
ENGROSSED SUBSTITUTE HOUSE BILL 2327

State of Washington

66th Legislature

2020 Regular Session

By House College & Workforce Development (originally sponsored by Representatives Pollet, Kilduff, Frame, Bergquist, Orwall, Wylie, and Appleton)

READ FIRST TIME 02/07/20.

1 AN ACT Relating to addressing sexual misconduct at postsecondary
2 educational institutions; adding new sections to chapter 28B.112 RCW;
3 adding a new section to chapter 42.56 RCW; and creating a new
4 section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature recognizes that
7 Washington's postsecondary educational institutions are some of the
8 best schools in the nation, offering high quality education and life
9 experiences for thousands of students. Washington institutions strive
10 to create learning environments where all students can reach their
11 full potential. The legislature also recognizes that in instances in
12 which an employee of an institution engages in sexual misconduct
13 against a student, institutions do not consistently disclose that
14 information. The legislature declares that disclosure of such
15 information is a matter of public safety for all Washington students
16 as well as for students on campuses across the nation. The
17 legislature finds that sexual misconduct, which may include
18 harassment or assault, has serious public health and safety effects
19 on students in Washington. These effects may deprive students of
20 their opportunities to obtain an education which would otherwise
21 improve their lives and health, and that of their own children. Other

1 effects include an employee in a position of power and authority over
2 students causing irreversible harm to the physical and mental health
3 of students from sexual misconduct. The legislature finds that
4 students of any postsecondary institution in Washington should be
5 protected from their institution hiring an employee who has been
6 found to have committed sexual misconduct at another postsecondary
7 institution. The legislature, therefore, also finds that
8 postsecondary institutions in Washington need to know if a
9 prospective employee has been found to have committed sexual
10 misconduct while employed at another institution. The legislature
11 finds that nondisclosure agreements which prevent an institution from
12 disclosing that an employee has committed sexual misconduct create a
13 high potential for students in jeopardy of being victimized.
14 Therefore, the legislature finds such nondisclosure agreements
15 between an employee and institution, pursuant to which the
16 institution agrees not to disclose findings of misconduct supported
17 by a preponderance of evidence or not to complete an investigation,
18 are against public policy and should not be entered into by any
19 Washington postsecondary institution and should not be enforced by
20 Washington courts. Therefore, the legislature intends to provide
21 clarity and direction to postsecondary educational institutions for
22 disclosing substantiated findings of sexual misconduct committed by
23 its employees against students.

24 NEW SECTION. **Sec. 2.** A new section is added to chapter 28B.112
25 RCW to read as follows:

26 The definitions in this section apply throughout this section and
27 sections 3 through 6 of this act unless the context clearly requires
28 otherwise.

29 (1) "Applicant" means a person applying for employment as
30 faculty, instructor, staff, advisor, counselor, coach, athletic
31 department staff, and any position in which the applicant will likely
32 have direct ongoing contact with students in a supervisory role or
33 position of authority. "Applicant" does not include enrolled students
34 who are applying for temporary student employment with the
35 postsecondary educational institutions, unless the student is a
36 graduate student applying for a position in which the graduate
37 student will have a supervisory role or position of authority over
38 other students. "Applicant" does not include a person applying for
39 employment as medical staff or for employment with an affiliated

1 organization, entity, or extension of a postsecondary educational
2 institution, unless the applicant will have a supervisory role or
3 position of authority over students.

4 (2) "Employee" means a person who is receiving or has received
5 wages as an employee from the postsecondary educational institutions
6 and includes current and former workers, whether the person is
7 classified as an employee, independent contractor, or consultant, and
8 is in, or had, a position with direct ongoing contact with students
9 in a supervisory role or position of authority. "Employee" does not
10 include a person who was employed by the institution in temporary
11 student employment while the person was an enrolled student unless
12 the student, at the time of employment, is or was a graduate student
13 in a position in which the graduate student has or had a supervisory
14 role or authority over other students. "Employee" does not include a
15 person employed as medical staff or with an affiliated organization,
16 entity, or extension of a postsecondary educational institution,
17 unless the employee has or had a supervisory role or position of
18 authority over students. A person who would be considered an
19 "employee" under this subsection, remains an "employee" even if the
20 person enrolls in classes under an institution's employee tuition
21 waiver program or similar program that allows faculty, staff, or
22 other employees to take classes.

23 (3) "Employer" includes postsecondary educational institutions or
24 school employers in this or any other state, and any other employer
25 in this state or any other state.

26 (4) "Postsecondary educational institution" means an institution
27 of higher education as defined in RCW 28B.10.016, a degree-granting
28 institution as defined in RCW 28B.85.010, a private vocational school
29 as defined in RCW 28C.10.020, or school as defined in RCW 18.16.020,
30 that participates in the state student financial aid program.

31 (5) "Sexual misconduct" includes, but is not limited to,
32 unwelcome sexual contact, unwelcome sexual advances, requests for
33 sexual favors, other unwelcome verbal, nonverbal, electronic, or
34 physical conduct of a sexual nature, sexual harassment, and any
35 misconduct of a sexual nature that is in violation of the
36 postsecondary educational institution's policies or has been
37 determined to constitute sex discrimination pursuant to state or
38 federal law.

