

SENATE BILL REPORT

SB 5518

As Reported by Senate Committee On:
Higher Education, February 12, 2015

Title: An act relating to campus sexual violence.

Brief Description: Creating procedures to address campus sexual violence.

Sponsors: Senators Kohl-Welles, Litzow, Frockt, Darneille, McAuliffe, Liias, Dammeier, Fain, Keiser, Hasegawa and Habib.

Brief History:

Committee Activity: Higher Education: 2/03/15, 2/12/15 [DPS, w/oRec].

SENATE COMMITTEE ON HIGHER EDUCATION

Majority Report: That Substitute Senate Bill No. 5518 be substituted therefor, and the substitute bill do pass.

Signed by Senators Bailey, Chair; Baumgartner, Vice Chair; Kohl-Welles, Ranking Minority Member; Frockt and Liias.

Minority Report: That it be referred without recommendation.

Signed by Senator Becker.

Staff: Evan Klein (786-7483)

Background: Overview of Federal Law. The handling of sexual assaults on college and university campuses is governed by procedural guidelines under Title IX of the education amendments of 1972. The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) and the Violence Against Women Act (VAWA) also require institutions to develop reporting protocols and disciplinary procedures for handling sexual violence incidents.

Institutions of higher education must develop their own student conduct, disciplinary, and reporting requirements.

Washington State does not have non-criminal statutory requirements for the handling of student-on-student sexual assaults. Public institutions of higher education each have student codes of conduct codified in the Washington Administrative Code.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Title IX. Every college and university that accepts federal funds must comply with Title IX.

Title IX has been interpreted by the United States Supreme Court and the United States Department of Education to require educational institutions to maintain policies, practices, and programs that do not discriminate against anyone based on sex.

A school violates a student's rights under Title IX regarding student-on-student sexual violence when: (1) the alleged conduct is serious enough to limit or deny a student's ability to participate in or benefit from the school's educational program; and (2) the school, upon notice, fails to take prompt and effective steps reasonably calculated to end the sexual violence, prevent its recurrence, and as appropriate, remedy its effects.

The Department of Education requires institutions to investigate incidence of sexual violence and have grievance procedures in place for resolving student and employee complaints of sexual discrimination. Colleges and universities must develop sexual violence procedures that at the least include the following:

- notice to students and employees of grievance procedures, including where complaints may be filed;
- application of grievance procedures to complaints filed by students or on their behalf;
- provisions for reliable and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence;
- designated and reasonably prompt time frames for the major stages of the complaint process;
- notice to the complainant and alleged perpetrator of the outcome of the complaint; and,
- assurance that the school will take steps to prevent recurrence of any sexual violence and remedy discriminatory effects on the complainant and others.

Institutions can lose federal funds for violating the requirements of Title IX.

Clery Act. The Clery Act requires institutions of higher education to record and disclose information about campus crimes to the U.S. Department of Education. An institution may be fined up to \$35,000 per violation or may lose financial aid, if it violates the Clery Act reporting requirements.

Violence Against Women Act. VAWA was reauthorized in 2013, amending the Clery Act. The VAWA reauthorization added new sexual violence offenses to Clery reporting requirements including sexual offenses, domestic violence, dating violence, and stalking. The reauthorization requires institutions to develop a statement of policy describing programs to prevent sexual violence and education programs to promote awareness. The reauthorization also requires institutions to develop a statement of policy regarding procedures for responding to a sexual violence complaint.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Substitute): Various provisions regarding campus sexual violence are included.

Disciplinary Process. All institutions of higher education must refrain from establishing a different disciplinary process on the same campus for a matter of sexual violence. The disciplinary process cannot change based on the status of the student, including membership on an athletic team, fraternity or sorority, academic year, or any other characteristic.

Confidentiality and Reporting Protocols. Institutions of higher education must make information available on an annual basis to all current and prospective students, employees, and parents of students, regarding the institution's compliance with campus sexual violence confidentiality and reporting requirements. Resources must also be made available to all campus sexual assault survivors on a confidential basis, regardless of whether the survivor chooses to proceed with a formal report.

Uniform Campus Climate Survey. The four-year institutions must conduct a campus climate assessment to gauge the prevalence of sexual assault on their campuses. The State Board for Community and Technical Colleges (SBCTC) must conduct a uniform campus climate assessment survey of community and technical colleges. The surveys should assess the following:

1. student and employee knowledge of:
 - a. their institution's Title IX coordinator's role;
 - b. campus policies and procedures addressing sexual assault and violence;
 - c. options for reporting sexual violence as a survivor or witness;
 - d. the availability of resources on and off campus, such as counseling, health, and academic assistance;
2. student and employee bystander attitudes and behavior;
3. whether survivors reported to the institution or law enforcement and why they did or did not report; or
4. an evaluation of student and employee attitudes and awareness of campus sexual violence and any recommendations for better addressing and preventing sexual violence.

Institutions and SBCTC must report their findings to the Governor and the higher education committees of the Legislature by December 31, 2016. The report must include a plan or proposal to undertake a statewide public awareness campaign on campus sexual violence. An assessment conducted to comply with new federal requirements pertaining to campus climate assessments fulfills this requirement.

Memoranda of Understanding. The SBCTC, Council of Presidents, and independent colleges of Washington must submit reports to the Governor and the Legislature's higher education committees by July 1, 2016, on steps taken by their institutions to enter into memoranda of understanding with local law enforcement that set forth each party's roles and responsibilities related to the prevention and response to sexual assault.

Institutions must develop and distribute sexual violence policies and procedures that include, but are not limited to, information about their Title IX compliance officer or other individual

responsible for handling sexual violence violations. Institutions must annually distribute these policies and procedures.

EFFECT OF CHANGES MADE BY HIGHER EDUCATION COMMITTEE (Recommended Substitute): The substitute removes the section regarding survivor's rights. The substitute clarifies that institutions cannot have different sexual violence disciplinary processes based on the status or characteristics of the student, including membership in a fraternity or sorority. Certain requirements of the campus climate assessment were altered. The four-year institutions and community and technical colleges must include in their campus climate assessment report, a plan or proposal to undertake a statewide public awareness campaign on campus sexual violence. The substitute also requires all public institutions of higher education to develop and distribute policies and procedures for handling complaints of sexual violence. The policies should include information about the institution's Title IX compliance officer or another responsible individual, and these policies should be annually distributed to students and employees.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: Yes.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Proposed Substitute as Heard in Committee:

PRO: This bill is to ensure that campuses are made safe for students. It is important to work on prevention of sexual assaults and institutional responses in the event of an incident. This bill will help increased Title IX compliance. Campus sexual assault should be a high priority for the state. Stakeholders want to be cautious with the design of the climate assessment, what stakeholders are involved, and in regard to the interplay between state and federal law.

Persons Testifying: PRO: Senator Kohl-Welles, prime sponsor; Andrea Piper-Wentland, WA Coalition of Sexual Assault Programs; Emily Cordo, Legal Director of Sexual Violence Legal Services, YWCA Seattle|King|Snohomish; Grace Huang, WA State Coalition Against Domestic Violence; Joe Holliday, SBCTC, Director of Student Services; Paul Francis, Council of Presidents; Janet Chung, Legal Voice.