

SENATE BILL REPORT

SB 5518

As of February 3, 2015

Title: An act relating to campus sexual violence.

Brief Description: Creating procedures to address campus sexual violence.

Sponsors: Senators Kohl-Welles, Litzow, Frockt, Darneille, McAuliffe, Lias, Dammeier, Fain, Keiser, Hasegawa and Habib.

Brief History:

Committee Activity: Higher Education: 2/03/15.

SENATE COMMITTEE ON HIGHER EDUCATION

Staff: Evan Klein (786-7483)

Background: Overview of Federal Law. The handling of sexual assaults on college and university campuses is governed by procedural guidelines under Title IX of the education amendments of 1972. The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) and the Violence Against Women Act (VAWA) also require institutions to develop reporting protocols and disciplinary procedures for handling sexual violence incidents.

Institutions of higher education must develop their own student conduct, disciplinary, and reporting requirements.

Washington State does not have non-criminal statutory requirements for the handling of student-on-student sexual assaults. Public institutions of higher education each have student codes of conduct codified in the Washington Administrative Code.

Title IX. Every college and university that accepts federal funds must comply with Title IX.

Title IX has been interpreted by the United States Supreme Court and the United States Department of Education to require educational institutions to maintain policies, practices, and programs that do not discriminate against anyone based on sex.

A school violates a student's rights under Title IX regarding student-on-student sexual violence when: (1) the alleged conduct is serious enough to limit or deny a student's ability

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to participate in or benefit from the school's educational program; and (2) the school, upon notice, fails to take prompt and effective steps reasonably calculated to end the sexual violence, prevent its recurrence, and as appropriate, remedy its effects.

The Department of Education requires institutions to investigate incidence of sexual violence and have grievance procedures in place for resolving student and employee complaints of sexual discrimination. Colleges and universities must develop sexual violence procedures that at the 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 school will take steps to prevent recurrence of any sexual violence and remedy discriminatory effects on the complainant and others.

Institutions can lose federal funds for violating the requirements of Title IX.

Clery Act. The Clery Act requires institutions of higher education to record and disclose information about campus crimes to the U.S. Department of Education. An institution may be fined up to \$35,000 per violation or may lose financial aid, if it violates the Clery Act reporting requirements.

Violence Against Women Act. VAWA was reauthorized in 2013, amending the Clery Act. The VAWA reauthorization added new sexual violence offenses to Clery reporting requirements including sexual offenses, domestic violence, dating violence, and stalking. The reauthorization requires institutions to develop a statement of policy describing programs to prevent sexual violence and education programs to promote awareness. The reauthorization also requires institutions to develop a statement of policy regarding procedures for responding to a sexual violence complaint.

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

Summary of Bill (Proposed Substitute): Various provisions regarding campus sexual violence are included.

Survivor's Rights. All survivors of sexual violence regardless of any personal characteristics have the right to:

- have disclosures of sexual violence treated seriously;
- make a decision about whether or not to disclose a crime or incident or to partake in a conduct proceeding;
- be treated with dignity and to receive courteous, fair, and respectful health care and counseling services;

- be free from retaliation by the college or university, the accused, or their friends, family, and acquaintances; and
- exercise civil rights and practice of religion without interference by the investigative, criminal justice, or conduct process of the college or university.

Disciplinary Process. All institutions of higher education must refrain from establishing a different disciplinary process on the same campus for a matter of sexual violence. The disciplinary process cannot change based on the status of the student, including membership on an athletic team, academic year, or any other characteristic.

Campus Sexual Violence Awareness Campaign. Institutions of higher education must coordinate with state agencies and other relevant stakeholders to develop a statewide campus sexual violence awareness campaign.

Confidentiality and Reporting Protocols. Institutions of higher education must make information available to all current and prospective students, employees, and parents of students, regarding the institution's compliance with campus sexual violence confidentiality and reporting requirements. Resources must also be made available to all campus sexual assault survivors on a confidential basis, regardless of whether the survivor chooses to proceed with a formal report.

Uniform Campus Climate Survey. The four-year institutions must conduct a campus climate assessment to gauge the prevalence of sexual assault on their campuses. The State Board for Community and Technical Colleges (SBCTC) must conduct a uniform campus climate assessment survey of community and technical colleges. The surveys should assess the student and employee knowledge of the following:

- their Title IX compliance officer's role and contact information;
- campus policies and procedures;
- how and where to report sexual violence;
- the availability of resources;
- the prevalence of victimization;
- bystander attitudes and behavior; and
- whether survivors report incidents.

Institutions and SBCTC must report their findings to the Governor and the higher education committees of the Legislature by December 31, 2016. An assessment conducted to comply with new federal requirements pertaining to campus climate assessments fulfills this requirement.

Memoranda of Understanding. The SBCTC, Council of Presidents, and independent colleges of Washington must submit reports to the Governor and the Legislature's higher education committees by July 1, 2016, on steps taken by their institutions to enter into memoranda of understanding with local law enforcement that set forth each party's roles and responsibilities related to the prevention and response to sexual assault.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: Yes.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: This bill is to ensure that campuses are made safe for students. It is important to work on prevention of sexual assaults and institutional responses in the event of an incident. This bill will help increased Title IX compliance. Campus sexual assault should be a high priority for the state. Stakeholders want to be cautious with the design of the climate assessment, what stakeholders are involved, and in regard to the interplay between state and federal law.

Persons Testifying: PRO: Senator Kohl-Welles, prime sponsor; Andrea Piper-Wentland, WA Coalition of Sexual Assault Programs; Emily Cordo, Legal Director of Sexual Violence Legal Services, YWCA Seattle|King|Snohomish; Grace Huang, WA State Coalition Against Domestic Violence; Joe Holliday, SBCTC, Director of Student Services; Paul Francis, Council of Presidents; Janet Chung, Legal Voice.