

FIRST REGULAR SESSION

# HOUSE BILL NO. 412

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE PETERS.

1117L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 173, RSMo, by adding thereto one new section relating to student safety at institutions of higher education.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 173, RSMo, is amended by adding thereto one new section, to be  
2 known as section 173.1405, to read as follows:

**173.1405. 1. In order to receive state funds for student financial assistance, the  
2 governing board of each institution of higher education located in this state shall adopt a  
3 policy concerning sexual assault, domestic violence, dating violence, and stalking, as  
4 defined in the federal Higher Education Act of 1965, 20 U.S.C. Section 1092(f), involving  
5 a student, both on and off campus. The policy shall include the following:**

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

15       **(2) A policy that, in the evaluation of complaints in any disciplinary process, it shall  
16 not be a valid excuse to alleged lack of affirmative consent that the accused believed that**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **the complainant consented to the sexual activity under either of the following circumstances:**

18 **(a) The accused's belief in affirmative consent arose from the intoxication or**  
19 **recklessness of the accused; or**

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

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

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

30 **(a) The complainant was asleep or unconscious;**

31 **(b) The complainant was incapacitated due to the influence of drugs, alcohol, or**  
32 **medication, so that the complainant could not understand the fact, nature, or extent of the**  
33 **sexual activity;**

34 **(c) The complainant was unable to communicate due to a mental or physical**  
35 **condition.**

36 **2. In order to receive state funds for student financial assistance, the governing**  
37 **board of each institution of higher education located in this state shall adopt detailed and**  
38 **victim-centered policies and protocols regarding sexual assault, domestic violence, dating**  
39 **violence, and stalking involving a student that comport with best practices and current**  
40 **professional standards. At a minimum, the policies and protocols shall cover all of the**  
41 **following:**

42 **(1) A policy statement on how the institution will provide appropriate protections**  
43 **for the privacy of individuals involved, including confidentiality;**

44 **(2) Initial response by the institution's personnel to a report of an incident,**  
45 **including requirements specific to assisting the victim, providing information in writing**  
46 **about the importance of preserving evidence, and the identification and location of**  
47 **witnesses;**

48 **(3) Response to stranger and nonstranger sexual assault;**

49 **(4) The preliminary victim interview, including the development of a victim**  
50 **interview protocol, and a comprehensive followup victim interview, as appropriate;**

51 **(5) Contacting and interviewing the accused;**

52 **(6) Seeking the identification and location of witnesses;**

53           (7) Providing written notification to the victim about the availability of, and contact  
54 information for, on- and off-campus resources and services, and coordination with law  
55 enforcement, as appropriate;

56           (8) Participation of victim advocates and other supporting people;

57           (9) Investigating allegations that alcohol or drugs were involved in the incident;

58           (10) Providing that an individual who participates as a complainant or witness in  
59 an investigation of sexual assault, domestic violence, dating violence, or stalking will not  
60 be subject to disciplinary sanctions for a violation of the institution's student conduct  
61 policy at or near the time of the incident, unless the institution determines that the violation  
62 was egregious, including, but not limited to, an action that places the health or safety of any  
63 other person at risk or involves plagiarism, cheating, or academic dishonesty;

64           (11) The role of the institutional staff supervision;

65           (12) A comprehensive, trauma-informed training program for campus officials  
66 involved in investigating and adjudicating sexual assault, domestic violence, dating  
67 violence, and stalking cases; and

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

69           3. In order to receive state funds for student financial assistance, the governing  
70 board of each institution of higher education located in this state shall, to the extent  
71 feasible, enter into memoranda of understanding, agreements, or collaborative  
72 partnerships with existing on-campus and community-based organizations, including rape  
73 crisis centers, to refer students for assistance or make services available to students,  
74 including counseling, health, mental health, victim advocacy, and legal assistance, and  
75 including resources for the accused.

76           4. In order to receive state funds for student financial assistance, the governing  
77 board of each institution of higher education located in this state shall implement  
78 comprehensive prevention and outreach programs addressing sexual violence, domestic  
79 violence, dating violence, and stalking. A comprehensive prevention program shall include  
80 a range of prevention strategies, including, but not limited to, empowerment programming  
81 for victim prevention, awareness raising campaigns, primary prevention, bystander  
82 intervention, and risk reduction. Outreach programs shall be provided to make students  
83 aware of the institution's policy on sexual assault, domestic violence, dating violence, and  
84 stalking. At a minimum, an outreach program shall include a process for contacting and  
85 informing the student body, campus organizations, athletic programs, and student groups  
86 about the institution's overall sexual assault policy, the practical implications of an  
87 affirmative consent standard, and the rights and responsibilities of students under the  
88 policy.

89           **5. Outreach programming shall be included as part of every incoming student's**  
90 **orientation.**

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