

1 S.120

2 Introduced by Senator Hashim

3 Referred to Committee on Education

4 Date: March 2, 2023

5 Subject: Education; postsecondary schools; intercollegiate sexual harm
6 prevention council

7 Statement of purpose of bill as introduced: This bill proposes to create several
8 requirements for postsecondary schools related to sexual misconduct,
9 including (1) a sexual misconduct campus climate survey, (2) the creation of
10 confidential resource advocates, (3) the requirement to maintain a
11 memorandum of understanding with local sexual assault programs, (4) the
12 provision of amnesty for good faith reports of sexual misconduct, and (5) the
13 requirement to provide annual awareness programming and training. This bill
14 also proposes to repeal the prospective sunset of the Intercollegiate Sexual
15 Harm Prevention Council

16 An act relating to postsecondary schools and sexual misconduct protections

17 It is hereby enacted by the General Assembly of the State of Vermont:

18 ~~Sec. 1 of 16 V.S.A. § 182 is added to read:~~

19 ~~§ 182. SEXUAL MISCONDUCT CAMPUS CLIMATE SURVEY~~

1 ~~(a) Each postsecondary school with a campus in Vermont shall biennially~~
2 ~~conduct an anonymous Sexual Misconduct Campus Climate Survey of all~~
3 ~~students attending such schools.~~

4 ~~(b) The Intercollegiate Sexual Harm Prevention Council shall create the~~
5 ~~Sexual Misconduct Campus Climate Survey Subcommittee from among its~~
6 ~~members, which shall develop and maintain the Survey. In developing the~~
7 ~~Survey, the Subcommittee shall:~~

8 ~~(1) review Sexual Misconduct Campus Climate Surveys currently~~
9 ~~utilized by postsecondary schools in any location;~~

10 ~~(2) provide opportunities for comment from organizations that work~~
11 ~~directly with survivors of sexual assault; and~~

12 ~~(3) account for the diverse needs and differences of the State's~~
13 ~~postsecondary schools.~~

14 ~~(c) The Survey shall gather information on sexual misconduct involving~~
15 ~~postsecondary students, including:~~

16 ~~(1) the number and type of incidents that occurred;~~

17 ~~(2) reporting and disclosure of the incidents by the student;~~

18 ~~(3) logistical details of the incidents;~~

19 ~~(4) perpetrator information;~~

20 ~~(5) student awareness of institutional policies and procedures related to~~

21 ~~campus sexual misconduct,~~

1 ~~(6) campus responses to the incidents, if reported;~~

2 ~~(7) demographic information of the student survivor;~~

3 ~~(8) perceptions of campus safety among members of the campus~~
4 ~~community;~~

5 ~~(9) subsequent actions of, and impact on, the student survivors; and~~

6 ~~(10) any other items the Subcommittee deems essential to the Survey.~~

7 ~~(d) The Subcommittee shall provide guidance to postsecondary schools on~~
8 ~~administration of the Survey, including guidance on how to provide reasonable~~
9 ~~accommodations for people with disabilities.~~

10 ~~(e) Within 60 days after administration of the Survey, each postsecondary~~
11 ~~school shall submit a summary of its results to the Vermont Network Against~~
12 ~~Domestic and Sexual Violence and shall post a summary of its results on the~~
13 ~~school's website in an easily accessible manner.~~

14 ~~(f) The Survey results shall also be posted on the Agency of Education's~~
15 ~~website, along with the annual security report required under 20 U.S.C.~~
16 ~~§ 1092(f).~~

17 Sec. 2. 16 V.S.A. § 183 is added to read:

18 § 183. CONFIDENTIAL RESOURCE ADVOCATES

19 (a) Each postsecondary school with a campus in Vermont shall employ at
20 least one Confidential Resource Advocate. An institution with fewer than

1 ~~1,000 students may, in the alternative, partner with a local victim advocacy~~
2 ~~organization to provide an Advocate.~~

3 ~~(b) An Advocate shall be appointed based on the individual's experience~~
4 ~~and demonstrated ability to effectively provide victim services related to~~
5 ~~sexual misconduct. An Advocate shall not:~~

6 ~~(1) be a student, Title IX coordinator, an official who is an authorized~~
7 ~~administrator of disciplinary process on behalf of the school, or a member of~~
8 ~~campus police or law enforcement; or~~

9 ~~(2) hold a position or job that may create a conflict of interest, including~~
10 ~~general counsel for the school, director of athletics, dean of students, an~~
11 ~~employee who serves on a misconduct hearing board, or a person to whom an~~
12 ~~appeal might be made.~~

13 ~~(c) A school that partners with a local organization to provide an Advocate~~
14 ~~pursuant to subsection (a) of this section shall ensure that the Advocate has on-~~
15 ~~campus office hours.~~

