

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0399.04 Jerry Barry x4341

HOUSE BILL 18-1391

HOUSE SPONSORSHIP

Duran and Winter,

SENATE SPONSORSHIP

Martinez Humenik and Kerr,

House Committees

Education

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE PREVENTION OF SEXUAL MISCONDUCT ON HIGHER
102 EDUCATION CAMPUSES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill requires each institution of higher education (institution) to adopt, periodically review, and update a policy on sexual misconduct (policy). The bill establishes minimum requirements for the policies, including reporting options, procedures for investigations and adjudications, and protections for involved persons. Institutions are to promote the policy by posting information on their websites and annually

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

distributing the policy and information.

Institutions are required to provide training on awareness and prevention of sexual misconduct, the policy, and resources available to discuss such misconduct.

The bill requires institutions to report to the department of higher education (department) on their policies and training, and the department posts information on the reports on its website.

The department is to host biennial summits on sexual misconduct on institution campuses to facilitate communication, share information, and hear from experts. The bill identifies the membership of the planning committee for the summits. The planning committees are to report to specified committees of the general assembly on the summits.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 23-5-146 as
3 follows:

4 **23-5-146. Sexual misconduct - policies - confidential resources**
5 **- training - reports - definitions.** (1) AS USED IN THIS SECTION, UNLESS
6 THE CONTEXT OTHERWISE REQUIRES:

7 (a) "CLERY ACT" MEANS THE FEDERAL "JEANNE CLERY
8 DISCLOSURE OF CAMPUS SECURITY POLICY AND CAMPUS CRIME
9 STATISTICS ACT" OR "CLERY ACT", 20 U.S.C. SEC. 1092(f).

10 (b) "COMPLAINANT" MEANS A PERSON WHO IS SUBJECT TO
11 ALLEGED SEXUAL MISCONDUCT UNDER AN INSTITUTION'S SEXUAL
12 MISCONDUCT POLICY.

13 (c) "DEPARTMENT" MEANS THE DEPARTMENT OF HIGHER
14 EDUCATION CREATED AND EXISTING PURSUANT TO SECTION 24-1-114.

15 (d) "INSTITUTION OF HIGHER EDUCATION" OR "INSTITUTION"
16 MEANS A STATE INSTITUTION OF HIGHER EDUCATION, AS DEFINED IN
17 SECTION 23-18-102 (10)(b); A PARTICIPATING PRIVATE INSTITUTION OF
18 HIGHER EDUCATION, AS DEFINED BY SECTION 23-18-102 (8); A LOCAL
19 DISTRICT COLLEGE, AS DEFINED BY SECTION 23-71-102 (1)(a); AND AN

1 AREA TECHNICAL COLLEGE, AS DEFINED BY SECTION 23-60-103 (1).

2 (e) "REPORTING PARTY" MEANS AN INDIVIDUAL WHO REPORTS AN
3 ALLEGED INCIDENT OF SEXUAL MISCONDUCT UNDER AN INSTITUTION'S
4 SEXUAL MISCONDUCT POLICY.

5 (f) "RESPONDING PARTY" MEANS AN INDIVIDUAL WHO HAS BEEN
6 ACCUSED OF SEXUAL MISCONDUCT UNDER AN INSTITUTION'S SEXUAL
7 MISCONDUCT POLICY.

8 (g) "TITLE IX" MEANS TITLE IX OF THE FEDERAL "CIVIL RIGHTS
9 ACT OF 1964", AS AMENDED, 20 U.S.C. SECS. 1681 TO 1688.

10 (h) "VIOLENCE AGAINST WOMEN ACT" MEANS THE ACT CODIFIED
11 AT 42 U.S.C. SECS. 13701 TO 14040.

12 (2) ON OR BEFORE AUGUST 1, 2019, EACH INSTITUTION OF HIGHER
13 EDUCATION SHALL ADOPT A SEXUAL MISCONDUCT POLICY FOR ENROLLED
14 STUDENTS. THE POLICY MUST BE PERIODICALLY REVIEWED AND UPDATED.

