

FINAL BILL REPORT

ESHB 2327

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Synopsis as Enacted

Brief Description: Addressing sexual misconduct at postsecondary educational institutions.

Sponsors: House Committee on College & Workforce Development (originally sponsored by Representatives Pollet, Kilduff, Frame, Bergquist, Orwall, Wylie and Appleton).

House Committee on College & Workforce Development
House Committee on Appropriations
Senate Committee on Higher Education & Workforce Development
Senate Committee on Ways & Means

Background:

Sexual Misconduct Policies and Title IX.

Postsecondary educational institutions (institutions) each have policies prohibiting sexual misconduct on campus, which can include sexual harassment, sexual assault or violence, nonconsensual sexual activity, stalking, indecent exposure, sexual exploitation, dating violence, and domestic violence. Every institution that accepts federal funds must comply with Title IX, which is a federal civil rights law that prohibits discrimination based on sex in federally funded education programs and activities. Under Title IX, an institution receiving federal financial assistance must respond promptly and effectively to reports of sexual violence and have grievance procedures in place for resolving student and employee complaints of sexual discrimination. Institutions must develop sexual violence procedures that at least include the following:

- notice to students and employees of grievance procedures, including where complaints may be filed;
- application of grievance procedures to complaints filed by students or on their behalf;
- provisions for reliable and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence;
- designated and reasonably prompt time frames for the major stages of the complaint process;
- notice to the complainant and alleged perpetrator of the outcome of the complaint; and
- assurance that the institution will take steps to prevent recurrence of any sexual violence and remedy discriminatory effects on the complainant and others.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Public Records Act.

Under the Public Records Act (PRA), state and local agencies are required to make written records available to the public for inspection and copying upon request, unless an exemption applies. Certain investigative, law enforcement, and crime victim information is exempt, in addition to certain personal information in employee files maintained for public agencies, to the extent that the disclosure would violate their right to privacy.

Summary:

Sexual Misconduct Assessment and Impact Report.

By December 1, 2023, the public four-year institutions of higher education must report to the Governor and appropriate committees of the Legislature on the following:

- summaries of any campus climate assessments conducted to gauge the prevalence of sexual misconduct on college and university campuses;
- outreach efforts and information from traditionally marginalized students or those who experience disproportionate impacts of systemic oppression;
- how information obtained in the campus climate assessments was used to design and improve policies, programs, and resources; and
- the impacts of this act on institutional hiring practices, campus safety, and other relevant considerations.

Settlement Agreements.

Any provision of a settlement agreement between an institution and an employee is considered void and unenforceable if the provision prohibits the employee, institution, survivor, or any other person from disclosing that the employee is the subject of an ongoing investigation or was found to have conducted sexual misconduct. A settlement agreement may contain provisions requiring nondisclosure of personal identifying information of persons filing complaints, making allegations, and witnesses participating in investigations.

Public Records Act.

Personal identifying information in an employee personnel file, student file, investigation file, settlement agreement, or other files held by an institution that reveals the identity of witnesses or victims of sexual misconduct committed by an employee of the institution are exempt from public disclosure and copying, unless the victim or witness indicates a desire for disclosure. The term "witness" does not include an employee under investigation for allegations of sexual misconduct.

Personnel Files.

An institution must complete investigations into sexual misconduct complaints or allegations of an employee against a student regardless of whether the employee voluntarily or involuntarily leaves employment with the institution, unless the complainant requests otherwise. When the investigation is complete, the institution must make written findings of whether the complaint or allegation is substantiated. Institutions must use a preponderance of the evidence standard when determining whether findings are substantiated. Institutions must include in an employee's personnel file or employment records any substantiated findings of sexual misconduct committed by the employee while employed with that institution. When disclosing records in an employee's personnel file or employment record,

the institution must keep personal identifying information of the complainant and any witness confidential, unless otherwise agreed to by the complainant or witnesses.

Institutional Requirements for Applicant Reference and Background Checks.

Beginning October 1, 2020, before an official offer of employment, an institution must request the applicant to sign a statement with three items:

1. a declaration of whether the applicant is the subject of any substantiated findings of sexual misconduct in any current or former employment at an institution or is currently being investigated for, or left a position during an investigation into, a violation of sexual misconduct, and if so, an explanation of the situation;
2. an authorization to permit the applicant's current and past employers to disclose to the hiring institution any sexual misconduct committed by the applicant and to make copies of all documents in the previous employer's personnel, investigative, or other files relating to sexual misconduct by the applicant available to the hiring institution; and
3. a release from liability for the applicant's current and past employers, and employees acting on behalf of the employer, for providing the information in 1 and 2.

In addition, beginning July 1, 2021, before an official offer of employment the institution must request that the applicant's current and past employers provide copies of all documents, if any, related to sexual misconduct in an employee's personnel file. The request must include a copy of the applicant's declaration and signed statement. The institution must also ask the applicant if he or she is the subject of any substantiated findings of, is currently being investigated for, or has left a position during an investigation into sexual misconduct, and if so, an explanation of the situation. The institution may only use the information received for the purpose of evaluating the applicant's qualifications for the position for which the person applied.

An institution that receives a request to disclose information about substantiated findings or ongoing investigations into sexual misconduct about a current or previous employee must provide the information requested and make copies of documents related to substantiated sexual misconduct in the applicant's personnel file available to the requesting institution. In addition, an institution must disclose information about substantiated findings of sexual misconduct to any employer conducting reference or background checks on a current or former employee, even if the employer conducting the reference check does not specifically ask for such information.

Beginning October 1, 2020, an institution may not hire an applicant who does not sign the statement attesting to any sexual misconduct findings or ongoing investigations.

Institutions without existing procedures in place must establish procedures to begin implementing sexual misconduct disclosure requirements no later than July 1, 2021.

Institutions, or an employee acting on behalf of the institution, that disclose information are presumed to be acting in good faith and are immune from civil and criminal liability for disclosure. The institution is not liable for nondisclosure of information by an employee without access to personnel records who is asked to respond to a reference check. However, institutions must share with all staff who are likely to receive reference checks the best

practices for informing requesters how to contact the appropriate office for personnel records. Institutions must keep personal identifying information of the complainant and any witness confidential, unless the complainant or witness agree to disclose their identifying information. The disclosure requirements do not restrict expungement from a personnel file or employment records of information about alleged sexual misconduct that has not been substantiated.

Applicant, employee, employer, postsecondary educational institution, sexual misconduct, and student are all defined.

Votes on Final Passage:

House	94	4	
Senate	35	13	(Senate amended)
House	95	1	(House concurred)

Effective: June 11, 2020