
Senate Committee on Education

This measure may be considered for action during today's work session.

SENATE BILL 347

Revises provisions governing sexual misconduct in institutions of the Nevada System of Higher Education. (BDR 34-237)

Sponsored By: Senator Scheible
Date Heard: April 2, 2021
Fiscal Notes: Effect on Local Government: No.
Effect on the State: Yes.

Senate Bill 347 relates to sexual misconduct at higher education institutions. The measure creates the Task Force on Sexual Misconduct at Institutions of Higher Education and prescribes the membership and duties of the task force. Further, SB 347 authorizes the Board of Regents of the University of Nevada to require an institution to:

- Conduct a climate survey on sexual misconduct;
- Adopt a sexual misconduct policy;
- Meet certain requirements relating to grievances and provide training on the grievance process;
- Enter into a memorandum of understanding with an organization that assists victims of sexual misconduct;
- Designate and provide training to a victim's advocate;
- Prohibit sanctioning a reporting party or witness under certain circumstances;
- Provide programming on sexual misconduct awareness and prevention; and
- Submit certain reports.

The bill allows the Board of Regents to impose a fine against an institution that does not comply with the requirements. Finally, SB 347 requires the Board of Regents to compile reports from institutions and forward them to the Director of the Department of Health and Human Services and to the Legislature or the Legislative Committee on Education.

Amendments: Senator Scheible proposed the following amendments (see attached):

1. Defines domestic violence to include crimes committed by certain persons and clarifies the definitions of sexual assault, sexual harassment, sexual misconduct, stalking, supportive measures, and trauma-informed response. The amendment also provides a definition of dating violence;
2. Revises the membership of the Task Force on Sexual Misconduct at Institutions of Higher Education to include a Title IX coordinator, a mental health professional, and a representative of a domestic violence and/or sexual assault entity;
3. Provides for the development of a climate survey on sexual misconduct to be administered at higher education institutions and specifies the topics that must be included in the survey;
4. Authorizes the Board of Regents to conduct a sexual misconduct survey biennially at each institution—subject to the availability of funds—and provides for the content and reporting of the survey;
5. Clarifies the investigative, disciplinary, and non-disciplinary processes as specified in the bill as written;
6. Clarifies how the sexual misconduct policy may be provided;

7. Specifies—if the Board of Regents adopts a policy on sexual misconduct—the contents of the process that will be followed, including rules of evidence, notification requirements, appeals procedures, and disciplinary actions;
8. Provides that institutions may adopt a memorandum of understanding (MOU) with local law enforcement agencies with regard to sexual misconduct incidents and specifies requirements and protocols for the MOU;
9. Authorize the development of MOUs with certain crisis centers and public health agencies;
10. Provides for and defines the duties of a confidential resource advisor, the designated victim’s advocate;
11. Further provides for the response to a complainant or witness who reports an alleged incident;
12. Authorizes the Board of Regents to provide investigative, disciplinary, and non-disciplinary training to certain employees;
13. Allows the Board of Regents to require institutions to include trauma informed, gender inclusive, and lesbian, gay, bisexual, transgender, and queer (LGBTQ) inclusive programming on sexual misconduct matters and culturally responsive training;
14. Provides for the annual reporting of sexual misconduct incidents;
15. Provides for the institutional disciplinary process and related reporting as well as an institution’s response processes to incidents, including hearings and investigations;
16. Includes a waiver from requirements of school-sponsored programs and activities, including scholarships, for those who have experienced sexual misconduct; and
17. Ensures compliance with federal law.

Special Note: See fiscal notes attached.

Blue bold italics: new language in the original bill

Green bold underlining: language proposed to be added in this amendment

~~Strikethrough red:~~ is deleted language in the original bill

~~Purple double strikethrough:~~ is language proposed to be deleted in this amendment

Orange double underlining: is deleted language in the original bill proposed to be retained in this amendment

Section 1. *Chapter 396 of NRS is hereby amended by adding 1 thereto the provisions set forth as sections 2 to 27, inclusive, of this act.*

Sec. 2. *As used in sections 2 to 27, inclusive, of this act, 4 unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Domestic violence” means ~~the commission of any act described in NRS 33.018~~ A felony or misdemeanor crime of violence committed by:*
(A) A current or former spouse or intimate partner of the victim;
(B) A person with whom the victim shares a child in common;
(C) A person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
(D) A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or
(E) Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Sec. 4. *“Reporting party” means a student or employee of an institution within the System who reports being a victim of an alleged incident of sexual misconduct to the institution.*

Sec. 5. *“Responding party” means a student or employee of an institution within the System who has been accused of committing an alleged incident of sexual misconduct by a reporting party.*

Sec. 6. *“Sexual assault” means ~~a violation of NRS 200.366.~~ the touching or penetration, no matter how slight, of the vagina or anus with any body part or object, or oral touching or penetration by a sex organ of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity*

Sec. 7. *“Sexual harassment” ~~has the meaning ascribed to it in NRS 176A.280.~~ means any unwelcome conduct of a sexual nature, regardless of whether it is direct or indirect, or verbal or nonverbal (including conduct that is undertaken in whole or in part, through the use of*

electronic messaging services, commercial mobile services, electronic communications, or other technology), that unreasonably alters an individual's terms, conditions, benefits, or privileges of an educational program or activity, including by creating an intimidating, hostile, or offensive environment, which takes the form of—

(A) a sexual advance;

(B) a request for sexual favors;

(C) a sexual act, where such submission is made either explicitly or implicitly a term or condition of a program or activity at a school or school activity, regardless of a student's submission to or rejection of such sexual act;

(D) a sexual act, where such submission or rejection is used as the basis for a decision affecting a term or condition of a program or activity at a school or school activity, regardless of a student's submission to or rejection of such sexual act;

(E) other conduct of a sexual nature; or

(F) domestic violence, intimate partner violence (dating violence), and sex-based stalking.

Sec 8. *“Sexual misconduct” means an incident of sexual harassment, sexual violence, domestic violence, sexual exploitation, stalking harassment or violence based on sexual orientation or gender identity or expression, ~~gender-based violence, violence based on sexual orientation, gender identity or expression, sexual assault, sexual harassment or stalking~~ or other gender-based harassment or violence.*

Sec. 9. *“Stalking” means ~~a violation of NRS 200.575.~~ engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for the person's safety or the safety of others or (ii) suffer substantial emotional distress. For the purposes of this definition:*

(A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

(C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Sec. 10. *“Dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, physical or sexual violence; emotional abuse; interfering with complainant's ability to secure a job or save money; violence or threat of violence toward*

the complainant's child, other family, friend, pet, or property; threat of suicide by the respondent; or threat by the respondent to report the complainant to police, immigration officials, child protective services, or a mental health institution.

Sec. 11. "Supportive measures" has the meaning ascribed to it in 34 C.F.R. § 106.30 means non-disciplinary individualized services offered as appropriate, as reasonably available, and without fee or charge to parties in a sexual misconduct case before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The recipient must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures.

Sec. 12. "Trauma-informed response" means a response involving an understanding of the complexities of sexual misconduct, including, without limitation:

1. The neurobiological causes and impacts of trauma; and
2. The influence of social myths and stereotypes surrounding the causes and impacts of trauma.

