
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1005 Session of
2015

INTRODUCED BY WILLIAMS, FONTANA, TARTAGLIONE, COSTA, FARNESE,
HUGHES, RAFFERTY AND HAYWOOD, SEPTEMBER 16, 2015

REFERRED TO EDUCATION, SEPTEMBER 16, 2015

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An
2 act relating to the public school system, including certain
3 provisions applicable as well to private and parochial
4 schools; amending, revising, consolidating and changing the
5 laws relating thereto," providing for sexual violence
6 policies at institutions of higher education.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. The act of March 10, 1949 (P.L.30, No.14), known
10 as the Public School Code of 1949, is amended by adding an
11 article to read:

12 ARTICLE XX-H

13 SEXUAL VIOLENCE POLICIES AT

14 INSTITUTIONS OF HIGHER EDUCATION

15 Section 2001-H. Scope of article.

16 This article relates to colleges and universities adopting
17 affirmative consent policies in determining whether or not a
18 sexual activity is consensual and victim-centered procedures.

19 Section 2002-H. Definitions.

20 The following words and phrases when used in this article

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Academic year." A 12-month period commencing on or after
4 August 1 of the calendar year.

5 "Accused." An individual who is accused by a complainant of
6 engaging in sexual violence.

7 "Affirmative consent." An affirmative, conscious and
8 voluntary agreement to engage in sexual activity. The term does
9 not include any of the following:

10 (1) Lack of protest or resistance.

11 (2) Silence.

12 "Complainant." An individual who alleges to be a victim of
13 sexual violence perpetrated by the accused.

14 "Department." The Department of Education of the
15 Commonwealth.

16 "Independent institution of higher education." As defined in
17 the act of November 29, 2004 (P.L.1383, No.180), known as the
18 Uniform Crime Reporting Act.

19 "Institution of higher education." An independent
20 institution of higher education, a community college, a State-
21 related institution or a member institution of the State System
22 of Higher Education.

23 "Private licensed school." As defined in the act of December
24 15, 1986 (P.L.1585, No.174), known as the Private Licensed
25 Schools Act.

26 "Program." A comprehensive prevention and outreach program
27 established under section 2006-H(a).

28 "Sexual violence." An act of sexual violence as defined in
29 42 Pa.C.S. § 6402 (relating to definitions).

30 "Student." A person who is enrolled on a full-time or part-

1 time basis at an institution of higher education or private
2 licensed school.

3 Section 2003-H. Affirmative consent policies.

4 (a) Affirmative consent.--An institution of higher education
5 or a private licensed school shall adopt affirmative consent
6 policies concerning sexual violence occurring on campus and off
7 campus. The institution of higher education or private licensed
8 school shall adopt policies for all of the following:

9 (1) Determining whether or not affirmative consent was
10 given by each individual engaged in a sexual activity in
11 accordance with all of the following:

12 (i) Affirmative consent must be ongoing throughout a
13 sexual activity and can be revoked at any time.

14 (ii) The existence of a dating relationship or past
15 sexual activity between the individuals engaged in a
16 sexual activity is not an indicator of affirmative
17 consent.

18 (iii) Before and during a sexual activity, it is the
19 responsibility of each individual engaged in a sexual
20 activity to ensure that he or she has the affirmative
21 consent of the other to engage or continue to engage in a
22 sexual activity.

23 (2) Determining whether or not the elements of the
24 complaint against the accused have been established by a
25 preponderance of the evidence by the complainant.

26 (b) Invalid defenses.--

27 (1) In evaluating a sexual violence complaint during a
28 disciplinary proceeding, an institution of higher education
29 or a private licensed school may not accept any of the
30 following as a valid defense to an alleged lack of

1 affirmative consent:

2 (i) The accused believed that the complainant
3 affirmatively consented to a sexual activity due to the
4 intoxication or recklessness of the accused.

5 (ii) The accused did not take reasonable steps, in
6 the circumstances known to the accused at the time, to
7 ascertain whether or not the complainant affirmatively
8 consented.

9 (2) In evaluating a sexual violence complaint during a
10 disciplinary proceeding, an institution of higher education
11 or private licensed school may not accept as a valid defense
12 that the accused believed that the complainant affirmatively
13 consented to a sexual activity if the accused knew or should
14 have reasonably known that the complainant was unable to
15 consent to a sexual activity under any of the following
16 circumstances:

17 (i) The complainant was asleep or unconscious.

