

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 19-0437.01 Jerry Barry x4341

SENATE BILL 19-007

SENATE SPONSORSHIP

Pettersen and Winter,

HOUSE SPONSORSHIP

McLachlan and Buckner,

Senate Committees
Education

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE PREVENTION OF SEXUAL MISCONDUCT ON HIGHER**
102 **EDUCATION CAMPUSES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill requires each institution of higher education (institution) to adopt, periodically review, and update a policy on sexual misconduct (policy). The bill establishes minimum requirements for the policies, including reporting options, procedures for investigations and adjudications, and protections for involved persons. Institutions shall promote the policy by posting information on their websites and annually

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

distributing the policy and information.

Institutions are required to provide training on awareness and prevention of sexual misconduct, the policy, and resources available to discuss such misconduct.

The bill requires institutions to report to the department of higher education (department) on their policies and training, and the department shall post the reports on its website.

The department is to host biennial summits on sexual misconduct on institution campuses to facilitate communication, share information, and hear from experts. The bill identifies the membership of the planning committee for the summits. The planning committees are to report to specified committees of the general assembly on the summits.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 23-5-146 as
3 follows:

4 **23-5-146. Sexual misconduct - policies - confidential resources**
5 **- training - reports - definitions.** (1) AS USED IN THIS SECTION, UNLESS
6 THE CONTEXT OTHERWISE REQUIRES:

7 (a) "CLERY ACT" MEANS THE FEDERAL "JEANNE CLERY
8 DISCLOSURE OF CAMPUS SECURITY POLICY AND CAMPUS CRIME
9 STATISTICS ACT" OR "CLERY ACT", 20 U.S.C. SEC. 1092(f).

10 (b) "COMPLAINANT" MEANS A PERSON WHO IS SUBJECT TO
11 ALLEGED SEXUAL MISCONDUCT UNDER AN INSTITUTION'S SEXUAL
12 MISCONDUCT POLICY.

13 (c) "DEPARTMENT" MEANS THE DEPARTMENT OF HIGHER
14 EDUCATION CREATED AND EXISTING PURSUANT TO SECTION 24-1-114.

15 (d) "INSTITUTION OF HIGHER EDUCATION" OR "INSTITUTION"
16 MEANS A STATE INSTITUTION OF HIGHER EDUCATION, AS DEFINED IN
17 SECTION 23-18-102 (10)(b), OR ANY ACCREDITED CAMPUS OF A STATE
18 INSTITUTION OF HIGHER EDUCATION; A PARTICIPATING PRIVATE
19 INSTITUTION OF HIGHER EDUCATION, AS DEFINED IN SECTION 23-18-102

1 (8); A LOCAL DISTRICT COLLEGE, AS DEFINED IN SECTION 23-71-102 (1)(a);
2 AND AN AREA TECHNICAL COLLEGE, AS DEFINED IN SECTION 23-60-103 (1).

3 (e) "REPORTING PARTY" MEANS AN INDIVIDUAL WHO REPORTS AN
4 ALLEGED INCIDENT OF SEXUAL MISCONDUCT UNDER AN INSTITUTION'S
5 SEXUAL MISCONDUCT POLICY.

6 (f) "RESPONDING PARTY" MEANS AN INDIVIDUAL WHO HAS BEEN
7 ACCUSED OF SEXUAL MISCONDUCT UNDER AN INSTITUTION'S SEXUAL
8 MISCONDUCT POLICY.

9 (g) "TITLE IX" MEANS TITLE IX OF THE FEDERAL EDUCATION
10 AMENDMENTS OF 1972, AS AMENDED, 20 U.S.C. SECS. 1681 TO 1688.

11 (h) "VIOLENCE AGAINST WOMEN ACT" MEANS THE ACT CODIFIED
12 IN PART AT 42 U.S.C. SECS. 13701 TO 14040.

13 (2) ON OR BEFORE AUGUST 1, 2020, EACH INSTITUTION OF HIGHER
14 EDUCATION SHALL ADOPT A SEXUAL MISCONDUCT POLICY FOR ENROLLED
15 STUDENTS. EACH INSTITUTION SHALL PERIODICALLY REVIEW AND UPDATE
16 THE POLICY.