~~Sec. 13. 1. The Task Force on Sexual Misconduct at the Nevada System of Higher Education created pursuant to section 12 of this act shall develop a climate survey on sexual misconduct designed to be administered at institutions within the System.~~

~~In developing the climate survey on sexual misconduct, the Task Force shall: (a) Use best practices from peer-reviewed research; (b) Consult with persons with expertise in the development and use of climate surveys on sexual misconduct at institutions of higher education; (c) Review climate surveys on sexual misconduct which have been developed and implemented by institutions of higher education, including, without limitation, institutions in other states; (d) Provide opportunity for written comment from organizations that assist victims of sexual misconduct to ensure the adequacy and appropriateness of any proposed content of the climate survey on sexual misconduct; (e) Consult with institutions within the System on strategies for optimizing the effectiveness of the climate survey on sexual misconduct; and (f) Account for the diverse needs and differences of the institutions within the System. 2. The climate survey on sexual misconduct must request information on topics related to sexual misconduct. The topics may include, without limitation: (a) The estimated number and type of alleged incidents of sexual misconduct, both reported and not reported, at an institution within the System; (b) Whether a student taking the survey has knowledge of such information; (c) When and where an alleged incident of sexual misconduct occurred such as on campus, off-campus, abroad, or online; (d) Awareness of a student of the policies and procedures related to sexual misconduct at an institution; (e) Whether a student reported an alleged incident of sexual misconduct and: (1) If the incident was reported, to which campus resource or law enforcement agency a report was made; and (2) If the incident was not reported, the reason the student chose not to report the incident; (f) Whether a~~

~~student who reported an alleged incident of sexual misconduct was: (1) Offered supportive measures by an institution; (2) Informed of, aware of or referred to campus, local or state resources for support for victims, including, without limitation, appropriate medical care and legal services; and (3) Informed of the prohibition against retaliation for reporting an alleged incident of sexual misconduct; (f) Contextual factors in an alleged incident of sexual misconduct, such as the involvement of force, incapacitation or coercion; (g) Demographic information that could be used to identify at-risk groups, including, without limitation, the gender, race, ethnicity, national origin, economic status, disability status, gender identity, immigration status and sexual orientation of the student taking the climate survey on sexual misconduct; (h) Perceptions a student has of campus safety; (i) Whether a student has confidence in the ability of the institution to protect against and respond to alleged incidents of sexual misconduct; (j) Whether a student chose to withdraw or take a leave of absence from the institution or transfer to another institution because the student is the reporting party or responding party in an alleged incident of sexual misconduct; (k) Whether a student withdrew from any classes or was placed on academic probation or otherwise disciplined as a result of an alleged incident of sexual misconduct; (l) If the misconduct was perpetrated by a student, faculty member, staff, third-party vendor, or other~~

~~Whether the student experienced any negative health impacts from sexual misconduct or the institution's response to a report, including but not limited to PTSD, anxiety, depression, chronic pain, or eating disorders.~~

~~(m) — Community attitudes toward sexual misconduct including individuals' willingness to intervene as a bystander and (l) (o) Any other questions as determined necessary by the Task Force. 3. The Task Force shall provide the Board of Regents with any recommendations respecting the content, timing and administration of the climate survey on sexual misconduct, including, without limitation, recommendations on achieving a response rate that is statistically valid. 4. The Task Force shall deliver the climate survey on sexual misconduct and any recommendations to the Board of Regents at least biennially, with the first survey delivered not later than March 31, 2022.~~

Sec ~~12.~~ 13. 1. There is hereby created a Task Force on Sexual Misconduct at Institutions of Higher Education consisting of 16 members as follows: (a) The Chair of the Board of Regents, or his or her designee; (b) The Chancellor of the System, or his or her designee; (c) The Attorney General, or his or her designee; (d) Thirteen ~~Ten~~ members appointed by the Board of Regents as follows: (1) One representative of a state college; (2) One representative of a community college; (3) One representative from a university; (4) One Title IX coordinator from a System institution (5) Two students who represent a group or organization that focuses on multiculturalism, diversity or advocacy at a state college or community college; (6) Two students who represent a group or organization that focuses on multiculturalism, diversity or advocacy at a university; (7) One researcher with experience in the development of climate surveys on sexual misconduct; (8) One researcher of statistics, data analytics or econometrics with experience in survey analysis in higher education; and (9) One medical professional from Las Vegas School of Medicine or University of Nevada, Reno School of Medicine; and ; (10) One mental health professional from either the University of Nevada, Las Vegas School of Medicine or University of Nevada, Reno School of Medicine

(e) One representative of the Nevada Coalition to End Domestic and Sexual Violence, or its successor organization, appointed by the Attorney General; (f) One representative of a domestic violence and/or sexual assault nonprofit or agency appointed by the Attorney General; (g) One representative of the Every Voice Coalition, or any successor organization dedicated to student and survivor advocacy, appointed by the Attorney General. 2. After the initial terms, each appointed member of the Task Force serves a term of 2 years and may be reappointed to one additional 2-year term following his or her initial term. A vacancy must be filled in the same manner as the original appointment. 3. The Task Force shall, at its first meeting and each odd-numbered year thereafter, elect a Chair from among its members. 4. The Task Force shall meet at least once annually and may meet at other times upon the call of the Chair or a majority of the members of the Task Force. 5. A majority of the members of the Task Force constitutes a quorum, and a quorum may exercise all the power and authority conferred on the Task Force. 6. Members of the Task Force serve without compensation, 7. Each member of the Task Force who is an officer or employee of the State or a local government must be relieved from his or her duties without loss of his or her regular compensation so that the member may prepare for and attend meetings of the Task Force and perform any work necessary to carry out the duties of the Task Force in the most timely manner practicable. A state agency or local government shall not require an officer or employee who is a member of the Task Force to make up the time the member is absent from work to carry out his or her duties as a member, and shall not require the member to take annual vacation or compensatory time for the absence. 8. The Office of the Attorney General shall provide administrative support to the Task Force.

~~Sec. 14. 1. The Board of Regents may require each institution within the System to conduct a climate survey on sexual misconduct at the institution biennially. 2. A climate survey on sexual misconduct conducted pursuant to subsection 1 must include the questions developed by the Task Force on Sexual Misconduct at Institutions of Higher Education pursuant to section 13 of this act. If an institution within the System includes additional questions on a climate survey on sexual misconduct conducted pursuant to subsection 1, the questions must not be unnecessarily traumatizing for a victim of an alleged incident of sexual misconduct. 3.~~

~~If When an institution within the System conducts a climate survey on sexual misconduct pursuant to subsection 1, the institution shall: (a) Provide the survey to each student at the institution, including, without limitation, students studying abroad or on a leave of absence from the institution; (b) The survey should be administered online and provided with reasonable accommodations to individuals with disabilities. (b) (c) Not require the disclosure of personally identifying information by a respondent to the climate survey on sexual misconduct; (1) And shall include a "decline to state" option for each question (c) (d) Work to ensure an adequate number of students complete the survey to achieve a random and representative sample size of students; (d)(e) Within 120 days after completion of the climate survey on sexual misconduct: (1) Compile a summary of the responses to the survey; and (2) Submit the summary of responses to the Board of Regents; and (e)(f) Post on the Internet website maintained by the institution in a manner that does not disclose the identity of a student: (1) The responses to the climate survey on sexual misconduct; (2) The summary of the responses to the climate survey on sexual misconduct; and (3) A link to the summary of the responses to the climate survey on sexual misconduct on the Internet website maintained by the Board of Regents. 4. If an institution within the System conducts a climate survey on sexual misconduct pursuant to subsection 1, the institution may provide the survey to a former student of the institution who took a leave of absence or withdrew from the institution because the student was a reporting party of an alleged incident of sexual misconduct.~~

Sec. 13. 14. The Board of Regents may utilize researchers employed at one or more institutions within the System to develop a climate survey for students on sexual misconduct designed to be administered at an institution within the System. The climate survey on sexual misconduct must:

- (a.) Provide institution-specific data regarding the prevalence of gender-based harassment and discrimination;
 - (b.) Be fair and unbiased;
 - (c.) Be scientifically valid and reliable; and
 - (d.) Meet the highest standards of survey research.
1. If appointed to develop a climate survey on sexual misconduct, the researchers shall:
 - (a.) Use best practices from peer-reviewed research;
 - (b.) Consult with persons with expertise in the development and use of climate surveys on sexual misconduct at institutions of higher education;
 - (c.) Review climate surveys on sexual misconduct which have been developed and implemented by institutions of higher education, including, without limitation, institutions in other states;
 - (d.) Provide opportunity for written comment from organizations that assist victims of sexual misconduct to ensure the adequacy and appropriateness of any proposed content of the climate survey on sexual misconduct;
 - (e.) Consult with institutions within the System on strategies for optimizing the effectiveness of the climate survey on sexual misconduct; and
 - (f.) Account for the diverse needs and differences of the institutions within the System.

