

HB133/aHFI#1/aSJC/aSFI#1 strikes the list of conditions for which a person can never give affirmative consent, rewriting the subsection to state “affirmative consent can never be given by a person who is unable to communicate”.

Synopsis of SJC Amendment

Senate Judiciary Committee Amendment to House Bill 133 as amended changes the type of policies and procedures public or private postsecondary educational institutions and PED must adopt for the investigation of and disciplinary procedures addressing allegations of sexual assault, dating violence, and harassment or stalking to “trauma informed.” Prior to the amendment the policies were to be “complainant-centered.”

HB133/aHFI#1/aSJC adds definitions for “trauma informed policy,” which means a program or system that realizes the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in clients, families, staff, and others involved with the system; responds by fully integrating knowledge about trauma into policies, procedures and practices; and seeks to actively resist retraumatization.

“Regent” is stricken from the list of individuals to be included in PED policies and procedures. The bill retains “student, faculty member, employee, school volunteer, or contractor”.

Synopsis of SFI#1 Amendment

House Floor Amendment #1 to House Bill 133 adds to schools entering memoranda of understanding, agreements or collaborative partnerships with on-campus and community-based organizations, including rape crisis centers, shall make services available to the accused and the accuser. Services to the accuser is added in this amendment.

HB133/aHFI#1 strikes language requiring “students entering the eighth grade in the 2012-2013 school year” to take a course in health education. Language is added “students entering the seventh grade in the in the 2019-2020 school year or a subsequent school year” shall take a course in health education.

Synopsis of Original Bill

House Bill 133 enacts new statutory requirements for public or private post-secondary educational institutions and for public schools.

Public or private post-secondary educational institutions that receive state funds for student financial aid shall adopt detailed, complainant-centered policies and procedures to address allegations of sexual assault, domestic violence, dating violence and harassment, or stalking. The policies are to cover students, faculty, employees, contractors, and regents, both on and off campus.

PED shall adopt detailed, complainant-centered policies and procedures for the investigation of and disciplinary procedures addressing allegations of sexual assault, domestic violence, dating violence and harassment or stalking involving a student, faculty member, employee, school volunteer, contractor or regent, both on and off campus.

HB 133 amends Section 22-13-1.1 NMSA 1978, health education graduation requirement. Health education courses must also include content on affirmative consent. The following must be included: a standard of affirmative consent defined as an affirmative, conscious and voluntary agreement to engage in sexual activity; an emphasis that

- it is the responsibility of each person involved in the sexual activity to ensure the affirmative consent of all other participants;
- affirmative consent cannot be implied, assumed, or inferred from silence or a lack of protest or resistance;
- affirmative consent can be revoked at any time;
- the existence of a dating relationship or past sexual relations is not affirmative consent;
- affirmative consent can never be given by a person who is asleep, unconscious, incapacitated due to drugs, alcohol, or medication or unable to communicate due to a mental or physical condition.

FISCAL IMPLICATIONS

HB 133 requires public and private post-secondary education institutions and PED to adopt detailed, complainant-centered policies and procedures to address allegations of sexual assault, domestic violence, dating violence and harassment, or stalking. PED will have to incorporate the affirmative consent requirement in health education classes.

These requirements can be accomplished with existing staff and resources.

SIGNIFICANT ISSUES

According to the Centers for Disease Control and Prevention (CDC) *STOP SV: A Technical Package to Prevent Sexual Violence*, 2016, approximately 1-in-5 women in the U.S. have experienced rape or attempted rape in her lifetime with approximately 44 percent having experienced other forms of sexual violence. Approximately 11 percent of men have experienced unwanted sexual contact and 13 percent have experienced other unwanted sexual incidents.

As reported in the *2017 New Mexico Youth Risk & Resilience Survey* of New Mexico high school students, 8.0 percent reported being physically forced to have sexual intercourse, 9.9 percent reported experiencing sexual violence at least once in the past twelve months, and 11.0 percent experienced physical dating violence at least once in the past twelve months.

The National Conference of State Legislators reports sexual violence results in significant health, social and economic costs. In addition to physical injuries, victims may experience psychological consequences including depression, anxiety, suicidal thoughts and post-traumatic stress disorder. Victims of sexual violence, on average, have more and costlier medical care visits compared to non-victims. One 2009 study in Iowa found that costs stemming from sexual violence totaled \$4.7 billion annually, about \$1,580 per resident, in quality of life, work loss, medical and criminal costs.

Per the CDC promoting healthy sexuality, including comprehensive sex education that addresses sexual communication, sexual respect and consent, have been shown to reduce high risk sexual behavior, a clear risk factor for sexual violence victimization and perpetration.

ADMINISTRATIVE IMPLICATIONS

PED will be need to collaborate with other agencies in the promulgation of rules establishing the detailed, complainant-centered policies and processes.

To incorporate affirmative consent in the already mandated training in health education class, PED will need to hold public hearings and communicate the changes to district and charter schools. The course description in the Student Teacher Accountability Reporting Systems will need to be amended.

OTHER SUBSTANTIVE ISSUES

All post-secondary institutions receiving federal financial aid funds are required to adhere to the following federal regulations: Title IX, the Campus Sexual Violence Elimination (SaVE) Act, the Violence Against Women (VAWA) Act, and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. These federal requirements overlap with some of the requirements found in this bill. All New Mexico public post-secondary institutions receive federal financial aid funds.

Per the Elementary and Secondary Education Act, reauthorized as the Every Student Succeeds Act, Section 8546 (U.S.C. 7926), each local educational agency shall have in place a policy in effect that prohibits any individual who is a school employee, contractor, or agent from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such a school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law.

VKH/gb/al/sb