17 (3) AT A MINIMUM, EACH SEXUAL MISCONDUCT POLICY MUST
18 INCLUDE:

19 (a) DEFINITIONS OF FORMS OF SEXUAL MISCONDUCT CONSISTENT
20 WITH FEDERAL LAW AND POLICY, SUCH AS TITLE IX, THE CLERY ACT, AND
21 THE VIOLENCE AGAINST WOMEN ACT;

22 (b) CONFIDENTIAL AND NONCONFIDENTIAL REPORTING OPTIONS
23 FOR SEXUAL MISCONDUCT;

24 (c) AN EXPLANATION OF THE ROLE OF THE INSTITUTION IN THE
25 RESPONSE TO:

26 (I) A VIOLATION OF THE SEXUAL MISCONDUCT POLICY; OR

27 (II) A REPORT OF AN INCIDENT OF SEXUAL MISCONDUCT;

1 (d) PROCEDURES FOR INVESTIGATING REPORTS OF SEXUAL
2 MISCONDUCT, WHICH MUST:

3 (I) BE FAIR, IMPARTIAL, AND PROMPT, AND THE INSTITUTION MUST
4 MAKE A GOOD FAITH EFFORT TO COMPLETE AN INVESTIGATION OR
5 ADJUDICATIVE PROCESS, EXCLUDING ANY APPEALS, WITHIN AN AVERAGE
6 OF SIXTY TO NINETY DAYS, WITHOUT JEOPARDIZING THE RIGHTS OF A
7 COMPLAINANT OR RESPONDING PARTY. THE PROCEDURE MAY INCLUDE A
8 PROCESS THAT ALLOWS FOR THE EXTENSION OF THESE TIME FRAMES FOR
9 GOOD CAUSE WITH PRIOR WRITTEN NOTICE OF THE DELAY AND THE
10 REASON FOR THE DELAY TO THE COMPLAINANT AND THE RESPONDING
11 PARTY.

12 (II) INCLUDE THE PREPONDERANCE OF THE EVIDENCE AS THE
13 EVIDENTIARY STANDARD;

14 (III) OUTLINE THE PROCEDURES TO BE FOLLOWED IN THE
15 INVESTIGATION AND ADJUDICATION PROCESS, WHICH MUST SPECIFY THAT
16 ALL QUESTIONS GO THROUGH THE OFFICIAL INDIVIDUAL OR INDIVIDUALS
17 CONDUCTING OR PARTICIPATING IN THE INVESTIGATION PROCESS;

18 (IV) PROVIDE THE COMPLAINANT AND THE RESPONDING PARTY
19 WITH THE SAME OPPORTUNITIES TO HAVE AN ADVISOR OR OTHER PERSON
20 PRESENT DURING ANY PART OF THE PROCEEDING; EXCEPT THAT THE
21 ADVISOR OR OTHER PERSON IS NOT ALLOWED TO SPEAK ON BEHALF OF THE
22 COMPLAINANT OR RESPONDING PARTY DURING THE COURSE OF THE
23 PROCEEDINGS;

24 (V) PROVIDE REGULAR WRITTEN UPDATES ON THE STATUS OF THE
25 INVESTIGATION OR PROCEEDING TO THE COMPLAINANT AND RESPONDING
26 PARTY THROUGHOUT THE PROCESS UNTIL CONCLUSION; AND

27 (VI) PROVIDE FOR CONCURRENT NOTIFICATION OF THE OUTCOME

1 OF THE INVESTIGATION OR PROCEEDING TO THE COMPLAINANT AND THE
2 RESPONDING PARTY;

3 (e) PROHIBITIONS ON:

4 (I) THE CONSIDERATION OF PRIOR, IRRELEVANT SEXUAL CONDUCT,
5 EXCEPT RELATING TO A PRIOR RELATIONSHIP OR HISTORY BETWEEN THE
6 PARTIES IF RELEVANT TO SOME MATERIAL ISSUE IN THE PROCESS; AND

7 (II) ANY ACTION THAT WOULD BE RETALIATORY UNDER TITLE IX;

8 (f) PROTECTION FROM DISCIPLINARY ACTION AGAINST A
9 COMPLAINANT, REPORTING PARTY, OR WITNESS FOR HIS OR HER
10 PARTICIPATION IN THE REPORTING OR INVESTIGATION AND FROM POLICY
11 VIOLATIONS RELATED TO THE INCIDENT, SUCH AS, AT A MINIMUM,
12 PERSONAL CONSUMPTION OF ALCOHOL OR DRUGS; AND

13 (g) THAT ALL PROVISIONS OF THE SEXUAL MISCONDUCT POLICY,
14 INCLUDING ANY APPEAL PROCESS THAT MAY BE PROVIDED, BE APPLIED
15 EQUALLY TO BOTH THE COMPLAINANT AND THE RESPONDING PARTY.