2. If a climate survey on sexual misconduct is developed, the climate survey must request information on topics related to sexual misconduct. The topics may include, without limitation:
 - (a.) The estimated number of alleged incidents of sexual misconduct, both reported and not reported, at an institution within the System, if a student taking the survey has knowledge of such information;
 - (b.) When and where an alleged incident of sexual misconduct occurred;
 - (c.) Whether an alleged incident of sexual misconduct was perpetrated by a student, faculty member, staff member of an institution within the System, third party vendor or another person;
 - (d.) Awareness of a student of the policies and procedures related to sexual misconduct at an institution;
 - (e.) Whether a student reported an alleged incident of sexual misconduct and:
 1. If the incident was reported, to which campus resource or law enforcement agency a report was made; and
 2. If the incident was not reported, the reason the student chose not to report the incident;
 - (f.) Whether a student who reported an alleged incident of sexual misconduct was:
 1. Offered supportive measures by an institution;
 2. Informed of, aware of or referred to campus, local or state resources for support for victims, including, without limitation, appropriate medical care and legal services; and
 3. Informed of the prohibition against retaliation for reporting an alleged incident of sexual misconduct;
 - (g) Contextual factors in an alleged incident of sexual misconduct, such as the involvement of force, incapacitation or coercion;
 - (h) Demographic information that could be used to identify at-risk groups, including, without limitation, the gender, race, ethnicity, national origin, economic status, disability, gender identity or expression, immigration status and sexual orientation of the student to the climate survey on sexual misconduct;
 - (i) Perceptions a student has of campus safety;
 - (j) Whether a student has confidence in the ability of the institution to protect against and respond to alleged incidents of sexual misconduct;
 - (k) Whether a student chose to withdraw or take a leave of absence from the institution or transfer to another institution because the student is the Complainant or Respondent in an alleged incident of sexual misconduct;
 - (l) Whether a student withdrew from any classes or was placed on academic probation, disciplinary probation, or otherwise disciplined as a result of an alleged incident of sexual misconduct;

- (m) Whether a student experienced any financial impact as a result of an alleged incident of sexual misconduct or the response of an institution within the System to the alleged incident of sexual misconduct;
- (n) Whether a student experienced any negative health impacts as a result of an alleged incident of sexual misconduct or the response of an institution within the System to the alleged incident of sexual misconduct, including, without limitation, post-traumatic stress disorder, anxiety, depression, chronic pain or an eating disorder;
- (o) The perception of the survey participants of the attitudes of the community toward sexual misconduct, including, without limitation, the willingness of a person to intervene in an ongoing incident of sexual misconduct as a bystander; and
- (p) Any other questions as determined necessary by the researchers.

4. The climate survey on sexual misconduct must provide an option for students to decline to answer a question

5. If the BOR requires a climate survey on sexual misconduct, the climate survey must be submitted to the Task Force on Sexual Misconduct at the Nevada System of Higher Education for comment.

Sec. 14.15. 1. The Board of Regents shall conduct a sexual misconduct climate survey for all students at each institution biennially to the extent funding is available.

2. If an institution within the System conducts a climate survey on sexual misconduct pursuant to subsection 1, the institution shall:

(a) Provide the survey to each student at the institution, including, without limitation, students studying abroad;

(b) Not require the disclosure of personally identifiable information by a respondent participant of the climate survey on sexual misconduct;

(c) Work to ensure an adequate number of students complete the survey to achieve a random and representative sample size of students;

(d) Within 120 days after completion of the climate survey on sexual misconduct:

(1) Compile a summary of the responses to the survey; and

(2) Submit the summary of responses to the Board of Regents; and

(e) Post on the Internet website maintained by the institution in a manner that does not disclose the identity of a student:

(1) The summary of the responses to the climate survey on sexual misconduct; and

(2) A link to the institutions summaries of the responses to the climate survey on sexual misconduct on the Internet website maintained by the Board of Regents.

1. A climate survey on sexual misconduct must be administered electronically by an institution within the System and provide reasonable accommodations for students with a disability. An institution may receive a waiver to not participate

in the survey due to financial circumstances with approval from the Board of Regents.

2. Any gift, donation, bequest, grant or other source of money received may be used to carry out the provisions of this section

Sec ~~15~~. 16. The Board of Regents shall conduct a sexual misconduct climate survey of all its students at each institution biennially. If the Board of Regents requires an institution within the System to conduct a climate survey on sexual misconduct pursuant to section 14 of this act, the Board of Regents shall:

1. Provide a copy of the questions developed by researchers employed at an institution within the System pursuant to section 13 of this act to each institution within a reasonable time after the Board of Regents receives the questions from the researchers who develop the questions;

2. Establish a repository for the summaries of the climate survey on sexual misconduct submitted by each institution pursuant to section 14 of this act;

3. Post each summary of the responses to a climate survey on sexual misconduct submitted by an institution pursuant to section 14 of this act on the Internet website maintained by the Board of Regents in a manner that does not disclose the identity of a student;

4. Adopt a policy on the dissemination, collection and summation of the responses to the climate survey on sexual misconduct; and

5. On or before February 1 of each odd-numbered year, report the summaries of the climate survey on sexual misconduct submitted by an institution pursuant to section 14 of this act to the Director of the Legislative Counsel Bureau for transmittal to the Senate and Assembly Standing Committees on Education.

6. The data and reports underline the numbers generated for the annual report are confidential and not subject to Public Records Act.

Sec. ~~16~~. 17. *The Board of Regents may require an institution within the System to:*

1. *Require employees who participate in ~~the grievance process of the institution pursuant to Title IX of the Education Amendments Act of 1972, 20 U.S.C. §§ 1681 et seq.,~~ the investigative, disciplinary and non-disciplinary process of the institution pursuant to a policy on sexual misconduct adopted pursuant to section ~~17~~-18 of this act to receive annual training on topics related to sexual misconduct which may include, without limitation, any training required pursuant to section ~~21~~ 23 of this act;*

2. *Provide a reporting party and responding party with a copy of the policies of the institution regarding the submission and consideration of evidence that may be considered during ~~the grievance~~ any institutions' investigative, disciplinary and non-disciplinary processes;*

3. *Within 7 business days after a final determination of a report of an alleged incident of sexual misconduct, inform the reporting party and the responding party of the result of the final determination; and*

4. *Unless otherwise required by state or federal law, not disclose the identity of a reporting party or responding party.*

Sec. ~~17~~. 18. 1. *The Board of Regents may require an institution within the System to adopt a policy on*

sexual misconduct, consistent with applicable state and federal law.

2. If the Board of Regents requires the adoption of a policy on sexual misconduct pursuant to subsection 1, in developing the policy on sexual misconduct, an institution within the System:

(a) Shall:

(1) Incorporate a trauma-informed response;

(2) Coordinate with:

(I) The Title IX coordinator of the institution; and

(II) If an institution has entered into a memorandum of understanding pursuant to section 18 of this act, the organization that assists victims of sexual misconduct; and

(3) Engage in a culturally competent manner to reflect the diverse needs of all students;

and

(b) May consider input from internal and external entities, including, without limitation:

(1) Administrators at the institution;

(2) Personnel affiliated with health care centers located on or off a campus of the institution that provide services to the institution;

(3) ~~A victim's advocate~~ Confidential Resource Advisor designated pursuant to section ~~19~~ 22 of this act;

(4) Staff affiliated with campus housing services;

(5) Students enrolled in an institution within the System;

(6) Law enforcement agencies, including, without limitation, campus police or security; and

(7) The district attorney of the county where the main campus of the institution is located.

