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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. **4450**

03/12/2020 Authored by Bernardy
The bill was read for the first time and referred to the Higher Education Finance and Policy Division

- 1.1 A bill for an act
- 1.2 relating to higher education; amending a postsecondary institution's mandated
- 1.3 sexual harassment and sexual assault policy; imposing requirements for campus
- 1.4 investigations and disciplinary proceedings; incorporating these requirements into
- 1.5 the Minnesota Human Rights Act; amending Minnesota Statutes 2018, sections
- 1.6 135A.15, as amended; 363A.13, subdivision 1.
- 1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.8 Section 1. Minnesota Statutes 2018, section 135A.15, as amended by Laws 2019, chapter
- 1.9 64, article 2, section 3, is amended to read:
- 1.10 **135A.15 SEXUAL HARASSMENT AND VIOLENCE POLICY.**
- 1.11 Subdivision 1. **Applicability; policy required.** (a) This section applies to the following
- 1.12 postsecondary institutions:
- 1.13 (1) institutions governed by the Board of Trustees of the Minnesota State Colleges and
- 1.14 Universities; and
- 1.15 (2) private postsecondary institutions that offer in-person courses on a campus located
- 1.16 in Minnesota and which are eligible institutions as defined in section 136A.103, provided
- 1.17 that a private postsecondary institution with a systemwide enrollment of fewer than 100
- 1.18 students in the previous academic year is exempt from subdivisions 4 to 10.
- 1.19 Institutions governed by the Board of Regents of the University of Minnesota are
- 1.20 requested to comply with this section.
- 1.21 (b) A postsecondary institution must adopt a clear, understandable written policy on
- 1.22 sexual harassment and sexual violence that informs victims of their rights under the crime
- 1.23 victims bill of rights, including the right to assistance from the Crime Victims Reparations

Board and the commissioner of public safety. The policy must apply to students and employees and must provide information about their rights and duties. The policy must apply to ~~criminal~~ incidents of sexual harassment or sexual assault against a student or employee of a postsecondary institution occurring on property owned or leased by the postsecondary system or institution or at any activity, program, organization, or event sponsored by the system or institution; or by a fraternity ~~and~~ or sorority, regardless of whether the activity, program, organization, or event occurs on or off property owned or leased by the postsecondary system or institution. It must include procedures for reporting incidents of sexual harassment or sexual violence and for disciplinary actions against violators. During student registration, a postsecondary institution shall provide each student with information regarding its policy. A copy of the policy also shall be posted at appropriate locations on campus at all times.

Subd. 1a. ~~Sexual assault definition~~ **Definitions.** (a) For the purposes of this section, the following terms have the meanings given them.

(b) "Reporting party" means the party in a disciplinary proceeding who has reported being subject to conduct or communication that could constitute sexual harassment or sexual assault.

(c) "Responding party" means the party in a disciplinary proceeding who has been reported to be the perpetrator of conduct or communication that could constitute sexual harassment or sexual assault.

(d) "Sexual assault" means rape, sex offenses - fondling, sex offenses - incest, or sex offenses - statutory rape as defined in Code of Federal Regulations, title 34, part 668, subpart D, appendix A, as amended.

(e) "Sexual harassment" has the meaning given in section 363A.03, subdivision 43.

Subd. 2. **Victims' rights.** (a) The policy required under subdivision 1 shall, at a minimum, require that students and employees be informed of the policy, and shall include provisions for:

(1) filing criminal charges with local law enforcement officials in sexual assault cases;

(2) the prompt assistance of campus authorities, at the request of the victim, in notifying the appropriate law enforcement officials and disciplinary authorities of a sexual assault incident;

3.1 (3) allowing sexual assault victims to decide whether to report a case to law enforcement
3.2 or participate in a campus investigation, disciplinary proceeding, or nondisciplinary
3.3 restorative justice service;

3.4 (4) requiring campus authorities to treat sexual assault victims with dignity;

3.5 (5) requiring campus authorities to offer sexual assault victims fair and respectful health
3.6 care, counseling services, or referrals to such services;

3.7 (6) preventing campus authorities from suggesting to a victim of sexual assault that the
3.8 victim is at fault for the crimes or violations that occurred;

3.9 (7) preventing campus authorities from suggesting to a victim of sexual assault that the
3.10 victim should have acted in a different manner to avoid such a crime;

3.11 (8) subject to ~~subdivision~~ subdivisions 2a and 10, protecting the privacy of sexual assault
3.12 victims by only disclosing data collected under this section to the victim, persons whose
3.13 work assignments reasonably require access, and, at a sexual assault victim's request, police
3.14 conducting a criminal investigation;

