

LFC Requester:	Connor Jorgensen
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 1/25/2024

Bill No: HB 151

Sponsor: Reps. Thompson, Little,
Andrea Romero, Gurrola, and
Chasey
Short Title: Post-Secondary Affirmative
Consent Policies

**Agency Name
and Code** University of New Mexico-952
Number: _____
Person Writing Lenaya Montoya
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 151 requires post-secondary institutions that receive state funds to adopt trauma-informed policies and responses for the investigation of allegations of sexual assault, domestic and dating violence, stalking and harassment. HB 151 requires that institution policies utilize affirmative consent standards in determining if consent was given by all parties to sexual activity. HB 151 also establishes a preponderance of evidence standard in determining if policies have been violated. HB 151 requires a trauma-informed response training program for post-secondary educational institution employees that investigate and adjudicate sexual assault, domestic and dating violence, staking and harassment cases. Additionally, HB 151 requires that post-secondary educational institutions implement comprehensive prevention and outreach programs that include programming for students, staff, and faculty regarding awareness of sexual assault, domestic and dating violence, staking and harassment. Programming must also include primary prevention, bystander intervention and empowerment/risk reduction.

FISCAL IMPLICATIONS

UNM Office of Equal Opportunity-

There is no appropriation on this bill. Post-secondary educational institutions that receive federal financial aid or funding are already required to provide trauma informed policies and response and primary prevention pursuant to the Violence Against Women Act (VAWA) amendments to the Jeanne Clery Act (Clery Act) (20 U.S.C § 1092 and regulations at 34 CFR 668.46). However, providing trauma-informed training to those that investigate and adjudicate allegations of sexual assault, domestic and dating violence, stalking and harassment (this includes campus law enforcement, Title IX and civil rights investigators, hearing officers, advisors, sanctioners, and those involved in appellate process) can be costly, particularly for in-person training opportunities.

Similarly, providing training to all students, staff and faculty on risk reduction, primary prevention and bystander intervention can also be costly and labor intensive particularly in large post-secondary institutions. Dedicated staff and training dollars will make programming and training consistent and sustainable.

UNM Police Department-

There is no appropriation that accompanies this bill. However, there will be a cost to the institutions to develop and implement policies and procedures. There will also be costs related to staff time, materials, and training, especially for law enforcement.

SIGNIFICANT ISSUES

UNM Police Department-

The requirements of this bill reflect the current “Gold Standard” or benchmark that the University of New Mexico has already adopted. Moreover, UNM created the SMART (Sexual Misconduct & Assault Response Team) about a decade ago, which includes both on-campus and community-based organizations.

A more detailed description of a comprehensive, trauma-informed response training program is needed and the frequency of this training or advanced training in this area should be included. Better description of institutions providing continued active training on affirmative consent policies. It should also be noted that approximately 800 public institutions have adopted the affirmed consent standard since 2014.

Inclusive language, especially related to identity characteristics should be included in the bill.

The availability of advocates especially after hours should also be included in the bill that will be working with law enforcement.

PERFORMANCE IMPLICATIONS

UNM Police Department-

Post-secondary educational institutions would be required to also be diligent in the reporting and review of these type of incidents/crimes. However, all public post-secondary educational institutions under the Clery Act should have already implemented these practices.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

UNM Office of Equal Opportunity-

HB 151 sets forth definitions of sexual assault, domestic violence and stalking that match those set forth in NM criminal statutes for those offenses.

However, the VAWA amendments to the Clery Act, in some cases utilize different definitions for classifying and responding to sexual assault and domestic and dating violence and stalking. Post-secondary educational institutions must utilize the Clery Act definitions of these terms if the institution accepts federal financial aide or other funding.

The proposed definition of dating violence set forth in HB 151 (there is currently no separate state law definition of dating violence but dating violence is defined as domestic violence and described in NM Crimes Against Household Members NMSA §30-3-11) matches the definition set forth in the Clery Act.

The proposed definition for stalking set forth in HB 151 is different than the definition in the Clery Act. The NM stalking criminal stalking definition is used in HB 151. The NM stalking definition requires “a course of conduct” that would place an individual in apprehension of death, great bodily injury. The federal Clery Act defines stalking as “two or more acts” that would “subject a reasonable person to emotional distress.” The Clery Act definition of stalking is a broader definition that encompasses a wider range of stalking behaviors and requires only that the Complainant suffers emotional distress versus fear of death or great bodily harm.

Harmonizing definitions in HB 151 with federal requirements contained in the Clery Act, may provide consistency and clarity for post-secondary educational institutions that must comply with both federal and state law.

UNM Police Department-

All crimes noted are already delineated in the New Mexico state statutes and are reflected in many aspects within the university to include existing policies, patterns, and practices.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Many post-secondary educational institutions (UNM) already utilize affirmative consent definitions and practices, preponderance of the evidence standards, and trauma-informed approaches. However, a state law will ensure that all post-secondary educational institutions in NM are consistent in approach. If this bill would not be enacted there would not be a state-wide requirement for affirmative consent, trauma-informed polices and processes etc. and to address these types of incidents/crimes.