1 (6) "Student" means a person enrolled at a postsecondary
2 educational institution and for whom educational records are
3 maintained.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 28B.112
5 RCW to read as follows:

6 (1)(a) Postsecondary educational institutions shall administer
7 campus climate assessments to gauge the prevalence of sexual
8 misconduct on their campuses.

9 (b) The state board for community and technical colleges shall
10 administer campus climate assessments of community and technical
11 colleges to gauge the prevalence of sexual misconduct on community
12 and technical college campuses.

13 (c) The student achievement council shall develop a standardized
14 statewide campus climate assessment to be administered by the
15 postsecondary educational institutions and the state board for
16 community and technical colleges. The assessment must be designed to
17 capture information on the prevalence and effects of sexual
18 misconduct on students who have traditionally been marginalized or
19 experience disproportionate impacts of systemic oppression based on,
20 for example, race, ethnicity, nationality, sexual orientation, gender
21 identity, gender expression, and disability.

22 (d) The assessment must include, but is not limited to, the
23 following:

24 (i) The prevalence of sexual misconduct on and off campus;

25 (ii) Options for reporting sexual misconduct presented to
26 survivors and witnesses and how those options were presented;

27 (iii) Whether survivors or witnesses reported to the
28 institutions, campus police, or any other local law enforcement
29 agency, and reasons why they did or did not report, including any
30 barriers or discouragement they experienced in reporting or not
31 reporting;

32 (iv) Whether survivors or witnesses experienced retaliation for
33 reporting, filing complaints, or working with investigators; whether
34 there were perceptions that such actions might result in retaliation
35 affecting students' or staff members' education or careers; and
36 whether there were perceived pressures not to report to law
37 enforcement or not to file complaints with outside agencies;

38 (v) An evaluation of student and employee attitudes and awareness
39 of campus sexual misconduct issues and consent.

1 (2) The postsecondary educational institutions and the state
2 board for community and technical colleges shall work with the
3 student achievement council to develop definitions of terms, survey
4 questions, scope of the assessment, or any other assessment features
5 the student achievement council finds necessary for the purposes of
6 consistency.

7 (3) (a) The postsecondary educational institutions and state board
8 for community and technical colleges shall submit assessment results
9 to the student achievement council every five years, beginning July
10 1, 2023. The student achievement council shall submit reports
11 summarizing the findings of the assessments to the governor and the
12 appropriate committees of the legislature by December 31st of each
13 year assessment results are due.

14 (b) Each postsecondary educational institution shall make the
15 portion of the student achievement council's report relating to the
16 institution widely available to its campus community, including by
17 posting on the institution's web site and by email informing
18 students, faculty, and staff of the report's availability.

19 NEW SECTION. **Sec. 4.** A new section is added to chapter 28B.112
20 RCW to read as follows:

21 (1) Except as provided in subsection (2) of this section, any
22 provision of a settlement agreement executed subsequent to the
23 effective date of this act between a postsecondary educational
24 institution and an employee is against public policy and void and
25 unenforceable if the provision prohibits the employee, the
26 institution, a survivor, or any other person from disclosing that the
27 employee has either:

28 (a) Been the subject of substantiated findings of sexual
29 misconduct; or

30 (b) Is the subject of an investigation into sexual misconduct
31 that is not yet complete.

32 (2) A settlement agreement may contain provisions requiring
33 nondisclosure of personal identifying information of persons filing
34 complaints or making allegations and of any witnesses asked to
35 participate in an investigation of the allegations.

36 (3) Personal identifying information in a settlement agreement
37 that reveals the identity of persons filing complaints or making
38 allegations and of any witnesses asked to participate in an

1 investigation of the allegations is exempt from public disclosure
2 pursuant to section 7 of this act.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 28B.112
4 RCW to read as follows:

5 (1) Unless the victim of the alleged sexual misconduct requests
6 otherwise, when a postsecondary educational institution investigates
7 a complaint or allegation of sexual misconduct committed by an
8 employee against a student of the institution, the institution shall
9 complete the investigation whether or not the employee voluntarily or
10 involuntarily leaves employment with the institution. When the
11 institution completes its investigation, the institution shall make
12 written findings of whether the complaint or allegation is
13 substantiated.

14 (2)(a) A postsecondary educational institution shall include in
15 the employee's personnel file or employment records any substantiated
16 findings of sexual misconduct committed by the employee while the
17 employee was employed with the postsecondary educational institution.

18 (b) When disclosing records included in an employee's personnel
19 file or employment records under this section, the institution shall
20 keep personal identifying information of the complainant and any
21 witnesses confidential, unless disclosure of identifying information
22 is agreed to by the complainant or witnesses or required under law.

23 (c) Personal identifying information in an employee's file or
24 employment records that reveals the identity of the complainant and
25 any witnesses is exempt from public disclosure pursuant to section 7
26 of this act.

27 (3) For purposes of this section, postsecondary educational
28 institutions shall use a preponderance of the evidence standard when
29 determining whether findings are substantiated.

