
SENATE BILL 6439

State of Washington

66th Legislature

2020 Regular Session

By Senators Randall, Van De Wege, Keiser, Stanford, Kuderer, Hunt, Dhingra, Llias, Wilson, C., Frockt, and Das

Read first time 01/16/20. Referred to Committee on Higher Education & Workforce Development.

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. "Applicant" does not
33 include enrolled students who are applying for temporary student
34 employment with the postsecondary educational institutions, unless
35 the student is applying for a position in which the student will have
36 a supervisory role or authority over other students.

37 (2) "Employee" means a person who is receiving or has received
38 wages as an employee from the postsecondary educational institutions
39 and includes current and former workers, whether the person is

1 classified as an employee, independent contractor, or consultant.
2 "Employee" does not include a person who was employed by the
3 institution in temporary student employment while the person was an
4 enrolled student unless the student is or was in a position in which
5 the student has or had a supervisory role or authority over other
6 students. A person who would be considered an "employee" under this
7 subsection, remains an "employee" even if the person enrolls in
8 classes under an institution's employee tuition waiver program or
9 similar program that allows faculty, staff, or other employees to
10 take classes.

11 (3) "Employer" includes postsecondary educational institutions or
12 school employers in this or any other state, and any other employer
13 in this state or any other state.

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

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

27 (6) "Student" means a person enrolled at a postsecondary
28 educational institution and for whom educational records are
29 maintained.

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

32 (1)(a) Postsecondary educational institutions shall administer
33 campus climate assessments to gauge the prevalence of sexual
34 misconduct on their campuses.

35 (b) The state board for community and technical colleges shall
36 administer campus climate assessments of community and technical
37 colleges to gauge the prevalence of sexual misconduct on community
38 and technical college campuses.

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

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

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

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

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

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

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

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

34 (3) (a) The postsecondary educational institutions and state board
35 for community and technical colleges shall submit assessment results
36 to the student achievement council every five years, beginning July
37 1, 2023. The student achievement council shall submit reports
38 summarizing the findings of the assessments to the governor and the
39 appropriate committees of the legislature by December 31st of each
40 year assessment results are due.

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

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

8 (1) Except as provided in subsection (2) of this section, any
9 provision of a settlement agreement between an institution of higher
10 education and an employee is against public policy and void and
11 unenforceable if the provision prohibits the employee, the
12 institution, a survivor, or any other person from disclosing that the
13 employee has been the subject of allegations, investigations, or
14 findings of sexual misconduct committed by the employee.

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

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

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

26 (1) Unless the victim of the alleged sexual misconduct requests
27 otherwise, when a postsecondary educational institution investigates
28 a complaint or allegation of sexual misconduct committed by an
29 employee against a student of the institution, the institution shall
30 complete the investigation whether or not the employee voluntarily or
31 involuntarily leaves employment with the institution. When the
32 institution completes its investigation, the institution shall make
33 written findings of whether the complaint or allegation is
34 substantiated.

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

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

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

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

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

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

18 (1) Before hiring an applicant, a postsecondary educational
19 institution shall request the applicant to sign a statement:

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

26 (b) Authorizing the applicant's current and past employers to
27 disclose to the hiring institution any sexual misconduct committed by
28 the applicant and making available to the hiring institution copies
29 of all documents in the previous employer's personnel, investigative,
30 or other files relating to sexual misconduct, including sexual
31 harassment, by the applicant; and

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

35 (2) Before hiring an applicant, a postsecondary educational
36 institution shall:

37 (a) Request in writing, electronic or otherwise, that the
38 applicant's current and past employers provide the information, if
39 any, described in subsection (1)(b) of this section. The request must

1 include a copy of the declaration and statement signed by the
2 applicant under subsection (1) of this section; and

3 (b) Ask the applicant if the applicant is the subject of any
4 substantiated findings of sexual misconduct, or is currently being
5 investigated for, or has left a position during an investigation
6 into, a violation of any sexual misconduct policy at the applicant's
7 current and past employers, and, if so, an explanation of the
8 situation.

9 (3)(a) Pursuant to (c) of this subsection, after receiving a
10 request under subsection (2)(a) of this section, a postsecondary
11 educational institution shall provide the information requested and
12 make available to the requesting institution copies of documents in
13 the applicant's personnel record relating to substantiated findings
14 of sexual misconduct.

15 (b) Pursuant to (c) of this subsection, if a postsecondary
16 educational institution has information about substantiated findings
17 of a current or former employee's sexual misconduct in the employee's
18 personnel file or employment records, the institution shall disclose
19 that information to any employer conducting reference or background
20 checks on the current or former employee for the purposes of
21 potential employment, even if the employer conducting the reference
22 or background check does not specifically ask for such information.

23 (c) If, by the effective date of this section, a postsecondary
24 educational institution does not have existing procedures for
25 disclosing information requested under this subsection, the
26 institution must establish procedures to begin implementing the
27 disclosure requirements of this subsection no later than January 1,
28 2021.

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

33 (5)(a) When disclosing information under this section, the
34 postsecondary educational institution shall keep personal identifying
35 information of the complainant and any witnesses confidential, unless
36 the complainant or witnesses agree to disclosure of their identifying
37 information.

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

1 (6) A postsecondary educational institution may not hire an
2 applicant who does not sign the statement described in subsection (1)
3 of this section.

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

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

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

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

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