

AMENDED IN ASSEMBLY AUGUST 4, 2014

AMENDED IN ASSEMBLY JUNE 18, 2014

AMENDED IN SENATE MAY 27, 2014

AMENDED IN SENATE MARCH 27, 2014

## **SENATE BILL**

**No. 967**

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### **Introduced by Senators De León and Jackson**

(Principal coauthor: Assembly Member Lowenthal)

**(Coauthors: Senators Beall, Cannella, Evans, Galgiani, Monning,  
Pavley, Torres, and Wolk)**

(Coauthors: Assembly Members Ammiano, Fong, Gonzalez,  
Quirk-Silva, Skinner, Ting, and Williams)

February 10, 2014

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An act to add Section 67386 to the Education Code, relating to student safety.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 967, as amended, De León. Student safety: sexual assault.

Existing law requires the governing boards of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions to adopt and implement written procedures or protocols to ensure that students, faculty, and staff who are victims of sexual assault on the grounds or facilities of their institutions receive treatment and information, including a description of on-campus and off-campus resources.

This bill would require the governing boards of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of

independent postsecondary institutions, in order to receive state funds for student financial assistance, to adopt policies concerning sexual assault, domestic violence, dating violence, and stalking that include certain elements, including an affirmative consent standard in the determination of whether consent was given by a complainant. The bill would require these governing boards to adopt certain sexual assault policies and protocols, as specified, and would require the governing boards, to the extent feasible, to enter into memoranda of understanding or other agreements or collaborative partnerships with on-campus and community-based organizations to refer students for assistance or make services available to students. The bill would also require the governing boards to implement comprehensive prevention and outreach programs addressing sexual assault, domestic violence, dating violence, and stalking. By requiring community college districts to adopt or modify certain policies and protocols, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 67386 is added to the Education Code,  
2     to read:  
3     67386. (a) In order to receive state funds for student financial  
4     assistance, the governing board of each community college district,  
5     the Trustees of the California State University, the Regents of the  
6     University of California, and the governing boards of independent  
7     postsecondary institutions shall adopt a policy concerning sexual  
8     assault, domestic violence, dating violence, and stalking, as defined  
9     in the federal Higher Education Act of 1965 (20 U.S.C. Sec.  
10    1092(f)) involving a student, both on and off campus. The policy  
11    shall include all of the following:

1 (1) An affirmative consent standard in the determination of  
2 whether consent was given by both parties to sexual activity.  
3 “Affirmative consent” means affirmative, conscious, and voluntary  
4 agreement to engage in sexual activity. It is the responsibility of  
5 each person involved in the sexual activity to ensure that he or she  
6 has the affirmative consent of the other or others to engage in the  
7 sexual activity. Lack of protest or resistance does not mean consent,  
8 nor does silence mean consent. Affirmative consent must be  
9 ongoing throughout a sexual activity and can be revoked at any  
10 time. The existence of a dating relationship between the persons  
11 involved, or the fact of past sexual relations between them, should  
12 never by itself be assumed to be an indicator of consent.

13 (2) A policy that, in the evaluation of complaints in any  
14 disciplinary process, it shall not be a valid excuse to alleged lack  
15 of affirmative consent that the accused believed that the  
16 complainant consented to the sexual activity under either of the  
17 following circumstances:

18 (A) The accused’s belief in affirmative consent arose from the  
19 intoxication or recklessness of the accused.

20 (B) The accused did not take reasonable steps, in the  
21 circumstances known to the accused at the time, to ascertain  
22 whether the complainant affirmatively consented.

23 (3) A policy that the standard used in determining whether the  
24 elements of the complaint against the accused have been  
25 demonstrated is the preponderance of the evidence.

26 (4) A policy that, in the evaluation of complaints in the  
27 disciplinary process, it shall not be a valid excuse that the accused  
28 believed that the complainant affirmatively consented to the sexual  
29 activity if the accused knew or reasonably should have known that  
30 the complainant was unable to consent to the sexual activity under  
31 any of the following circumstances:

32 (A) The complainant was asleep or unconscious.

33 (B) The complainant was incapacitated due to the influence of  
34 drugs, alcohol, or medication, so that the complainant could not  
35 understand the fact, nature, or extent of the sexual activity.

36 (C) The complainant was unable to communicate due to a mental  
37 or physical condition.