15 (3) AT A MINIMUM, EACH POLICY MUST INCLUDE:

16 (a) DEFINITIONS OF FORMS OF SEXUAL MISCONDUCT CONSISTENT
17 WITH FEDERAL LAW AND POLICY, SUCH AS TITLE IX, THE CLERY ACT, AND
18 THE VIOLENCE AGAINST WOMEN ACT;

19 (b) CONFIDENTIAL AND NONCONFIDENTIAL REPORTING OPTIONS
20 FOR SEXUAL MISCONDUCT;

21 (c) AN EXPLANATION OF THE ROLE OF THE INSTITUTION IN THE
22 RESPONSE TO:

23 (I) A VIOLATION OF THE SEXUAL MISCONDUCT POLICY; OR

24 (II) A REPORT OF AN INCIDENT OF SEXUAL MISCONDUCT;

25 (d) PROCEDURES FOR INVESTIGATING REPORTS OF SEXUAL
26 MISCONDUCT, WHICH MUST:

27 (I) BE FAIR, IMPARTIAL, AND PROMPT, AND THE INSTITUTION MUST

1 MAKE A GOOD FAITH EFFORT TO COMPLETE AN INVESTIGATION OR
2 ADJUDICATIVE PROCESS, EXCLUDING ANY APPEALS, WITHIN AN AVERAGE
3 OF SIXTY TO NINETY DAYS, WITHOUT JEOPARDIZING THE RIGHTS OF A
4 COMPLAINANT OR RESPONDING PARTY. THE PROCEDURE MAY INCLUDE A
5 PROCESS THAT ALLOWS FOR THE EXTENSION OF THESE TIME FRAMES FOR
6 GOOD CAUSE WITH PRIOR WRITTEN NOTICE OF THE DELAY AND THE
7 REASON FOR THE DELAY TO THE COMPLAINANT AND THE RESPONDING
8 PARTY.

9 (II) INCLUDE THE PREPONDERANCE OF THE EVIDENCE AS THE
10 EVIDENTIARY STANDARD;

11 (III) OUTLINE THE PROCEDURES TO BE FOLLOWED IN THE
12 INVESTIGATION AND ADJUDICATION PROCESS, WHICH MUST SPECIFY THAT
13 ALL QUESTIONS GO THROUGH THE OFFICIAL INDIVIDUAL OR INDIVIDUALS
14 CONDUCTING OR PARTICIPATING IN THE INVESTIGATION PROCESS;

15 (IV) PROVIDE THE COMPLAINANT AND THE RESPONDING PARTY
16 WITH THE SAME OPPORTUNITIES TO HAVE AN ADVISOR OR OTHER PERSON
17 PRESENT DURING ANY PART OF THE PROCEEDING; EXCEPT THAT THE
18 ADVISOR OR OTHER PERSON IS NOT ALLOWED TO SPEAK ON BEHALF OF THE
19 COMPLAINANT OR RESPONDING PARTY DURING THE COURSE OF THE
20 PROCEEDINGS;

21 (V) PROVIDE REGULAR WRITTEN UPDATES ON THE STATUS OF THE
22 INVESTIGATION OR PROCEEDING TO THE COMPLAINANT AND RESPONDING
23 PARTY THROUGHOUT THE PROCESS UNTIL CONCLUSION; AND

24 (VI) PROVIDE FOR CONCURRENT NOTIFICATION OF THE OUTCOME
25 OF THE INVESTIGATION OR PROCEEDING TO THE COMPLAINANT AND THE
26 RESPONDING PARTY;

27 (e) PROHIBITIONS ON:

1 (I) THE CONSIDERATION OF PRIOR, IRRELEVANT SEXUAL CONDUCT,
2 EXCEPT RELATING TO A PRIOR RELATIONSHIP OR HISTORY BETWEEN THE
3 PARTIES IF RELEVANT TO SOME MATERIAL ISSUE IN THE PROCESS;

4 (II) ANY ACTION THAT WOULD BE RETALIATORY UNDER TITLE IX;

5 (f) PROTECTION FROM DISCIPLINARY ACTION AGAINST A
6 COMPLAINANT, REPORTING PARTY, OR WITNESS FOR HIS OR HER
7 PARTICIPATION IN THE REPORT OR INVESTIGATION AND FROM POLICY
8 VIOLATIONS RELATED TO THE INCIDENT, SUCH AS, AT A MINIMUM,
9 PERSONAL CONSUMPTION OF ALCOHOL OR DRUGS; AND

10 (g) THAT ALL PROVISIONS OF THE SEXUAL MISCONDUCT POLICY,
11 INCLUDING ANY APPEAL PROCESS THAT MAY BE PROVIDED, BE APPLIED
12 EQUALLY TO BOTH THE COMPLAINANT AND THE RESPONDING PARTY.