3.15 (9) an investigation and resolution of a sexual assault complaint by campus disciplinary
3.16 authorities;

3.17 (10) a sexual assault victim's participation in and the presence of the victim's attorney
3.18 or other support person who is not a fact witness to the sexual assault at any meeting with
3.19 campus officials concerning the victim's sexual assault complaint or campus disciplinary
3.20 proceeding concerning a sexual assault complaint;

3.21 (11) ensuring that a sexual assault victim may decide when to repeat a description of
3.22 the incident of sexual assault;

3.23 (12) notice to a sexual assault victim of the availability of a campus or local program
3.24 providing sexual assault advocacy services and information on free legal resources and
3.25 services;

3.26 (13) notice to a sexual assault victim of the outcome of any campus disciplinary
3.27 proceeding concerning a sexual assault complaint, consistent with laws relating to data
3.28 practices;

3.29 (14) the complete and prompt assistance of campus authorities, at the direction of law
3.30 enforcement authorities, in obtaining, securing, and maintaining evidence in connection
3.31 with a sexual assault incident;

(15) the assistance of campus authorities, at the request of the sexual assault survivor,
in preserving ~~for a sexual assault complainant or victim~~ materials relevant to a campus
disciplinary proceeding;

(16) during and after the process of investigating a complaint and conducting a campus
disciplinary procedure, the assistance of campus personnel, in cooperation with the
appropriate law enforcement authorities, at a sexual assault victim's request, in shielding
the victim from unwanted contact with the alleged assailant, including transfer of the victim
to alternative classes or to alternative college-owned housing, if alternative classes or housing
are available and feasible;

(17) forbidding retaliation, and establishing a process for investigating complaints of
retaliation, against sexual assault victims by campus authorities, the accused, organizations
affiliated with the accused, other students, and other employees;

(18) at the request of the victim, providing students who reported sexual assaults to the
institution and subsequently choose to transfer to another postsecondary institution with
information about resources for victims of sexual assault at the institution to which the
victim is transferring; ~~and~~

(19) consistent with laws governing access to student records, providing a student who
reported an incident of sexual assault with access to the student's description of the incident
as it was reported to the institution, including if that student transfers to another postsecondary
institution; and

(20) prohibiting campus authorities from conditioning a financial aid or a remedial action
on the survivor entering into a nondisclosure agreement or other contract restricting the
survivor's ability to disclose information in connection with a sexual assault complaint,
investigation, or hearing.

(b) None of the rights given to a student by the policy required by subdivision 1 may be
made contingent upon the student reporting a case to law enforcement or participating in a
campus investigation or disciplinary proceeding.

Subd. 2a. **Campus investigation and disciplinary hearing procedures.** (a) A
postsecondary institution must provide a reporting party an opportunity for an impartial,
timely, and thorough investigation of a report of sexual harassment or sexual assault against
a student. If an investigation reveals that sexual harassment or sexual assault has occurred,
the institution must take prompt and effective steps reasonably calculated to end the sexual
harassment or sexual assault, prevent its recurrence, and, as appropriate, remedy its effects.
Remedial action may include either or both of the following:

5.1 (1) disciplinary action against the perpetrator of the sexual harassment or sexual assault;
5.2 or

5.3 (2) with the consent and cooperation of the survivor, nondisciplinary restorative justice
5.4 services.

5.5 (b) A postsecondary institution must provide adequate due process protections before
5.6 it imposes any disciplinary action against a responding party who is a student. A hearing
5.7 or other proceeding related to disciplinary action under this paragraph must be subject to
5.8 the following requirements:

5.9 (1) the reporting and responding party must be given equal opportunity to:

5.10 (i) have others present, including an advisor of their choice, who may be an attorney;

5.11 (ii) present witnesses and evidence;

5.12 (iii) discuss the investigation and disciplinary proceedings;

5.13 (iv) inspect and review any evidence obtained as part of the investigation that is directly
5.14 related to the allegations raised; and

5.15 (v) respond to evidence presented;

5.16 (2) if an institution allows for cross-examination of witnesses, neither the reporting party
5.17 nor the responding party may be permitted to personally cross-examine one another or other
5.18 witnesses. Any cross-examination must be performed by:

5.19 (i) a neutral third party;

5.20 (ii) the reporting or responding party's respective attorney or advisor; or

5.21 (iii) the adjudicator of the campus disciplinary proceeding;

5.22 (3) a postsecondary institution must provide the reporting and responding parties the
5.23 opportunity to provide testimony without encountering the other party in person, and to
5.24 review testimony provided by the other party in a similar manner. This may be done through
5.25 video conference or closed-circuit television; and

5.26 (4) if an institution allows for the participation of an attorney or advocate aligned with
5.27 either the responding or reporting party:

5.28 (i) the institution must allow the attorney or advocate from the reporting and responding
5.29 parties to participate; and

5.30 (ii) any restrictions on the attorney or advocate's participation must be applied equally
5.31 to the reporting and responding parties.

