
College & Workforce Development
Committee

ESHB 2327

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).

Brief Summary of Engrossed Substitute Bill

- Requires postsecondary educational institutions (institutions) to complete investigations into sexual misconduct, make written findings of whether sexual misconduct complaints or allegations are substantiated, and maintain substantiated findings in an employee's personnel file or employment records.
- Requires institutions to ask and require applicants to sign statements regarding substantiated findings of, or investigations into, sexual misconduct before hiring.
- Requires institutions to disclose information about substantiated findings or investigations into sexual misconduct when asked for reference checks about previous or current employees.
- Prohibits provisions of settlement agreements between institutions of higher education and employees when a provision prohibits disclosure of allegations, investigations, or findings of sexual misconduct by the employee.
- Exempts personal identifying information held in personnel, student, or investigation files by institutions from the Public Records Act.
- Requires the Student Achievement Council to develop a standardized statewide campus climate assessment to gauge the prevalence of sexual misconduct on college campuses.

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

Hearing Date:

Staff: Megan Mulvihill (786-7304)

Background:**Sexual Misconduct Policies and Title IX.**

Higher education 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 college and university 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, a public or private institution of higher education 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. Colleges and universities 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 school will take steps to prevent recurrence of any sexual violence and remedy discriminatory effects on the complainant and others.

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.

Campus Climate Assessment.

In 2015 Substitute Senate Bill 5518 required the public four-year institutions of higher education to each conduct a campus climate assessment to gauge the prevalence of sexual misconduct among students at their campuses. The State Board for Community and Technical Colleges (SBCTC) was required to conduct a uniform campus climate assessment for the community and technical colleges. The surveys asked about students' experiences with sexual assault, relationship and domestic violence, stalking, and other unwanted behavior as well as sexual harassment. In addition, the survey included questions about perceptions of campus climate, attitudes, and knowledge of policies and procedures. The institutions and SBCTC reported the findings to the Governor and the Legislature in December 2016.

Summary of Engrossed Substitute Bill:**Campus Climate Assessments.**

The Student Achievement Council (Council) must develop a standardized statewide campus climate assessment to be administered by postsecondary educational institutions (institutions) and the SBCTC. The assessment must include, but is not limited, to the following:

- prevalence of sexual misconduct on and off campus;
- options for reporting sexual misconduct and how those options are presented to survivors and witnesses;
- whether survivors or witnesses reported to institutions, campus police, or other law enforcement, and any barriers or discouragement experienced;
- whether survivors or witnesses experienced retaliation for reporting, filing complaints, or working with investigators, or any perceptions of retaliation; and
- an evaluation of student and employee attitudes and awareness of campus sexual misconduct issues and consent.

The institutions and the SBCTC must work with the Council to develop definitions, survey questions, the assessment scope, and other features the Council deems necessary for consistency. The assessment results must be submitted to the Council every five years, beginning July 1, 2023, and the Council must submit reports summarizing the findings to the Governor and the appropriate legislative committees by December 31 of each year the assessments are due. The institutions must make the part of the Council's report relating to their institution available by posting it on its website and by emailing students, faculty, and staff.

Settlement Agreements.

Any provision of a settlement agreement between an institution of higher education 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 has been the subject of allegations, investigations, or findings of sexual misconduct committed by the employee. 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.

Personnel Files.

An institution must complete investigations of complaints or allegations of sexual misconduct committed by an employee against a student regardless of whether the employee voluntarily or involuntarily leaves employment with the institution, unless the victim 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.

Before a postsecondary educational institution hires an applicant, the institution must request the applicant to sign a statement with three items:

- A declaration of whether the applicant is the subject of any substantiated findings of sexual misconduct in any current or former employment 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.
- 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.
- 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, before hiring an applicant 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 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.

An institution may not hire an applicant who does not sign the statement attesting to any sexual misconduct findings or investigations.

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

Institutions, or an employee acting on behalf of the institution, who discloses information is presumed to be acting in good faith and is immune from civil and criminal liability for disclosure. 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.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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