30 (4) For purposes of this section and section 6 of this act,
31 "substantiated" means the employee has committed sexual misconduct.

32 NEW SECTION. **Sec. 6.** A new section is added to chapter 28B.112
33 RCW to read as follows:

34 (1) Beginning October 1, 2020, before hiring an applicant, a
35 postsecondary educational institution shall request the applicant to
36 sign a statement:

37 (a) Declaring whether the applicant is the subject of any
38 substantiated findings of sexual misconduct in any current or former

1 employment or is currently being investigated for, or has left a
2 position during an investigation into, a violation of any sexual
3 misconduct policy at the applicant's current and past employers, and,
4 if so, an explanation of the situation;

5 (b) Authorizing the applicant's current and past employers to
6 disclose to the hiring institution any sexual misconduct committed by
7 the applicant and making available to the hiring institution copies
8 of all documents in the previous employer's personnel, investigative,
9 or other files relating to sexual misconduct, including sexual
10 harassment, by the applicant; and

11 (c) Releasing the applicant's current and past employers, and
12 employees acting on behalf of that employer, from any liability for
13 providing information described in (b) of this subsection.

14 (2) Beginning July 1, 2021, before hiring an applicant, a
15 postsecondary educational institution shall:

16 (a) Request in writing, electronic or otherwise, that the
17 applicant's current and past employers provide the information, if
18 any, described in subsection (1)(b) of this section. The request must
19 include a copy of the declaration and statement signed by the
20 applicant under subsection (1) of this section; and

21 (b) Ask the applicant if the applicant is the subject of any
22 substantiated findings of sexual misconduct, or is currently being
23 investigated for, or has left a position during an investigation
24 into, a violation of any sexual misconduct policy at the applicant's
25 current and past employers, and, if so, an explanation of the
26 situation.

27 (3)(a) Pursuant to (c) of this subsection, after receiving a
28 request under subsection (2)(a) of this section, a postsecondary
29 educational institution shall provide the information requested and
30 make available to the requesting institution copies of documents in
31 the applicant's personnel record relating to substantiated findings
32 of sexual misconduct.

33 (b) Pursuant to (c) of this subsection, if a postsecondary
34 educational institution has information about substantiated findings
35 of a current or former employee's sexual misconduct in the employee's
36 personnel file or employment records, unless otherwise prohibited by
37 law, the institution shall disclose that information to any employer
38 conducting reference or background checks on the current or former
39 employee for the purposes of potential employment, even if the

1 employer conducting the reference or background check does not
2 specifically ask for such information.

3 (c) If, by the effective date of this section, a postsecondary
4 educational institution does not have existing procedures for
5 disclosing information requested under this subsection, the
6 institution must establish procedures to begin implementing the
7 disclosure requirements of this subsection no later than July 1,
8 2021.

9 (4) (a) The postsecondary educational institution or an employee
10 acting on behalf of the institution, who discloses information under
11 this section is presumed to be acting in good faith and is immune
12 from civil and criminal liability for the disclosure.

13 (b) A postsecondary educational institution is not liable for any
14 cause of action arising from nondisclosure of information by an
15 employee without access to official personnel records who is asked to
16 respond to a reference check.

17 (c) The duty to disclose information under this section is the
18 responsibility of the postsecondary educational institution to
19 respond to a formal request for personnel records relating to a
20 current or prior employee when requested by another employer.

21 (5) (a) When disclosing information under this section, the
22 postsecondary educational institution shall keep personal identifying
23 information of the complainant and any witnesses confidential, unless
24 the complainant or witnesses agree to disclosure of their identifying
25 information.

26 (b) Personal identifying information that reveals the identity of
27 the complainant and any witnesses is exempt from public disclosure
28 pursuant to section 7 of this act.

29 (6) Beginning October 1, 2020, a postsecondary educational
30 institution may not hire an applicant who does not sign the statement
31 described in subsection (1) of this section.

32 (7) Information received under this section may be used by a
33 postsecondary educational institution only for the purpose of
34 evaluating an applicant's qualifications for employment in the
35 position for which the person has applied.

36 (8) This section does not restrict expungement from a personnel
37 file or employment records of information about alleged sexual
38 misconduct that has not been substantiated.

39 (9) Public institutions of higher education shall share best
40 practices with all faculty and staff who are likely to receive

1 reference check requests about how to inform and advise requesters to
2 contact the institution's appropriate official office for personnel
3 records.

4 NEW SECTION. **Sec. 7.** A new section is added to chapter 42.56
5 RCW to read as follows:

6 For the purposes of sections 2 through 6 of this act regarding
7 postsecondary educational institutions, personal identifying
8 information in an employee personnel file, student file,
9 investigation file, settlement agreement, or other files held by a
10 postsecondary educational institution that reveals the identity of
11 witnesses to or victims of sexual misconduct committed at the
12 postsecondary educational institution by an employee of the
13 institution are exempt from public disclosure and copying. If the
14 victim or witness indicates a desire for disclosure of the victim's
15 or witness' personal identifying information, such desire shall
16 govern.

--- END ---