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House of Representatives, April 14, 2021

An Act Regarding Sexual Misconduct and Intimate Partner Violence Policies at Institutions of Higher Education

Received by the Clerk of the House on April 12, 2021. Referred to the Committee on Education and Cultural Affairs pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative STOVER of Boothbay.

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

2 **Sec. 1. 20-A MRSA c. 441** is enacted to read:

3 **CHAPTER 441**

4 **SEXUAL AND INTIMATE PARTNER VIOLENCE POLICIES AT**
5 **INSTITUTIONS OF HIGHER EDUCATION**

6 **§12951. Definitions**

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

9 **1. Confidential resource advisor.** "Confidential resource advisor" means a person at
10 an institution of higher education who has been designated by the institution to provide
11 information in confidence on available resources and options for a reporting party or a
12 responding party.

13 **2. Employee.** "Employee" means an individual who is employed by an institution of
14 higher education, either as a part-time, full-time or contracted employee, or who has taken
15 a leave of absence or who has left that individual's position for any reason.

16 **3. Institution of higher education or institution.** "Institution of higher education"
17 or "institution" means a postsecondary, degree-granting public, private, nonprofit or for-
18 profit school chartered, incorporated or otherwise organized in this State with an
19 established physical presence in this State.

20 **4. Intimate partner violence.** "Intimate partner violence" means conduct that
21 constitutes abuse by a dating partner under Title 19-A, section 4002, subsection 1.

22 **5. Reporting party.** "Reporting party" means a student or employee who reports
23 having experienced an incident of sexual misconduct or intimate partner violence to the
24 institution.

25 **6. Responding party.** "Responding party" means a student or employee who has been
26 accused of sexual misconduct or intimate partner violence.

27 **7. Sexual misconduct.** "Sexual misconduct" means:

28 A. Stalking as described in Title 17-A, section 210-A;

29 B. Any crime described in Title 17-A, chapter 11;

30 C. Unauthorized dissemination of certain private images as described in Title 17-A,
31 section 511-A;

32 D. Aggravated sex trafficking or sex trafficking as described in Title 17-A, section
33 852 or 853, respectively; or

34 E. Gender-based violence or violence based on sexual orientation or gender identity
35 or expression.

36 **8. Student.** "Student" means an individual who is enrolled or seeking to be enrolled
37 in a program through an institution of higher education, either part-time or full-time or as

1 a continuing education student, or who has taken a leave of absence or who has withdrawn
2 for any reason.

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

6 **10. Trauma-informed.** "Trauma-informed" means an approach to care that assumes
7 that an individual is more likely than not to have a history of trauma and that recognizes
8 the presence of trauma symptoms and acknowledges the role trauma may play in an
9 individual's life.

10 **§12952. Amnesty policy**

11 A reporting party or a witness that asks for an investigation of sexual misconduct may
12 not be subject to a disciplinary proceeding or sanction for a violation of the institution of
13 higher education's student conduct policy related to drug or alcohol use, trespassing or
14 unauthorized entry of school facilities or violation of an institution policy unless the
15 institution determines that the report was not made in good faith or that the violation was
16 egregious. An egregious violation includes, but is not limited to, taking an action that
17 places the health and safety of another person at risk.

18 **§12953. Awareness programming**

19 An institution of higher education, with guidance from its Title IX coordinator, a local
20 law enforcement agency and a local sexual assault support center, shall provide mandatory
21 annual sexual misconduct primary prevention and awareness programming for all students
22 and all employees of the institution that must include:

23 **1. Affirmative consent.** An explanation of affirmative consent as it applies to sexual
24 activity and sexual relationships. For purposes of this subsection, "affirmative consent"
25 means consent to sexual activity that can be revoked at any time and does not include
26 silence, lack of resistance or consent given while intoxicated;

27 **2. Drugs and alcohol.** The role drugs and alcohol play in an individual's ability to
28 consent;

29 **3. Reporting.** Information on options relating to the reporting of an incident of sexual
30 misconduct, the effects of each option and the methods to report an incident of sexual
31 misconduct, including confidential and anonymous disclosure;

32 **4. Complaint resolution.** Information on the institution's procedures for resolving
33 sexual misconduct complaints and the range of sanctions or penalties the institution may
34 impose on students and employees found responsible for a violation;

35 **5. Support center.** Information about the local sexual assault support center and its
36 confidential resource advisor, services and how to access those services, as well as the
37 name and contact information of all other personnel at the institution of higher education
38 who may be contacted in confidence;

39 **6. Bystander intervention.** Strategies for bystander intervention and risk reduction;
40 and

41 **7. Prevention and awareness.** Opportunities for ongoing sexual misconduct
42 prevention and awareness campaigns and programming.