16 (4) (a) COMMENCING ON OR BEFORE AUGUST 1, 2020, EACH
17 INSTITUTION SHALL PROVIDE INFORMATION TO STUDENTS ON HOW TO
18 RECEIVE SUPPORT REGARDING SEXUAL MISCONDUCT. THE INSTITUTION
19 MAY DESIGNATE FACULTY OR STAFF MEMBERS TO FILL THIS ROLE; EXCEPT
20 THAT THE INSTITUTION'S TITLE IX COORDINATOR SHALL NOT BE SUCH AN
21 INDIVIDUAL. AN INSTITUTION MAY ALSO DESIGNATE AN OUTSIDE ENTITY
22 OR SERVICE TO SERVE THIS PURPOSE. IF AN INSTITUTION USES AN OUTSIDE
23 ENTITY OR SERVICE, IT SHALL MAKE ITS SEXUAL MISCONDUCT POLICY
24 AVAILABLE TO THE ENTITY OR SERVICE. AN INSTITUTION THAT ENROLLS
25 FEWER THAN ONE THOUSAND STUDENTS MAY PARTNER WITH ANOTHER
26 INSTITUTION IN THE REGION OR WITHIN THE STATE TO PROVIDE SERVICES
27 PURSUANT TO THIS SUBSECTION (4).

1 (b) IF AN INDIVIDUAL DESCRIBED IN SUBSECTION (4)(a) OF THIS
2 SECTION MEETS THE REQUIREMENTS OF SECTION 13-90-107 (1)(k)(II) OR
3 SECTION 12-43-218, THE INDIVIDUAL HAS THE PROTECTIONS FOR
4 CONFIDENTIALITY OR PRIVILEGES ESTABLISHED PURSUANT TO THOSE
5 SECTIONS.

6 (5) (a) COMMENCING ON OR BEFORE AUGUST 1, 2020, EACH
7 INSTITUTION OF HIGHER EDUCATION SHALL PROMOTE:

- 8 (I) AWARENESS AND PREVENTION OF SEXUAL MISCONDUCT; AND
- 9 (II) THE INSTITUTION'S SEXUAL MISCONDUCT POLICY.

10 (b) EACH INSTITUTION SHALL PROMOTE THE INFORMATION
11 DESCRIBED IN SUBSECTION (5)(a) OF THIS SECTION BY:

12 (I) PROMINENTLY DISPLAYING ON ITS WEBSITE:

13 (A) THE INSTITUTION'S SEXUAL MISCONDUCT POLICY; AND

14 (B) THE TELEPHONE NUMBER AND WEBSITE FOR AN
15 INSTITUTIONAL, LOCAL, STATE, OR NATIONAL TWENTY-FOUR-HOUR
16 HOTLINE THAT PROVIDES INFORMATION ON SEXUAL MISCONDUCT; AND

17 (II) ANNUALLY DISTRIBUTING THROUGH ELECTRONIC OR OTHER
18 MEANS OF COMMUNICATION THE INSTITUTION'S SEXUAL MISCONDUCT
19 POLICY.

20 (6) (a) COMMENCING ON OR BEFORE AUGUST 1, 2020, EACH
21 INSTITUTION OF HIGHER EDUCATION SHALL OFFER TRAINING:

22 (I) TO PROMOTE AWARENESS AND PREVENTION OF SEXUAL
23 MISCONDUCT; AND

24 (II) ON THE INSTITUTION'S SEXUAL MISCONDUCT POLICY.

25 (b) THE TRAINING MUST BE OFFERED ANNUALLY TO ALL INCOMING
26 STUDENTS AND NEWLY EMPLOYED FACULTY AND STAFF AND, WHEN
27 APPLICABLE, TO ALL STUDENTS, FACULTY, AND STAFF IF THE SEXUAL

1 MISCONDUCT POLICY IS SUBSTANTIALLY UPDATED. ANY INDIVIDUAL
2 DESIGNATED AS RESPONSIBLE FOR INVESTIGATING OR ADJUDICATING
3 COMPLAINTS UNDER THE SEXUAL MISCONDUCT POLICY MUST BE TRAINED
4 ON THE POLICY IN EFFECT AT THE TIME OF THE INVESTIGATION OR
5 ADJUDICATION.