13 (4) (a) EACH INSTITUTION SHALL PROVIDE INFORMATION TO
14 STUDENTS ON HOW TO ACCESS AN INDIVIDUAL OR INDIVIDUALS FOR THE
15 PURPOSE OF PROVIDING SUPPORT REGARDING SEXUAL MISCONDUCT. THE
16 INSTITUTION MAY DESIGNATE FACULTY OR STAFF MEMBERS TO FILL THIS
17 ROLE; EXCEPT THAT THE INSTITUTION'S TITLE IX COORDINATOR SHALL
18 NOT BE SUCH AN INDIVIDUAL. AN INSTITUTION MAY ALSO DESIGNATE AN
19 OUTSIDE ENTITY OR SERVICE TO SERVE THIS PURPOSE. IF AN INSTITUTION
20 USES AN OUTSIDE ENTITY OR SERVICE, IT SHALL MAKE ITS SEXUAL
21 MISCONDUCT POLICY AVAILABLE TO THE ENTITY OR SERVICE. AN
22 INSTITUTION THAT ENROLLS FEWER THAN ONE THOUSAND STUDENTS MAY
23 PARTNER WITH ANOTHER INSTITUTION IN THE REGION OR WITHIN THE
24 STATE TO PROVIDE SERVICES PURSUANT TO THIS SUBSECTION (4).

25 (b) IF AN INDIVIDUAL DESCRIBED IN SUBSECTION (4)(a) OF THIS
26 SECTION MEETS THE REQUIREMENTS OF SECTION 13-90-107 (1)(k)(II) OR
27 SECTION 12-43-218, THE INDIVIDUAL HAS THE PROTECTIONS FOR

1 CONFIDENTIALITY OR PRIVILEGES ESTABLISHED PURSUANT TO THOSE
2 SECTIONS.

3 (5)(a) EACH INSTITUTION OF HIGHER EDUCATION SHALL PROMOTE:

4 (I) AWARENESS AND PREVENTION OF SEXUAL MISCONDUCT; AND

5 (II) THE INSTITUTION'S SEXUAL MISCONDUCT POLICY; AND

6 (b) EACH INSTITUTION SHALL PROMOTE THE INFORMATION
7 DESCRIBED IN SUBSECTION (5)(a) OF THIS SECTION BY:

8 (I) PROMINENTLY DISPLAYING ON ITS WEBSITE:

9 (A) THE INSTITUTION'S SEXUAL MISCONDUCT POLICY; AND

10 (B) THE TELEPHONE NUMBER AND WEBSITE FOR AN
11 INSTITUTIONAL, LOCAL, STATE, OR NATIONAL TWENTY-FOUR-HOUR
12 HOTLINE THAT PROVIDES INFORMATION ON SEXUAL MISCONDUCT.

13 (II) ANNUALLY DISTRIBUTING THROUGH ELECTRONIC OR OTHER
14 MEANS OF COMMUNICATION THE INSTITUTION'S SEXUAL MISCONDUCT
15 POLICY.

16 (6)(a) EACH INSTITUTION OF HIGHER EDUCATION SHALL OFFER
17 TRAINING:

18 (I) TO PROMOTE AWARENESS AND PREVENTION OF SEXUAL
19 MISCONDUCT; AND

20 (II) ON THE INSTITUTION'S SEXUAL MISCONDUCT POLICY.

21 (b) THE TRAINING MUST BE OFFERED ANNUALLY TO ALL INCOMING
22 STUDENTS AND NEWLY EMPLOYED FACULTY AND STAFF AND, WHEN
23 APPLICABLE, TO ALL STUDENTS, FACULTY, AND STAFF IF THE SEXUAL
24 MISCONDUCT POLICY IS SUBSTANTIALLY UPDATED. ANY INDIVIDUAL
25 DESIGNATED AS RESPONSIBLE FOR INVESTIGATING OR ADJUDICATING
26 COMPLAINTS UNDER THE SEXUAL MISCONDUCT POLICY SHALL BE TRAINED
27 ON THE POLICY IN EFFECT AT THE TIME OF THE INVESTIGATION OR

1 ADJUDICATION.

2 (c) THE TRAINING REQUIRED BY THIS SUBSECTION (6) MAY
3 INCLUDE BUT IS NOT LIMITED TO:

