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FIRST SPECIAL SESSION-2021

Legislative Document

No. 1727

S.P. 572

In Senate, May 19, 2021

An Act Concerning Sexual Misconduct on College Campuses

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by President JACKSON of Aroostook.
Cosponsored by Representative STOVER of Boothbay and
Senators: DAUGHTRY of Cumberland, MAXMIN of Lincoln, Representatives: BRENNAN
of Portland, McCREIGHT of Harpswell, OSHER of Orono, RECKITT of South Portland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §12004-I, sub-§12-C** is enacted to read:

3 **12-C.**

4 Education: Higher Higher Education Expenses Only 20-A MRSA §12954
5 Education Sexual Misconduct
6 Advisory Commission

7
8 **Sec. 2. 20-A MRSA c. 441** is enacted to read:

9 **CHAPTER 441**

10 **SEXUAL MISCONDUCT AT INSTITUTIONS OF HIGHER EDUCATION**

11 **§12951. Definitions**

12 As used in this chapter, unless the context otherwise indicates, the following terms
13 have the following meanings.

14 **1. Affirmative consent.** "Affirmative consent" means consent to sexual activity that
15 can be revoked at any time. "Affirmative consent" does not include silence, lack of
16 resistance or consent given while intoxicated.

17 **2. Employee.** "Employee" means an individual who is employed by an institution of
18 higher education, including a full-time, part-time or contracted employee, or an individual
19 who was employed by an institution of higher education, including a full-time, part-time
20 or contracted employee, but has taken a leave of absence or terminated the employment as
21 a result of having been a victim of sexual misconduct or for any other reason.

22 **3. Institution of higher education.** "Institution of higher education" or "institution"
23 means any degree-granting educational institution regulated under chapter 409 that is
24 located in this State, any university in the University of Maine System, any college in the
25 Maine Community College System and the Maine Maritime Academy.

26 **4. Reporting party.** "Reporting party" means a student or employee who reports
27 having experienced an alleged incident of sexual misconduct at an institution of higher
28 education.

29 **5. Responding party.** "Responding party" means an individual who has been accused
30 of an alleged incident of sexual misconduct at an institution of higher education.

31 **6. Sexual misconduct.** "Sexual misconduct" means the following conduct as defined
32 by each institution in its code of conduct and consistent with applicable federal definitions:
33 sexual violence, dating violence, domestic violence, gender-based violence, violence based
34 on sexual orientation or gender identity or expression, sexual assault, sexual harassment or
35 stalking.

36 **7. Sexual misconduct climate survey.** "Sexual misconduct climate survey" means
37 the survey developed pursuant to section 12954, subsection 7.

1 **8. Student.** "Student" means an individual who is enrolled in a credit-bearing program
2 at an institution of higher education or who was enrolled in a credit-bearing program at an
3 institution of higher education but has taken a leave of absence or has withdrawn from the
4 program as a result of having been a victim of sexual misconduct or for any other reason.

5 **9. Title IX coordinator.** "Title IX coordinator" means the employee at an institution
6 of higher education who is responsible for institutional compliance with the so-called Title
7 IX provisions of the federal Education Amendments of 1972, as amended.

8 **10. Trauma-informed response.** "Trauma-informed response" means a response by
9 an individual who has received specific training in the complexities of the trauma caused
10 by sexual misconduct including training on:

11 A. The neurobiological impact of trauma;

12 B. The influence of societal stereotypes or other misconceptions relating to the causes
13 and impacts of trauma on an individual experiencing the trauma caused by sexual
14 misconduct;

15 C. Methodologies for avoiding perpetuation of the trauma caused by sexual
16 misconduct; and

17 D. How to conduct an effective investigation of trauma.

18 **§12952. Adoption of policies**

19 **1. Adoption of policy required.** Each institution of higher education shall adopt a
20 policy on sexual misconduct, referred to in this section as "the policy," in accordance with
21 this section and consistent with applicable state and federal law.

22 **2. Development of policy.** The policy must be developed in coordination with the
23 institution's Title IX coordinator and a local rape crisis center or domestic violence support
24 center. An institution may consider input from various internal and external entities
25 including, but not limited to, administrators, personnel affiliated with on-campus and off-
26 campus health care centers, confidential resource advisors, residence life staff, students,
27 local law enforcement agencies and the district attorney having jurisdiction in the
28 municipality where the institution of higher education's primary campus is located. The
29 policy must be culturally competent and reflect the diverse needs of all students.

