

SENATE BILL REPORT

ESHB 1998

As Reported by Senate Committee On:
Higher Education & Workforce Development, April 2, 2019
Ways & Means, April 9, 2019

Title: An act relating to creating a task force to provide more certainty and clarity for institutions of higher education and our communities regarding campus sexual violence policies and procedures.

Brief Description: Creating a task force on sexual violence at institutions of higher education.

Sponsors: House Committee on College & Workforce Development (originally sponsored by Representatives Pellicciotti, Leavitt, Jinkins, Callan, Stonier, Valdez, Frame, Stanford, Pollet, Tarleton, Bergquist, Santos, Macri and Doglio).

Brief History: Passed House: 3/05/19, 97-0.

Committee Activity: Higher Education & Workforce Development: 3/19/19, 4/02/19 [DP-WM].

Ways & Means: 4/09/19, 4/09/19 [DP, w/oRec].

Brief Summary of Bill

- Creates a task force on Title IX protections and compliance to examine options, develop model policies, and recommend oversight on campus sexual violence at higher education institutions .

SENATE COMMITTEE ON HIGHER EDUCATION & WORKFORCE DEVELOPMENT

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Palumbo, Chair; Randall, Vice Chair; Holy, Ranking Member; Brown, Liias and Wellman.

Staff: Kellee Gunn (786-7429)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

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.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker, Billig, Carlyle, Conway, Darneille, Hasegawa, Keiser, Liias, Palumbo, Pedersen, Schoesler, Van De Wege, Wagoner and Warnick.

Minority Report: That it be referred without recommendation.

Signed by Senator Hunt.

Staff: Daniel Masterson (786-7454)

Background: Title IX. The Office of Civil Rights, under the United States Department of Education (USDOE), enforces, among other statutes, Title IX of the Education Amendments of 1972. Title IX states: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

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

Every institution that accepts federal funds must comply with Title IX, including state and local educational agencies.

Under President Obama's administration, USDOE provided nonbinding guidance to higher education institutions on Title IX through "Dear Colleague" letters. In November 2018, under the current President Trump administration, USDOE released proposed regulations that would codify the ways higher education institutions would administer policies related to Title IX. The proposed Title IX rule was open for public comment for 60 days from the date of publication and is now under review by USDOE.

In addition to Title IX, the Clery Act and the Violence Against Women Act are federal laws that require higher education institutions to report on campus sexual violence and develop policy statements on preventing sexual violence. State law prohibits discrimination based on gender at higher education institutions.

Task Force on Campus Sexual Violence Prevention. In 2015, the Legislature created a task force on campus sexual assault to develop a set of best practices to reduce the occurrence of campus sexual violence, enhance student safety, develop recommendations on improving sexual violence policies and procedures, and improve collaboration with law enforcement. The task force was required to report to the Legislature in 2015 and 2016.

Summary of Bill: With recognition that Title IX regulations are to change, a task force is established to analyze and recommend changes to state laws, regulations, policies, and procedures to ensure institutions of higher education have robust, trauma-informed, and survivor-centered policies consistent with federal regulations and policies.

The task force must:

- examine state policy options to ensure clear, consistent, and comprehensive protections consistent with federal law;
- develop model procedures, policies, and guidance for higher education institutions;
- evaluate and recommend oversight and accountability measures, including the feasibility of establishing a statewide office to implement, monitor, and ensure the consistency of campus sexual violence policies statewide; and
- take into consideration the work of the 2015 Campus Sexual Violence Prevention Task Force.

The task force shall consist of at least 13 members, representing certain state agencies, higher education institutions, and certain nonprofits. Specifically, the members of the task force include:

- one member from each of the two largest caucuses of the Senate, appointed by the president of the Senate;
- one member from each of the two largest caucuses of the House, appointed by the speaker of the House of Representatives;
- the attorney general or a designee;
- one member representing each of the following, appointed jointly by the president of the Senate and the speaker of the House of Representatives:
 1. the state sexual assault coalition;
 2. the independent four-year private universities;
 3. the private degree-granting institutions and private career colleges;
 4. the state affiliate of a national organization focused on civil liberties; and
 5. any other entity agreed upon by the Senate and House of Representatives;
- three members representing campus sexual assault survivors, appointed by the president of the Senate and the speaker of the House of Representatives, upon recommendation by a sexual assault advocacy organization;
- one member representing the public four-year higher education institutions, appointed by the Governor;
- one member representing the public community and technical colleges, appointed by the Governor; and
- the Superintendent of Public Instruction or a designee.

The task force must choose its chair from among its legislative membership, and the chair must convene the first meeting by August 1, 2019.

The Washington Student Achievement Council must provide staff support for the task force. The task force must report its findings and recommendations to the appropriate committees of the Legislature after changes to Title IX have been adopted. The task force expires January 1, 2022.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

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

Staff Summary of Public Testimony (Higher Education & Workforce Development):

PRO: There are changes under way for Title IX. This bill seeks to ensure that the institutions of higher education here in Washington State maintain certain aspects of current policies with respect to the changes that may take place on the federal level. Schools right now have discretion on how Title IX is implemented. Preemption depends on what comes from the federal government's rule. Title IX proceedings should be a fair and equitable process. This is a good first step. This task force will ensure there are safe places for sexual assault survivors.

OTHER: The Council of Presidents (COP) has done a lot of work in this area. Five years ago, the state established a cross-sector higher education conference on this issue. Additionally, there were two bills related to this that passed in 2015, that created a task force and focused on institutions' prevention and response. There was no funding associated with those two bills. Though the enacting task force legislation in 2015 did not include K-12 or student representatives, the COP ensured they were at the table. The CTCs have been a partner with COP in the work over the last few years. We are concerned about the potential impact of Title IX regulations and are in support of this proactive effort.

Persons Testifying (Higher Education & Workforce Development): PRO: Representative Mike Pellicciotti, Prime Sponsor; Fajer Saeed Ebrahim, Legal Voice; Guillermo Rogel, Washington Student Association.

OTHER: Paul Francis, Council of Presidents; Joe Holliday, State Board for Community and Technical Colleges.

Persons Signed In To Testify But Not Testifying (Higher Education & Workforce Development): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: This task force is specifically charged with figuring out what sort of legal response the state of Washington may want to have to the federal policy changes that are anticipated to Title IX. The task force will examine the impact of proposed new rules, and ensure that Washington does not retreat from current protections. This bill will help establish the infrastructure to ensure students are safe on and off of campus. It is our responsibility to respond to the challenge and ensure that appropriate policies are in place to protect students. Students and institutions have been working together to look at the best way to update our policies and processes. The potential changes happening at the federal level are difficult to keep up with. We are keeping an eye on the rules requiring a preponderance of evidence standard and potential rules requiring an accuser to face direct cross examination. There is also a question about whether Title IX protections only apply on campus, or also off campus.

Persons Testifying (Ways & Means): PRO: Nancy Sapiro, Legal Voice; Guillermo Rogel, Washington Student Association, Executive Director.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.