

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 19-0437.01 Jerry Barry x4341

SENATE BILL 19-007

SENATE SPONSORSHIP

Pettersen and Winter,

HOUSE SPONSORSHIP

McLachlan and Buckner,

Senate Committees
Education

House 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 shall 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 shall post 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), OR ANY ACCREDITED CAMPUS OF A STATE
18 INSTITUTION OF HIGHER EDUCATION; A PARTICIPATING PRIVATE
19 INSTITUTION OF HIGHER EDUCATION, AS DEFINED IN SECTION 23-18-102

1 (8); A LOCAL DISTRICT COLLEGE, AS DEFINED IN SECTION 23-71-102 (1)(a);
2 AND AN AREA TECHNICAL COLLEGE, AS DEFINED IN SECTION 23-60-103 (1).

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

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

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

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

13 (2) (a) ON OR BEFORE AUGUST 1, 2020, EACH INSTITUTION OF
14 HIGHER EDUCATION SHALL ADOPT A SEXUAL MISCONDUCT POLICY FOR
15 ENROLLED STUDENTS. EACH INSTITUTION SHALL PERIODICALLY REVIEW
16 AND UPDATE THE POLICY.

17 (b) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, IF THERE
18 IS A CONFLICT BETWEEN THIS SECTION AND ANY FEDERAL LAW OR
19 REGULATION AND BASED ON THAT CONFLICT AN INSTITUTION OF HIGHER
20 EDUCATION IS AT RISK OF LOSING FEDERAL MONEY FOR ITSELF OR ITS
21 STUDENTS, THE INSTITUTION SHALL FOLLOW FEDERAL LAW AND SHALL
22 NOT BE LIABLE FOR ANY VIOLATION OF THIS SECTION BASED ON THAT
23 ACTION.

24 (3) AT A MINIMUM, EACH SEXUAL MISCONDUCT POLICY MUST
25 INCLUDE:

26 (a) DEFINITIONS OF FORMS OF SEXUAL MISCONDUCT CONSISTENT
27 WITH FEDERAL AND STATE LAW AND POLICY;

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

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

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

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

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

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

18 (II) INCLUDE THE PREPONDERANCE OF THE EVIDENCE AS THE
19 EVIDENTIARY STANDARD WHEN A STUDENT IS THE RESPONDENT,
20 NOTWITHSTANDING ANY OTHER EVIDENTIARY STANDARD IN ANY OTHER
21 POLICY OF THE INSTITUTION;

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

26 (IV) PROVIDE THE COMPLAINANT AND THE RESPONDING PARTY
27 WITH THE SAME OPPORTUNITIES TO HAVE AN ADVISOR OR OTHER PERSON

1 PRESENT DURING ANY PART OF THE PROCEEDING; EXCEPT THAT THE
2 ADVISOR OR OTHER PERSON IS NOT ALLOWED TO SPEAK ON BEHALF OF THE
3 COMPLAINANT OR RESPONDING PARTY DURING THE COURSE OF THE
4 PROCEEDINGS;

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

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

11 (e) PROHIBITIONS ON:

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

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

16 (f) PROTECTION FROM DISCIPLINARY ACTION AGAINST A
17 COMPLAINANT, REPORTING PARTY, OR WITNESS FOR HIS OR HER
18 PARTICIPATION IN THE REPORTING OR INVESTIGATION AND FROM POLICY
19 VIOLATIONS RELATED TO THE INCIDENT, SUCH AS, AT A MINIMUM,
20 PERSONAL CONSUMPTION OF ALCOHOL OR DRUGS; AND

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

24 (4) (a) COMMENCING ON OR BEFORE AUGUST 1, 2020, EACH
25 INSTITUTION SHALL PROVIDE INFORMATION TO STUDENTS ON HOW TO
26 RECEIVE SUPPORT REGARDING SEXUAL MISCONDUCT. THE INSTITUTION
27 MAY DESIGNATE FACULTY OR STAFF MEMBERS TO FILL THIS ROLE; EXCEPT

1 THAT THE INSTITUTION'S TITLE IX COORDINATOR SHALL NOT BE SUCH AN
2 INDIVIDUAL. AN INSTITUTION MAY ALSO DESIGNATE AN OUTSIDE ENTITY
3 OR SERVICE TO SERVE THIS PURPOSE. IF AN INSTITUTION USES AN OUTSIDE
4 ENTITY OR SERVICE, IT SHALL MAKE ITS SEXUAL MISCONDUCT POLICY
5 AVAILABLE TO THE ENTITY OR SERVICE. AN INSTITUTION THAT ENROLLS
6 FEWER THAN ONE THOUSAND STUDENTS MAY PARTNER WITH ANOTHER
7 INSTITUTION IN THE REGION OR WITHIN THE STATE TO PROVIDE SERVICES
8 PURSUANT TO THIS SUBSECTION (4).