3. If the Board of Regents requires the adoption of a policy on sexual misconduct pursuant to subsection 1, an institution within the System shall provide:

(a) Internal or external entities an opportunity to provide comment on the initial policy on sexual misconduct or any substantive change to the policy;

(b) Instructions on how an internal or external entity may provide comment on the initial policy on sexual misconduct or a substantive change to the policy; and

(c) A reasonable length of time during which the institution will accept comment.

4. After an initial policy on sexual misconduct is adopted by an institution within the System, the opportunity for comment by an internal or external entity pursuant to subsection 3 applies only to a substantive change to the policy, as determined by the institution.

5. If the Board of Regents requires the adoption of a policy on sexual misconduct pursuant to subsection 1, an institution within the System shall make the policy on sexual misconduct publicly available not later than the start of each academic year:

~~(a). On a campus of the institution in locations where students regularly congregate including, without limitation, a dining facility, recreational facility, library, bookstore, student union, student center or common area of campus housing;~~

(a) Upon request, to a prospective student, current student or employee of the institution; and

(b) On the Internet website maintained by the institution.

6. As used in this section, “student” includes, without limitation, a former student of the institution who took a leave of absence or withdrew from the institution due to being a complainant of an alleged incident of sexual misconduct.

Sec. ~~18-19-1~~. If the Board of Regents requires the adoption of a policy on sexual misconduct pursuant to section 17 of this act, the policy must include, without limitation, information on: (a) The procedures by which a student or employee at an institution within the System may report or disclose an alleged incident of sexual misconduct that occurred on or off a campus of the institution; (b) Obtaining emergency medical assistance after an alleged incident of sexual misconduct, including, without limitation: (1) The name and location of the nearest medical facility where a student or employee may receive a forensic medical examination; (2) Options for transportation and reimbursement for travel costs associated with obtaining a forensic medical examination; (3) The telephone number and Internet website for a national 24-hour hotline and any other state or local resources that provide information on sexual misconduct; and (4) Any programs that may provide financial assistance to a student for the cost of obtaining emergency medical assistance; (c) The types of counseling and health, safety, academic and other support services available within the local community or through an organization that assists victims of sexual misconduct, including, without limitation, the contact information for any relevant providers of support services; (d) The name, contact information and a description of the role of and services provided by: (1) An advisor who may serve as a confidential resource to a responding party; (2) A ~~victim’s advocate~~ designated by the institution pursuant to section ~~20~~ 22 of this act; (3) The Title IX coordinator of the institution; (4) An organization that supports persons accused of sexual misconduct; and (5) An organization that assists victims of sexual misconduct; (e) The rights or obligations of a student or employee to: (1) Notify or decline to notify a law enforcement agency of an alleged incident of sexual misconduct; (2) Receive assistance from the appropriate personnel on a campus of the institution in notifying a law enforcement agency of an alleged incident of sexual misconduct; (3) Obtain an order for protection, restraining order or injunction issued by a court; or (4) Obtain an agreement between the reporting party and responding party to restrict contact; (f) Procedures for a student or employee to notify an institution that an order for protection, restraining order or injunction has been issued under state or federal law; (g) The responsibilities of the institution upon receipt of the notice of an order for protection, restraining order or injunction; (h) Supportive measures, including, without limitation: (1) Changing academic, living, campus transportation or work arrangements; (2) Taking a leave of absence from the institution in response to an alleged incident of sexual misconduct; (3) How to request supportive measures; and (4) The process to have any supportive measures reviewed by the institution; (i) Appropriate local, state and federal law enforcement agencies, including, without limitation, the contact information for a law enforcement agency; and (j) ~~The grievance process of the institution for investigating and resolving a report of an alleged incident of sexual misconduct pursuant to Title IX of the Education Amendments Act of 1972, 20 U.S.C. §§ 1681 et seq., the policy on sexual misconduct adopted pursuant to section 17 of this act and, if required by the Board of Regents, the requirements of section 16 of this act.~~ A summary of the institution’s procedures for investigating, adjudicating, and resolving sexual misconduct complaints, including an explanation of all procedures which shall be followed to obtain investigatory reports and gather evidence, and potential sanctions which may be imposed, as well as clear statements advising students that:

(1) The process shall be uniformly applied for all disciplinary proceedings relating to any claims of sexual misconduct. (2) Timely and detailed notice shall be given, upon such time as the institution decides to proceed with an institutional disciplinary process, to the reporting party and the responding party describing the date, time, and location, if

known, and a summary of the factual allegations concerning the violation.(3) The reporting party of an alleged incident of sexual misconduct and the responding party may be accompanied by an advisor and support person of their choice, which may include an advocate and counsel, to meet with the institution's investigator or other fact finder and may consult with an advisor and support person, which may include an advocate and counsel, during any meetings and disciplinary proceedings; provided, however, that the institution may establish rules regarding how the proceedings will be conducted which may include guidelines on the extent to which the advisor or support person for each party may participate in a meeting or disciplinary proceeding and any limitations on participation which shall apply equally to both parties; and provided further, that the institution shall adopt reasonable measures to provide for the involvement of the advisor and support person for each party but the availability of the advisor and support person shall not significantly delay a meeting or disciplinary proceeding.(4) The reporting party and the responding party shall be provided with a copy of the institution's policies regarding the submission and consideration of evidence that may be used during a disciplinary proceeding and shall have equal opportunity to present evidence and witnesses on their behalf during a disciplinary proceeding; provided, however, that each party shall be provided with an equal opportunity inspect and review all relevant evidence that shall be relied on in the determination of discipline before a determination is made. (5) There shall be restrictions on evidence considered by the fact finder including, but not limited to, the use of evidence of prior sexual activity or character witnesses.(6) That the investigation and adjudication of alleged sexual misconduct is not an adversarial process between the complainant, the respondent, and the witnesses, but rather a process for postsecondary institutions to comply with their obligations under existing law. The reporting party does not have the burden to prove, nor does the responding party have the burden to disprove, the underlying allegation or allegations of misconduct. (7) The reporting party and the responding party shall be informed in writing of the results of a disciplinary proceeding not later than 7 business days after a final determination of a complaint, not including any time for appeal, unless good cause for additional time is shown, and they shall be informed of any process for appealing the decision.(8) An institution shall offer an appeal as a result of procedural errors, previously unavailable relevant evidence that could significantly impact the outcome of a case, conflict of interest or bias, and where the sanction is disproportionate to the findings, the reporting party and the responding party shall be provided with an equal opportunity to appeal decisions regarding responsibility or sanctions.

(9)The institution shall not disclose the identity of the reporting party or the responding party, except as necessary to carry out a disciplinary process or as permitted under state or federal law and shall not share information which identifies domicile, the location of employment or phone, email or other contact information, or information that may disclose the location of either party to the adverse party, unless the information provided is intended to ensure the safety of either party(10) The institution's disciplinary proceedings shall not serve as a substitute for the criminal legal process.

