.

Budget Implications:

This bill includes appropriations of \$4.5 million to the State Police, \$4.5 million to rape crisis centers, and \$1 million to college campuses.

Effective Date:

This act shall take effect in 90 days except for provisions related to campus climate assessment and reporting of aggregate data which shall take place after a year. The appropriations added in sections 4, 5 and 6 of the bill shall take effect immediately.