6.1 (c) In any disciplinary proceeding arising from an alleged incident of sexual harassment
6.2 against a student or sexual assault against a student, a postsecondary institution must apply
6.3 a preponderance of the evidence standard of proof.

6.4 (d) Throughout any investigation or disciplinary proceeding, a postsecondary institution
6.5 must treat the reporting parties, responding parties, witnesses, and other participants in the
6.6 proceeding with dignity, respect, and fairness.

6.7 Subd. 3. **Uniform amnesty.** The sexual harassment and violence policy required by
6.8 subdivision 1 must include a provision that a witness or victim of an incident of sexual
6.9 assault who reports the incident in good faith shall not be sanctioned by the institution for
6.10 admitting in the report to a violation of the institution's student conduct policy on the personal
6.11 use of drugs or alcohol.

6.12 Subd. 4. **Coordination with local law enforcement.** (a) A postsecondary institution
6.13 must enter into a memorandum of understanding with the primary local law enforcement
6.14 agencies that serve its campus. The memorandum must be entered into no later than January
6.15 1, 2017, and updated every two years thereafter. This memorandum shall clearly delineate
6.16 responsibilities and require information sharing, in accordance with applicable state and
6.17 federal privacy laws, about certain crimes including, but not limited to, sexual assault. This
6.18 memorandum of understanding shall provide:

6.19 (1) delineation and sharing protocols of investigative responsibilities;

6.20 (2) protocols for investigations, including standards for notification and communication
6.21 and measures to promote evidence preservation; and

6.22 (3) a method of sharing information about specific crimes, when directed by the victim,
6.23 and a method of sharing crime details anonymously in order to better protect overall campus
6.24 safety.

6.25 (b) Prior to the start of each academic year, a postsecondary institution shall distribute
6.26 an electronic copy of the memorandum of understanding to all employees on the campus
6.27 that are subject to the memorandum.

6.28 (c) An institution is exempt from the requirement that it develop a memorandum of
6.29 understanding under this section if the institution and local or county law enforcement
6.30 agencies establish a sexual assault protocol team to facilitate effective cooperation and
6.31 collaboration between the institution and law enforcement.

6.32 Subd. 5. **Online reporting system.** (a) A postsecondary institution must provide an
6.33 online reporting system to receive complaints of sexual harassment and sexual violence

from students and employees. The system must permit anonymous reports, provided that the institution is not obligated to investigate an anonymous report unless a formal report is submitted through the process established in the institution's sexual harassment and sexual violence policy.

(b) A postsecondary institution must provide students making reports under this subdivision with information about who will receive and have access to the reports filed, how the information gathered through the system will be used, and contact information for on-campus and off-campus organizations serving victims of sexual violence.

(c) Data collected under this subdivision is classified as private data on individuals as defined by section 13.02, subdivision 12. Postsecondary institutions not otherwise subject to chapter 13 must limit access to the data to only the data subject and persons whose work assignments reasonably require access.

(d) A postsecondary institution's procedures for receiving reports of sexual harassment or sexual assault may not require a student or employee to use the online reporting system in order to submit a report, but must provide multiple reporting options that the reporter can pursue separately or simultaneously. Reporting options under this paragraph must include verbal reports to an appropriate campus authority.

Subd. 6. Data collection and reporting. (a) Postsecondary institutions must annually report statistics on sexual assault. This report must be prepared in addition to any federally required reporting on campus security, including reports required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, United States Code, title 20, section 1092(f). The report must include, but not be limited to, the number of incidents of sexual assault reported to the institution in the previous calendar year, as follows:

(1) the number that were investigated by the institution;

(2) the number that were referred for a disciplinary proceeding at the institution;

(3) the number the victim chose to report to local or state law enforcement;

(4) the number for which a campus disciplinary proceeding is pending, but has not reached a final resolution;

(5) the number in which the alleged perpetrator was found responsible by the disciplinary proceeding at the institution;

(6) the number that resulted in any action by the institution greater than a warning issued to the accused;

8.1 (7) the number that resulted in a disciplinary proceeding at the institution that closed
8.2 without resolution;

8.3 (8) the number that resulted in a disciplinary proceeding at the institution that closed
8.4 without resolution because the accused withdrew from the institution;

8.5 (9) the number that resulted in a disciplinary proceeding at the institution that closed
8.6 without resolution because the victim chose not to participate in the procedure; and

8.7 (10) the number of reports made through the online reporting system established in
8.8 subdivision 5, excluding reports submitted anonymously.