38 (b) In order to receive state funds for student financial assistance,  
39 the governing board of each community college district, the  
40 Trustees of the California State University, the Regents of the

1 University of California, and the governing boards of independent  
2 postsecondary institutions shall adopt detailed and victim-centered  
3 policies and protocols regarding sexual assault, domestic violence,  
4 dating violence, and stalking involving a student that comport with  
5 best practices and current professional standards. At a minimum,  
6 the policies and protocols shall cover all of the following:

7 (1) A policy statement on how the institution will provide  
8 appropriate ~~confidentiality for individuals involved in an incident.~~  
9 *protections for the privacy of individuals involved, including*  
10 *confidentiality.*

11 (2) Initial response by the institution's personnel to a report of  
12 an incident, including requirements specific to assisting the victim,  
13 providing information in writing about the importance of preserving  
14 evidence, and the identification and location of witnesses.

15 (3) Response to stranger and nonstranger sexual assault.

16 (4) The preliminary victim interview, including the development  
17 of a victim interview protocol, and a comprehensive followup  
18 victim interview, as appropriate.

19 (5) Contacting and interviewing the accused.

20 (6) Seeking the identification and location of witnesses.

21 (7) Providing written notification to the victim about the  
22 availability of, and contact information for, on- and off-campus  
23 resources and services, and coordination with law enforcement,  
24 as appropriate.

25 (8) Participation of victim advocates and other supporting  
26 people.

27 (9) Investigating allegations that alcohol or drugs were involved  
28 in the incident.

29 (10) Providing that ~~those an individual who participate~~  
30 *participates as a complainant or witness in the an investigation*  
31 *of sexual assault, domestic violence, dating violence, and stalking,*  
32 *either as a complainant or a third-party witness, or stalking will*  
33 *not be subject to disciplinary sanctions for violations a violation*  
34 *of the institution's student conduct policy at or near the time of*  
35 *the incident if the violations did not place incident, unless the*  
36 *institution determines that the violation was egregious, including,*  
37 *but not limited to, an action that places the health or safety of any*  
38 *other person at risk. risk or involves plagiarism, cheating, or*  
39 *academic dishonesty.*

40 (11) The role of the institutional staff supervision.

1 (12) A comprehensive, trauma-informed training program for  
2 campus officials involved in investigating and adjudicating sexual  
3 assault, domestic violence, dating violence, and stalking cases.

4 (13) Procedures for confidential reporting by victims and third  
5 parties.

6 (c) In order to receive state funds for student financial assistance,  
7 the governing board of each community college district, the  
8 Trustees of the California State University, the Regents of the  
9 University of California, and the governing boards of independent  
10 postsecondary institutions shall, to the extent feasible, enter into  
11 memoranda of understanding, agreements, or collaborative  
12 partnerships with existing on-campus and community-based  
13 organizations, including rape crisis centers, to refer students for  
14 assistance or make services available to students, including  
15 counseling, health, mental health, victim advocacy, ~~student~~  
16 ~~advocacy~~, and legal assistance, *and including resources for the*  
17 *accused*.

18 (d) In order to receive state funds for student financial assistance,  
19 the governing board of each community college district, the  
20 Trustees of the California State University, the Regents of the  
21 University of California, and the governing boards of independent  
22 postsecondary institutions shall implement comprehensive  
23 prevention and outreach programs addressing sexual violence,  
24 domestic violence, dating violence, and stalking. A comprehensive  
25 prevention program shall include a range of prevention strategies,  
26 including, but not limited to, empowerment ~~programming~~,  
27 *programming for victim prevention*, awareness raising campaigns,  
28 primary prevention, bystander intervention, and risk reduction.  
29 Outreach programs shall be provided to make students aware of  
30 the institution's policy on sexual assault, domestic violence, dating  
31 violence, and stalking. At a minimum, an outreach program shall  
32 include a process for contacting and informing the student body,  
33 campus organizations, athletic programs, and student groups about  
34 the institution's overall sexual assault policy, the practical  
35 implications of an affirmative consent standard, and the rights and  
36 responsibilities of students under the policy. ~~Outreach~~

37 (e) *Outreach* programming shall be included as part of ~~new~~  
38 ~~student orientation~~; *every incoming student's orientation*.

39 SEC. 2. If the Commission on State Mandates determines that  
40 this act contains costs mandated by the state, reimbursement to

- 1 local agencies and school districts for those costs shall be made
- 2 pursuant to Part 7 (commencing with Section 17500) of Division
- 3 4 of Title 2 of the Government Code.