

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 702

Introduced by Cavanaugh, 6.

Read first time January 23, 2019

Committee:

- 1 A BILL FOR AN ACT relating to education; to adopt the Campus Safety Act.
- 2 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 19 of this act shall be known and may be
2 cited as the Campus Safety Act.

3 Sec. 2. (1) For purposes of the Campus Safety Act:

4 (a) Accused party means a student or employee of the postsecondary
5 institution alleged to have committed dating violence, domestic violence,
6 sexual assault, or stalking;

7 (b) Awareness program has the same meaning as in 34 C.F.R. 668.46,
8 as such regulation existed on January 1, 2019;

9 (c) Bystander intervention has the same meaning as in 34 C.F.R.
10 668.46, as such regulation existed on January 1, 2019;

11 (d) Commission means the Coordinating Commission for Postsecondary
12 Education;

13 (e) Postsecondary institution has the same meaning as in section
14 85-2403;

15 (f) Primary prevention program has the same meaning as in 34 C.F.R.
16 668.46, as such regulation existed on January 1, 2019;

17 (g) Reporting party means a student or employee of the postsecondary
18 institution reporting an alleged incident of dating violence, domestic
19 violence, sexual assault, or stalking;

20 (h) Responsible employee means an employee of a postsecondary
21 institution:

22 (i) Who has the authority to take action to redress sexual violence;

23 (ii) Who has been given the duty of reporting incidents of sexual
24 violence or other misconduct by students to the Title IX coordinator or
25 other appropriate school designee; or

26 (iii) Who a student could reasonably believe has the authority or
27 duty described in subdivision (1)(h)(i) or (1)(h)(ii) of this section;

28 (i) Sexual violence means sexual acts perpetrated against a person's
29 will or when a person is incapable of giving consent by reason of, but
30 not limited to, the following:

31 (i) Such person's age;

1 (ii) Such person's use of drugs or alcohol; or
2 (iii) An intellectual or other disability that prevents such person
3 from having the capacity to give consent;

4 (j) Title IX means Title IX of the Education Amendments of 1972,
5 Public Law 92-318, 20 U.S.C. 1681 to 1688, and its accompanying
6 regulations and guidance documents, as such law, regulations, and
7 documents existed on January 1, 2019; and

8 (k) Trauma-informed response means a response to dating violence,
9 domestic violence, sexual assault, and stalking that involves an
10 understanding of the complexities of such matters through training
11 centered on the neurobiological impact of trauma, the influence of
12 societal myths and stereotypes surrounding the causes and impacts of
13 trauma, understanding the behavior of perpetrators, and conducting an
14 effective investigation on behalf of the reporting party who suffered the
15 trauma.

16 (2) For purposes of the Campus Safety Act, each postsecondary
17 institution shall adopt definitions of the following terms for use in the
18 institution's applicable policies. The definitions shall be consistent
19 with the purposes of the act, any rules or regulations of the commission,
20 and any applicable federal definitions. Such defined terms include:

21 (a) Dating violence;

22 (b) Domestic violence;

23 (c) On-campus, near-campus, and off-campus, with respect to the
24 locations of alleged acts of dating violence, domestic violence, sexual
25 assault, stalking, or sexual violence;

26 (d) Sexual assault; and

27 (e) Stalking.

28 Sec. 3. (1) Each postsecondary institution shall adopt a policy on
29 dating violence, domestic violence, sexual assault, and stalking that
30 shall be made easily available, upon request, to an applicant, student,
31 or employee of the institution. The policy shall include, but not be

1 limited to:

2 (a) The procedures by which students and employees at the
3 institution may report or disclose incidents of dating violence, domestic
4 violence, sexual assault, or stalking regardless of where the offense
5 occurred;

6 (b) Information on where to receive immediate emergency assistance
7 following an incident of dating violence, domestic violence, sexual
8 assault, or stalking. This shall include, but not be limited to, contact
9 information for seeking medical treatment on-campus, if available, and
10 off-campus and information relating to preserving evidence based on the
11 type of offense;