8.9 (b) If an institution previously submitted a report indicating that one or more disciplinary
8.10 proceedings was pending, but had not reached a final resolution, and one or more of those
8.11 disciplinary proceedings reached a final resolution within the previous calendar year, that
8.12 institution must submit updated totals from the previous year that reflect the outcome of
8.13 the pending case or cases.

8.14 (c) The reports required by this subdivision must be submitted to the Office of Higher
8.15 Education by October 1 of each year. Each report must contain the data required under
8.16 paragraphs (a) and (b) from the previous calendar year.

8.17 (d) The commissioner of the Office of Higher Education shall calculate statewide numbers
8.18 for each data item reported by an institution under this subdivision. The statewide numbers
8.19 must include data from postsecondary institutions that the commissioner could not publish
8.20 due to federal laws governing access to student records.

8.21 (e) The Office of Higher Education shall publish on its website:

8.22 (1) the statewide data calculated under paragraph (d); and

8.23 (2) the data items required under paragraphs (a) and (b) for each postsecondary institution
8.24 in the state.

8.25 Each postsecondary institution shall publish on the institution's website the data items
8.26 required under paragraphs (a) and (b) for that institution.

8.27 (f) Reports and data required under this subdivision must be prepared and published as
8.28 summary data, as defined in section 13.02, subdivision 19, and must be consistent with
8.29 applicable law governing access to educational data. If an institution or the Office of Higher
8.30 Education does not publish data because of applicable law, the publication must explain
8.31 why data are not included.

9.1 Subd. 7. **Access to data; audit trail.** (a) Data on incidents of sexual assault shared with
9.2 campus security officers or campus administrators responsible for investigating or
9.3 adjudicating complaints of sexual assault are classified as private data on individuals as
9.4 defined by section 13.02, subdivision 12, for the purposes of postsecondary institutions
9.5 subject to the requirements of chapter 13. Postsecondary institutions not otherwise subject
9.6 to chapter 13 must limit access to the data to only the data subject and persons whose work
9.7 assignments reasonably require access.

9.8 (b) Only individuals with explicit authorization from an institution may enter, update,
9.9 or access electronic data related to an incident of sexual assault collected, created, or
9.10 maintained under this section. The ability of authorized individuals to enter, update, or
9.11 access these data must be limited through the use of role-based access that corresponds to
9.12 the official duties or training level of the individual and the institutional authorization that
9.13 grants access for that purpose. All actions in which the data related to an incident of sexual
9.14 assault are entered, updated, accessed, shared, or disseminated outside of the institution
9.15 must be recorded in a data audit trail. An institution shall immediately and permanently
9.16 revoke the authorization of any individual determined to have willfully entered, updated,
9.17 accessed, shared, or disseminated data in violation of this subdivision or any provision of
9.18 chapter 13. If an individual is determined to have willfully gained access to data without
9.19 explicit authorization, the matter shall be forwarded to a county attorney for prosecution.

9.20 Subd. 8. **Comprehensive training.** (a) A postsecondary institution must provide campus
9.21 security officers and campus administrators responsible for investigating or adjudicating
9.22 complaints of sexual assault with comprehensive training on preventing and responding to
9.23 sexual assault in collaboration with the Bureau of Criminal Apprehension or another law
9.24 enforcement agency with expertise in criminal sexual conduct. The training for campus
9.25 security officers shall include a presentation on the dynamics of sexual assault,
9.26 neurobiological responses to trauma, and best practices for preventing, responding to, and
9.27 investigating sexual assault. The training for campus administrators responsible for
9.28 investigating or adjudicating complaints on sexual assault shall include presentations on
9.29 preventing sexual assault, responding to incidents of sexual assault, the dynamics of sexual
9.30 assault, neurobiological responses to trauma, and compliance with state and federal laws
9.31 on sexual assault.

