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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
56th Legislature, 1st Session, 2023

Bill Number	<u>HB43</u>	Sponsor	<u>Thomson/Chasey/Romero, A/Serrato/Szczepanski</u>
Tracking Number	<u>.223820.1</u>	Committee Referrals	<u>HEC/HJC;SEC/SJC</u>
Short Title	<u>Affirmative Consent Policy in Schools</u>		
Analyst	<u>Condon</u>	Original Date	<u>2/9/2023</u>
		Last Updated	<u></u>

BILL SUMMARY

House Bill 43 (HB43) requires public schools, and public and private post-secondary educational institutions, to adopt policies and procedures addressing affirmative consent and the prevention of sexual assault, domestic violence, dating violence, harassment and stalking.

HB43 amends the public school code to set affirmative consent as the standard for sexual activity, and requires the Public Education Department (PED) to adopt trauma-informed policies and trauma-informed responses 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 or contractor, both on and off campus.

HB43 amends high school graduation requirements to require that health education courses include a standard of affirmative consent.

FISCAL IMPACT

The bill does not contain an appropriation.

SUBSTANTIVE ISSUES

Affirmative consent. As college and high school 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. HB43 defines "affirmative consent" to mean affirmative, conscious and voluntary agreement to engage in sexual activity. In addition to high schools and colleges 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 that 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 US (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.

Additionally, a [2018 report](#) from the U.S. Department of Education (USDE) found that between 2015 and 2018, sexual assaults at elementary, middle and high schools had a sharp increase. The USDE found that reports of sexual violence at schools rose from about 9.6 thousand in the 2015-2016 school year to nearly 15 thousand in the 2017-2018 school year, representing more than a 50 percent increase.

Trauma-informed investigations and responses. HB43 requires that trauma-informed investigations and policies must include definitions of affirmative consent, provisions to protect confidentiality, and definitions for sexual assault behaviors and domestic violence. The procedures in HB43 outline the process of investigation, and resources that must be provided by education institutions to their students, staff and faculty.

HB43 would require schools to enter into a memorandum of understanding or partnerships with existing on-campus or community-based organizations to offer supports to a “responding party” and “complainant” at no cost, and also requires schools to implement comprehensive prevention and outreach programs addressing affirmative consent, sexual assault, domestic violence, dating violence and harassment or stalking.

In their agency analysis of HB 43, the Office of the Attorney General (NMAG) noted that additional language could bring clarity and ensure current reporting requirements are upheld. The NMAG says, “As this bill addresses in part students under the age of 18, some confusion might arise in certain instances between the bill’s privacy and confidentiality measures and Section 32A-4-3’s NMSA 1978 reporting requirements. The bill could create additional clarity by providing

that school policies must provide for the privacy and confidentiality of students ‘subject to mandatory reporting requirements established by state law.’”

Graduation requirement changes. Beginning in school year 23-24, and enacted in subsequent school years, students entering the ninth grade would be required to take a health education course that includes age-appropriate training in the prevention and awareness of sexual abuse and assault that includes a standard of affirmative consent.

In 2019, [only 24 states mandated sex education for K-12 students](#), and only 9 required that instruction to include concepts of consent. New Mexico was one of the states that did mandate sex education, but did not require consent be covered in those health courses.

ADMINISTRATIVE IMPLICATIONS

In their agency analysis of HB43, PED says they would need to amend administrative regulation, [6.29.1 NMAC](#), relating to educational standards and expectations for all students attending public schools, to include affirmative consent. PED believes they would also have to amend the course description in the Student Teacher Accountability Reporting System (STARS) to incorporate the affirmative consent requirement in the health education class.

The provisions of HB43 could potentially create a significant impact on necessary staff within higher education institutions, the Higher Education Department, the Public Education Department and public school districts that might result in a request for funding in subsequent years.

At the time of this analysis, neither the Higher Education Department nor any higher education institutions had provided an agency analysis to better understand the administrative implications of HB43.

RELATED BILLS

HB126 School Graduation Requirements.

SOURCES OF INFORMATION

- LESC Files
- Public Education Department

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