12 (c) Descriptions of the types of counseling, health, safety,
13 academic, and other support services available from the institution,
14 within the local community or region, or through a local community-based
15 rape crisis center or domestic violence program, including contact
16 information;

17 (d) The rights of students and employees to:

18 (i) Notify law enforcement, including campus, local, and state law
19 enforcement agencies, of an alleged incident of dating violence, domestic
20 violence, sexual assault, or stalking;

21 (ii) Receive assistance from campus authorities in making any
22 notification;

23 (iii) Decline to notify campus or law enforcement authorities; and

24 (iv) Obtain a protective order or seek enforcement of an existing
25 protective order against a perpetrator of the assault, stalking, or
26 violence;

27 (e) The responsibilities of the institution upon receipt of
28 notification that a protective order has been issued under state law;

29 (f) A summary of the institution's procedures for resolving
30 complaints against students alleged to have engaged in dating violence,
31 domestic violence, sexual assault, or stalking, including clear

1 statements advising students of the rights and procedures developed under
2 section 4 of this act;

3 (g) Information regarding the institution's obligations under state
4 and federal law to:

5 (i) Investigate or address, to the extent possible, any act of
6 alleged dating violence, domestic violence, sexual assault, or stalking,
7 including when the alleged act was reported anonymously;

8 (ii) Assess whether any act of alleged dating violence, domestic
9 violence, sexual assault, or stalking triggers the need for a timely
10 warning or emergency notification under 34 C.F.R. 668.46(e), the
11 obligations of which may, in limited circumstances, result in the release
12 of the reporting party's identity; and

13 (iii) Disclose the identity of a reporting party to another student,
14 an employee, or a third party;

15 (h) A summary of the institution's employee disciplinary process;
16 and

17 (i) The range of sanctions or penalties the institution may impose
18 on students and employees found responsible for a violation of the
19 applicable institutional policy prohibiting acts of dating violence,
20 domestic violence, sexual assault, or stalking.

21 (2) On or before October 1, 2019, and on or before each October 1
22 thereafter, each postsecondary institution shall transmit to all students
23 via email a copy of the policy described in subsection (1) of this
24 section.

25 Sec. 4. (1) Each postsecondary institution shall establish rules
26 and procedures for resolving allegations of dating violence, domestic
27 violence, sexual assault, or stalking by students and employees. Such
28 procedures and rules shall meet the requirements set forth in this
29 section.

30 (2) An investigation, including any hearing and resulting
31 disciplinary proceeding, shall be conducted by an official who receives

1 not less than annual training on issues relating to dating violence,
2 domestic violence, sexual assault, or stalking and investigatory
3 procedures and hearing procedures to protect the safety and rights of
4 students and to promote accountability.

5 (3)(a) Except as provided in subdivision (3)(b) of this section, the
6 reporting party and the accused party may be accompanied by an advisor or
7 support person of their choice to meet with the institution's
8 investigator or other factfinder and may consult with an advisor or
9 support person during a meeting, including any disciplinary proceeding.
10 The institution shall adopt reasonable measures to provide for the
11 involvement of the advisor or support person for each party.

12 (b) The institution may establish rules regarding how the proceeding
13 will be conducted. This may include guidelines on the extent to which an
14 advisor or support person for each party may participate in the meeting
15 or disciplinary proceeding. Any limitations on participation shall apply
16 equally to both parties. The availability of an advisor or support person
17 shall not significantly delay a meeting or disciplinary proceeding.

18 (4) Complaints by a reporting party shall be resolved using a
19 preponderance of the evidence standard.

20 (5) The reporting party and the accused party shall be provided the
21 institution's policies regarding the submission and consideration of
22 categories of evidence that may be used during a disciplinary proceeding
23 and shall have equal opportunity to present evidence and witnesses on
24 their behalf during disciplinary proceedings. The reporting party and the
25 accused party shall be provided with timely and equal access to
26 information or relevant evidence that shall be used in the determination
27 of a discipline.

28 (6) The institution shall place restrictions on evidence that may be
29 considered by the factfinder, including, but not limited to, the use of
30 evidence of prior sexual activity of the parties or witnesses.