30 **3. Content of policy.** The policy must include, but is not limited to:

31 A. Procedures by which students and employees at the institution may report or
32 disclose alleged incidents of sexual misconduct regardless of where the alleged
33 incident occurred;

34 B. Information on where a reporting party may receive immediate emergency
35 assistance following an alleged incident of sexual misconduct including, but not limited
36 to:

37 (1) The name and location of the nearest medical facility where a reporting party
38 may request that a medical forensic exam be administered by a trained sexual
39 violence forensic health care provider, including information on transportation
40 options and information on reimbursement for travel costs, if any;

41 (2) The contact information for a local rape crisis center and a local domestic
42 violence support center and a description of the services provided by the centers;

1 (3) The telephone number and website for a national 24-hour hotline and any state
2 or local resources that provide information on sexual misconduct; and

3 (4) Information on any programs that may financially assist a reporting party with
4 the cost of emergency medical assistance;

5 C. Descriptions of the types of and contact information for counseling, health, safety,
6 academic and other support services available within the local community or region or
7 through a rape crisis center or domestic violence support center, including but not
8 limited to the name and contact information for organizations that support responding
9 parties accused of sexual misconduct, the name and contact information for a
10 confidential resource advisor under section 12956 and a description of the role of and
11 services provided by the confidential resource advisor, and the name and contact
12 information for the institution's Title IX coordinator;

13 D. The rights and obligations of students and employees to:

14 (1) Notify or decline to notify law enforcement, including campus, local and state
15 police, of an alleged incident of sexual misconduct;

16 (2) Receive assistance from campus authorities in making any notification under
17 subparagraph (1); and

18 (3) Obtain a court or institution-issued protection order against a responding party
19 involved with the alleged incident of sexual misconduct;

20 E. The process for requesting supportive measures reasonably available from the
21 institution including, but not limited to, options for changing academic, living, campus
22 transportation or working arrangements or taking a leave of absence in response to an
23 alleged incident of sexual misconduct, how to request those changes and the process to
24 have any such measures reviewed;

25 F. The contact information for the closest local, state and federal law enforcement
26 agencies with jurisdiction over matters involving sexual misconduct, procedures for
27 students to notify the institution that a protection order has been issued under state or
28 federal law and the institution's responsibilities upon receipt of such notice;

29 G. A summary of the institution's procedures for investigating, adjudicating and
30 resolving sexual misconduct complaints against students, including an explanation of
31 all procedures that must be followed to obtain investigatory reports and gather
32 evidence, and potential sanctions or penalties that may be imposed. The policy must
33 provide that:

34 (1) The procedure be uniformly applied for all disciplinary proceedings relating to
35 any claims of sexual misconduct;

36 (2) Timely and detailed notice be given to the reporting party and the responding
37 party describing the date, time and location of the incident, if known, and a
38 summary of the factual allegations concerning the incident;

39 (3) An investigation, including any hearings and resulting disciplinary
40 proceedings, be conducted by an individual who receives not less than annual
41 training on issues relating to sexual misconduct, investigatory procedures and
42 hearing procedures to protect the safety and rights of students and promote
43 accountability, objectivity, impartiality and a trauma-informed response;

1 (4) The reporting party and the responding party may consult with and be
2 accompanied by an advisor or support person of that party's choice, which may
3 include an advocate or counsel, during any meetings and disciplinary proceedings
4 including during any meeting with the individual conducting the investigation
5 pursuant to subparagraph (3) or fact finding for the institution. The policy may
6 include guidelines regarding the extent to which the advisor or support person for
7 each party may participate in a meeting or disciplinary proceeding as long as any
8 limitations on participation apply equally to both parties. The policy must include
9 reasonable measures to provide for the involvement of the advisor or support
10 person for each party as long as providing for the involvement of the advisor or
11 support person does not significantly delay a meeting or disciplinary proceeding;

12 (5) The reporting party and the responding party be provided with a copy of the
13 policy regarding the submission and consideration of evidence that may be used
14 during a disciplinary proceeding and have equal opportunity to present evidence
15 and witnesses on the party's behalf during a disciplinary proceeding. Each party
16 must be provided with timely and equal access to all relevant evidence used in the
17 determination of a sanction or penalty;

