Sexual Assault on Campus: Beyond Title IX

See the previous issue of WomanView for a brief history of Title IX and its role in addressing sexual assault on college campuses.

In the past two years a handful of states have taken significant steps to address the problem of sexual assault on college campuses by introducing legislation with the goal of protecting survivors and reforming campus procedure and culture. In this issue of WomanView we examine laws in three states—California, New York, and Illinois—that vary in how consent to sexual activity is defined, which protocols and procedures are required, and how educational institutions are held accountable. We also briefly review other efforts on the local, state, and federal level.

California

On September 28, 2014, California became the first state to enact a law that specifically provides protections for survivors of domestic and sexual violence on college campuses. The California law provides a comprehensive definition of consent, and criteria for campus protocols and the handling of cases. Protocols and procedures covers student and staff training, confidentiality for survivors and others, as well as the implementation of trauma-informed training for staff. The law also provides for comprehensive prevention and outreach programs for students in order to change campus culture. All of these are required for educational institutions to receive state funds for student financial assistance.

Consent: The California law explicitly uses the term “affirmative consent,” which is defined as “affirmative, conscious, and voluntary agreement to engage in sexual activity.” This definition creates a “yes means yes” standard for defining consent on college campuses.

Amnesty: California’s law provides that a survivor or witness will not be subject to disciplinary sanctions for a violation of the institution’s student conduct policy unless it is determined that the violation was egregious.

Prevention Education and Outreach: Educational institutions must implement comprehensive prevention and outreach programs addressing sexual violence, domestic violence, dating violence, and stalking. These may include bystander intervention, risk reduction, and general awareness campaigns. Orientation for all students must include outreach programming. Also, campus personnel involved in investigating and adjudicating cases shall
receive trauma-informed training.

Accountability: Educational institutions must adhere to certain criteria to receive state funds for student financial aid. And, “to the extent feasible,” educational institutions must enter into agreements and partnerships with on-campus and community-based organizations, such as rape crisis centers, counseling services, and legal assistance organizations.

New York

New York’s “Enough is Enough” law was signed on July 7, 2015. It is the most comprehensive and detailed statute to date, with state funding available to help ensure successful implementation.

Consent: The law requires every educational institution to adopt a definition of “affirmative consent” that reads in part: “Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity.” Consent may be given in words or actions, but must create “clear permission regarding willingness to engage in the sexual activity.”

Amnesty: New York’s law provides that a survivor or witness shall not be subject to the institution’s student code of conduct for violations of alcohol or drug use so as not to be deterred from reporting of domestic or sexual violence for fear of discipline for violations of a school’s code of conduct.

Students’ Rights: The law includes a student “bill of rights” that consists of eleven rights that students must be made aware of. These include the right to make a report to law enforcement, the right for their disclosure to be treated seriously, the right to a fair process, the right to have to describe the incident as few times as possible, the right to be accompanied by an advisor of the survivor’s choosing throughout the process, and the right to be protected from retaliation. Survivors may also request accommodations, including that the educational institution issue a “no contact order” to the accused, who has the right to a prompt review of the need for the order.

Prevention Education and Outreach: Educational institutions must conduct a climate assessment to determine campus culture around sexual assault at least every other year. Institutions must adopt comprehensive campaigns that are ongoing to educate the community about sexual assault, domestic violence, and dating violence. All first-year students must receive prevention training, and all student leaders and athletes shall receive additional training. Multiple prevention methods should be used and should cover all at-risk populations.

Accountability: Educational institutions are required to file a certificate of compliance annually with the New York Department of Education. If an educational institution does not file a
certificate of compliance then it will be ineligible for state aid or assistance. The Department will conduct random audits to ensure compliance with the provisions of the law, and results will be posted on the Department’s website. In addition, the law establishes and funds a sexual assault victims unit as a division of the state police. The unit will be specially trained for responding to sexual assault and will provide assistance to campus sexual assault investigations and campus police as well as training to the campus community. State funds were also allocated for services provided by rape crisis centers for prevention, education, and victim services, and also to pay for training of staff and other expenses.

**Illinois**
The Illinois law, [Preventing Sexual Violence in Higher Education Act](https://www.legis.state.il.us/billstatus/sb1971), was signed on August 21, 2015.

**Consent:** The Illinois law does not explicitly say “affirmative consent”; however the definition is similar to the other state laws. Consent is “a freely given agreement to sexual activity” with stipulations regarding use of force and incapacitation as conditions where consent is impossible.