16 ~~(d) The Advocate shall receive training in the awareness and prevention of~~
17 ~~sexual misconduct, Title IX policies, the policies of the school, and trauma-~~
18 ~~informed response. The Advocate shall coordinate with on-campus and off-~~
19 ~~campus sexual assault service providers within a reasonable time after being~~
20 ~~designated as an Advocate.~~

21 ~~(e)(1) The Advocate shall have the following responsibilities.~~

- 1 (A) to provide confidential services to students;
- 2 (B) to provide information about the services, accommodations, and
3 support available to victims of sexual assault;
- 4 (C) to notify all school staff involved in providing or enforcing
5 supportive measures or accommodations of their duties in writing;
- 6 (D) if requested in writing by a student, to assist the student with
7 coordinating supports available through on-campus supports or through the
8 memorandums of understanding with the sexual assault member organizations
9 of the Vermont Network Against Domestic and Sexual Violence;
- 10 (E) if requested by a student, to assist the student with contacting
11 campus or local law enforcement agencies, or both, to make a report;
- 12 (F) to notify a student of the student's rights and the school's
13 responsibilities regarding protection orders, no contact orders, and any other
14 lawful orders issued by the school or by a criminal, civil, or tribal court; and
- 15 (G) if requested by a student, to attend an administrative or school-
16 based adjudication proceeding as the Advocate or support person for the
17 student.
- 18 (2) The Advocate shall not:
- 19 (A) be required to report an incident to the campus or local law
20 enforcement agency unless otherwise required to do so by State or federal law,

1 ~~(B) disclose confidential information, including name, contact~~
2 ~~information, personally identifying information, or information on the sexual~~
3 ~~misconduct incident without the prior written consent of the student who~~
4 ~~shared the information;~~

5 ~~(C) provide services to both the reporting party and responding party~~
6 ~~of the same incident; or~~

7 ~~(D) act as a counselor or therapist.~~

8 ~~(f) Nothing in this section shall be construed to limit either party's right of~~
9 ~~cross examination of the Advocate in a civil or criminal proceeding if the~~
10 ~~Advocate testifies after written consent has been given.~~

11 ~~(g) Notice to an Advocate of an alleged act of sexual misconduct or an~~
12 ~~Advocate's performance of a service under this section shall not be considered~~
13 ~~actual or constructive notice of such an alleged act to the postsecondary school~~
14 ~~at which the Advocate is employed or provides contracted services.~~

15 ~~(h) If a conflict of interest arises for a school in which an Advocate is~~
16 ~~advocating for a student's need for sexual assault crisis services or campus or~~
17 ~~law enforcement services, the school shall not discipline, penalize, or~~
18 ~~otherwise retaliate against the Advocate for representing the interests of the~~
19 ~~reporting party.~~

20 ~~(i) An Advocate shall be subject to the same privilege as a crisis worker~~
21 ~~pursuant to 12 V.S.A. § 1614.~~

1 ~~Sec. 3, 16 V.S.A., § 184 is added to read:~~

2 § 184. MEMORANDUM OF UNDERSTANDING BETWEEN

3 POSTSECONDARY SCHOOLS AND LOCAL SEXUAL ASSAULT
4 PROGRAMS

5 (a) A postsecondary school shall enter into and maintain a memorandum of
6 understanding with its local sexual assault member organization of the
7 Vermont Network Against Domestic and Sexual Violence. If a postsecondary
8 school is unable to obtain a memorandum from its local program, the school
9 shall notify the Intercollegiate Sexual Harm Prevention Council to discuss
10 alternatives. The memorandum of understanding shall:

11 (1) assist in developing the postsecondary school's policies,
12 programing, and training regarding sexual misconduct involving students;

13 (2) provide an off-campus alternative for students of the postsecondary
14 school to receive free and confidential sexual assault crisis services, including
15 access to a forensic nursing examiner, if available, or free and confidential
16 domestic violence crisis services in response to sexual misconduct, if available;

17 (3) ensure that a student may access free and confidential counseling
18 and advocacy services either on campus or off campus; and

19 (4) ensure cooperation and training between the postsecondary school
20 and the local sexual assault member organization of the Vermont Network

21 Against Domestic and Sexual Violence to ensure an understanding of the roles

1 ~~that the school and member program should play in responding to reports and~~
2 disclosures of sexual misconduct against students and the school's protocols
3 for providing support and services to students.

4 (b) A memorandum of understanding may include an agreement, including
5 a fee structure, between the sexual assault member organization of the Vermont
6 Network Against Domestic and Sexual Violence and the postsecondary school
7 to provide confidential victim services. Confidential victim services may
8 include case consultation and training fees for Advocates, consultation fees for
9 the development and implementation of student education and prevention
10 programs, the development of staff training and prevention curriculum, and
11 confidential on-site office space for an advocate from the sexual assault
12 member organization of the Vermont Network Against Domestic and Sexual
13 Violence to meet with students.