31 (7) The reporting party and the accused party shall not directly

1 question each other during disciplinary proceedings. If the reporting
2 party requests, reasonable accommodations for separate proceedings shall
3 be made available.

4 (8) The reporting party and the accused party shall be notified in
5 writing of the results of a disciplinary proceeding not later than seven
6 business days after a final determination of a complaint, not including
7 any time for appeal, unless good cause for additional time is shown. The
8 notice shall include information on any process for appealing the
9 decision.

10 (9) The institution shall not disclose the identity of the reporting
11 party or the accused party, except as necessary to carry out a
12 disciplinary process or as otherwise permitted or required under state or
13 federal law.

14 Sec. 5. (1) Each postsecondary institution shall adopt detailed and
15 trauma-informed policies regarding dating violence, domestic violence,
16 sexual assault, and stalking involving students and employees of the
17 institution. Such policies shall comport with the best practices and
18 current professional standards. The institution shall establish
19 procedures for regularly reviewing and updating the policies and
20 procedures.

21 (2) Each postsecondary institution shall apply the same policies
22 relating to claims of dating violence, domestic violence, sexual assault,
23 and stalking to all students.

24 (3) Each postsecondary institution shall adopt policies and
25 procedures with local law enforcement agencies to establish the
26 respective roles and responsibilities of the institution and such
27 agencies related to the prevention of and response to campus and near-
28 campus sexual assaults. Such policies and procedures shall comply with
29 all applicable confidentiality and privacy laws. Such policies and
30 procedures shall:

31 (a) Set out the jurisdiction of the local law enforcement agencies

1 based on criteria such as location and type of incident and provide for
2 cross or multi-jurisdictional response and investigation, as appropriate;

3 (b) Establish the methods for facilitating the issuance of timely
4 warnings and emergency notifications about crimes that may pose a serious
5 threat to the campus or near-campus communities required by the federal
6 Jeanne Clery Disclosure of Campus Security Policy and Campus Crime
7 Statistics Act or Clery Act, 20 U.S.C. 1092(f) and such act's
8 implementing regulations, as such act and regulations existed on January
9 1, 2019;

10 (c) Establish protocols, as permitted by federal and state law, for
11 cases where a student consents to the release of relevant documentation
12 and information created during law enforcement investigations;

13 (d) Include provisions for the sharing of data as required by the
14 federal Clery Act and identifying trends, patterns, and research-informed
15 strategies to prevent sexual assaults; and

16 (e) Include methods for notifying the office of the prosecutor
17 having jurisdiction where the alleged offense occurred.

18 (4) All policies adopted by a postsecondary institution under this
19 section shall comply with federal law, including the following acts and
20 laws and their implementing regulations and accompanying guidance
21 documents, as such acts, laws, regulations, and documents existed on
22 January 1, 2019:

23 (a) Title IX;

24 (b) The Clery Act;

25 (c) Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000d et
26 seq.; and

27 (d) The Family Educational Rights and Privacy Act of 1974, 20 U.S.C.
28 1232g.

29 (5) A postsecondary institution shall develop the policies required
30 by this section in coordination with the institution's Title IX
31 coordinator. The institution shall seek input from interested parties and

1 organizations, including, but not limited to, institutional
2 administrators, personnel affiliated with on-campus and off-campus health
3 care centers, personnel affiliated with any on-campus or local,
4 community-based rape crisis center and domestic violence program,
5 confidential resource advisors, residence life, students, state and local
6 law enforcement, and prosecutors. The institution shall allow a
7 reasonable period of time for review and comment on the policies by such
8 interested parties and organizations. Following an institution's adoption
9 of the policies required by this section, the opportunity for review and
10 comment by such parties and organizations shall only apply to substantive
11 changes in such policies.

12 Sec. 6. (1) There is hereby created within the commission the
13 position of campus safety officer. The campus safety officer shall be
14 appointed by the executive director of the commission. The campus safety
15 officer shall have experience in public safety policy.

16 (2) The campus safety officer shall:

17 (a) Assist postsecondary institutions in implementing the Campus
18 Safety Act;

19 (b) Promote safety from dating violence, domestic violence, sexual
20 assault, and stalking at postsecondary institutions;

21 (c) Coordinate, aggregate, and disseminate best practices, training
22 opportunities, and other resources to further the goals of the act.