18 (6) Appropriate restrictions be placed on evidence considered by the fact finder
19 including, but not limited to, the use of evidence of prior sexual activity or
20 character witnesses;

21 (7) The reporting party and the responding party be informed in writing of the
22 results of a disciplinary proceeding not later than 7 business days after a final
23 determination of a complaint, not including time for appeal, if any, unless good
24 cause for additional time is shown. The reporting party and responding party must
25 be informed of the process, if any, for appealing the decision;

26 (8) If any appeal is allowed based on a claim of procedural errors, previously
27 unavailable relevant evidence that could significantly impact the outcome of a
28 disciplinary proceeding or the sanction's or penalty's being disproportionate to the
29 offense, the reporting party and the responding party be provided with an equal
30 opportunity to make the appeal;

31 (9) The institution may not publicly disclose the identity of the reporting party or
32 the responding party, except as necessary to carry out a disciplinary proceeding or
33 as otherwise permitted under state or federal law; and

34 (10) It is communicated that the institution's disciplinary proceedings may not
35 serve as a substitute for the criminal justice process.

36 The policy must include a clear statement advising students of the procedures under
37 the policy;

38 H. A summary of the institution's employee disciplinary process as it pertains to sexual
39 misconduct; and

40 I. The range of sanctions or penalties the institution may impose on students and
41 employees found responsible for a violation of the applicable institutional policy
42 prohibiting sexual misconduct.

43 **4. Adoption of and amendments to the policy.** When adopting or amending a policy,
44 an institution shall provide an opportunity for comment and a reasonable length of time in

1 which comments will be accepted. The institution shall provide the draft policy or
2 proposed substantive amendments by electronic or regular mail to internal and external
3 entities, with instructions on how to comment and the reasonable length of time in which
4 comments will be accepted. Once an institution has adopted a policy, the opportunity for
5 review and comment by internal and external entities applies only to substantive
6 amendments in the policy.

7 **5. Public access.** The policy must be publicly accessible:

8 A. On each campus of the institution in locations where students regularly congregate,
9 including, but not limited to, dining and recreational facilities, libraries, bookstores,
10 student unions and student centers and the common areas of dormitories and other
11 student housing locations; and

12 B. On each institution's publicly accessible website. The policy must be posted on the
13 website no later than the first week of classes in each academic year.

14 The policy must also be provided upon request to an applicant, student or employee of the
15 institution.

16 **6. Confidentiality.** The identity of a reporting party and a responding party and all
17 information relating to an incident of sexual misconduct is confidential and may not be
18 disclosed, except as necessary to carry out a disciplinary process or as otherwise permitted
19 under state or federal law.

20 **§12953. Notice to proceed**

21 Each institution shall provide a reporting party and a responding party with written
22 notice of the institution's decision to hold a disciplinary proceeding regarding an allegation
23 of sexual misconduct sufficiently in advance of a disciplinary proceeding to provide the
24 reporting and responding parties with the opportunity to meaningfully exercise their rights.
25 The disciplinary proceeding must provide due process and be prompt, fair and impartial
26 and include the opportunity for both parties to present witnesses and other evidence. The
27 written notice must include the information required to be posted on the institution's
28 publicly accessible website pursuant to section 12952, subsection 5.

29 **§12954. Higher Education Sexual Misconduct Advisory Commission**

30 **1. Establishment.** The Higher Education Sexual Misconduct Advisory Commission,
31 established by Title 5, section 12004-I, subsection 12-C and referred to in this chapter as
32 "the commission," is created for the purpose of developing and advising the commissioner
33 on a base sexual misconduct climate survey for dissemination to institutions of higher
34 education and providing recommendations on the content, timing and application of the
35 survey.

36 **2. Membership.** The commission consists of the following 20 members:

37 A. The commissioner or designee;

38 B. The Commissioner of Health and Human Services or designee;

39 C. The following 7 members appointed by the commissioner:

40 (1) Two members representing a statewide coalition against sexual assault;

41 (2) A member representing an organization promoting racial equity and justice;

- 1 (3) A member representing a coalition of Wabanaki women;
- 2 (4) A member representing a statewide organization for disability rights;
- 3 (5) A member representing a statewide organization for lesbian, gay, bisexual and
- 4 transgender people of the State; and
- 5 (6) A member representing a coalition of students and victims against sexual
- 6 violence; and

