
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.

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

14 (3) "Employer" includes postsecondary educational institutions or
15 school employers in this or any other state, and any other employer
16 in this state or any other state.

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

22 (5) "Sexual misconduct" includes, but is not limited to,
23 unwelcome sexual contact, unwelcome sexual advances, requests for
24 sexual favors, other unwelcome verbal, nonverbal, electronic, or
25 physical conduct of a sexual nature, sexual harassment, and any
26 misconduct of a sexual nature that is in violation of the
27 postsecondary educational institution's policies or has been
28 determined to constitute sex discrimination pursuant to state or
29 federal law.

30 (6) "Student" means a person enrolled at a postsecondary
31 educational institution and for whom educational records are
32 maintained.

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

35 (1)(a) Postsecondary educational institutions shall administer
36 campus climate assessments to gauge the prevalence of sexual
37 misconduct on their campuses.

38 (b) The state board for community and technical colleges shall
39 administer campus climate assessments of community and technical

1 colleges to gauge the prevalence of sexual misconduct on community
2 and technical college campuses.

3 (c) The student achievement council shall develop a standardized
4 statewide campus climate assessment to be administered by the
5 postsecondary educational institutions and the state board for
6 community and technical colleges. The assessment must be designed to
7 capture information on the prevalence and effects of sexual
8 misconduct on students who have traditionally been marginalized or
9 experience disproportionate impacts of systemic oppression based on,
10 for example, race, ethnicity, nationality, sexual orientation, gender
11 identity, gender expression, and disability.

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

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

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

17 (iii) Whether survivors or witnesses reported to the
18 institutions, campus police, or any other local law enforcement
19 agency, and reasons why they did or did not report, including any
20 barriers or discouragement they experienced in reporting or not
21 reporting;

22 (iv) Whether survivors or witnesses experienced retaliation for
23 reporting, filing complaints, or working with investigators; whether
24 there were perceptions that such actions might result in retaliation
25 affecting students' or staff members' education or careers; and
26 whether there were perceived pressures not to report to law
27 enforcement or not to file complaints with outside agencies;

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

30 (2) The postsecondary educational institutions and the state
31 board for community and technical colleges shall work with the
32 student achievement council to develop definitions of terms, survey
33 questions, scope of the assessment, or any other assessment features
34 the student achievement council finds necessary for the purposes of
35 consistency.

36 (3) (a) The postsecondary educational institutions and state board
37 for community and technical colleges shall submit assessment results
38 to the student achievement council every five years, beginning July
39 1, 2023. The student achievement council shall submit reports
40 summarizing the findings of the assessments to the governor and the

1 appropriate committees of the legislature by December 31st of each
2 year assessment results are due.

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

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

10 (1) Except as provided in subsection (2) of this section, any
11 provision of a settlement agreement executed subsequent to the
12 effective date of this act between a postsecondary educational
13 institution and an employee is against public policy and void and
14 unenforceable if the provision prohibits the employee, the
15 institution, a survivor, or any other person from disclosing that the
16 employee has either:

17 (a) Been the subject of substantiated findings of sexual
18 misconduct; or

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

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

25 (3) Personal identifying information in a settlement agreement
26 that reveals the identity of persons filing complaints or making
27 allegations and of any witnesses asked to participate in an
28 investigation of the allegations is exempt from public disclosure
29 pursuant to section 7 of this act.

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

32 (1) Unless the victim of the alleged sexual misconduct requests
33 otherwise, when a postsecondary educational institution investigates
34 a complaint or allegation of sexual misconduct committed by an
35 employee against a student of the institution, the institution shall
36 complete the investigation whether or not the employee voluntarily or
37 involuntarily leaves employment with the institution. When the
38 institution completes its investigation, the institution shall make

1 written findings of whether the complaint or allegation is
2 substantiated.

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

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

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

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

19 (4) For purposes of this section and section 6 of this act,
20 "substantiated" means the employee has been found responsible for
21 sexual misconduct.

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

24 (1) Beginning October 1, 2020, before hiring an applicant, a
25 postsecondary educational institution shall request the applicant to
26 sign a statement:

27 (a) Declaring whether the applicant is the subject of any
28 substantiated findings of sexual misconduct in any current or former
29 employment or is currently being investigated for, or has left a
30 position during an investigation into, a violation of any sexual
31 misconduct policy at the applicant's current and past employers, and,
32 if so, an explanation of the situation;

33 (b) Authorizing the applicant's current and past employers to
34 disclose to the hiring institution any sexual misconduct committed by
35 the applicant and making available to the hiring institution copies
36 of all documents in the previous employer's personnel, investigative,
37 or other files relating to sexual misconduct, including sexual
38 harassment, by the applicant; and

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

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

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

11 (b) Ask the applicant if the applicant is the subject of any
12 substantiated findings of sexual misconduct, or is currently being
13 investigated for, or has left a position during an investigation
14 into, a violation of any sexual misconduct policy at the applicant's
15 current and past employers, and, if so, an explanation of the
16 situation.

17 (3)(a) Pursuant to (c) of this subsection, after receiving a
18 request under subsection (2)(a) of this section, a postsecondary
19 educational institution shall provide the information requested and
20 make available to the requesting institution copies of documents in
21 the applicant's personnel record relating to substantiated findings
22 of sexual misconduct.

23 (b) Pursuant to (c) of this subsection, if a postsecondary
24 educational institution has information about substantiated findings
25 of a current or former employee's sexual misconduct in the employee's
26 personnel file or employment records, unless otherwise prohibited by
27 law, the institution shall disclose that information to any employer
28 conducting reference or background checks on the current or former
29 employee for the purposes of potential employment, even if the
30 employer conducting the reference or background check does not
31 specifically ask for such information.

32 (c) If, by the effective date of this section, a postsecondary
33 educational institution does not have existing procedures for
34 disclosing information requested under this subsection, the
35 institution must establish procedures to begin implementing the
36 disclosure requirements of this subsection no later than July 1,
37 2021.

38 (4)(a) The postsecondary educational institution or an employee
39 acting on behalf of the institution, who discloses information under

1 this section is presumed to be acting in good faith and is immune
2 from civil and criminal liability for the disclosure.

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

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

11 (5)(a) When disclosing information under this section, the
12 postsecondary educational institution shall keep personal identifying
13 information of the complainant and any witnesses confidential, unless
14 the complainant or witnesses agree to disclosure of their identifying
15 information.

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

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

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

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

29 (9) Public institutions of higher education shall share best
30 practices with all faculty and staff who are likely to receive
31 reference check requests about how to inform and advise requesters to
32 contact the institution's appropriate official office for personnel
33 records.

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

36 For the purposes of sections 2 through 6 of this act regarding
37 postsecondary educational institutions, personal identifying
38 information in an employee personnel file, student file,
39 investigation file, settlement agreement, or other files held by a

1 postsecondary educational institution that reveals the identity of
2 witnesses to or victims of sexual misconduct committed at the
3 postsecondary educational institution by an employee of the
4 institution are exempt from public disclosure and copying. If the
5 victim or witness indicates a desire for disclosure of the victim's
6 or witness' personal identifying information, such desire shall
7 govern.

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