1 The awareness training provided under this section must use an approach to training
2 that recognizes and is sensitive to the fact that members of certain marginalized groups,
3 including but not limited to persons of color, persons with disabilities and persons who are
4 marginalized because of gender identity or sexual orientation, are more likely to experience
5 sexual violence.

6 **§12954. Training for individuals involved in the disciplinary process**

7 An individual who participates in the implementation of an institution of higher
8 education's disciplinary process under this chapter, including an individual responsible for
9 resolving complaints of reported incidents, must have training or experience in handling
10 sexual misconduct complaints and the operations of the institution's disciplinary process.
11 The training must include, but is not limited to:

12 **1. Approach.** Information about a trauma-informed approach to working with and
13 interviewing individuals subjected to sexual misconduct;

14 **2. Conduct.** Information on particular types of conduct that constitute sexual
15 misconduct, including same-sex intimate partner violence;

16 **3. Consent.** Information on affirmative consent as defined in section 12953,
17 subsection 1 and the role drugs and alcohol may play in an individual's ability to consent;

18 **4. Trauma.** The effects of trauma, including neurobiological effects;

19 **5. Cultural factors.** Cultural competence training regarding how sexual misconduct
20 may affect students or employees differently depending on factors that contribute to
21 cultural background, including but not limited to national origin, sex, ethnicity, religion,
22 gender identity, gender expression and sexual orientation;

23 **6. Communication.** Ways to communicate sensitively and compassionately with a
24 reporting party, including, but not limited to, an awareness of responding to a reporting
25 party with consideration of that party's cultural background and providing services to or
26 assisting in locating services for the reporting party, and ways to communicate sensitively
27 with a responding party, including an awareness of the emotional impact of being wrongly
28 accused; and

29 **7. Intellectual disabilities.** Training and information regarding how intimate partner
30 violence and sexual misconduct may affect students with developmental or intellectual
31 disabilities.

32 **§12955. Institutional training**

33 An institution of higher education shall ensure that its Title IX coordinator and
34 members of its special or campus police force or the campus safety personnel employed by
35 the institution undergo annual training in the awareness of sexual misconduct and in
36 trauma-informed response.

37 **§12956. Policy adoption**

38 An institution of higher education shall adopt a policy on sexual misconduct, consistent
39 with applicable state and federal law, and shall make the policy publicly available on
40 campus in locations where students regularly congregate, including, but not limited to,
41 dining and recreational facilities, libraries, bookstores, student unions and student centers
42 and the common areas of dormitories and other student housing locations; available, upon

1 request, to an applicant, student or employee of the institution; and publicly available on
2 the institution's publicly accessible website in an accessible format not later than the first
3 week of classes in each academic year. The institution shall update the website annually.
4 The policy must be trauma-informed and must be developed in coordination with the
5 institution's Title IX coordinator and the local sexual assault support center or domestic
6 violence center. In adopting the policy the institution may also consider input from various
7 internal and external entities, including, but not limited to institutional administrators,
8 personnel affiliated with on-campus and off-campus health care centers, personnel
9 affiliated with on-campus confidential resource advisors, residence life staff, students, the
10 Department of Public Safety, Bureau of State Police and the law enforcement agency and
11 the county attorney having jurisdiction in the city or town where the institution's primary
12 campus is located. The policy must be developed in a culturally competent manner in order
13 to reflect the diverse needs of all students and employees. The policy must include, but is
14 not limited to:

15 **1. Reporting.** Procedures by which students and employees at the institution may
16 report or disclose alleged incidents of sexual misconduct, regardless of where the offense
17 occurred;

18 **2. Emergency assistance.** Information on where a person can receive immediate
19 emergency assistance following an alleged incident of sexual misconduct, which must
20 include, but is not limited to:

21 A. The name and location of the nearest medical facility where an individual may
22 request that a forensic exam be administered by a trained sexual violence forensic
23 health care provider, including information on transportation options and information
24 on reimbursement for travel costs, if any;