7 D. The following 11 members appointed by the Governor:

- 8 (1) A student attending a public institution of higher education in this State;
- 9 (2) A student attending a private institution of higher education in this State;
- 10 (3) A student attending an institution in the Maine Community College System;
- 11 (4) A representative of the University of Maine System recommended by the
- 12 Chancellor of the University of Maine System;
- 13 (5) A representative of a private institution of higher education recommended by a
- 14 Maine association of independent colleges;
- 15 (6) A representative of the Maine Community College System recommended by
- 16 the President of the Maine Community College System;
- 17 (7) A Title IX coordinator at a public institution of higher education in this State;
- 18 (8) A Title IX coordinator at a private institution of higher education in this State;
- 19 (9) A researcher with experience in the development and design of sexual
- 20 misconduct climate surveys;
- 21 (10) A researcher of statistics, data analytics or econometrics with experience in
- 22 higher education survey analysis; and
- 23 (11) A representative of a health center at an institution of higher education with
- 24 experience dealing with campus sexual violence.

25 **3. Staffing.** The department shall provide appropriate staffing assistance to the

26 commission.

27 **4. Terms; vacancies; compensation.** Each appointed member serves a 2-year term

28 and continues serving until either reappointed or the member's successor is appointed. In

29 the event of a vacancy on the commission, the member's unexpired term must be filled

30 through an appointment by the appointing authority for the vacant seat for the balance of

31 the unexpired term. Members are compensated in accordance with Title 5, chapter 379.

32 **5. Quorum.** A quorum of the commission consists of 11 members.

33 **6. Duties.** Beginning March 31, 2022, and biennially thereafter, the commission shall

34 provide to the commissioner the sexual misconduct climate survey developed in

35 accordance with subsections 7 and 8 and any related recommendations, including but not

36 limited to recommendations on achieving statistically valid response rates.

37 **7. Development of sexual misconduct climate survey.** The commission must

38 develop the sexual misconduct climate survey by:

- 1 A. Using best practices from peer-reviewed research and in consultation with
2 individuals with expertise in the development and use of sexual misconduct climate
3 surveys by institutions of higher education;
- 4 B. Reviewing sexual misconduct climate surveys that have been developed and
5 previously used by institutions;
- 6 C. To ensure the adequacy and appropriateness of the proposed content, providing
7 opportunities for written comment from organizations that work directly with victims
8 and survivors of sexual misconduct;
- 9 D. Consulting with institutions on strategies for optimizing the effectiveness of the
10 survey; and
- 11 E. Accounting for the diverse needs and differences of the State's institutions of higher
12 education.

13 **8. Information to be gathered.** The sexual misconduct climate survey must collect
14 anonymous responses, may not require the disclosure of personally identifiable information
15 and must be designed to gather the following information:

- 16 A. The number of incidents, both reported and unreported, of sexual misconduct at
17 each institution of higher education;
- 18 B. The timing and location of incidents of sexual misconduct;
- 19 C. Student awareness of the institution's policies and procedures related to sexual
20 misconduct;
- 21 D. Whether a student reported sexual misconduct and, if so, to which campus resource
22 or law enforcement agency the report was made, and, if not, the reason for the student's
23 decision not to report;
- 24 E. Whether a student was informed of or referred to local, state, campus or other
25 resources or victim support services, including appropriate medical care and legal
26 services;
- 27 F. Whether a student was provided the option of protection from retaliation, access to
28 school-based accommodations and criminal justice remedies;
- 29 G. Contextual factors of each incident of sexual misconduct, such as the involvement
30 of force, incapacitation or coercion;
- 31 H. Demographic information that could be used to identify at-risk groups including
32 but not limited to gender, race and sexual orientation;
- 33 I. Perceptions of campus safety among members of the campus community and
34 confidence in the institution's ability to protect against and respond in a timely and
35 trauma-informed manner to incidents of sexual misconduct;
- 36 J. Whether a reporting party was satisfied with the institution of higher education's
37 response to the reporting party's report;
- 38 K. Whether the student has chosen to withdraw or take a leave of absence from the
39 institution or transferred to another institution due to being either the reporting party or
40 the responding party in an allegation of sexual misconduct;

1 L. Whether the student has withdrawn from any classes or been placed on academic
2 probation as a result of an incident of sexual misconduct; and

3 M. Answers to any other questions developed by the commission.

4 **§12955. Sexual misconduct climate survey dissemination; data collection; reporting**

5 **1. Dissemination; conduct.** The commissioner shall provide the sexual misconduct
6 climate survey biennially to each institution, and each institution shall biennially conduct
7 the sexual misconduct climate survey on each campus. Each institution may append
8 campus-specific questions to the survey, as long as any additional questions do not require
9 the disclosure of any personally identifiable information and are not unnecessarily
10 traumatizing for victims of sexual misconduct. All students must be offered an opportunity
11 to complete the sexual misconduct climate survey.