23 (3) The commission may adopt and promulgate rules and regulations to
24 establish and implement the role and responsibilities of the campus
25 safety officer.

26 Sec. 7. Each postsecondary institution shall make publicly
27 available on its web site the following information:

28 (1) The total number of allegations of dating violence, domestic
29 violence, sexual assault, and stalking made by a student or employee of
30 the institution against another student or employee of the institution in
31 the preceding school year. The information shall be provided in an

1 aggregate format and shall be updated each school year;

2 (2) The telephone number and web site for a local, state, or
3 national twenty-four-hour hotline providing information on dating
4 violence, domestic violence, sexual assault, and stalking;

5 (3) The name and contact information for the institution's Title IX
6 coordinator;

7 (4) The policy developed under section 3 of this act;

8 (5) Any other policies, procedures, or rules developed by the
9 institution under the Campus Safety Act;

10 (6) The name and contact information for a confidential resource
11 advisor and a description of the role of and services provided by the
12 confidential resource advisor, which shall be updated on a timely basis;

13 (7) Information on reporting options, the process of investigation
14 and adjudication by the institution, and the process for requesting
15 interim protective measures; and

16 (8) The name and location of the nearest medical facility where an
17 individual may request a sexual assault evidence collection kit be
18 administered by a trained sexual violence forensic health care provider,
19 including information on transportation options and reimbursement for
20 costs.

21 Sec. 8. Each postsecondary institution shall provide a method for
22 anonymously reporting an incident of dating violence, domestic violence,
23 sexual assault, or stalking that involves a student or employee of the
24 institution, regardless of whether the incident occurs on-campus, near-
25 campus, or off-campus. This shall include an option to report such
26 incidents electronically. The electronic reporting option shall be easily
27 accessible through a clearly identifiable link on the home page of the
28 institution's web site.

29 Sec. 9. Upon receiving a report of dating violence, domestic
30 violence, sexual assault, or stalking by a student or employee,
31 regardless of whether the incident occurred on-campus, near-campus, or

1 off-campus, a postsecondary institution shall:

2 (1) Provide the reporting party with an objectively clear and easily
3 understood notification of his or her rights and options under the
4 institution's policies. Such notification shall also be provided to the
5 accused party when reasonably practicable;

6 (2) Ensure that the report is provided to the institution's Title IX
7 coordinator and campus law enforcement;

8 (3) Review the report and begin an investigation within twenty-one
9 days.

10 Sec. 10. (1) A postsecondary institution shall enter into and
11 maintain a memorandum of understanding with at least one community-based
12 sexual assault crisis service center and at least one community-based
13 domestic violence agency to:

14 (a) Provide an off-campus alternative for students to receive crisis
15 services in response to dating violence, domestic violence, sexual
16 assault, or stalking;

17 (b) Ensure that a student or employee of the institution may access
18 free and confidential counseling and advocacy services, either on-campus
19 or off-campus; and

20 (c) Encourage cooperation and trainings between the institution and
21 the service center or agency to ensure an understanding of the roles that
22 the institution, service center, and agency should play in responding to
23 reports and disclosures of dating violence, domestic violence, sexual
24 assault, and stalking against students and employees of the institution
25 and the institution's protocols for providing support and services to
26 such students and employees.

27 (2) The memoranda of understanding may include an agreement,
28 including a fee structure, for the sexual assault crisis service center
29 or domestic violence agency to provide confidential victim services.
30 Confidential victim services may include case consultation and training
31 fees for confidential resource advisors, consultation fees for the

1 development and implementation of student education and prevention
2 programs, the development of staff training and prevention curriculum,
3 and confidential on-campus office space for an advocate from a sexual
4 assault crisis service center or domestic violence agency to meet with
5 students.

6 (3) The commission may waive all or parts of the requirements of
7 this section for a postsecondary institution that demonstrates it has
8 acted in good faith but was unable to obtain the memoranda of
9 understanding as required by this section.