25 B. The contact information for a rape crisis center and a domestic violence center and
26 a description of the services provided by such centers;

27 C. The telephone number and website address for a national 24-hour hotline and any
28 state or local resources providing information on sexual misconduct; and

29 D. Information on any programs that may financially assist a student with the cost of
30 emergency medical assistance;

31 **3. Counseling and support services.** Descriptions of and contact information for the
32 types of counseling and health, safety, academic and other support services available within
33 the local community or region or through a rape crisis center or domestic violence center
34 and the name and contact information for organizations that support students accused of
35 sexual misconduct, which must include but is not limited to the name and contact
36 information for a confidential resource advisor and a description of the role of and services
37 provided by the confidential resource advisor and the name and contact information for the
38 institution's Title IX coordinator;

39 **4. Rights and obligations.** The rights and obligations of students and employees to:

40 A. Notify or decline to notify law enforcement, including campus, local, state and
41 federal law enforcement agencies, of an alleged incident of sexual misconduct;

42 B. Receive assistance from campus authorities in making any notification under
43 paragraph A; and

1 C. Obtain a protective order issued by a court or the institution against a responding
2 party of the incident of sexual misconduct;

3 **5. Institution support measures.** The process for requesting support measures
4 reasonably available from the institution, which must include, but are not limited to, options
5 for changing academic, living, campus transportation or working arrangements or taking a
6 leave of absence in response to an alleged incident of sexual misconduct, how to request
7 those changes and the process to have any such measures reviewed;

8 **6. Protective orders.** The contact information for the closest local, state and federal
9 law enforcement agencies with jurisdiction over matters involving sexual misconduct and
10 procedures for students to notify the institution that a protective order has been issued under
11 state or federal law and the institution's responsibilities upon receipt of such notice;

12 **7. Complaint investigation, adjudication and resolution.** A summary of the
13 institution's procedures for investigating, adjudicating and resolving sexual misconduct
14 complaints, including an explanation of all procedures that must be followed to obtain
15 investigatory reports and gather evidence, and potential sanctions that may be imposed, as
16 well as clear statements advising students that:

17 A. The process will be uniformly applied for all disciplinary proceedings relating to
18 any claims of sexual misconduct;

19 B. Timely and detailed notice will be given to the reporting party and the responding
20 party when the institution decides to proceed with an institutional disciplinary process,
21 describing the date, time and location, if known, and a summary of the factual
22 allegations concerning the violation;

23 C. An investigation, including any hearings and resulting disciplinary proceedings,
24 will be conducted by an individual who receives not less than annual training on issues
25 relating to sexual misconduct, investigatory procedures and hearing procedures to
26 protect the safety and rights of students and promote accountability, objectivity,
27 impartiality and a trauma-informed response;

28 D. The reporting party and the responding party may be accompanied by an advisor
29 or support person of their choice, which may include an advocate or counsel, to meet
30 with the institution's investigator or other fact finder and may consult with an advisor
31 or support person during any meetings and disciplinary proceedings.

32 The institution may establish rules regarding how the disciplinary proceedings will be
33 conducted, which may include guidelines on the extent to which the advisor or support
34 person for each party may participate in a meeting or disciplinary proceeding and any
35 limitations on participation that will apply equally to both parties.

36 The institution shall adopt reasonable measures to provide for the involvement of the
37 advisor or support person for each party, but the availability of the advisor or support
38 person may not significantly delay a meeting or disciplinary proceeding;

39 E. The reporting party and the responding party will be provided with a copy of the
40 institution's policies regarding the submission and consideration of evidence that may
41 be used during a disciplinary proceeding and will have equal opportunity to present
42 evidence and witnesses on their behalf during a disciplinary proceeding and that each
43 party will be provided with timely and equal access to all relevant evidence that will
44 be used in the determination of sanctions or penalties;

1 F. There will be restrictions on evidence considered by the institution's investigator or
2 other fact finder, including, but not limited to, the use of evidence of prior sexual
3 activity or character witnesses;

4 G. The reporting party and the responding party will be informed in writing of the
5 results of a disciplinary proceeding not later than 7 business days after a final
6 determination of a complaint, not including any time for appeal, unless good cause for
7 additional time is shown, and they will be informed of any process for appealing the
8 decision;