9 (b) IF AN INDIVIDUAL DESCRIBED IN SUBSECTION (4)(a) OF THIS
10 SECTION MEETS THE REQUIREMENTS OF SECTION 13-90-107 (1)(k)(II) OR
11 SECTION 12-43-218, THE INDIVIDUAL HAS THE PROTECTIONS FOR
12 CONFIDENTIALITY OR PRIVILEGES ESTABLISHED PURSUANT TO THOSE
13 SECTIONS.

14 (5) (a) COMMENCING ON OR BEFORE AUGUST 1, 2020, EACH
15 INSTITUTION OF HIGHER EDUCATION SHALL PROMOTE:

- 16 (I) AWARENESS AND PREVENTION OF SEXUAL MISCONDUCT; AND
- 17 (II) THE INSTITUTION'S SEXUAL MISCONDUCT POLICY.

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

- 20 (I) PROMINENTLY DISPLAYING ON ITS WEBSITE:
 - 21 (A) THE INSTITUTION'S SEXUAL MISCONDUCT POLICY; AND
 - 22 (B) THE TELEPHONE NUMBER AND WEBSITE FOR AN
23 INSTITUTIONAL, LOCAL, STATE, OR NATIONAL TWENTY-FOUR-HOUR
24 HOTLINE THAT PROVIDES INFORMATION ON SEXUAL MISCONDUCT; AND
- 25 (II) ANNUALLY DISTRIBUTING THROUGH ELECTRONIC OR OTHER
26 MEANS OF COMMUNICATION THE INSTITUTION'S SEXUAL MISCONDUCT
27 POLICY.

1 (6) (a) COMMENCING ON OR BEFORE AUGUST 1, 2020, EACH
2 INSTITUTION OF HIGHER EDUCATION SHALL OFFER TRAINING:

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

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

6 (b) THE TRAINING MUST BE OFFERED ANNUALLY TO ALL INCOMING
7 STUDENTS AND NEWLY EMPLOYED FACULTY AND STAFF AND, WHEN
8 APPLICABLE, TO ALL STUDENTS, FACULTY, AND STAFF IF THE SEXUAL
9 MISCONDUCT POLICY IS SUBSTANTIALLY UPDATED. ANY INDIVIDUAL
10 DESIGNATED AS RESPONSIBLE FOR INVESTIGATING OR ADJUDICATING
11 COMPLAINTS UNDER THE SEXUAL MISCONDUCT POLICY MUST BE TRAINED
12 ON THE POLICY IN EFFECT AT THE TIME OF THE INVESTIGATION OR
13 ADJUDICATION.

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

16 (I) HOW TO PROMOTE AWARENESS AND PREVENTION OF SEXUAL
17 MISCONDUCT;

18 (II) AN EXPLANATION OF THE INSTITUTION'S SEXUAL MISCONDUCT
19 POLICY;

20 (III) AN EXPLANATION OF RELEVANT STATE AND FEDERAL LAWS
21 CONCERNING SEXUAL MISCONDUCT;

22 (IV) AN EXPLANATION OF TYPES OF CONDUCT THAT WOULD
23 CONSTITUTE A VIOLATION OF THE INSTITUTION'S SEXUAL MISCONDUCT
24 POLICY;

25 (V) THE ROLE OF THE INSTITUTION IN ENSURING A COORDINATED
26 RESPONSE TO AN ALLEGATION OF SEXUAL MISCONDUCT;

27 (VI) THE DEFINITION OF "CONSENT" IN THE CONTEXT OF SEXUAL

1 ACTIVITY;

2 (VII) OPTIONS FOR BYSTANDER INTERVENTION;

