

HOUSE BILL No. 2732

By Committee on Federal and State Affairs

3-4

1 AN ACT concerning postsecondary educational institutions; relating to
2 student safety; requiring postsecondary educational institutions to
3 implement sexual violence policies and protocols in order to receive
4 certain state appropriations.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. (a) As used in this section:

8 (1) "Affirmative consent" means affirmative, conscious and voluntary
9 agreement to engage in sexual activity. "Affirmative consent" does not
10 mean silence or a lack of protest or resistance.

11 (2) "Postsecondary educational institution" means the same as
12 provided in K.S.A. 74-3201b, and amendments thereto.

13 (3) "Sexual assault," "domestic violence," "dating violence" and
14 "stalking" mean the same as such terms are defined in the federal higher
15 education act of 1965, 20 U.S.C. § 1092(f), as in effect on January 1, 2020.

16 (b) (1) For fiscal year 2021, and each fiscal year thereafter, the
17 director of accounts and reports shall not disburse any moneys
18 appropriated to a postsecondary educational institution for grants or
19 scholarships if the state board of regents has determined that such
20 postsecondary educational institution is not in compliance with the
21 requirements of this section.

22 (2) (A) The state board of regents shall adopt rules and regulations to
23 establish a reporting system to accurately determine on an annual basis
24 whether each postsecondary educational institution is in compliance with
25 the requirements of this section.

26 (B) Upon a determination that a postsecondary educational institution
27 is not in compliance with the requirements of this section, the state board
28 of regents shall send the director of accounts and reports notice of such
29 noncompliance.

30 (c) Each postsecondary educational institution shall adopt a policy
31 concerning sexual assault, domestic violence, dating violence and stalking
32 involving students, both on and off campus. The policy shall include the
33 following:

34 (1) An affirmative consent standard that can be used to determine
35 whether consent was given by all parties to a sexual activity. Such
36 affirmative consent standard shall be based on, but not be limited to, the

1 following principles:

2 (A) It is the responsibility of each individual involved in a sexual
3 activity to ensure that each such individual has the affirmative consent of
4 the other or others to engage in the sexual activity;

5 (B) affirmative consent shall be ongoing throughout a sexual activity
6 and may be revoked at any time; and

7 (C) the existence of a dating relationship between the individuals
8 involved, or the existence of past sexual relations between the individuals,
9 should not be assumed to be an indicator of affirmative consent;

10 (2) a provision stating that a lack of affirmative consent shall not be
11 excused during any disciplinary proceeding resulting from a complaint if
12 the accused believed that the complainant consented to a sexual activity, or
13 if the accused knew or reasonably should have known that the complainant
14 was unable to consent to a sexual activity, under any of the following
15 circumstances:

16 (A) The accused's belief in affirmative consent arose from the
17 intoxication or recklessness of the accused;

18 (B) the accused did not take reasonable steps, in the circumstances
19 known to the accused at the time, to ascertain whether the complainant
20 affirmatively consented;

21 (C) the complainant was asleep or unconscious;

22 (D) the complainant was incapacitated due to the influence of drugs,
23 alcohol or medication, so that the complainant could not understand the
24 fact, nature or extent of the sexual activity; or

25 (E) the complainant was unable to communicate due to a mental or
26 physical condition; and

27 (3) a provision stating that the standard of proof of preponderance of
28 the evidence shall be used in determining whether the elements of the
29 complaint against the accused have been demonstrated.

30 (d) Each postsecondary educational institution shall adopt detailed
31 and victim-centered protocols regarding sexual assault, domestic violence,
32 dating violence and stalking involving students. Such protocols shall
33 comport with best practices and current professional standards and shall
34 include, but not be limited to, the following:

35 (1) A requirement that the postsecondary educational institution's
36 personnel shall provide appropriate protections for the privacy of
37 individuals involved, including confidentiality;

38 (2) requirements concerning the initial response by the postsecondary
39 educational institution's personnel to any report of an incident, including
40 requirements specific to assisting the complainant, providing information
41 in writing to the complainant about the importance of preserving evidence
42 and identifying and locating witnesses;

43 (3) procedures for conducting preliminary complainant interviews

1 and follow-up complainant interviews, as appropriate;

2 (4) procedures for contacting and interviewing the accused and
3 witnesses;

4 (5) procedures for providing written notification to the complainant
5 about the availability of, and contact information for, on-campus and off-
6 campus resources and services, and coordination with law enforcement, as
7 appropriate;

8 (6) a requirement that the postsecondary educational institution
9 provide advocates and other supporting individuals to the complainant and
10 the accused throughout the investigation and adjudication process;

11 (7) procedures for investigating allegations that alcohol or drugs were
12 involved in the incident;

13 (8) procedures that ensure an individual who participates as a
14 complainant or witness in an investigation of sexual assault, domestic
15 violence, dating violence or stalking shall not be subject to disciplinary
16 sanctions for a violation of the institution's student conduct policy at or
17 near the time of the incident, unless the institution determines that the
18 violation was egregious, including, but not limited to, an action that places
19 the health or safety of any other individual at risk or involves plagiarism,
20 cheating or academic dishonesty; and

21 (9) a comprehensive, trauma-informed training program for
22 postsecondary educational institution personnel who are involved in
23 investigating, adjudicating or otherwise supervising cases of sexual
24 assault, domestic violence, dating violence and stalking.

25 (e) Each postsecondary educational institution shall, to the extent
26 feasible, enter into memoranda of understanding, agreements or
27 collaborative partnerships with existing on-campus and community-based
28 organizations, including rape-crisis centers, to refer students for assistance
29 or make services available to students, including, but not limited to, the
30 accused. Such services shall include counseling, health, mental health,
31 victim advocacy and legal assistance resources.

32 (f) Each postsecondary educational institution shall implement
33 comprehensive prevention and outreach programs addressing sexual
34 assault, domestic violence, dating violence and stalking.

35 (1) A comprehensive prevention program shall include a range of
36 prevention strategies, including, but not limited to, empowerment
37 programming for victim prevention, awareness-raising campaigns, primary
38 prevention, bystander intervention and risk reduction.

39 (2) Comprehensive outreach programs shall be provided to current
40 students and shall also be included as part of every incoming student's
41 orientation. Comprehensive outreach programs shall include, but not be
42 limited to, informing students about the following:

43 (A) The rights and responsibilities of students under the institution's

1 policy on sexual assault, domestic violence, dating violence and stalking,
2 including the practical implications of the institution's affirmative consent
3 standard;

4 (B) the process for contacting and informing the student body,
5 campus organizations, athletic programs and student groups about the
6 institution's policy on sexual assault, domestic violence, dating violence
7 and stalking;

8 (C) on-campus and off-campus resources relating to sexual assault,
9 domestic violence, dating violence and stalking;

10 (D) prevention and bystander intervention training focused on sexual
11 assault, domestic violence, dating violence and stalking; and

12 (E) the warning signs of intimate partner and dating violence,
13 including information concerning the violence that can occur between
14 individuals in a current or previous intimate or dating relationship.

15 (g) The state board of regents may adopt rules and regulations as
16 necessary to administer the provisions of this section.

17 Sec. 2. This act shall take effect and be in force from and after its
18 publication in the statute book.