4 (I) HOW TO PROMOTE AWARENESS AND PREVENTION OF SEXUAL
5 MISCONDUCT;

6 (II) AN EXPLANATION OF THE INSTITUTION'S SEXUAL MISCONDUCT
7 POLICY;

8 (III) AN EXPLANATION OF RELEVANT STATE AND FEDERAL LAWS
9 CONCERNING SEXUAL MISCONDUCT;

10 (IV) AN EXPLANATION OF TYPES OF CONDUCT THAT WOULD
11 CONSTITUTE A VIOLATION OF THE INSTITUTION'S SEXUAL MISCONDUCT
12 POLICY;

13 (V) THE ROLE OF THE INSTITUTION AND ACCESS TO RESOURCES IN
14 ENSURING A COORDINATED RESPONSE TO AN ALLEGATION OF SEXUAL
15 MISCONDUCT;

16 (VI) THE DEFINITION OF "CONSENT" IN THE CONTEXT OF SEXUAL
17 ACTIVITY;

18 (VII) OPTIONS FOR BYSTANDER INTERVENTION;

19 (VIII) OPTIONS FOR INVOLVING LAW ENFORCEMENT IN
20 RESPONDING TO SEXUAL MISCONDUCT;

21 (IX) THE IMPORTANCE OF TREATING AND HOW TO TREAT OTHERS
22 WITH DIGNITY AND RESPECT; AND

23 (X) THE EFFECTS OF TRAUMA ON REPORTING PARTIES OR
24 COMPLAINANTS WHO HAVE EXPERIENCED SEXUAL MISCONDUCT THAT MAY
25 INCLUDE:

26 (A) INFORMATION ON WORKING WITH AND INTERVIEWING PERSONS
27 WHO HAVE EXPERIENCED SEXUAL MISCONDUCT;

1 (B) WAYS TO COMMUNICATE SENSITIVELY AND COMPASSIONATELY
2 WITH A REPORTING PARTY OR COMPLAINANT; AND

3 (C) INFORMATION REGARDING HOW SEXUAL MISCONDUCT MAY
4 IMPACT STUDENTS WITH DEVELOPMENTAL OR INTELLECTUAL DISABILITIES.

5 (7) (a) ON OR BEFORE JANUARY 1, 2019, EACH INSTITUTION OF
6 HIGHER EDUCATION SHALL PROVIDE TO THE DEPARTMENT, TO BE POSTED
7 ON THE DEPARTMENT'S WEBSITE:

8 (I) A COPY OF THE INSTITUTION'S SEXUAL MISCONDUCT POLICY;
9 AND

10 (II) A DESCRIPTION OF THE SEXUAL MISCONDUCT TRAINING
11 PROVIDED BY THE INSTITUTION AS REQUIRED BY SUBSECTION (6) OF THIS
12 SECTION.

13 (b) ON OR BEFORE JANUARY 1, 2020, AND ON OR BEFORE EACH
14 JANUARY 1 THEREAFTER, EACH INSTITUTION OF HIGHER EDUCATION SHALL
15 PROVIDE TO THE DEPARTMENT, TO BE POSTED ON THE DEPARTMENT'S
16 WEBSITE:

17 (I) A COPY OF ANY UPDATED INSTITUTIONAL SEXUAL MISCONDUCT
18 POLICY ADOPTED DURING THE PREVIOUS CALENDAR YEAR; AND

19 (II) A DESCRIPTION OF THE SEXUAL MISCONDUCT TRAINING
20 PROVIDED BY THE INSTITUTION AS REQUIRED BY SUBSECTION (6) OF THIS
21 SECTION.

22 (8) (a) SUBJECT TO AVAILABLE APPROPRIATIONS, THE
23 DEPARTMENT SHALL HOST BIENNIAL SUMMITS ON SEXUAL MISCONDUCT ON
24 INSTITUTION CAMPUSES FOR STAKEHOLDERS, ADVOCATES, STUDENTS,
25 FACULTY, AND OTHER INTERESTED PERSONS TO FACILITATE
26 COMMUNICATION, SHARE INFORMATION, AND HEAR FROM EXPERTS, AND
27 OTHER EFFORTS TO PROMOTE AWARENESS AND PREVENTION OF SEXUAL

1 MISCONDUCT ON COLORADO'S INSTITUTION CAMPUSES.

2 (b) PRIOR TO EACH BIENNIAL SUMMIT, THE DEPARTMENT SHALL
3 CONVENE A PLANNING COMMITTEE COMPOSED OF:

4 (I) A REPRESENTATIVE OF A PUBLIC FOUR-YEAR INSTITUTION,
5 APPOINTED BY THE GOVERNING BOARDS OF PUBLIC FOUR-YEAR
6 INSTITUTIONS;

7 (II) A REPRESENTATIVE OF A PUBLIC TWO-YEAR COLLEGE,
8 APPOINTED BY THE GOVERNING BOARDS OF PUBLIC TWO-YEAR COLLEGES;

9 (III) A REPRESENTATIVE OF A PUBLIC RURAL COLLEGE, AS DEFINED
10 BY THE DEPARTMENT, APPOINTED BY THE GOVERNING BOARDS OF PUBLIC
11 RURAL COLLEGES;

12 (IV) A REPRESENTATIVE OF A PUBLIC AREA TECHNICAL COLLEGE,
13 APPOINTED BY THE GOVERNING BOARDS OF PUBLIC AREA TECHNICAL
14 COLLEGES;

15 (V) A REPRESENTATIVE OF A PRIVATE FOUR-YEAR INSTITUTION,
16 APPOINTED BY THE GOVERNING BOARDS OF THE PRIVATE FOUR-YEAR
17 INSTITUTIONS;

18 (VI) TWO STUDENTS, ONE FROM A PUBLIC FOUR-YEAR INSTITUTION
19 AND ONE FROM A PUBLIC TWO-YEAR COLLEGE, APPOINTED BY A
20 STATEWIDE ORGANIZATION OF PUBLIC STUDENT GOVERNMENTS;

21 (VII) A REPRESENTATIVE OF A CAMPUS-BASED ORGANIZATION
22 THAT REPRESENTS VICTIMS OF SEXUAL MISCONDUCT FROM AN INSTITUTION
23 NOT OTHERWISE REPRESENTED ON THE COMMITTEE, APPOINTED BY THE
24 EXECUTIVE DIRECTOR OF THE DEPARTMENT;

25 (VIII) A REPRESENTATIVE OF A STATEWIDE COMMUNITY-BASED
26 ADVOCACY ORGANIZATION THAT REPRESENTS VICTIMS OF SEXUAL
27 MISCONDUCT, APPOINTED BY THE EXECUTIVE DIRECTOR OF THE

1 DEPARTMENT; AND

2 (IX) A VICTIM OF SEXUAL MISCONDUCT AT AN INSTITUTION,
3 APPOINTED JOINTLY BY THE REPRESENTATIVES APPOINTED PURSUANT TO
4 SUBSECTIONS (8)(b)(VII) AND (8)(b)(VIII) OF THIS SECTION.

5 (c) THE PLANNING COMMITTEE MAY COLLABORATE WITH OTHER
6 INTERESTED PARTIES, INCLUDING COMMUNITY PARTNERS, TO DEVELOP THE
7 MOST EFFECTIVE EVENT TO FACILITATE THE PURPOSES OF THE SUMMIT AS
8 DESCRIBED IN SUBSECTION (8)(a) OF THIS SECTION.

9 (d) (I) ON OR BEFORE JANUARY 15 OF THE YEAR FOLLOWING THE
10 SUMMIT, THE PLANNING COMMITTEE SHALL SUBMIT A REPORT TO THE
11 EDUCATION COMMITTEES OF THE SENATE AND THE HOUSE OF
12 REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES, INCLUDING A
13 SUMMARY OF THE EVENTS, ATTENDEES, OUTCOMES, AND
14 RECOMMENDATIONS.

15 (II) NOTWITHSTANDING THE PROVISIONS OF SECTION 24-1-136
16 (11)(a)(I), THE REQUIREMENT FOR THE REPORT IN SUBSECTION (8)(d)(I) OF
17 THIS SECTION CONTINUES INDEFINITELY.

18 **SECTION 2. Act subject to petition - effective date.** This act
19 takes effect at 12:01 a.m. on the day following the expiration of the
20 ninety-day period after final adjournment of the general assembly (August
21 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
22 referendum petition is filed pursuant to section 1 (3) of article V of the
23 state constitution against this act or an item, section, or part of this act
24 within such period, then the act, item, section, or part will not take effect
25 unless approved by the people at the general election to be held in
26 November 2018 and, in such case, will take effect on the date of the
27 official declaration of the vote thereon by the governor.