Sec. 19. 20. Each institution may, to the extent feasible, adopt a memorandum of understanding with local law enforcement agencies over the city or town wherein the institution's primary campus is located to establish the respective roles and responsibilities of each party related to the prevention of and response to on-campus and off-campus sexual misconduct. In adopting the memorandum of understanding, institutions and local law enforcement agencies shall develop policies and procedures that comply with all applicable confidentiality and privacy laws and that:

(i) set out the jurisdiction of the local law enforcement agencies based on criteria such as location and type of incident and provide for cross-jurisdictional or multi-jurisdictional response and investigation, as appropriate including:

- (a) Developing standards for notification and communication measures to promote evidence preservation
- (b) Coordinating training, programming, and requirements on issues related to sexual misconduct
- (c) Ensuring that reporting parties are able to move safely and comfortably between classes, extracurriculars, sports, and campus jobs

(ii) establish protocols, as permitted by federal and state law, for cases where a student or employee consents to the release of relevant documentation and information generated or acquired during local law enforcement or campus police investigations. This may include a mechanism for sharing information anonymously that: and

- (a) Requires that the reporting party authorized or requested that such information be shared and is fully and accurately informed about what procedures shall occur if the information is shared; and
- (b) Is carried out in a manner that is consistent with the General Education Provision Act, 20 U.S.C. section 1221, and any other applicable provisions under state law.

(iii) Establish the methods for sharing the Clery Act reporting requirements and for facilitating the issuance of timely warnings and emergency notifications required by the Clery Act relative to crimes that may pose a serious threat to the campus or near campus communities.

(iii) (iv) include methods for notifying the appropriate district attorney's office. If an institution is subject to the jurisdiction of more than 1 local law enforcement agency, 1 memorandum of understanding among the institution and the local law enforcement agencies shall comply with this subsection.

(v) Update such policies and procedures biennially.

2. The requirements of this section may be waived in the case of an institution that demonstrates that it acted in good faith but was unable to adopt joint policies and procedures with the local law enforcement agency having primary jurisdiction over the city or town wherein the institution's primary campus is located.

3. Notwithstanding any general or specific law to the contrary, a member of the department of state police or a local police department who acts as a first responder to a report of sexual misconduct at an institution of higher education shall receive training in the awareness of dating violence, domestic violence, sexual assault, and stalking and in trauma-informed response, subject to appropriation.

Section 20.21. *The Board of Regents may require an institution within the System to enter into and maintain a memorandum of understanding with a community-based sexual assault crisis service center funded by the department of public health and a community-based domestic violence program funded by the department of public health to:*

(a). Ensure cooperation and training between the institution and the organization that assists victims of sexual misconduct to ensure an understanding of the:

- (1) Responsibilities that the institution and organization that assists victims of sexual misconduct have in responding to a report or disclosure of an alleged incident of sexual misconduct; and*
- (2) Procedures of the institution for providing support and services to students and employees;*

(b) Provide an office space on a campus of the institution for an advocate from the organization that assists victims of sexual misconduct to confidentially meet with a student or employee;

(c) Require an organization that assist victims of sexual misconduct to:

- 1. Assist with developing policies, programming or training at the institution regarding sexual misconduct;*
- 2. Provide an alternative for a student or employee of the institution to receive free and confidential counseling, advocacy or crisis services related to an alleged incident of sexual misconduct that are located on or off a campus of the institution, including, without limitation:*
 - a. Access to a health care provider who specializes in forensic medical examinations*
 - b. Confidential services to a victim of sexual misconduct; and*
 - c. Consultation on a report of an alleged incident of sexual misconduct made by a victim or a case in which a victim is involved;*
 - d. Training victim's advocates*
 - e. The development and implementation of education and prevention programs for students of the institution; and*
 - f. The development and implementation of training and prevention curriculum for employees of the institution.*

The memorandum of understanding may include an agreement, including a fee structure, for the sexual assault crisis service center or domestic violence program to provide confidential victim services. Confidential victim services may include: (i) case consultation and training fees for confidential resource employees; (ii) consultation fees for the development and implementation of student education and prevention programs; (iii) the development of staff training and prevention curricula; and (iv) confidential on-site office space for an advocate from a sexual assault crisis service center or domestic violence program to meet with students and employees.

2. If the Board of Regents requires an institution within the System to enter into a memorandum of understanding pursuant to subsection 1, the Board of Regents may waive the requirement to enter into a memorandum of understanding if an institution demonstrates that it acted in good faith to enter into a memorandum of understanding but was unable to do so.

3 As used in this section:

- (a) "Forensic medical examination" has the meaning ascribed to it in NRS 217.300.*
- (b) "Student" includes, without limitation, a former student of the institution*

who took a leave of absence or withdrew from the institution because the student was a reporting party of an alleged incident of sexual misconduct.

Sec ~~20~~ 22 1. The Board of Regents may require an institution within the System to designate a victim's advocate, hereafter referred to as the "Confidential Resource Advisor" to parties to sexual misconduct. ~~If the Board of Regents requires the designation of a *victim's advocate*~~ Confidential Resource Advisor (CRA), an institution may: (a) Partner with an organization that assists victims of sexual misconduct to designate a ~~*victim's advocate*~~ Confidential Resource Advisor; (b) If the institution enrolls less than 1,000 students who reside in campus housing, partner with another institution within the System to designate a ~~*victim's advocate*~~ Confidential Resource Advisor; or (c) Designate existing categories of employees who may serve as a ~~*victim's advocate*~~ Confidential Resource Advisor. 2. A ~~*victim's advocate*~~ Confidential Resource Advisor designated pursuant to subsection 1: (a) May have another role at the institution; (b) Must not be a student, a Title IX coordinator, member of campus law enforcement or any other official of the institution who is authorized to initiate a disciplinary proceeding on behalf of the institution or whose position at the institution may create a conflict of interest; (d) Must be designated based on the experience and demonstrated ability of the person to effectively provide ~~*victim*~~ advocacy services related to sexual misconduct. (e) Must have received at least 20 hours of relevant training. 3. If an institution within the System designates a ~~*victim's advocate*~~ Confidential Resource Advisor pursuant to subsection 1, the institution shall provide training to ~~*the victim's advocate*~~ that Advisor on: (a) The awareness and prevention of sexual misconduct; (b) Title IX of the Education Amendments Act of 1972, 20 U.S.C. §§ 1681 et seq.; (c) Any policy on sexual misconduct adopted by the institution pursuant to section 17 of this act; and (d) Trauma-informed responses to a report of an alleged incident of sexual misconduct. 4. An institution within the System that designates a ~~*victim's advocate*~~ Confidential Resource Advisor pursuant to subsection 1 shall ensure the availability of a ~~*victim's advocate*~~ Confidential Resource Advisor to students within a reasonable distance from the institution where feasible, or via electronic means.

Sec. ~~21~~ 23. 1. If a ~~*victim's advocate*~~ Confidential Resource Advisor is designated pursuant to section ~~20~~ 22 of this act, the ~~*victim's advocate*~~ shall: (a) If an institution within the System has entered into a memorandum of understanding pursuant to section 19 of this act, coordinate with the organization that assists ~~*victims of*~~ parties to sexual misconduct; (b) Inform a student or employee of, or provide resources about how to obtain information on: (1) Options on how to report an alleged incident of sexual misconduct and the processes and effects of each option; (2) Counseling services available on a campus of the institution and through a local organization that assists ~~*victims of*~~ parties to sexual misconduct; (3) Medical and legal services available on or off a campus of the institution; (4) Available supportive measures; (5) Counseling related to student loans, including, without limitation, loan deferment, forbearance or other programs for students considering a leave of absence from, withdrawal from or part-time enrollment at the institution; (6) The grievance process of the institution and that the grievance process is not a substitute for the system of criminal justice; (7) The role of local, state and federal law enforcement agencies; (8) Any limits on the ability of the ~~*victim's advocate*~~ Confidential Resource Advisor to provide privacy or confidentiality to the student or employee; and (9) A policy on sexual misconduct adopted by the institution pursuant to section 17 of this act; (c) Notify the student or employee of his or her rights and the responsibilities of the institution regarding an order for protection, restraining order or injunction issued by a court; (d) Unless otherwise required by state or federal law, not be required to report an alleged incident of sexual misconduct to the institution or a law enforcement agency; (e) Provide confidential services to students and employees; (f) Not provide confidential services to more than one party in grievance process ~~*a grievance an institutions investigative, disciplinary and*~~

~~non-disciplinary process;~~ (g) *Unless otherwise required by state or federal law, not disclose confidential information without the prior written consent of the student or employee who shared the information.* (h) support a reporting party in obtaining supportive measures to ensure the reporting party has continued access to education; (i) Notify all staff of the institution who are involved in providing or enforcing supportive measures of the duties of the staff and ensure staff are trained; and (j) inform a student or employee that supportive measures may be available through disability services or the Title IX coordinator, if appropriate.