18 (ii) The complainant was incapacitated due to the
19 influence of drugs, alcohol or medication to the degree
20 that the complainant could not understand the fact,
21 nature or extent of the sexual activity.

22 (iii) The complainant was unable to communicate due
23 to a mental or physical condition.

24 Section 2004-H. Victim-centered procedures.

25 An institution of higher education or a private licensed
26 school shall adopt detailed, victim-centered procedures
27 regarding sexual violence in accordance with the best practices
28 and current professional standards. The institution of higher
29 education or private licensed school shall adopt procedures for
30 all of the following:

- 1 (1) Providing appropriate protections for the privacy of
2 victims of sexual violence, including confidentiality.
- 3 (2) Initially responding to an incident of sexual
4 violence by the personnel of the institution of higher
5 education or private licensed school, including reporting
6 the incident, assisting the victim of sexual violence,
7 providing information in writing about the importance of
8 preserving evidence.
- 9 (3) Responding to stranger and nonstranger sexual
10 violence.
- 11 (4) Conducting a preliminary interview of a victim of
12 sexual violence and a comprehensive followup interview of the
13 victim of sexual violence, if applicable.
- 14 (5) Contacting and interviewing an accused.
- 15 (6) Seeking the identification and location of
16 witnesses.
- 17 (7) Providing written notification to a victim of sexual
18 violence about the availability of on-campus and off-campus
19 resources and services for victims of sexual violence.
- 20 (8) Recruiting victim advocates to support a victim of
21 sexual violence.
- 22 (9) Investigating whether or not drugs, alcohol or
23 medication were involved in an incident of sexual violence.
- 24 (10) Providing that an individual who participates as a
25 complainant or witness in an investigation of sexual violence
26 will not be subject to disciplinary sanctions for a violation
27 of student conduct policy at or near the time of the incident
28 of sexual violence, unless the institution determines that
29 the violation was egregious, including an action that places
30 the health or safety of any other person at risk or involves

1 plagiarism, cheating or academic dishonesty.

2 (11) Providing for the role of staff supervision at the
3 institution of higher education or private licensed school.

4 (12) Establishing a comprehensive, trauma-informed
5 training program for campus officials involved in
6 investigating and adjudicating sexual violence.

7 Section 2005-H. Collaborative partnerships.

8 An institution of higher education or a private licensed
9 school shall, to the extent feasible, enter into collaborative
10 partnerships with existing on-campus organizations and
11 community-based organizations, including rape crisis centers, to
12 refer students for assistance or make services available to
13 students. The services shall include counseling, physical and
14 mental health, victim advocacy and legal assistance for the
15 complainant and accused.

16 Section 2006-H. Comprehensive prevention and outreach program.

17 (a) Establishment.--In addition to the education program
18 established under section 2003-G, an institution of higher
19 education or a private licensed school shall establish a
20 comprehensive prevention and outreach program addressing sexual
21 violence. The program shall include a range of prevention
22 strategies, including all of the following:

23 (1) Empowerment programming for victim prevention.

24 (2) Awareness raising campaigns.

25 (3) Primary prevention, bystander intervention and risk
26 reduction.

27 Section 2007-H. Notice of sexual violence policies.

28 An institution of higher education or a private licensed
29 school shall provide notice to the student body, campus
30 organizations, athletic programs and student groups of all of

1 the following:

2 (1) The sexual violence policies of the institution of
3 higher education or private licensed school.

4 (2) The practical implications of the affirmative
5 consent policies required by the institution of higher
6 education or private licensed school under section 2003-H and
7 the rights and responsibilities of students under the
8 affirmative consent policies.

9 Section 2008-H. Duties of department.

10 The department shall:

11 (1) Ensure compliance with this article.

12 (2) Solicit the cooperation of other agencies,
13 institutions and organizations, both public and private, in
14 carrying out the provisions of this article.

15 (3) Otherwise administer the provisions of this article.

16 Section 2009-H. Report.

17 An institution of higher education or a private licensed
18 school shall submit a report to the department on the
19 implementation of the provisions of this article as required by
20 the department.

21 Section 2010-H. Financial aid prohibited.

22 An institution of higher education or a private licensed
23 school that fails to comply with the provisions of this article
24 may not receive Commonwealth-funded financial aid administered
25 by the Pennsylvania Higher Education Assistance Agency.

26 Section 2011-H. Applicability.

27 This act shall apply to academic year 2016-2017 and each
28 academic year thereafter.

29 Section 2. This act shall take effect in 60 days.