

# California State Senate

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## SB ### (De León-Jackson) Addressing Sexual Assault on College Campuses

**PURPOSE:** Strengthen protections for victims of sexual assault on college campuses by requiring campuses to adopt an affirmative consent standard for the evaluation of complaints, implement comprehensive prevention programs and victim-centered sexual assault response policies and protocols, and form partnerships with on campus and community-based organizations to assist victims with connecting to services.

### BACKGROUND:

On March 7, 2013, the Campus Sexual Violence Elimination Act (Campus SaVE) was enacted as part of the reauthorization of the federal Violence Against Women Act (VAWA). Campus SaVE amended the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) to extend additional rights to campus victims of sexual violence, dating violence, domestic violence, and stalking.

Under the revised Clery Act, there is now a mandate for every college campus to include a statement of policy in its Annual Security Report regarding subjects that include: prevention and education programs; crime reporting procedures; possible sanctions and protective measures in disciplinary proceedings; recommended procedures for victims; the institution's disciplinary action process; and written notifications to students about existing counseling, health, mental health, victim advocacy, legal assistance, and other on-campus and community services available.

Although the new federal requirements, communication from the U.S. Department of Education (DOE) Office for Civil Rights,<sup>1</sup> and documents released by the U.S. Department of Justice (DOJ)<sup>2</sup> have provided general guidance for colleges and universities on how to protect and provide services and

<sup>1</sup> Dear Colleague Letter from the U.S. Department of Education re: Sexual Violence (April 4, 2011): <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>

<sup>2</sup> Findings Letter from U.S. Department of Justice and Memorandum of Agreement with the University of Montana Office of Public Safety (May 9, 2013): [http://www.justice.gov/crt/about/spl/documents/missoulafind\\_5-9-13.pdf](http://www.justice.gov/crt/about/spl/documents/missoulafind_5-9-13.pdf) [http://www.justice.gov/crt/about/spl/documents/missoulasettle\\_5-9-13.pdf](http://www.justice.gov/crt/about/spl/documents/missoulasettle_5-9-13.pdf)

support for sexual assault victims, there is currently a lack of uniform standards.

This uneven application of federal laws was most recently highlighted in President Barack Obama's release of a memorandum on January 22, 2014,<sup>3</sup> establishing a White House Task Force to Protect Students from Sexual Assault. Citing that compliance by institutions of higher education is inconsistent and in too many cases inadequate, the directive orders the Office of the Vice President and the White House Council on Women and Girls to lead an interagency effort to address campus rape and sexual assault, including the coordination of federal enforcement efforts and helping colleges and universities meet their legal obligations. The Task Force will be developing and submitting proposals and recommendations within the next 90 days.

SB ### would also address this issue and strengthen protections for victims in California by requiring college campuses to adopt universal standards for the determination of consent and the outcome of disciplinary actions, and to implement comprehensive prevention programs and victim-centered sexual assault policies and protocols.

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#### **PROPOSAL:**

- Require California colleges and universities, as part of their policy regarding campus sexual violence, domestic violence, dating violence, and stalking, to include all of the following:
  - An affirmative consent standard in the determination of whether consent was given by a complainant.
  - Prohibition on an accused perpetrator using self-intoxication or recklessness as a defense. It would also not be a defense if the accused failed to take reasonable steps to ascertain consent.
  - An explicit provision that an individual is unable to give consent for sexual activity if the individual is asleep or unconscious; incapacitated due to drugs and/or alcohol; or unable to communicate due to a mental and/or physical condition.
  - A preponderance of the evidence standard in the determination of disciplinary action.
- Require colleges and universities to adopt detailed and victim-centered sexual assault response policies and protocols that protect the confidentiality of victims and follow best practices and professional standards.
- Require colleges and universities to enter into memorandums of understanding, agreements, or similar partnerships with existing on campus and community-based organizations including rape crisis centers, to assist victims with accessing counseling, health, mental health, victim advocacy, legal, and other support services.
- Require colleges and universities to implement comprehensive prevention programs addressing sexual assault, dating violence, domestic violence, and stalking. The programs should include an array of prevention strategies including women's empowerment, campaigns to raise awareness, primary prevention, bystander intervention, and risk reduction.

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<sup>3</sup> Memorandum released by the White House on January 22, 2014, "Establishing a White House Task Force to Protect Students from Sexual Assault: <http://www.whitehouse.gov/the-press-office/2014/01/22/memorandum-establishing-white-house-task-force-protect-students-sexual-a>

**SUPPORT:**  
California Coalition Against Sexual Assault (CALCASA)

**OPPOSITION:**  
None on file.