14 Sec. 4. 16 V.S.A. § 185 is added to read:

15 § 185. AMNESTY PROTECTIONS FOR REPORTING PARTIES

16 A reporting party or a witness who causes an investigation of sexual
17 misconduct shall not be subject to disciplinary sanction for a violation of the
18 postsecondary school's student conduct policy related to the incident unless the
19 school determines that the report was not made in good faith or that the
20 violation was egregious. An egregious violation shall include taking an action
21 that places the health and safety of another person at risk.

1 ~~Sec. 5-16 V.S.A. § 186 is added to read:~~

2 § 186. ANNUAL AWARENESS PROGRAMMING AND TRAINING

3 (a) A postsecondary school, with guidance from its Title IX coordinator,
4 local law enforcement, and the sexual assault member organizations of the
5 Vermont Network Against Domestic and Sexual Violence, shall provide
6 mandatory annual trauma-informed, gender-inclusive, LGBTQ+-inclusive
7 sexual misconduct primary prevention and awareness programming for all
8 students and all staff and faculty of the school that shall include:

9 (1) an explanation of consent as it applies to sexual activity and sexual
10 relationships;

11 (2) the role drugs and alcohol play in an individual's ability to consent;

12 (3) information on options relating to the reporting of an incident of
13 sexual misconduct, the effects of each option, and the methods to report an
14 incident of sexual misconduct, including confidential and anonymous
15 disclosure;

16 (4) information on the school's procedures for resolving sexual
17 misconduct complaints and the range of sanctions or penalties the institution
18 may impose on those found responsible for a violation;

19 (5) the name, contact information, and role of the school's Confidential
20 Resource Advocate;

21 (6) strategies for bystander intervention and risk reduction,

1 ~~(7) how to implement supportive measures for reporting parties; and~~

2 ~~(8) opportunities for ongoing sexual misconduct prevention and~~
3 ~~awareness training and programming.~~

4 ~~(b) Trainings shall be culturally responsive and address the unique~~
5 ~~experiences and challenges faced by students based on race; color; ethnicity;~~
6 ~~national origin; religion; economic status; disability; and sex, including sexual~~
7 ~~orientation, gender identity, and pregnancy/parenting status.~~

8 Sec. 6. REPEAL

9 ~~2021 Acts and Resolves No. 68, Sec. 7 (Intercollegiate Sexual Harm~~
10 ~~Prevention Council 2025 repeal) is repealed.~~

11 Sec. 7. 16 V.S.A. § 2187 is redesignated and amended to read:

12 § 2187 181. INTERCOLLEGIATE SEXUAL HARM PREVENTION

13 COUNCIL

14 (a) Creation. There is created the Intercollegiate Sexual Harm Prevention
15 Council to create a coordinated response to campus sexual harm across
16 institutions of higher learning in Vermont.

17 * * *

18 (c) Duties. The Council shall:

19 ~~(d) Reporting parties shall be notified of the following:~~

1 ~~(7) create an annual conference to address prevention and sexual assault~~
2 response processes open to representatives from all Vermont postsecondary
3 schools.

4 * * *

5 Sec. 8. APPROPRIATION

6 The sum of \$22,000.00 is appropriated from the General Fund to the Center
7 for Crime Victim Services in fiscal year 2024 to provide a grant for the
8 purpose of staffing the Intercollegiate Sexual Harm Prevention Council and to
9 provide per diem compensation and reimbursement of expenses for members
10 who are not otherwise compensated by the member's employer for attendance
11 at meetings.

12 Sec. 9. TRANSITION

13 (a) The Intercollegiate Sexual Harm Prevention Council shall convene the
14 Sexual Misconduct Climate Campus Survey Subcommittee, as required in 16
15 V.S.A. § 182, at the regularly scheduled Council meeting next following July
16 1, 2023.

17 (b) Each postsecondary school with a campus in Vermont shall enter into a
18 memorandum of understanding with its local sexual violence member
19 organization of the Vermont Network Against Domestic and Sexual Violence,
20 as required by 16 V.S.A. § 184, not later than September 15, 2023.

1 ~~Sec. 10. EFFECTIVE DATE~~

2 ~~This act shall take effect on July 1, 2023.~~

Sec. 1. 16 V.S.A. § 184 is added to read:

§ 184. STUDENT ACCESS TO CONFIDENTIAL SEXUAL
MISCONDUCT SUPPORT SERVICES; COLLABORATION WITH
EXTERNAL PARTNERS

(a) Postsecondary schools shall ensure students have access to confidential sexual misconduct support services covered by victim and crisis worker privilege under applicable law, either on or off campus. Nothing in this subsection shall be construed to prohibit a postsecondary school from also facilitating student access to support services not covered by a victim and crisis worker privilege.