**Amnesty:** The Illinois law provides that a survivor or witness will not be subject to disciplinary sanctions for a violation of the institution’s student conduct policy unless it is determined that the violation was egregious.

**Students’ Rights:** The Illinois law provides a list of rights a student must be notified of when they report an assault, including the right to report or not report to law enforcement, the right to request interim protective measures and accommodations, and the right to be given the contact information for crisis centers, Title IX coordinators, and any other relevant resources. The law also requires that educational institutions provide a confidential advisor to provide emergency and ongoing support to survivors.

**Procedure:** The Illinois law requires that each educational institution develop a comprehensive policy that addresses interim protection measures and accommodations and specifies the range of sanctions that can be imposed. It also requires that educational institutions have a clear complaint resolution procedure and details the needs for confidentiality, prompt resolution, and victim safety, e.g., not having the complainant and respondent cross examine one another.

**Prevention Education and Outreach:** All students must receive prevention and awareness programming, and employees who are involved in implementation of the comprehensive plan, including Title IX coordinators, and members of campus law enforcement and campus security, must receive trauma-informed training.
Accountability: Educational institutions are required to provide a report annually to the Department of Human Rights and the Attorney General that has the institution’s comprehensive policy and statistics related to domestic and sexual violence incidents, etc. The Office of the Attorney General will maintain on its website a list of all higher education institutions that fail to comply with the annual reporting requirements. Each institution must participate in its own or a regional task force to evaluate policies, practices and procedures as well as bolster collaboration and information-sharing among stakeholders.

Other Measures
In October 2014, prior to the enactment of Enough is Enough, the State University of New York (SUNY) passed a resolution that would change school policy regarding sexual assault. The resolution called for an adoption of affirmational consent, amnesty for reporting individuals, training for campus police, and public awareness campaigns.

In September 2015, the University of Hawaii implemented a comprehensive sexual assault and domestic violence policy that includes a definition of affirmational consent and clear protocol for reporting, confidentiality, and resolution.

States where legislation has been introduced but not yet passed include Connecticut and Massachusetts. In addition, students continue to advocate for change in policy and practice on their own campuses across the country.

Federal Legislation
It is not only states that have pursued campus sexual assault legislation in the last two years. The Campus Sexual Violence Elimination (SaVE) Act, a 2013 amendment to the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act, made many positive changes regarding safety and awareness on college campuses. The law requires greater transparency, accountability, collaboration with law enforcement, and outreach and education for students, on the part of educational institutions. Currently pending in Congress, the Campus Accountability and Safety Act (H.R. 1310/S. 590), would further amend the Clery Act to improve educational institutions’ transparency, campus procedures and security, and training for staff, and directs the U.S. Department of Education to develop online training for educational institution staff, add to its website all Title IX coordinator information at each institution, and authorizes the imposition of civil penalties on educational institutions for failure to comply with this Act and Title IX.

On the other hand, another pending bill, the Safe Campus Act, would negatively impact survivors’ experiences. The bill would restrict educational institutions from initiating their own investigations and making accommodations for victims unless law
enforcement is involved. If a survivor does not want to report to law enforcement, then the institution cannot implement their own measures and remedies. Recently a coalition of sexual assault advocacy organizations signed a letter in opposition to the bill.

Concluding Thoughts
Though the recently enacted laws show remarkable progress, there are still important areas for improvement. Consent, campus culture, and campus procedure are all part of the progress, but we must also consider best policies and practices to ensure that all survivors, whomever the perpetrator, when or wherever the violence took place, and whether or not an incident was reported through the established procedures, are able to perform well academically and complete their educations. How do we best ensure that survivors stay in school, stay safe, and succeed academically, not only immediately following an incident, but until a diploma is conferred? For example, how do we ensure that survivors don’t leave school with incomPLEtes or failing grades? How do we ensure that survivors don’t have to pay double tuition to repeat a term or lose financial? Certainly, some educational institutions have good policies and procedures to deal with these issues that we can all learn from and standardize as part of a comprehensive response to domestic and sexual violence.

For more information, please contact Wendy Pollack, director, Women’s Law and Policy Project, Sargent Shriver National Center on Poverty Law. Abigail Watkins, Domestic Violence and Opportunity VISTA, contributed to this issue of WomanView.

Volume 19, No. 5
November 30, 2015