12 **2. Report to commissioner; website.** Within 120 days after completion of the sexual
13 misconduct climate survey, each institution shall submit a summary of the results and the
14 raw data, with any personally identifiable information removed or redacted, supporting the
15 results to the commissioner and post the following on the institution of higher education's
16 publicly accessible website:

17 A. The summary of the results of the survey;

18 B. The annual security report completed pursuant to 20 United States Code, Section
19 1092(f); and

20 C. A link to the department's statewide sexual misconduct climate survey data pursuant
21 to subsection 3.

22 **3. Data collection.** The department shall establish a data repository for all summaries
23 and raw data of sexual misconduct climate surveys submitted by institutions. The
24 department shall ensure that the sexual misconduct climate survey data submitted by all
25 institutions is available to the public in an easily accessible manner on the department's
26 publicly accessible website.

27 **§12956. Confidential resource advisors**

28 **1. Confidential resource advisor designated.** Each institution shall designate at least
29 one confidential resource advisor to provide emergency and ongoing support to survivors
30 of sexual violence. The confidential resource advisor must be designated based on
31 experience in sexual violence or domestic violence advocacy and a demonstrated ability to
32 effectively provide victim services related to sexual misconduct. The confidential resource
33 advisor may have another role at the institution of higher education, but may not be a
34 student or a Title IX coordinator.

35 **2. Additional designation; partnership.** Each institution of higher education shall
36 designate existing categories of employees that may also serve as confidential resource
37 advisors. This subsection may not be construed to limit an institution of higher education
38 from designating a new or existing employee as a confidential resource advisor. An
39 institution of higher education may partner with a local, state or national victim advocacy
40 organization to provide a confidential resource advisor under this section. An institution
41 of higher education that enrolls fewer than 1,000 residential students may partner with
42 another institution of higher education or rape crisis center within the State to provide the
43 services under this section. Any partnership entered into under this subsection must ensure

1 that the confidential resource advisor is available to a student within a reasonable distance
2 from the student's institution of higher education.

3 **3. Training.** A confidential resource advisor must receive the following training:

4 A. Prior to appointment as a confidential resource advisor, 40 hours of training on
5 sexual violence;

6 B. Training regarding unconscious biases related to race, gender and sexuality;

7 C. Training regarding awareness and prevention of sexual misconduct, federal
8 policies, the institution's policy under section 12952 and trauma-informed response;
9 and

10 D. Twenty hours of educational training annually on issues related to sexual violence.

11 **4. Coordination.** A confidential resource advisor shall coordinate with on-campus, if
12 any, and off-campus rape crisis centers and domestic violence support centers within a
13 reasonable time after being designated as a confidential resource advisor.

14 **5. Information and resources.** A confidential resource advisor is responsible for
15 providing the following information and resources regarding incidents of sexual
16 misconduct to students and employees:

17 A. Reporting options and the probable effects of each option;

18 B. Counseling services available on campus and through a local rape crisis center or
19 domestic violence support center;

20 C. Medical and health services available on campus and off campus;

21 D. When requested, campus escort services for security;

22 E. Available academic and residential life accommodations;

23 F. For students considering temporary or permanent withdrawal or reduced
24 enrollment, student loan counseling including but not limited to information regarding
25 loan deferment, forbearance or other applicable student loan programs;

26 G. The institution's investigative and disciplinary process;

27 H. The legal process of local, state and federal law enforcement agencies;

28 I. That the institution of higher education's disciplinary process is not to be considered
29 a substitute for the criminal justice process; and

30 J. Any limits on the ability of the confidential resource advisor to keep private or
31 confidential the information of the student.

