HOUSE BILL 18-1391

A BILL FOR AN ACT

CONCERNING THE PREVENTION OF SEXUAL MISCONDUCT ON HIGHER 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...
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.

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

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

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


(b) "Complainant" means a person who is subject to alleged sexual misconduct under an institution's sexual misconduct policy.

(c) "Department" means the department of higher education created and existing pursuant to section 24-1-114.

(d) "Institution of higher education" or "Institution" means a State institution of higher education, as defined in section 23-18-102 (10)(b), or any Accredited Campus of a State Institution of Higher Education; a participating private institution of higher education, as defined by section 23-18-102...
A LOCAL DISTRICT COLLEGE, AS DEFINED BY SECTION 23-71-102 (1)(a); AND AN AREA TECHNICAL COLLEGE, AS DEFINED BY SECTION 23-60-103 (1).

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

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

(g) "TITLE IX" MEANS TITLE IX OF THE FEDERAL EDUCATION AMENDMENTS OF 1972, AS AMENDED, 20 U.S.C. SECS. 1681 TO 1688.

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

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

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

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

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

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

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

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

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

(I) BE FAIR, IMPARTIAL, AND PROMPT, AND THE INSTITUTION MUST
MAKE A GOOD FAITH EFFORT TO COMPLETE AN INVESTIGATION OR
ADJUDICATIVE PROCESS, EXCLUDING ANY APPEALS, WITHIN AN AVERAGE
OF SIXTY TO NINETY DAYS, WITHOUT JEOPARDIZING THE RIGHTS OF A
COMPLAINANT OR RESPONDING PARTY. THE PROCEDURE MAY INCLUDE A
PROCESS THAT ALLOWS FOR THE EXTENSION OF THESE TIME FRAMES FOR
GOOD CAUSE WITH PRIOR WRITTEN NOTICE OF THE DELAY AND THE
REASON FOR THE DELAY TO THE COMPLAINANT AND THE RESPONDING
PARTY.

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

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

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

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

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

(e) Prohibitions on:

(I) The consideration of prior, irrelevant sexual conduct, except relating to a prior relationship or history between the parties if relevant to some material issue in the process;

(II) Any action that would be retaliatory under Title IX;

(f) Protection from disciplinary action against a complainant, reporting party, or witness for his or her participation in the report or investigation and from policy violations related to the incident, such as, at a minimum, personal consumption of alcohol or drugs; and

(g) That all provisions of the sexual misconduct policy, including any appeal process that may be provided, be applied equally to both the complainant and the responding party.

(4) (a) Each institution shall provide information to students on how to access an individual or individuals for the purpose of providing support regarding sexual misconduct. The institution may designate faculty or staff members to fill this role; except that the institution's Title IX coordinator shall not be such an individual. An institution may also designate an outside entity or service to serve this purpose. If an institution uses an outside entity or service, it shall make its sexual misconduct policy available to the entity or service. An institution that enrolls fewer than one thousand students may partner with another institution in the region or within the state to provide services pursuant to this subsection (4).

(b) If an individual described in subsection (4)(a) of this
SECTION MEETS THE REQUIREMENTS OF SECTION 13-90-107 (1)(k)(II) OR
SECTION 12-43-218, THE INDIVIDUAL HAS THE PROTECTIONS FOR
CONFIDENTIALITY OR PRIVILEGES ESTABLISHED PURSUANT TO THOSE
SECTIONS.

(5) (a) EACH INSTITUTION OF HIGHER EDUCATION SHALL PROMOTE:
(I) AWARENESS AND PREVENTION OF SEXUAL MISCONDUCT; AND
(II) THE INSTITUTION'S SEXUAL MISCONDUCT POLICY; AND
(b) EACH INSTITUTION SHALL PROMOTE THE INFORMATION
described in subsection (5)(a) of this section by:
(I) PROMINENTLY DISPLAYING ON ITS WEBSITE:
(A) THE INSTITUTION'S SEXUAL MISCONDUCT POLICY; AND
(B) THE TELEPHONE NUMBER AND WEBSITE FOR AN
INSTITUTIONAL, LOCAL, STATE, OR NATIONAL TWENTY-FOUR-HOUR
HOTLINE THAT PROVIDES INFORMATION ON SEXUAL MISCONDUCT.
(II) ANNUALLY DISTRIBUTING THROUGH ELECTRONIC OR OTHER
MEANS OF COMMUNICATION THE INSTITUTION'S SEXUAL MISCONDUCT
POLICY.

(6) (a) EACH INSTITUTION OF HIGHER EDUCATION SHALL OFFER
TRAINING:
(I) TO PROMOTE AWARENESS AND PREVENTION OF SEXUAL
MISCONDUCT; AND
(II) ON THE INSTITUTION'S SEXUAL MISCONDUCT POLICY.
(b) THE TRAINING MUST BE OFFERED ANNUALLY TO ALL INCOMING
STUDENTS AND NEWLY EMPLOYED FACULTY AND STAFF AND, WHEN
APPLICABLE, TO ALL STUDENTS, FACULTY, AND STAFF IF THE SEXUAL
MISCONDUCT POLICY IS SUBSTANTIALLY UPDATED. ANY INDIVIDUAL
DESIGNATED AS RESPONSIBLE FOR INVESTIGATING OR ADJUDICATING
COMPLAINTS UNDER THE SEXUAL MISCONDUCT POLICY SHALL BE TRAINED ON THE POLICY IN EFFECT AT THE TIME OF THE INVESTIGATION OR ADJUDICATION.

(c) The training required by this subsection (6) may include but is not limited to:

(I) How to promote awareness and prevention of sexual misconduct;

(II) An explanation of the institution's sexual misconduct policy;

(III) An explanation of relevant state and federal laws concerning sexual misconduct;

(IV) An explanation of types of conduct that would constitute a violation of the institution's sexual misconduct policy;

(V) The role of the institution in ensuring a coordinated response to an allegation of sexual misconduct;

(VI) The definition of "consent" in the context of sexual activity;

(VII) Options for bystander intervention;

(VIII) Options for involving law enforcement in responding to sexual misconduct;

(IX) The importance of treating and how to treat others with dignity and respect; and

(X) The effects of trauma on reporting parties or complainants who have experienced sexual misconduct that may include:

(A) Information on working with and interviewing persons
WHO HAVE EXPERIENCED SEXUAL MISCONDUCT;

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

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

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

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

AND

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

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

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

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

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

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

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

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

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

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

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

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

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

(VIII) A REPRESENTATIVE OF A STATEWIDE COMMUNITY-BASED
ADVOCACY ORGANIZATION THAT REPRESENTS VICTIMS OF SEXUAL
MISCONDUCT, APPOINTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT; AND

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

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


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

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