6 (c) THE TRAINING REQUIRED BY THIS SUBSECTION (6) MAY
7 INCLUDE BUT IS NOT LIMITED TO:

8 (I) HOW TO PROMOTE AWARENESS AND PREVENTION OF SEXUAL
9 MISCONDUCT;

10 (II) AN EXPLANATION OF THE INSTITUTION'S SEXUAL MISCONDUCT
11 POLICY;

12 (III) AN EXPLANATION OF RELEVANT STATE AND FEDERAL LAWS
13 CONCERNING SEXUAL MISCONDUCT;

14 (IV) AN EXPLANATION OF TYPES OF CONDUCT THAT WOULD
15 CONSTITUTE A VIOLATION OF THE INSTITUTION'S SEXUAL MISCONDUCT
16 POLICY;

17 (V) THE ROLE OF THE INSTITUTION IN ENSURING A COORDINATED
18 RESPONSE TO AN ALLEGATION OF SEXUAL MISCONDUCT;

19 (VI) THE DEFINITION OF "CONSENT" IN THE CONTEXT OF SEXUAL
20 ACTIVITY;

21 (VII) OPTIONS FOR BYSTANDER INTERVENTION;

22 (VIII) OPTIONS FOR INVOLVING LAW ENFORCEMENT IN
23 RESPONDING TO SEXUAL MISCONDUCT;

24 (IX) THE IMPORTANCE OF TREATING AND HOW TO TREAT OTHERS
25 WITH DIGNITY AND RESPECT; AND

26 (X) THE EFFECTS OF TRAUMA ON REPORTING PARTIES OR
27 COMPLAINANTS WHO HAVE EXPERIENCED SEXUAL MISCONDUCT THAT MAY

1 INCLUDE:

2 (A) INFORMATION ON WORKING WITH AND INTERVIEWING PERSONS
3 WHO HAVE EXPERIENCED SEXUAL MISCONDUCT;

4 (B) WAYS TO COMMUNICATE SENSITIVELY AND
5 COMPASSIONATELY WITH A REPORTING PARTY OR COMPLAINANT; AND

6 (C) INFORMATION REGARDING HOW SEXUAL MISCONDUCT MAY
7 IMPACT STUDENTS WITH INTELLECTUAL AND DEVELOPMENTAL
8 DISABILITIES.

9 (7) (a) ON OR BEFORE JANUARY 1, 2020, EACH INSTITUTION OF
10 HIGHER EDUCATION SHALL PROVIDE TO THE DEPARTMENT, TO BE POSTED
11 ON THE DEPARTMENT'S WEBSITE:

12 (I) A COPY OF THE INSTITUTION'S SEXUAL MISCONDUCT POLICY;
13 AND

14 (II) A DESCRIPTION OF THE SEXUAL MISCONDUCT TRAINING
15 PROVIDED BY THE INSTITUTION AS REQUIRED BY SUBSECTION (6) OF THIS
16 SECTION.

17 (b) ON OR BEFORE JANUARY 1, 2021, AND ON OR BEFORE EACH
18 JANUARY 1 THEREAFTER, EACH INSTITUTION OF HIGHER EDUCATION SHALL
19 PROVIDE TO THE DEPARTMENT, TO BE POSTED ON THE DEPARTMENT'S
20 WEBSITE:

21 (I) A COPY OF ANY UPDATED INSTITUTIONAL SEXUAL MISCONDUCT
22 POLICY ADOPTED DURING THE PREVIOUS CALENDAR YEAR; AND

23 (II) A DESCRIPTION OF THE SEXUAL MISCONDUCT TRAINING
24 PROVIDED BY THE INSTITUTION AS REQUIRED BY SUBSECTION (6) OF THIS
25 SECTION.

26 (8) (a) COMMENCING ON OR BEFORE AUGUST 1, 2020, SUBJECT TO
27 AVAILABLE APPROPRIATIONS, THE DEPARTMENT SHALL HOST BIENNIAL

1 SUMMITS ON SEXUAL MISCONDUCT ON INSTITUTION CAMPUSES FOR
2 STAKEHOLDERS, ADVOCATES, STUDENTS, FACULTY, AND OTHER
3 INTERESTED PERSONS TO FACILITATE COMMUNICATION, SHARE
4 INFORMATION, AND HEAR FROM EXPERTS, AND OTHER EFFORTS TO
5 PROMOTE AWARENESS AND PREVENTION OF SEXUAL MISCONDUCT ON
6 COLORADO'S INSTITUTION CAMPUSES.