32 **6. Additional actions.** A confidential resource advisor, regarding an alleged incident
33 of sexual misconduct:

34 A. May, if appropriate and directed by a student, assist the student in contacting or
35 reporting to campus or local law enforcement agencies;

36 B. Shall notify a student of the student's rights and the institution's responsibility
37 regarding a protection order, no-contact order or any other lawful order issued by the
38 institution or by a criminal, civil or tribal court;

1 C. May not be required to report the incident to the institution or a law enforcement
2 agency unless otherwise required to do so by state or federal law;

3 D. May attend an administrative adjudication proceeding or the institution's
4 disciplinary proceeding as the advisor or support person of a student's or employee's
5 choice;

6 E. May disclose confidential information only with the prior written consent of the
7 student or employee who shared the information and only if required by state or federal
8 law;

9 F. May not provide services to both the reporting party and the responding party to the
10 incident of sexual misconduct; and

11 G. May not act as a counselor or therapist unless the confidential resource advisor is a
12 licensed counselor in this State and the student engages the confidential resource
13 advisor in that capacity.

14 **7. Notice.** Notice to a confidential resource advisor of an alleged incident of sexual
15 misconduct or a confidential resources advisor's performance of a service under this section
16 may not be considered actual or constructive notice of such an alleged incident to the
17 institution of higher education at which the confidential resource advisor is employed or
18 provides contracted services.

19 **8. Retaliation.** An institution may not discipline, penalize or otherwise retaliate
20 against a confidential resource advisor for representing the interest of the student by
21 advocating for the student's need for sexual assault crisis services or campus law
22 enforcement services.

23 **9. Privileged communications.** Notwithstanding any provision of law to the contrary,
24 except with regard to reporting, cooperating in an investigation or giving evidence pursuant
25 to Title 22, chapter 958-A or 1071, or except at the request or with the consent of a victim
26 of sexual assault, a confidential resource advisor may not be required to testify in any civil
27 or criminal action, suit or proceeding at law or in equity about any information that the
28 confidential resource advisor may have acquired in providing sexual assault counseling
29 services. A confidential resource advisor or a rape crisis center may not be required to
30 disclose to the court any records, notes, memoranda or documents containing confidential
31 communications. When a court in the exercise of sound discretion determines the
32 disclosure necessary to the proper administration of justice, information communicated to,
33 or otherwise learned by, that confidential resource advisor in connection with the provision
34 of sexual assault counseling services is not privileged and disclosure may be required.
35 Nothing in this subsection prohibits a confidential resource advisor from testifying in a
36 civil or criminal proceeding involving a person to whom the confidential resource advisor
37 has provided services if that person has provided specific written consent to that
38 confidential resource advisor.

39 **10. Confidential criminal history record information.** Notwithstanding any
40 provision of law to the contrary, a criminal justice agency, whether directly or through any
41 intermediary, may disseminate confidential criminal history record information to a
42 confidential resource advisor for the purpose of planning for the safety of a victim of sexual
43 assault. A confidential resource advisor who receives confidential criminal history record

1 information pursuant to this subsection shall use it solely for the purpose authorized by this
2 subsection and may not further disseminate the information.

3 **§12957. Awareness programming**

4 An institution of higher education, with guidance from its Title IX coordinator, local
5 law enforcement and the rape crisis center or the domestic violence support center
6 identified in the institution's policy under section 12952, shall provide mandatory annual
7 sexual misconduct prevention and awareness programming for all students and all
8 employees of the institution that includes:

9 **1. Affirmative consent.** An explanation of affirmative consent as it applies to sexual
10 activity and sexual relationships;

11 **2. Affirmative consent; drugs and alcohol.** The role drugs and alcohol play in an
12 individual's ability to provide affirmative consent;

13 **3. Options for reporting.** Information on options relating to the reporting of an
14 incident of sexual misconduct, the probable effects of each option and the methods to report
15 an incident of sexual misconduct, including confidential and anonymous disclosure;

16 **4. Institution's procedures; sanctions and penalties.** Information on the institution's
17 procedures for resolving sexual misconduct complaints and the range of sanctions or
18 penalties the institution may impose on students and employees found responsible for a
19 violation;

20 **5. Contact information.** The name, contact information and role of the confidential
21 resource advisor, as well as the name and contact information of all other confidential
22 personnel at the institution;

23 **6. Bystander intervention and risk reduction.** Strategies for bystander intervention
24 and risk reduction;

25 **7. Ongoing prevention and awareness.** Opportunities for ongoing sexual
26 misconduct prevention and awareness programming, including through ongoing
27 campaigns; and

28 **8. Sensitivity; marginalized groups.** An approach that recognizes and is sensitive to
29 the fact that members of certain marginalized groups are more likely to experience sexual
30 misconduct.

