AN ACT concerning postsecondary educational institutions; relating to policies on sexual assault, domestic violence, dating violence and stalking.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) As used in this section:

(1) "Affirmative consent" means affirmative, conscious and voluntary agreement to engage in sexual activity. "Affirmative consent" does not include lack of protest, lack of resistance or silence. The existence of a dating relationship or past sexual relations between the persons involved shall not by itself be an indicator of "affirmative consent."

(2) "Board" means the state board of regents or the governing board of any municipal university, community college or technical college.

(3) "Institution" means any post secondary educational institution as defined in K.S.A. 74-3201b, and amendments thereto.

(b) The board of any postsecondary educational institution shall adopt a policy concerning sexual assault, domestic violence, dating violence and stalking involving a student, both on and off campus. The policy shall include:

(1) An affirmative consent standard in the determination of whether consent was given by all parties to a sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that such person has received affirmative consent of the other person or persons to engage in the sexual activity. Affirmative consent is required throughout a sexual activity and may be revoked at any time;

(2) a standard that in the evaluation of complaints in any disciplinary process, if there is an alleged lack of consent, it shall not be a valid defense that the accused believed that the complainant consented to the sexual activity if:

(A) The accused's belief in the existence of affirmative consent arose from such accused's own intoxication or recklessness; or

(B) the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain whether the complainant affirmatively consented;

(3) a standard that in the evaluation of complaints in any disciplinary process, it shall not be a valid defense that the accused believed that the
complainant affirmatively consented to the sexual activity if the accused knew or reasonably should have known that the complainant was unable to consent to the sexual activity if the complainant was:

(A) Asleep or unconscious;
(B) incapacitated due to the influence of drugs, alcohol or medication so that the complainant could not understand the fact, nature or extent of the sexual activity; or
(C) unable to communicate due to a mental or physical condition; and
(4) a statement that the preponderance of the evidence standard shall be used in determining whether the elements of the complaint against the accused have been demonstrated.

c) The board of a postsecondary educational institution shall adopt detailed and victim-centered policies and protocols regarding sexual assault, domestic violence, dating violence and stalking involving a student that comport with best practices and current professional standards. Such policies and protocols shall at minimum address the following:

(1) How the institution will provide appropriate protections for the privacy of individuals involved, including confidentiality;
(2) the initial response by the institution's personnel to a report of an incident, including requirements specific to assisting the victim, providing information in writing about the importance of preserving evidence, and the identification and location of witnesses;
(3) the response to stranger and nonstranger sexual assault;
(4) the preliminary victim interview, including the development of a victim interview protocol and a comprehensive follow-up victim interview, as appropriate;
(5) contacting and interviewing the accused;
(6) seeking the identification and location of witnesses;
(7) providing written notification to the victim about the availability of, and contact information for, both on and off campus resources and services and coordination with law enforcement, as appropriate;
(8) participation of victim advocates and other supporting personnel;
(9) investigating allegations that alcohol or drugs were involved in the incident;
(10) providing that an individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence or stalking will not be subject to disciplinary sanctions for a violation of the institution's student conduct policy at or near the time of the incident, unless the institution determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating or academic dishonesty;
the role of institutional staff supervision;
(12) a comprehensive, trauma-informed training program for campus officials involved in investigating and adjudicating sexual assault, domestic violence, dating violence and stalking cases; and
(13) procedures for confidential reporting by victims and third parties.

(d) (1) The board of a postsecondary educational institution shall implement comprehensive prevention and outreach programs addressing sexual violence, domestic violence, dating violence and stalking.
(2) A comprehensive prevention program shall include a range of prevention strategies, including, but not limited to, empowerment programming for victim prevention, awareness raising campaigns, primary prevention, bystander intervention and risk reduction.
(3) An outreach program shall be provided to make students aware of an institution's policy on sexual violence, dating violence and stalking. Such outreach program shall include, but not be limited to, a process for contacting and informing the student body, campus organizations and other student groups about the institution's overall sexual assault policy; the practical implications of an affirmative consent standard; and the rights and responsibilities of the students under the policy.
(4) Outreach programming shall be included as part of every incoming student's orientation.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.