7 (b) PRIOR TO EACH BIENNIAL SUMMIT, THE DEPARTMENT SHALL
8 CONVENE A PLANNING COMMITTEE COMPOSED OF:

9 (I) A REPRESENTATIVE OF A PUBLIC FOUR-YEAR INSTITUTION,
10 APPOINTED BY THE GOVERNING BOARDS OF PUBLIC FOUR-YEAR
11 INSTITUTIONS;

12 (II) A REPRESENTATIVE OF A PUBLIC TWO-YEAR COLLEGE,
13 APPOINTED BY THE GOVERNING BOARDS OF PUBLIC TWO-YEAR COLLEGES;

14 (III) A REPRESENTATIVE OF A PUBLIC RURAL COLLEGE, AS DEFINED
15 BY THE DEPARTMENT, APPOINTED BY THE GOVERNING BOARDS OF PUBLIC
16 RURAL COLLEGES;

17 (IV) A REPRESENTATIVE OF A PUBLIC AREA TECHNICAL COLLEGE,
18 APPOINTED BY THE GOVERNING BOARDS OF PUBLIC AREA TECHNICAL
19 COLLEGES;

20 (V) A REPRESENTATIVE OF A PRIVATE FOUR-YEAR INSTITUTION,
21 APPOINTED BY THE GOVERNING BOARDS OF THE PRIVATE FOUR-YEAR
22 INSTITUTIONS;

23 (VI) TWO STUDENTS, ONE FROM A PUBLIC FOUR-YEAR INSTITUTION
24 AND ONE FROM A PUBLIC TWO-YEAR COLLEGE, APPOINTED BY A
25 STATEWIDE ORGANIZATION OF PUBLIC STUDENT GOVERNMENTS;

26 (VII) A REPRESENTATIVE OF A CAMPUS-BASED ORGANIZATION
27 THAT REPRESENTS VICTIMS OF SEXUAL MISCONDUCT FROM AN INSTITUTION

1 NOT OTHERWISE REPRESENTED ON THE COMMITTEE, APPOINTED BY THE
2 EXECUTIVE DIRECTOR OF THE DEPARTMENT;

3 (VIII) A REPRESENTATIVE OF A STATEWIDE COMMUNITY-BASED
4 ADVOCACY ORGANIZATION THAT REPRESENTS VICTIMS OF SEXUAL
5 MISCONDUCT, APPOINTED BY THE EXECUTIVE DIRECTOR OF THE
6 DEPARTMENT; AND

7 (IX) A VICTIM OF SEXUAL MISCONDUCT AT AN INSTITUTION,
8 APPOINTED JOINTLY BY THE REPRESENTATIVES APPOINTED PURSUANT TO
9 SUBSECTIONS (8)(b)(VII) AND (8)(b)(VIII) OF THIS SECTION.

10 (c) THE PLANNING COMMITTEE MAY COLLABORATE WITH OTHER
11 INTERESTED PARTIES, INCLUDING COMMUNITY PARTNERS, TO DEVELOP THE
12 MOST EFFECTIVE EVENT TO FACILITATE THE PURPOSES OF THE SUMMIT AS
13 DESCRIBED IN SUBSECTION (8)(a) OF THIS SECTION.

14 (d) (I) ON OR BEFORE JANUARY 15 OF THE YEAR FOLLOWING THE
15 SUMMIT, THE PLANNING COMMITTEE SHALL SUBMIT A REPORT TO THE
16 EDUCATION COMMITTEES OF THE SENATE AND THE HOUSE OF
17 REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES, INCLUDING A
18 SUMMARY OF THE EVENTS, ATTENDEES, OUTCOMES, AND
19 RECOMMENDATIONS.

20 (II) NOTWITHSTANDING THE PROVISIONS OF SECTION 24-1-136
21 (11)(a)(I), THE REQUIREMENT FOR THE REPORT IN SUBSECTION (8)(d)(I) OF
22 THIS SECTION CONTINUES INDEFINITELY.

23 **SECTION 2. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, and safety.