31 **§12958. Training for individuals involved in the disciplinary process**

32 **1. General requirement.** Each institution of higher education shall ensure that its
33 Title IX coordinator and members of its campus police force or campus safety personnel
34 employed by the institution of higher education undergo annual training in awareness of
35 sexual misconduct and trauma-informed responses.

36 **2. Requirements for involvement in disciplinary process.** Any individual who
37 participates in the implementation of an institution's disciplinary process under this chapter,
38 including but not limited to any individuals responsible for resolving complaints of
39 reported incidents of sexual misconduct, must be trained or have experience in handling
40 sexual misconduct complaints and the operations of the institution's disciplinary practice.
41 The training must include, but is not limited to:

- 1 A. Information about providing a trauma-informed response when working with and
2 interviewing victims of an alleged incident of sexual misconduct;
- 3 B. Information on particular types of conduct that constitute sexual misconduct,
4 including same-sex dating violence, domestic violence, sexual assault and stalking;
- 5 C. Information on affirmative consent and the role drugs and alcohol may play in an
6 individual's ability to consent;
- 7 D. The effects of trauma, including any neurobiological impact on an individual;
- 8 E. Cultural competency training regarding how sexual misconduct may impact
9 students differently depending on factors that contribute to a student's cultural
10 background, including national origin, sex, ethnicity, religion, gender identity, gender
11 expression and sexual orientation;
- 12 F. Methods of communicating sensitively and compassionately with a reporting party
13 including, but not limited to, an awareness of responding to a reporting party with
14 consideration of that party's cultural background and providing services to or assisting
15 in locating services for the reporting party and communicating an awareness of the
16 emotional impact of being wrongly accused; and
- 17 G. Training and information regarding how dating violence, domestic violence, sexual
18 assault and stalking may impact students with developmental or intellectual
19 disabilities.

20 **§12959. Reporting**

- 21 **1. Report.** By October 1, 2021 and annually thereafter, an institution of higher
22 education shall prepare and submit to the commissioner, the Commissioner of Health and
23 Human Services and the joint standing committee of the Legislature having jurisdiction
24 over higher education matters a report that includes the following:
- 25 A. The total number of alleged incidents of sexual misconduct reported to the
26 institution's Title IX coordinator by a student or employee of the institution against
27 another student or employee of the institution;
- 28 B. The number of law enforcement investigations initiated in response to complaints
29 of sexual misconduct brought by students or employees of the institution against
30 another student or employee of the institution, if known;
- 31 C. The number of students found responsible for violating the institution's policy
32 prohibiting sexual misconduct;
- 33 D. The number of students found not responsible for violating the institution's policy
34 prohibiting sexual misconduct;
- 35 E. The number of sanctions or penalties imposed by the institution as a result of a
36 finding of responsibility for violating the institution's policy prohibiting sexual
37 misconduct. The report must provide information in a manner that keeps confidential
38 any personally identifiable information in compliance with state and federal privacy
39 laws; and
- 40 F. The number of students or employees who used a confidential resource advisor
41 without instigating a Title IX investigation. The report must provide information in a

1 manner that keeps confidential any personally identifiable information in compliance
2 with state and federal privacy laws.

3 **§12960. Immunity**

4 A reporting party or a witness who requests an investigation of sexual misconduct may
5 not be subject to a disciplinary proceeding or sanction or penalty for a violation of the
6 institution's student conduct policy related to drug or alcohol use, trespassing or
7 unauthorized entry of the institution's facilities or violation of the institution's policy under
8 section 12952 unless the institution determines that the report was not made in good faith
9 or that the violation was egregious. An egregious violation must include, but not be limited
10 to, taking an action that places the health and safety of another person at risk.