2. *If a victim's advocate is designated pursuant to section 20 of this act, the victim's advocate may:* (a) If requested by the student or employee, using only the student or employee's identifying information, shall coordinate with the appropriate institutional personnel to arrange possible school-provided supportive measures, including those available through the memorandums of understanding with rape crisis centers: (2) Changes in academic, dining, housing, transportation or on campus employment (3) Access to counseling and other mental health services (4) Excused absences, academic counseling, and tutoring (5) Academic coursework accommodations (6) Financial resources including if a student has to withdraw from a class or school entirely, the institution shall provide tuition credit, opportunities to withdraw or re-enroll in a course without academic or financial penalty, and continued eligibility for scholarships and honors. ~~(7) The supportive measures may also be obtained, when appropriate, through disability services and the Title IX Coordinator~~ (a) (b) *If directed appropriate and if deemed appropriate directed by a student or employee, assist the student or employee in reporting an alleged incident of sexual misconduct to the institution or a law enforcement agency;* and (b) Shall notify the student or employee of their rights and the institution's responsibilities regarding protection orders, no contact orders, and any other lawful orders issued by the institution or by a criminal, civil, or tribal court. (c) Shall not be required to report an incident to the institution or a law enforcement agency unless otherwise required to do so by state or federal law and shall provide confidential services to students or employees. ~~(b)~~ (d) *Attend a disciplinary proceeding of the institution as the advisor or support person of a reporting party.*

3. *Notice to a Confidential Resource Advisor of an alleged incident of sexual misconduct or the performance of services by a Confidential Resource Advisor pursuant to this section must not be considered actual or constructive notice of an alleged incident of sexual misconduct to the institution within the System which designated the Confidential Resource Advisor pursuant to section 20 22 of this act.*

4. *If a conflict of interest arises between the institution within the System which designated a Confidential Resource Advisor and the victim's advocate in advocating for the provision of supportive measures by the institution to a reporting party, the institution shall not discipline, penalize or otherwise retaliate against the Confidential Resource Advisor for advocating for the reporting party.*

~~5. Nothing in this section shall be construed to limit either party's right of cross-examination of the advisor in a civil or criminal proceeding if the advisor testifies after written consent has been given. A Victim Advocate shall not act as a counselor or therapist unless the Victim Advocate is licensed as a counselor in this state and the reporting party engages the Victim Advocate in that capacity.~~

Sec. ~~22.24.~~ The Board of Regents may prohibit an institution within the System from subjecting a party or a witness ~~The Board of Regents may require an institution within the System not to subject a reporting party or a witness who reports an alleged incident of sexual misconduct to a disciplinary proceeding or sanction for a violation of a policy on student conduct related to drug or alcohol use, trespassing or unauthorized entry of school facilities~~

or other violation of a policy of an institution that occurred during or related to an alleged incident of sexual misconduct unless the institution determines that the: 1. Report of an alleged incident of sexual misconduct was not made in good faith; or 2. The violation of a policy on student conduct was egregious, including, without limitation, a violation that poses a risk to the health or safety of another person. 3. If the schools' code of conduct prohibits sexual activity or certain forms of sexual activity, including same-gender relationships or sexual activity, the school will not take disciplinary action against individuals reporting sexual misconduct or non-harassing sexual activity related to the incident(s), or other non-harassing sexual activity discovered during an investigation into the reported incident. 4. The Board of Regents may require an institution within the System to review any disciplinary action taken against a Complainant or witness to determine if there is any connection between the alleged incident of sexual misconduct that was reported and the misconduct that led to a reporting party the Complainant or witness being disciplined.

Sec. ~~23.25~~. 1. *The Board of Regents may require an institution within the System to provide training on the investigative, disciplinary and non-disciplinary grievance processes of the institution to an employee who is a participant in any investigative, disciplinary and non-disciplinary the grievance processes. The training must include, without limitation: (a) How to respond to and otherwise address a report of an alleged incident of sexual misconduct; (b) Information on working with and interviewing victims of sexual misconduct; (c) Information on particular types of sexual misconduct, including, without limitation, domestic violence and sexual assault; (d) An explanation of consent as it applies to a sexual act or sexual conduct with another person; (e) The manner in which drugs and alcohol may affect the ability of a person to consent to a sexual act or sexual conduct with another person; (f) The effects of trauma, including, without limitation, any neurobiological impact on a person; (g) Training in cultural competency regarding how sexual misconduct may impact students differently depending on, without limitation, ~~the national origin, sex, ethnicity, religion, gender identity or expression or sexual orientation~~ race, color, national origin, ethnicity, religion, economic status, sex (including gender identity, gender expression, sexual orientation, pregnancy/parenting status) of a student; (h) Information regarding how sexual misconduct may impact students with disabilities; (i) Ways to communicate appropriately with reporting parties; (j) Ways to communicate appropriately with a responding party, including, without limitation, an awareness of the emotional impact of being accused; and (k) Information regarding re-traumatization and blaming of a victim. 2. The Board of Regents may require an institution within the System to train the Title IX coordinator and members of the campus police or safety personnel of the institution in the awareness of sexual misconduct and in trauma-informed response to an alleged incident of sexual misconduct.*

Sec. ~~24.26~~. 1. *The Board of Regents may require an institution within the System to provide annual trauma informed, gender inclusive, LGBTQ inclusive programming on awareness and prevention of sexual misconduct to all students and employees of the institution. If the Board of Regents requires an institution to provide programming on awareness and prevention of sexual misconduct, the programming must include, without limitation: (a) An explanation of consent as it applies to a sexual act or sexual conduct with another person; (b) The manner in which drugs and alcohol may affect the ability of a person to consent to a sexual act or sexual conduct with another person; (c) Information on options for reporting an alleged incident of sexual misconduct, the effects of each option and the method to file a report under each option,*

including, without limitation, a description of the confidentiality and anonymity, as applicable, of a report; (d) Information on ~~the grievance~~ any investigative, disciplinary and non-disciplinary processes of the institution for addressing a report of an alleged incident of sexual misconduct, including, without limitation, a policy on sexual misconduct adopted pursuant to section 17 of this act; (e) The range of sanctions or penalties the institution may impose on a student or employee found responsible for an incident of sexual misconduct; (f) If a victim's advocate is designated pursuant to section 20 of this act, the name, contact information and role of the victim's advocate; (g) Strategies for intervention by bystanders; (h) Strategies for reduction of the risk of sexual misconduct; and (i) Any other opportunities for additional programming on awareness and prevention of sexual misconduct.2. If an institution provides programming on awareness and prevention of sexual misconduct pursuant to subsection 1, the institution: (a) Shall coordinate with the Title IX coordinator of the institution, and may coordinate with a law enforcement agency and, if the institution entered into a memorandum of understanding with an organization that assists victims of sexual misconduct pursuant to section 19 of this act, that organization; and (b) Shall require students or employees to attend the programming on the awareness and prevention of sexual misconduct.

(C) Shall provide culturally responsive trainings that address the unique experiences and challenges faced by students based on race, color, ethnicity, national origin, religion, economic status, disability, and sex (including sexual orientation, gender identity, and pregnancy/parenting status).