10 Sec. 11. A reporting party or witness to an allegation of dating
11 violence, domestic violence, sexual assault, or stalking shall not be
12 subject to a disciplinary sanction for a violation of the postsecondary
13 institution's student conduct policy related to the incident unless the
14 institution determines that the report was not made in good faith or that
15 the violation was egregious. An egregious violation shall include, but
16 not be limited to, an action that places the health and safety of another
17 person at risk.

18 Sec. 12. (1) A postsecondary institution shall have at least one
19 confidential resource advisor. A confidential resource advisor may serve
20 in other roles at the institution, except that a confidential resource
21 advisor shall not be a student, Title IX coordinator, or responsible
22 employee as defined in subdivision (1)(h)(i) or (1)(h)(ii) of section 2
23 of this act.

24 (2) The confidential resource advisor shall receive training in the
25 awareness and prevention of dating violence, domestic violence, sexual
26 assault, and stalking and in trauma-informed response.

27 (3) The confidential resource advisor shall provide confidential
28 services to reporting parties. The confidential resource advisor shall
29 not be required to report an incident to the postsecondary institution or
30 law enforcement unless otherwise required to do so by state or federal
31 law.

1 (4) The confidential resource advisor shall provide information to
2 the reporting party on:

3 (a) Reporting options and the effects of each option;

4 (b) Counseling services available through local, community-based
5 centers or programs;

6 (c) Administrative, medical, and health services available on-campus
7 and off-campus;

8 (d) Available academic accommodations;

9 (e) The disciplinary procedures of the institution; and

10 (f) The legal process carried out through local law enforcement.

11 (5) The confidential resource advisor shall coordinate with the
12 institution to arrange interim protective measures to allow reporting
13 parties to change academic, living, campus transportation, or working
14 arrangements in response to the alleged assault, stalking, or violence.

15 (6) The confidential resource advisor shall coordinate with on-
16 campus and off-campus sexual assault crisis services and, if directed by
17 the reporting party, campus or local law enforcement and may, as
18 appropriate, assist the reporting party in contacting or reporting to
19 campus or local law enforcement.

20 (7) The confidential resource advisor shall also advise a reporting
21 party of his or her rights and the postsecondary institution's
22 responsibilities regarding a protection order, no-contact order, and
23 other lawful orders issued by the institution or a court.

24 (8) A postsecondary institution shall not discipline, penalize, or
25 otherwise retaliate against a confidential resource advisor for
26 representing the interests of or advocating for a reporting party.

27 (9) A confidential resource advisor may attend an administrative or
28 institution-based adjudication proceeding as the advisor or support
29 person for the reporting party.

30 (10) Notice to a confidential resource advisor of an alleged act of
31 domestic violence, dating violence, sexual assault, or stalking or a

1 confidential resource advisor's performance of a service under this
2 section shall not be considered actual or constructive notice of such
3 alleged act to the postsecondary institution at which the confidential
4 resource advisor is employed or provides contracted services.

5 (11) A postsecondary institution may partner with an outside victim
6 advocacy organization to provide a confidential resource advisor. A
7 postsecondary institution that enrolls fewer than one thousand students
8 may partner with another postsecondary institution in this state to
9 provide the services required by this section.

10 Sec. 13. (1) In response to an alleged incident of dating violence,
11 domestic violence, sexual assault, or stalking, a postsecondary
12 institution shall make interim protective measures reasonably available
13 to the reporting party. These shall include, but not be limited to,
14 options for changing academic, living, campus transportation, or working
15 arrangements.

16 (2) A request for interim protective measures made by a confidential
17 resource advisor shall not constitute notice to a responsible employee
18 for purposes of Title IX.

19 Sec. 14. (1) Each postsecondary institution shall provide to newly
20 enrolled students and newly hired employees mandatory dating violence,
21 domestic violence, sexual assault, and stalking primary prevention and
22 awareness programs. Such training and programs shall include:

23 (a) An explanation of consent in a sexual relationship;

24 (b) The role drugs and alcohol play in an individual's ability to
25 consent;

26 (c) Information on options for reporting dating violence, domestic
27 violence, sexual assault, or stalking and the effects of each reporting
28 option;

29 (d) Information on anonymous reporting;

30 (e) Information on services provided by confidential resource
31 advisors and the name and contact information for any advisors of the

1 institution; and

2 (f) Strategies for bystander intervention and risk reduction.