3 (VIII) OPTIONS FOR INVOLVING LAW ENFORCEMENT IN

4 RESPONDING TO SEXUAL MISCONDUCT;

5 (IX) THE IMPORTANCE OF TREATING AND HOW TO TREAT OTHERS

6 WITH DIGNITY AND RESPECT; AND

7 (X) THE EFFECTS OF TRAUMA ON REPORTING PARTIES OR

8 COMPLAINANTS WHO HAVE EXPERIENCED SEXUAL MISCONDUCT THAT MAY

9 INCLUDE:

10 (A) INFORMATION ON WORKING WITH AND INTERVIEWING PERSONS

11 WHO HAVE EXPERIENCED SEXUAL MISCONDUCT;

12 (B) WAYS TO COMMUNICATE SENSITIVELY AND

13 COMPASSIONATELY WITH A REPORTING PARTY OR COMPLAINANT; AND

14 (C) INFORMATION REGARDING HOW SEXUAL MISCONDUCT MAY

15 IMPACT STUDENTS WITH INTELLECTUAL AND DEVELOPMENTAL

16 DISABILITIES.

17 (7) (a) ON OR BEFORE OCTOBER 1, 2020, EACH INSTITUTION OF

18 HIGHER EDUCATION SHALL PROVIDE TO THE DEPARTMENT, TO BE POSTED

19 ON THE DEPARTMENT'S WEBSITE:

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

21 (II) A STATEMENT AS TO HOW THE INSTITUTION IS PROVIDING

22 INFORMATION TO STUDENTS ON HOW TO RECEIVE SUPPORT REGARDING

23 SEXUAL MISCONDUCT AS REQUIRED BY SUBSECTION (4) OF THIS SECTION

24 AND HOW IT IS PROMOTING THE INFORMATION REQUIRED BY SUBSECTION

25 (5) OF THIS SECTION; AND

26 (III) A DESCRIPTION OF THE SEXUAL MISCONDUCT TRAINING

27 PROVIDED BY THE INSTITUTION AS REQUIRED BY SUBSECTION (6) OF THIS

1 SECTION.

2 (b) ON OR BEFORE OCTOBER 1, 2021, AND ON OR BEFORE EACH
3 JANUARY 1 THEREAFTER, EACH INSTITUTION OF HIGHER EDUCATION SHALL
4 PROVIDE TO THE DEPARTMENT, TO BE POSTED ON THE DEPARTMENT'S
5 WEBSITE:

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

8 (II) A STATEMENT AS TO ANY CHANGES IN THE MANNER IN WHICH
9 THE INSTITUTION PROVIDES OR PROMOTES THE INFORMATION REQUIRED BY
10 SUBSECTION (4) OR (5) OF THIS SECTION; AND

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

14 (8) BEGINNING IN 2020, AND EVERY YEAR THEREAFTER, THE
15 DEPARTMENT SHALL INCLUDE AS PART OF ITS "STATE MEASUREMENT FOR
16 ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART)
17 GOVERNMENT ACT" HEARING REQUIRED BY SECTION 2-7-203
18 INFORMATION CONCERNING THE REPORTS SUBMITTED BY INSTITUTIONS
19 PURSUANT TO SUBSECTION (7)(a) OF THIS SECTION.

20 (9) (a) COMMENCING ON OR BEFORE AUGUST 1, 2020, SUBJECT TO
21 AVAILABLE APPROPRIATIONS, THE DEPARTMENT SHALL HOST BIENNIAL
22 SUMMITS ON SEXUAL MISCONDUCT ON INSTITUTION CAMPUSES FOR
23 STAKEHOLDERS, ADVOCATES, STUDENTS, FACULTY, AND OTHER
24 INTERESTED PERSONS TO FACILITATE COMMUNICATION, SHARE
25 INFORMATION, AND HEAR FROM EXPERTS, AND OTHER EFFORTS TO
26 PROMOTE AWARENESS AND PREVENTION OF SEXUAL MISCONDUCT ON
27 COLORADO'S INSTITUTION CAMPUSES.

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

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

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

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

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

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

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

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

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

1 (IX) A VICTIM OF SEXUAL MISCONDUCT AT AN INSTITUTION,
2 APPOINTED JOINTLY BY THE REPRESENTATIVES APPOINTED PURSUANT TO
3 SUBSECTIONS (9)(b)(VII) AND (9)(b)(VIII) OF THIS SECTION.

4 (c) THE PLANNING COMMITTEE MAY COLLABORATE WITH OTHER
5 INTERESTED PARTIES, INCLUDING COMMUNITY PARTNERS, TO DEVELOP THE
6 MOST EFFECTIVE EVENT TO FACILITATE THE PURPOSES OF THE SUMMIT AS
7 DESCRIBED IN SUBSECTION (9)(a) OF THIS SECTION.

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

14 (II) NOTWITHSTANDING THE PROVISIONS OF SECTION 24-1-136
15 (11)(a)(I), THE REQUIREMENT FOR THE REPORT IN SUBSECTION (9)(d)(I) OF
16 THIS SECTION CONTINUES INDEFINITELY.

17 **SECTION 2. Safety clause.** The general assembly hereby finds,
18 determines, and declares that this act is necessary for the immediate
19 preservation of the public peace, health, and safety.