(b) If a postsecondary school is working with an external provider to provide confidential support services on its behalf, pursuant to subsection (a) of this section, and those support services are beyond those the external provider may provide as a matter of course to the general public, the postsecondary school shall enter into, and maintain, an agreement with the external provider. Agreements may address:

(1) assistance in development or delivery of programming and training regarding sexual misconduct involving students;

(2) collaborative marketing to make the campus community aware of the availability of confidential services from the external provider, either on or off campus, such as sexual assault crisis services, domestic violence crisis services, and sexual assault nurse examiner services;

(3) reciprocal education of school and external provider personnel to ensure a mutual understanding of the other's role, responsibilities, and processes for receiving disclosures of sexual misconduct, the provision of support services, and options for resolution;

(4) reporting of data as required by federal law, if applicable, as well as reporting of de-identified aggregate information that will aid the school in identifying and addressing trends of concern; and

(5) use of school-provided space to meet confidentially with members of the campus community.

(c) All agreements executed pursuant to subsection (b) of this section shall be independently negotiated between the postsecondary school and external providers.

Sec. 2. 16 V.S.A. § 185 is added to read:

§ 185. AMNESTY PROTECTIONS

Postsecondary schools shall create and adopt an amnesty policy that prohibits disciplinary action against a student reporting or otherwise participating in a school sexual misconduct resolution process for alleged ancillary policy violations related to the sexual misconduct incident at issue; provided, however, the school may take disciplinary action if it determines that the conduct giving rise to the alleged ancillary policy violation placed or threatened to place the health and safety of another person at risk. This policy shall not be construed to limit a counter-complaint made in good faith or to prohibit action as to a report made in good faith.

Sec. 3. 16 V.S.A. § 186 is added to read:

§ 186. ANNUAL AWARENESS PROGRAMMING AND TRAINING

(a) A postsecondary school shall offer annual trauma-informed, inclusive, and culturally relevant sexual misconduct primary prevention and awareness programming to all students, staff, and faculty of the school. Primary prevention and awareness programming shall address, in a manner appropriate for the audience:

(1) an explanation of consent as it applies to sexual activity and sexual relationships;

(2) the role drugs and alcohol play in an individual's ability to consent;

(3) information about on and off-campus options for reporting of an incident of sexual misconduct, including confidential and anonymous disclosure mechanisms, and the effects of each option;

(4) information on the school's procedures for resolving sexual misconduct complaints and the range of sanctions the school may impose on those found responsible for a violation;

(5) the name and contact information of school officials responsible for coordination of supportive measures and an overview of the types of supportive measures available;

(6) the name, contact information, and services of confidential resources, on and off campus;

(7) strategies for bystander intervention and risk reduction;

(8) how to directly access health services, mental health services, and confidential resources both on and off-campus;

(9) opportunities for ongoing sexual misconduct prevention and awareness training and programming; and

(10) best practices for responding to disclosures of sexual misconduct.

(b) Information on the training topics contained in subsection (a) of this section, including on and off campus supportive measures for reporting parties, shall be available in a centrally located place on the schools' website.

(c) Schools shall endeavor to collaborate with community partners, such as local and statewide law enforcement, local and statewide prosecution offices, health care service providers, confidential service providers, and other relevant stakeholders, regarding the inclusion of appropriate information about the relevant stakeholders' respective roles and offerings in primary prevention and awareness programming.

Sec. 4. REPEAL

2021 Acts and Resolves No. 68, Sec. 7 (Intercollegiate Sexual Harm Prevention Council 2025 repeal) is repealed.

Sec. 5. 16 V.S.A. § 2187 is redesignated and amended to read:

§ 2187 183. INTERCOLLEGIATE SEXUAL HARM PREVENTION COUNCIL

(a) Creation. There is created the Intercollegiate Sexual Harm Prevention Council to create a coordinated response to campus sexual harm across institutions of higher learning in Vermont.

* * *

(c) Duties. The Council shall:

* * *

(7) create or promote annual training opportunities addressing prevention and sexual assault response processes open to representatives from all Vermont postsecondary schools.

* * *

~~Sec. 6. APPROPRIATION~~

~~The sum of \$22,000.00 is appropriated from the General Fund to the Center for Crime Victim Services in fiscal year 2025 to provide a grant for the purpose of staffing the Intercollegiate Sexual Harm Prevention Council and to provide per diem compensation and reimbursement of expenses for members who are not otherwise compensated by the member's employer for attendance at meetings.~~

Sec. 6. [Deleted.]

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2024.