Sec. ~~25~~.26. 1. The Board of Regents may require an institution within the System to prepare and submit to the Board an annual ~~a~~ report that includes, without limitation: (a) The total number of reports of alleged incidents of sexual misconduct made to the institution; (b) ~~The number of investigations initiated by a law enforcement agency in response to reports of alleged incidents of sexual misconduct, if known;~~ (c) The number of students and employees found responsible for an incident of sexual misconduct by the institution; (d) The number of students and employees accused of but found not responsible for an incident of sexual misconduct by the institution; (e) The number of sanctions ~~or remedies~~ imposed on a responding party or remedies provided to a reporting party by the institution as a result of a finding of responsibility for an incident of sexual misconduct; (f) the number of individuals requesting supportive measures and the number of requests for supportive measures that were granted; and (g) the number of reporting parties who took a leave of absence, transferred to another institution or withdrew from the institution.2. A report submitted pursuant to subsection 1 must not contain any personally identifiable information of a student or employee of an institution within the System. 3. If the Board of Regents requires a report to be prepared and submitted pursuant to subsection 1, an institution shall submit the report to the Board of Regents not later than October 1 of each year. 4. If the Board of Regents requires a report to be prepared and submitted pursuant to subsection 1, the Board of Regents shall, not later than December 31 of each year, submit a compilation of the reports the Board of Regents received pursuant to subsection 1 to the Director of the Department of Health and Human Services and to the Director of the Legislative Counsel Bureau for transmittal to the next regular session of the Legislature in even-numbered years or the Legislative Committee on Education in odd-numbered years.

Sec. ~~27~~-28. 1. Each institution of higher education shall provide both the reporting party and the responding party with written notice of the institution's decision to proceed with an institutional disciplinary process regarding an allegation of sexual misconduct sufficiently in advance of a disciplinary hearing to provide both the reporting and responding parties with the opportunity to meaningfully exercise their rights to a

proceeding that is prompt, fair, and impartial; which shall include the opportunity for both parties to present witnesses and other evidence, and any other due process rights afforded to them under institutional policy. The written notice shall include the information required to be posted on the institution's website pursuant to this chapter.

Sec. ~~27~~-29 1. The institution shall take reasonable steps to respond to each incident of sexual misconduct involving individuals subject to the institution's policies that occur in connection with any educational activity or other program of the institution, as well as incidents that occurred outside of those educational programs or activities, whether they occurred on or off campus, to determine if the incident could contribute to a hostile educational environment or otherwise interfere with a student's access to education. 2. Regardless of whether or not a complaint has been filed under an institution's investigative, disciplinary and non-disciplinary process, if the institution knows, or reasonably should know, about possible sexual misconduct involving individuals subject to the institution's policies at the time, the institution shall promptly investigate to determine whether the alleged conduct more likely than not occurred, or otherwise respond if the institution determines that an investigation is not required. If the institution determines that the alleged conduct more likely than not occurred, it shall immediately take reasonable steps to end the harassment, address the hostile environment, if one has been created, prevent its recurrence, and address its effects. A postsecondary institution must address: (a) any employee-on-student sexual misconduct or student-on-student sexual misconduct if a responsible employee knew or, in the exercise of reasonable care, should have known about it; and (b) any employee-on-student sexual misconduct that occurred in the context of the employee's job duties, regardless of whether a responsible employee knew or should have known about it.

3. The Board of Regents may require an institution within the System that accepts a request from a Complainant who is 18 years of age or older to keep the identity of the Complainant confidential or take no investigative action against a Respondent. An institution shall not grant such a request if state or federal law requires disclosure or further action. In determining whether to grant such a request, the institution shall consider whether:

i. Whether the respondent can sufficiently respond to the allegations without knowing the complainant's identity.

ii. The increased risk that the identified respondent will commit additional acts of violence, discrimination or harassment, such as:

a. Whether there have been other misconduct, violence, discrimination or harassment complaints about the same respondent;

b. Whether the respondent threatened violence, discrimination or harassment against the complainant or others;

c. Whether the violence, discrimination or harassment was committed by multiple persons;

d. Whether the circumstances of the incident indicate that the behavior was planned by the respondent or others;

e. Whether the reported violence, discrimination or harassment was committed with a weapon;

f. Whether the complainant is a minor;

g. Whether the institution possesses other means to obtain relevant evidence of the reported violence, discrimination or harassment (e.g., security cameras or personnel, physical evidence);

h. Whether the complainant's information reveals a pattern of behavior at a given location or by a particular group to facilitate sexual misconduct (e.g., by using drugs, alcohol, coercion, intimidation, hazing);

k. Other factors determined by the institution that indicate the respondent may repeat the behavior or that others may be at risk.

Based on one or more of these factors, the institution may decide to investigate and, if appropriate, pursue disciplinary action even though the complainant requested confidentiality or requested that no investigation or disciplinary action be undertaken. If none of these factors is present, or if any or all of these factors are present to an insufficient degree, the institution will work to respect the complainant's request for confidentiality.

2. If an institution within the System grants a request for confidentiality or to not take any investigative or disciplinary action pursuant to subsection 1, the institution shall take reasonable steps to, without initiating formal action against the Respondent:

(a) Respond to the report of an alleged incident of sexual misconduct while maintaining the confidentiality of the Complainant;

(b) Limit the effects of the alleged incident of sexual misconduct; and

(c) Prevent the recurrence of any misconduct.

3. Reasonable steps taken pursuant to subsection 2 may include, without limitation:

(a) Increased monitoring, supervision or security at locations or activities where the alleged incident of sexual misconduct occurred;

(b) Providing additional training and educational materials for students and employees, including information on options for anonymous reporting, confidential reporting, formal complaints, and informal resolution; and

(c) Ensuring a Complainant is informed of and has access to appropriate supportive measures; or

4. If an institution within the System grants a request for confidentiality or to not take any investigative or disciplinary action pursuant to subsection 1, the institution shall inform the Complainant that the ability of the institution to respond to the report of the alleged incident of sexual misconduct will be limited by the request.

5. If an institution within the System determines that it cannot grant a request for confidentiality or to not take any investigative or disciplinary action pursuant to subsection 1, the institution shall:

(a) Inform the Complainant of the determination before disclosing the identity of the Complainant or initiating an investigation; and

(b) Maintain supportive measures for Complainant ; and

(c) Provide additional reasonable accommodations and safety measures to the Complainant in light of safety concerns that may arise from the institution's decision to move forward with an investigation or disciplinary action. These accommodations and safety measures may include, but are not limited to housing accommodations, transportation support, academic accommodations, safety planning, and/or employment accommodations; and

(d) If requested by the Complainant inform the Respondent that the Complainant asked the institution not to take investigative or disciplinary action against the Respondent.

Sec. 30

1. In conducting a hearing and investigation of an alleged incident of sexual misconduct pursuant to section 24 of this act, an institution within the System shall:

: (a) Provide parties an opportunity to identify witnesses and other evidence to assist the institution in determining whether an alleged incident of sexual misconduct has occurred

(b) inform the reporting party and the responding party that any evidence available to the party but not disclosed during the investigation might not be considered at a subsequent hearing; and

(c) Equitably collect and use evidence, including, without limitation, providing that:

(i) Except as otherwise authorized by this section, an investigator may not consider the sexual history of a reporting party or responding party;

(ii) An investigator may not consider any previous or subsequent sexual history between the reporting party and any party other than the responding party unless the history is directly relevant to prove that any physical injuries alleged to have been inflicted by the responding party were inflicted by another person;

(iii) An investigator may not consider the existence of a dating relationship or previous or subsequent consensual sexual conduct between the reporting party and the responding party unless the evidence is relevant to demonstrate how the parties communicated consent in previous or subsequent consensual sexual conduct;

(iv) Before allowing the consideration of any evidence proffered pursuant to this subdivision, the investigator shall provide a written explanation to the parties as to why consideration of the evidence is consistent with this clause *and*

(d) Prohibit questions of either party or of any witness that are repetitive, irrelevant, or harassing.

