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.
(8); 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
(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) EXCEPT AS PROVIDED IN SUBSECTION (3)(e) OF THIS SECTION,
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) SPECIFY EITHER THE PREPONDERANCE OF THE EVIDENCE OR CLEAR AND CONVINCING 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) If the potential punishment for a violation of the
policy includes expulsion or suspension of one semester or
longer, that the following procedures apply instead of
subsections (3)(d)(II) to (3)(d)(IV) of this section:

(I) Clear and convincing evidence as the evidentiary
standard if the fact finding is performed by a single person or
preponderance of the evidence as the evidentiary standard if
the fact finder is a panel;

(II) Outlining the procedures to be followed in the
investigation, adjudicatory hearing, and appellate processes
including:

(A) Separating individuals or panels for the investigation,
adjudicatory hearing, and appellate processes who shall not be
invested in the outcome of a previous stage of the process;

(B) Providing the complainant and the responding party
with the same opportunities to have an advisor or other person,
including an attorney, present during any part of the
investigation who may participate at all stages of the
investigation, adjudicatory hearing, and appellate processes;

and

(C) During the adjudicatory hearing, the issuance of any
necessary and appropriate protective orders for the benefit of
the complainant or any witness, which may include, but are not
limited to, provisions for the questioning of the complainant
outside the presence of the respondent; and
(D) If an adjudicatory hearing panel is used, the availability of a legal advisor who is a licensed attorney to advise the panel.

(f) Prohibitions on:

(I) The consideration of prior sexual conduct, except that which is relevant to a material and substantive issue in the adjudicatory process and where the probative value outweighs any prejudicial value; and

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

(g) Protection from disciplinary action against a complainant, reporting party, or witness for his or her truthful 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

(h) 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.

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

(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.