

SENATE BILL REPORT

SB 6439

As of January 29, 2020

Title: An act relating to addressing sexual misconduct at postsecondary educational institutions.

Brief Description: Addressing sexual misconduct at postsecondary educational institutions.

Sponsors: Senators Randall, Van De Wege, Keiser, Stanford, Kuderer, Hunt, Dhingra, Liias, Wilson, C., Frockt, Das, Hasegawa and Saldaña.

Brief History:

Committee Activity: Higher Education & Workforce Development: 1/28/20.

Brief Summary of Bill

- Requires each postsecondary educational institution (institution) to administer a campus climate assessment to measure the prevalence of sexual misconduct on their campuses.
- Disallows the use of an agreement prohibiting a person from disclosing that an employee was the subject of an investigation, allegation, or findings of sexual misconduct.
- Requires institutions to ask job applicants to sign a statement regarding history of sexual misconduct and ask previous employers certain information about an applicant.
- Exempts personal identifying information of a witness or complainant of sexual misconduct at institutions from the Public Records Act.

SENATE COMMITTEE ON HIGHER EDUCATION & WORKFORCE DEVELOPMENT

Staff: Kellee Gunn (786-7429)

Background: Public Records Act. Washington's Public Records Act (PRA) requires state and local agencies to disclose all public records upon request, unless the record is explicitly exempt under the PRA or by another law.

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.

Non-Disclosure Agreements. A nondisclosure agreement (NDA) is a form of contract between two or more parties that restricts the disclosure of confidential material or information to third parties. There are certain limitations to NDAs under state and federal law.

Sexual Misconduct Policies at Higher Education Institutions. Every higher education institution that receives federal funds must comply with certain federal laws related to campus safety and sexual violence including the Clery Act, the Violence Against Women Act, and Title IX.

In 2015, the Legislature enacted two laws that created procedures to address and prevent campus sexual violence. As a result, certain disciplinary processes and confidentiality protocols were developed and a uniform campus climate survey was conducted at the public baccalaureate institutions and the community and technical colleges (CTCs).

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Institutions includes public and private baccalaureate institutions, the CTCs, private vocational schools, degree-granting institutions, and cosmetology schools in Washington State. The term sexual misconduct is defined to include any misconduct of a sexual nature against an institution's policies or determined to constitute sex discrimination under state or federal law.

Campus Climate Assessment. Each institution must administer a campus climate assessment to gauge the prevalence of sexual misconduct on their campus. The Washington Student Achievement Council (WSAC) must create a standardized assessment, in consultation with the CTCs. The assessment must have questions related to where sexual misconduct occurs, options for reporting sexual misconduct, responses by institutions and law enforcement to sexual misconduct, prevalence of retaliation or pressure on survivors or witnesses not to report, and on attitudes and awareness of campus sexual misconduct issues and consent.

Institutions must submit the results to WSAC every five years beginning July 1, 2023. A summary of those reports is due to the Governor and the appropriate committees of the Legislature by December 31st of each year an assessment is due. The institutions must make the report available to the campus community.

Use of Nondisclosure Agreements. Any agreement between an institution and an employee is against public policy and void and unenforceable if it prohibits the employee, institution, survivor, or another person from disclosing that the employee has been the subject of an investigation, allegation, or findings of sexual misconduct.

Investigations of Sexual Misconduct and Personnel Files. An institution must investigate a sexual misconduct allegation regardless of whether the accused is still an employee and make written findings on whether the allegation is substantiated. Any substantiated findings of sexual misconduct must be included in an employee's personnel file. For the purpose of inclusion in the personnel file and in hiring practices, "substantiated" means the employee has been found responsible for sexual misconduct through the use of the preponderance of the evidence standard.

Hiring Practices at Postsecondary Educational Institutions. Beginning no later than October 1, 2020, an applicant to an institution is required to sign a statement:

- declaring whether they have been the subject of any substantiated findings of sexual misconduct and provide an explanation of the situation;
- authorizing the applicant's current and past employers to disclose any sexual misconduct committed by the applicant; and
- releasing an applicant's current or former employers from liability.

An institution may not hire an applicant who does not sign the statement. An applicant does not include a student applying for temporary student employment unless it includes supervising other students.

An institution must request certain information from an applicant's current or past employers beginning July 1, 2021. If any information on a current or former employee is requested of an institution by another institution, it must be provided. Best practices must be shared with all faculty and staff at public higher education institutions that may receive reference check requests on how to inform and advise requesters for personnel records. The duty to disclose information is the responsibility of the institution when responding to a formal request for personnel records relating to a current or prior employee when requested by another employer.

An institution is not liable for any cause of action arising of information by an employee without access to their official personnel records.

Disclosure requirements must be implemented no later than January 1, 2021.

Unless required otherwise, personal identifying information of a witness or complainant in a settlement agreement, a personnel file, student file, or other files is exempt from public disclosure and copying.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute: PRO: We have heard from students, advocates of survivors, and college partners that there is a problem here to solve. Institutions should be safe for employees and students. There are gaps in the system. This is a complex issue that balances confidentiality, due-process, and hiring practices. The policy behind this bill is good. This will require centralizing of human resources work. There will be costs associated with this bill. In 2015, the Legislature passed two bills related to prevention and response of sexual misconduct. There were three reports over 18 months, and they are posted on the Council of Presidents' website. As the WSAC works on assessments and surveys, the Council of Presidents would like to be included. A school climate

assessment is a lever to improve school safety, especially in collecting information from the experiences of the most marginalized students. We must disrupt the pipeline of harm that allows professors to resign at one school, and get a job with another. This bill has the power of preventing sexual misconduct on college campuses. Students deserve information on faculty, and prior misconduct. This bill will ensure there will be no more victims through a better hiring process.

OTHER: Due process rights should be the cornerstone of this legislation for students and staff. In 2004, the Legislature made a change to require every K-12 employee to sign a statement regarding sexual misconduct. A school district cannot hire a staff person if they did not sign the statement. The law also requires training on laws related to sexual and physical misconduct. A difference between K-12 and higher education is that professionals in K-12 need licenses to work and that is not true in higher education. There is an amendment request, in section 5(4), that the sentence should be changed to "committed" sexual misconduct, rather than "responsible for" sexual misconduct. We are committed to student safety. This is a complex issue. The cost of compliance is real. This requires investment. Unlike public institutions, the independent colleges cannot provide a fiscal note. The cost of compliance cannot be absorbed and may lead to tuition increases.

Persons Testifying: PRO: Senator Emily Randall, Prime Sponsor; Paul Francis, Council of Presidents; Morgan Hickel, University of Washington; Valery Richardson, University of Washington; Fajer Saeed Ebrahim, Legal Voice; Bengisu Cicek, Washington Student Association; Maya Caruth, Associated Students of Eastern Washington; Samantha Cruz Mendoza, Director of Legislative Affairs for the Associated Students of Washington State University.

OTHER: Lucinda Young, Washington Education Association; Terri Standish-Kuon, President and CEO, Independent Colleges of Washington.

Persons Signed In To Testify But Not Testifying: No one.