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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**56th Legislature, 2nd Session, 2024**

<b>Bill Number</b>	<u>HB151</u>	<b>Sponsor</b>	<u>Thomson/Little/Romero/Gurrola/Chasey</u>
<b>Tracking Number</b>	<u>.227254.1</u>	<b>Committee Referrals</b>	<u>HHHC;SEC/SJC</u>
<b>Short Title</b>	<u>Post-Secondary Affirmative Consent Policies</u>		
<b>Analyst</b>	<u>Davalos</u>	<b>Original Date</b>	<u>1/30/2024</u>
		<b>Last Updated</b>	<u>2/6/2024</u>

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## **BILL SUMMARY**

### Synopsis of Bill

House Bill 151 (HB151) would require postsecondary educational institutions that receive state funds for student financial assistance to adopt trauma-informed policies and procedures that address affirmative consent and prevention of sexual assault, domestic violence, dating violence, harassment or stalking involving a student, faculty member, employee, contractor, or regent. HB151 would also require public postsecondary educational institutions to implement a comprehensive, trauma-informed training program for employees involved in investigating sexual assault cases; make health care, mental health care, and related services available to impacted parties at no cost; and implement comprehensive prevention outreach programs that are part of student orientation.

## **FISCAL IMPACT**

HB151 does not contain an appropriation. However, it appears HB151 would have a fiscal impact on postsecondary institutions that will vary depending on the postsecondary institution's existing resources, as HB151 requires postsecondary institutions that receive state funds to "make services available to parties, including counseling, health care, complainant advocacy, legal assistance and resources for the responding party and the complainant at no cost."

New Mexico Independent Community Colleges (NMICC) notes there will be some financial impact on institutions as they update their materials to conform to the definitions in HB151. The New Mexico Institute of Mining and Technology (NMIMT), New Mexico State University (NMSU), and the University of New Mexico (UNM) all note recurring costs to meet the bill's requirements, reporting annual costs ranging from \$330 thousand to \$1 million. San Juan College noted the financial impact on their institution would be minimal as the college already complies with the stipulations of HB151 and would only need to realign their student and employee handbooks with the definitions provided in HB151.

## **SUBSTANTIVE ISSUES**

HB151 would require public postsecondary educational institution policies and procedures to include an affirmative consent standard in determining that consent has been given by all parties participating in sexual activity. The bill specifies policies and procedures must include that affirmative consent can never be given if a party is asleep, unconscious, incapacitated due to the influence of drugs, alcohol, or medication or is unable to communicate due to mental or physical conditions. HB151 stipulates that affirmative consent cannot be implied, assumed, or inferred from silence or lack of protest or resistance, and consent can be revoked at any time. Per HB151, the policies and procedures would confirm that the existence of a dating relationship or past sexual relations between the parties should never be assumed to be an indicator of consent.

**Affirmative Consent.** As college campuses seek to protect their students from sexual violence and better educate students about their rights and resources, many educational institutions have opted to include affirmative consent, or “yes means yes,” policies and standards. HB151 defines "affirmative consent" to mean affirmative, conscious and voluntary agreement to engage in sexual activity. In addition to postsecondary educational institutions addressing affirmative consent in their policies, some states have enacted legislation that sets affirmative consent as the standard. For example, in 2014, California became the first state to require universities receiving state funds to use an affirmative consent standard for determining whether consent was given by both parties to sexual activity.

**Prevalence of Sexual Violence.** Understanding the pervasiveness of sexual violence on school campuses is difficult as researchers and institutions acknowledge this is an underreported crime. Even without being comprehensive, data continues to show that students are experiencing sexual violence at high rates. The New Mexico Department of Health (NMDOH) reports the following data as relates to sexual violence:

- Sexual violence is common. Over half of women and almost 1 in 3 men have experienced sexual violence involving physical contact during their lifetimes. 1 in 4 women and about 1 in 26 men have experienced completed or attempted rape. Additionally, 1 in 3 women and about 1 in 9 men experienced sexual harassment in a public place.
- Sexual violence starts early. More than 4 in 5 female rape survivors reported that they were first raped before age 25 and almost half were first raped as a minor (i.e., before age 18). Nearly 8 in 10 male rape survivors reported that they were made to penetrate someone before age 25 and about 4 in 10 were first made to penetrate as a minor.
- In 2021, 9.8 percent of New Mexico high school students reported being forced to have sexual intercourse. In 2019, the most recent year that national data is available, 9.1 percent of New Mexico high school students and 7.3 percent of U.S. students reported ever being physically forced to have sexual intercourse, indicating a higher risk of forced sexual intercourse for students in New Mexico than the U.S. (New Mexico Risk and Resiliency Survey, NMDOH and PED).
- Sexual violence disproportionately affects some groups. Women and racial and ethnic minority groups experience a higher burden of sexual violence. For example, more than 2 in 5 non-Hispanic American Indian or Alaska Native and non-Hispanic multiracial women were raped in their lifetime.

## **ADMINISTRATIVE IMPLICATIONS**

Postsecondary educational institutions noted HB151 would require hiring additional staff for annual training and trauma-informed investigations.

The New Mexico Higher Education Department (HED) notes HB151 would require additional procedures to those already required as mandated by [Title IX of the Education Amendments of 1972](#), the VAWA, and the Clery Act. HED notes HB151 may cause conflict between HB151 requirements and the current institutional policies. HED also notes they may need to develop a new rule to ensure compliance at higher education institutions.

UNM notes that HB151 reflects the current “Gold Standard” or benchmark that UNM has already adopted. Moreover, UNM created the [Sexual Misconduct & Assault Response Team \(SMART\)](#) about a decade ago, which includes both on-campus and community-based organizations. SMART is an immediate victim services response team with goals of providing ongoing training for all campus law enforcement and campus security and providing 24-hour access to confidential victim services and advocacy.

NMSU confirmed they are currently using an affirmative consent standard when evaluating allegations of sexual misconduct and trains students on this standard. NMSU also uses a preponderance of the evidence standard for investigations, as outlined in their [Administrative Rules and Procedures \(3.25, NMSU\)](#). NMIMT notes they are currently using a clear and convincing standard of evidence for resolving complaints under their Sexual Misconduct policy; with HB151 the institute may need to change its standard of evidence to preponderance of the evidence standard.

#### **SOURCES OF INFORMATION**

- LESC Files
- Department of Justice (DOJ)
- Higher Education Department (HED)
- New Mexico Independent Community Colleges (NMICC)
- New Mexico Institute of Mining and Technology (NMIMT)
- New Mexico State University (NMSU)
- University of New Mexico (UNM)

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