9.32 (b) The following categories of students who attend, or will attend, one or more courses
9.33 on campus or will participate in on-campus activities must be provided sexual assault
9.34 prevention training:

9.35 (1) students pursuing a degree or certificate;

10.1 (2) students who are taking courses through the Postsecondary Enrollment Options Act;
10.2 and

10.3 (3) any other categories of students determined by the institution.

10.4 Students must complete such training no later than ten business days after the start of a
10.5 student's first semester of classes. Once a student completes the training, institutions must
10.6 document the student's completion of the training and provide proof of training completion
10.7 to a student at the student's request. Students enrolled at more than one institution within
10.8 the same system at the same time are only required to complete the training once.

10.9 The training shall include information about topics including but not limited to sexual
10.10 assault as defined in subdivision 1a; consent as defined in section 609.341, subdivision 4;
10.11 preventing and reducing the prevalence of sexual assault; procedures for reporting campus
10.12 sexual assault; and campus resources on sexual assault, including organizations that support
10.13 victims of sexual assault.

10.14 (c) A postsecondary institution ~~shall~~ must annually train individuals responsible for
10.15 responding to reports of sexual assault, campus security officers, and campus administrators
10.16 responsible for investigating or adjudicating complaints of sexual assault. This training shall
10.17 include information about victim-centered best practices for interacting with victims of
10.18 sexual assault, including how to reduce the emotional distress resulting from the reporting,
10.19 investigatory, and disciplinary process.

10.20 Subd. 9. **Student health services.** (a) An institution's student health service providers
10.21 must screen students for incidents of sexual violence and sexual harassment. Student health
10.22 service providers shall offer students information on resources available to victims and
10.23 survivors of sexual violence and sexual harassment including counseling, mental health
10.24 services, and procedures for reporting incidents to the institution.

10.25 (b) Each institution offering student health or counseling services must designate an
10.26 existing staff member or existing staff members as confidential resources for victims of
10.27 sexual violence or sexual harassment. The confidential resource must be available to meet
10.28 with victims of sexual violence and sexual harassment. The confidential resource must
10.29 provide victims with information about locally available resources for victims of sexual
10.30 violence and sexual harassment including, but not limited to, mental health services and
10.31 legal assistance. The confidential resource must provide victims with information about the
10.32 process for reporting an incident of sexual violence and sexual harassment to campus
10.33 authorities or local law enforcement. The victim shall decide whether to report an incident
10.34 of sexual violence and sexual harassment to campus authorities or local law enforcement.

Confidential resources must be trained in all aspects of responding to incidents of sexual violence and sexual harassment including, but not limited to, best practices for interacting with victims of trauma, preserving evidence, campus disciplinary and local legal processes, and locally available resources for victims. Data shared with a confidential resource is classified as sexual assault communication data as defined by section 13.822, subdivision 1.

Subd. 10. **Applicability of other laws.** This section does not exempt mandatory reporters from the requirements of section 626.556 or 626.557 governing the reporting of maltreatment of minors or vulnerable adults. Nothing in this section limits the authority of an institution to comply with other applicable state or federal laws related to investigations or reports of sexual harassment, sexual violence, or sexual assault.

Sec. 2. Minnesota Statutes 2018, section 363A.13, subdivision 1, is amended to read:

Subdivision 1. **Utilization; benefit or services.** (a) It is an unfair discriminatory practice to discriminate in any manner in the full utilization of or benefit from any educational institution, or the services rendered thereby to any person because of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance, sexual orientation, or disability, or to fail to ensure physical and program access for disabled persons.

(b) For purposes of this subdivision, program access includes but is not limited to providing taped texts, interpreters or other methods of making orally delivered materials available, readers in libraries, adapted classroom equipment, and similar auxiliary aids or services. Program access does not include providing attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

(c) For purposes of this subdivision, full utilization of services rendered includes but is not limited to access to the investigation and discipline proceedings under section 135A.15, subdivision 2a, which must be accessible and applied equally to any person regardless of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance, sexual orientation, or disability.

Sec. 3. **REVISOR INSTRUCTION.**

(a) In Minnesota Statutes, section 135A.15, the revisor of statutes shall:

(1) change the term "victim," or similar terms, to "survivor," or similar terms; and

- 12.1 (2) change the term "sexual violence," or similar terms, to "sexual assault," or similar
- 12.2 terms.
- 12.3 (b) The revisor shall also make grammatical changes related to the changes in terms.
- 12.4 Sec. 4. **EFFECTIVE DATE.**
- 12.5 This act is effective August 1, 2021.