(e) Provide periodic updates on the investigation to the Complainant and the Respondent regarding the timeline of the investigation.

(f) Decide whether a hearing is necessary to determine whether any sexual misconduct more likely than not occurred. In making this decision, an institution may consider whether the parties elected to participate in the investigation and whether each party had the opportunity to suggest questions to be asked of the other party or witnesses, or both, during the investigation.

(g) Use the preponderance of the evidence standard to decide whether sexual misconduct occurred.

(h) At the conclusion of the investigation, notify the Complainant and Respondent simultaneously of the finding.

(i) In the event that disciplinary action is imposed based on the finding, impose discipline in accordance with the appropriate administrative process.

2. Any hearing shall be subject to the following rules: (a) If the school conducts a hearing, generally, the parties may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. However, the hearing officer has discretion to accept for good cause, or exclude, such new evidence offered at the hearing. (b) Any cross-examination of either party or any witness shall not be conducted directly by a party or a party's advisor when not required to. (c) Either party or any witness may request to answer the questions by video from a remote location. (d) Student parties shall have the opportunity to submit written questions to the hearing officer in advance of the hearing. At the hearing, the other party shall have an opportunity to note an objection to the questions posed. The institution may limit such objections to written form, and neither the hearing officer nor the institution are obligated to respond, other than to include any objection in the record. The hearing officer shall have the authority and obligation to discard or rephrase any question that the hearing officer deems to be repetitive, irrelevant, or harassing. In making these determinations, the hearing officer is not bound by, but may take guidance from, the formal rules of evidence. (e) Generally, the parties may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. However, the hearing officer has discretion to accept for good cause, or exclude, such new evidence offered at the hearing.

3. Schools should take no more than 60 calendar days to complete the date of the complaint to the final resolution. (a) That timeline can only be extended because of good cause, which includes, but is not limited to, the following: (1) Unworked holiday breaks; (2) Mutual, uncoerced request of the parties; or (3) Awaiting arrival of video evidence from a third party (which still must be confined to a reasonable timeframe). (b) Good cause shall not include: (1) Worked breaks including summer (2) Distance barriers, such as study abroad, which can be overcome through videoconferencing (3) Graduation of one of the parties (this is, in fact, all the more reason to comply with the timeline); (4) Unnecessary delay requests the school reasonably perceives to be delay tactics (5) Police investigations that require more than a temporary delay. (c) No investigation shall last more than 120 days from initial complaint to final resolution, regardless of any good cause for delay. (d) The institution should outline the deadlines and process for parties to appeal, if the institution's investigative, disciplinary and non-disciplinary procedures include an appeals process. (e) They shall provide for periodic status updates on the investigation to the complainant and respondent regarding the timeline of the

investigation, hearing, and appeals process—including written notice of any reasonable delays.

4. When requested by a complainant or otherwise determined to be appropriate, an institution shall issue an interim no-contact directive prohibiting the respondent from contacting the complainant during the pendency of the investigation. (1) An institution shall not issue an interim mutual no-contact directive unless it is necessary to protect the noncomplaining party's safety or well-being, or to respond to interference with an investigation. A no-contact directive issued after a decision of responsibility has been made shall be unilateral and only apply against the party found responsible.

5. Upon the issuance of a mutual no-contact directive, an institution shall provide the parties with a written justification for the directive and an explanation of the terms of the directive. Upon the issuance of any no-contact directive, the institution shall provide the parties with an explanation of the terms of the directive, including the circumstances, if any, under which violation could be subject to disciplinary action.

Sec. ~~29~~. 31. School-sponsored programs and activities—including scholarships, state based scholarships and grants, Promise scholarships, with any minimum GPA, credit, or other academic requirements or disciplinary record requirements related to academic success shall waive any such requirements for any student applicant or participant who has experienced sexual misconduct. 2. Such a waiver may be obtained from a certified third party included but not limited to a Victim Advocate, Title IX Coordinator, Law Enforcement personnel, academic advisors and Disability Resource Center personnel. 3. Confidentiality related to such a waiver and related personally identifying information, shall be maintained unless disclosure is required specifically for the purposes of executing such accommodations.

Sec. ~~30 (26)~~. ~~32~~ 1. The Board of Regents may, after reasonable notice and opportunity for hearing, determine that an institution within the System failed to comply with a requirement imposed by the Board of Regents pursuant to sections 2 to 30, inclusive, of this act. If the Board of Regents determines an institution failed to comply with a requirement imposed by the Board, the Board may, for each violation, impose a fine of not more than \$150,000 or 1 percent of the annual operating budget of the institution, whichever is less, against the institution. 2. The Board of Regents shall use any money collected from the imposition of a fine pursuant to subsection 1 to administer and enforce the provisions of sections 2 to 27, inclusive, of this act.

Sec. ~~31(27)~~-~~33~~. The Board of Regents may adopt regulations as necessary to carry out the provisions of sections 2 to 30, inclusive, of this act.

Sec. ~~32~~. 34. If on or after the date of implementation, any provision of the act conflicts with federal law, that provision shall be rendered inoperative for the duration of the conflict and without affecting the whole.

(BDR 34-237) SB347- Conceptual Amendments

Sec. ~~33-29~~ 35. The provisions of subsection 1 of NRS 218D.380 do not apply to any provision of this act which adds or revises a requirement to submit a report to the Legislature.

Sec. ~~34-30~~ 36. 1. This section becomes effective upon passage and approval. 2. Section 12 of this act becomes effective upon passage and approval for the purpose of appointing members to the Task Force on Sexual Misconduct at Institutions of Higher Education and on July 1, 2021, for all other purposes.

3. Sections 1 to 11, inclusive, and 13 to ~~30~~30, inclusive, of this act become effective on July 1, 2021.

EXECUTIVE AGENCY
FISCAL NOTE

AGENCY'S ESTIMATES

Date Prepared: March 31, 2021

Agency Submitting: Office of the Attorney General

Items of Revenue or Expense, or Both	Fiscal Year 2020-21	Fiscal Year 2021-22	Fiscal Year 2022-23	Effect on Future Biennia
Total	0	0	0	0

Explanation

(Use Additional Sheets of Attachments, if required)

At this time, it is uncertain which entities or appointed members may be tasked with conducting the climate survey. If this responsibility rests with the Attorney General's Office, there may be associated costs to complete this requirement. Administrative support required under section 12.8 may also incur additional costs if the task force meets more than once each year.

Until these items are known, fiscal impact cannot be determined.

Name Jessica L Hoban
Title Chief Financial Officer

GOVERNOR'S OFFICE OF FINANCE COMMENTS

Date Wednesday, March 31, 2021

The Agency's response appears to be reasonable.

Name Heather Field
Title Executive Branch Budget Officer

EXECUTIVE AGENCY
FISCAL NOTE

AGENCY'S ESTIMATES

Date Prepared: March 31, 2021

Agency Submitting: Nevada System of Higher Education

Items of Revenue or Expense, or Both	Fiscal Year 2020-21	Fiscal Year 2021-22	Fiscal Year 2022-23	Effect on Future Biennia
Total	0	0	0	0

Explanation

(Use Additional Sheets of Attachments, if required)

After reviewing the proposed legislation, the Nevada System of Higher Education anticipates significant fiscal impact related to implementing the bill but cannot determine the amount. We anticipate multiple additional staff at most, if not all institutions (program coordinators, victims' advocates, investigators, intake analysts); the development of the climate survey; case management systems, training, travel, and operating expenses. The final impacts would be dependent upon the development of the climate survey, the policy on sexual misconduct, investigations and training required.

Name Julia Teska

Title Budget Director

GOVERNOR'S OFFICE OF FINANCE COMMENTS

The agency's response appears reasonable.

Date Wednesday, March 31, 2021

Name Catherine Bartlett

Title Executive Branch Budget Officer 2