11 **§12961. Memoranda of understanding**

12 **1. Requirement.** An institution of higher education shall enter into and maintain a
13 memorandum of understanding with a Department of Health and Human Services-funded
14 rape crisis center or domestic violence support center to:

15 A. Assist in developing the institution's policy under section 12952, programming and
16 trauma-informed response training regarding sexual misconduct involving students or
17 employees;

18 B. Provide an off-campus option for students and employees of the institution to
19 receive free and confidential sexual assault crisis services, including access to a sexual
20 assault nurse examiner, if available, or free and confidential domestic violence crisis
21 services in response to sexual misconduct;

22 C. Ensure that a student or employee of the institution may access free and confidential
23 counseling and advocacy services either on campus or off campus;

24 D. Ensure that a student or employee of the institution has access to free transportation
25 provided by the institution when seeking off-campus confidential counseling and
26 advocacy services; and

27 E. Ensure cooperation and training between the institution and the rape crisis center or
28 domestic violence support center regarding the roles that the institution, rape crisis
29 center and domestic violence support center should play in responding to reports and
30 disclosures of sexual misconduct against students and employees of the institution and
31 the institution's protocols for providing support and services to such students and
32 employees.

33 **2. Confidential victim services; fees.** A memorandum of understanding may include
34 an agreement, including a fee structure, between the rape crisis center or domestic violence
35 support center under subsection 1 and the institution of higher education to provide
36 confidential victim services. Confidential victim services may include case consultation
37 and training fees for confidential resource advisors, consultation fees for the development
38 and implementation of sexual misconduct education and prevention programs for students,
39 the development of trauma-informed response staff training and prevention curricula and
40 private on-site office space for an advocate from the rape crisis center or domestic violence
41 support center to meet with students or employees.

42 **3. Waiver of requirements.** The department may waive the requirements of this
43 section in the case of an institution that demonstrates that it acted in good faith to enter into

1 and maintain a memorandum of understanding pursuant to this section but was unable to
2 obtain a signed memorandum. In the event that an institution is unable to enter into and
3 maintain a memorandum of understanding pursuant to this section, the institution must
4 provide contact information for local rape crisis centers or domestic violence support
5 centers on its publicly accessible website.

6 **§12962. Enforcement; penalty; appeal**

7 An institution may not overturn or readjudicate a Title IX decision without the approval
8 of the commissioner.

9 Upon a determination by the commissioner that an institution of higher education has
10 violated or failed to carry out any provision of this chapter or any rule adopted under this
11 chapter and after reasonable notice and opportunity for a hearing, the commissioner may
12 impose an administrative penalty for each violation not to exceed \$150,000, adjusted
13 annually for inflation by rule, or 1% of the institution's annual operating budget, whichever
14 is lower.

15 There is established within the department the Sexual Misconduct Response Fund,
16 referred to in this section as "the fund." The fund is nonlapsing. The commissioner shall
17 deposit any administrative penalties collected under this section into the fund. All funds in
18 the fund must be used exclusively to implement this chapter.

19 **§12963. Rulemaking**

20 The commissioner shall adopt rules to implement this chapter, including but not limited
21 to deadlines for dissemination of sexual misconduct climate surveys and collection of
22 survey information, solicitation methods designed to achieve the highest practicable
23 response rate and collection and publication of statistical information gathered from
24 institutions of higher education. The commissioner shall also adopt rules to establish the
25 inflation adjustment for the cap on the administrative penalty under section 12962. Rules
26 adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter
27 375, subchapter 2-A.

28 **SUMMARY**

29 This bill does the following.

30 1. It requires institutions of higher education in the State to adopt sexual misconduct
31 policies.

32 2. It creates the Higher Education Sexual Misconduct Advisory Commission to develop
33 a biennial sexual misconduct climate survey to be provided to the Commissioner of
34 Education and disseminated to institutions of higher education to conduct the surveys on
35 each of their campuses.

36 3. It requires institutions of higher education to designate confidential resource advisors
37 and provides confidential resource advisors with qualified privilege;

38 4. It requires training for confidential resource advisors and individuals involved in the
39 institution's disciplinary process.

40 5. It requires institutions of higher education to report to the joint standing committee
41 of the Legislature having jurisdiction over education matters, the Commissioner of

1 Education and the Commissioner of Health and Human Services on incidents of sexual
2 misconduct on their campuses.

3 6. It provides certain specific immunity to students who report or request investigations
4 into incidents of sexual misconduct.

5 7. It requires institutions of higher education to enter into memoranda of understanding
6 with Department of Health and Human Services-funded rape crisis centers or domestic
7 violence support centers; this requirement may be waived upon a showing of a good faith
8 effort to comply.

9 8. Provides the Commissioner of Education enforcement authority and provides that a
10 civil penalty of not more than \$150,000 or 1% of an institution's operating budget,
11 whichever is lower, may be adjudged for a violation.