3 (2) Each postsecondary institution shall provide ongoing
4 opportunities for dating violence, domestic violence, sexual assault, and
5 stalking prevention and awareness campaigns and programs.

6 Sec. 15. (1) Each postsecondary institution shall employ
7 responsible employees, as defined in subdivisions (1)(h)(i) and (1)(h)
8 (ii) of section 2 of this act, who shall be responsible for reporting
9 cases of dating violence, domestic violence, sexual assault, and stalking
10 to the Title IX coordinator of the institution.

11 (2) A responsible employee required by this section shall complete
12 minimum training requirements as determined by the commission in
13 coordination with the Attorney General. Such training shall include
14 training by a local, state, or national victim services organization.

15 (3) A responsible employee required by this section shall provide a
16 reporting party with the information required by section 9 of this act.

17 Sec. 16. An individual who participates in the implementation of a
18 postsecondary institution's disciplinary process under the Campus Safety
19 Act, including an individual responsible for resolving complaints by
20 reporting parties, shall have training or experience in handling dating
21 violence, domestic violence, sexual assault, and stalking complaints and
22 the operations of the institution's disciplinary process. Such training
23 shall include, but not be limited to:

24 (1) Information on working with and interviewing persons subjected
25 to dating violence, domestic violence, sexual assault, and stalking;

26 (2) Information on particular types of conduct that constitute
27 dating violence, domestic violence, sexual assault, and stalking
28 including same-sex acts;

29 (3) Information on consent and the role drugs and alcohol can play
30 in the ability to consent;

31 (4) The effects of trauma, including the neurobiological impact on a

1 person;

2 (5) Cultural awareness training regarding how dating violence,
3 domestic violence, sexual assault, and stalking may impact students
4 differently depending on a student's cultural background; and

5 (6) Ways to communicate sensitively and compassionately with a
6 reporting party, including, but not limited to, an awareness of
7 responding to a reporting party with consideration of that party's
8 cultural background and providing services to or assisting in locating
9 services for students.

10 Sec. 17. (1) Each postsecondary institution shall ensure that its
11 Title IX coordinator and members of any campus police force or campus
12 security personnel are educated in the awareness and prevention of dating
13 violence, domestic violence, sexual assault, and stalking and in trauma-
14 informed response.

15 (2) Any peace officer who acts as a first responder to a report of
16 dating violence, domestic violence, sexual assault, or stalking at a
17 postsecondary institution shall receive training in the awareness and
18 prevention of dating violence, domestic violence, sexual assault, and
19 stalking and in trauma-informed response.

20 Sec. 18. (1) On or before October 1, 2020, and each October 1
21 thereafter, each postsecondary institution shall prepare and submit to
22 the commission a report, in a form and manner prescribed by the
23 commission, that includes the following information for the preceding
24 school year:

25 (a) The total number of allegations of dating violence, domestic
26 violence, sexual assault, and stalking reported to the institution's
27 Title IX coordinator by a responsible employee or reporting party against
28 another student or employee of the institution;

29 (b) The number of times an incident of dating violence, domestic
30 violence, sexual assault, and stalking reported by a reporting party was
31 investigated by law enforcement, if known;

1 (c) The number of accused parties found responsible for violating
2 the institution's policies prohibiting sexual assault;

3 (d) The number of accused parties found not responsible for
4 violating the institution's policies prohibiting sexual assault; and

5 (e) The number of accused parties separated from the institution as
6 a result of a finding of responsibility for violating an institution's
7 policies prohibiting sexual assault.

8 (2) A report under this section shall not contain individually
9 identifying information of reporting parties or accused parties and shall
10 comply with applicable state and federal privacy laws.

11 Sec. 19. The commission may adopt and promulgate rules and
12 regulations as necessary to carry out the Campus Safety Act, including,
13 but not limited to, establishing minimum standards for campus security
14 and safety issues at postsecondary institutions.