9 H. If an institution offers an appeal as a result of procedural errors or previously
10 unavailable relevant evidence that could significantly impact the outcome of a case or
11 if the sanction or penalty is disproportionate to the findings, the reporting party and the
12 responding party will be provided with an equal opportunity to appeal decisions
13 regarding responsibility or sanctions or penalties;

14 I. The institution will not publicly disclose the identity of the reporting party or the
15 responding party except as necessary to carry out a disciplinary process or as permitted
16 under state or federal law; and

17 J. The institution's disciplinary proceedings will not serve as a substitute for the
18 criminal justice process;

19 **8. Disciplinary process.** A summary of the institution's employee disciplinary process
20 as it pertains to sexual misconduct; and

21 **9. Sanctions or penalties.** The range of sanctions or penalties the institution may
22 impose on students and employees found responsible for a violation of the applicable
23 institutional policy prohibiting acts of sexual misconduct.

24 Each institution of higher education shall provide draft policies and substantive
25 changes by electronic or regular mail to internal and external entities, with instructions on
26 how to comment and a reasonable length of time in which comments will be accepted.
27 However, once an institution has adopted policies as required by this section, the
28 opportunity for review and comment by internal and external entities applies only to
29 substantive changes in those policies.

30 **§12957. Notice of rights**

31 An institution of higher education shall provide both the reporting party and the
32 responding party written notice of the institution's decision to proceed with an institutional
33 disciplinary process regarding an allegation of sexual misconduct sufficiently in advance
34 of a disciplinary hearing to provide both the reporting party and the responding party the
35 opportunity to meaningfully exercise their rights. The disciplinary proceeding must
36 provide due process and be prompt, fair and impartial and include the opportunity for both
37 parties to present witnesses and other evidence. The written notice must include the
38 information required to be posted on the institution's publicly accessible website pursuant
39 to section 12956.

40 **§12958. Data reporting requirements**

41 No later than October 1st annually, an institution of higher education shall prepare and
42 submit to the commissioner, the Commissioner of Health and Human Services and the joint

1 standing committee of the Legislature having jurisdiction over education matters a report
2 that includes:

3 1. **Allegations.** The number of allegations of intimate partner violence and sexual
4 misconduct reported to the institution's Title IX coordinator made by a student or employee
5 against another student or employee;

6 2. **Law enforcement investigations.** The number of law enforcement investigations
7 initiated in response to complaints of sexual misconduct made by a student or employee
8 against another student or employee, if known;

9 3. **Findings.** The number of students found responsible for violating an institution's
10 policies prohibiting sexual misconduct and the number of students found not responsible
11 for violating an institution's policies prohibiting sexual misconduct;

12 4. **Actions.** The number of sanctions or penalties imposed by the institution as a result
13 of a finding of responsibility for violating an institution's policies prohibiting sexual
14 misconduct. The report must provide this information in an anonymous manner that
15 complies with state and federal privacy laws; and

16 5. **Confidential resource advisors.** The number of students or employees who
17 consulted a confidential resource advisor without filing an allegation of sexual misconduct.
18 The report must provide this information in an anonymous manner that complies with state
19 and federal privacy laws.

20 **§12959. Enforcement and penalty**

21 An institution may not overturn or readjudicate a complaint resolution without the
22 permission of the commissioner. Upon determination, after reasonable notice and
23 opportunity for a hearing, that an institution of higher education has violated or failed to
24 carry out any provision of this chapter or any rule adopted under this chapter, the
25 commissioner may impose a fine upon that institution for each violation not to exceed
26 \$150,000, which must be adjusted for inflation annually after the effective date of this
27 section, or 1% of an institution's annual operating budget, whichever is lower. The
28 commissioner shall use any fines received under this section to provide oversight of this
29 chapter.

30 **§12960. Rules**

31 The department shall adopt rules to administer this chapter. Rules adopted pursuant to
32 this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

33 **SUMMARY**

34 This bill requires all degree-granting public, private, nonprofit and for-profit colleges
35 and universities chartered, incorporated or otherwise organized in this State with an
36 established physical presence in this State to adopt a policy on sexual misconduct that
37 applies to students and employees who report having experienced an incident of sexual
38 misconduct or intimate partner violence and to students and employees who are accused of
39 sexual misconduct or intimate partner violence. Schools are also required to provide
40 mandatory annual sexual misconduct primary prevention and awareness programming for
41 all students and all employees and to provide training for individuals involved in the
42 disciplinary process. Each school is required to submit a report each year to the
43 Commissioner of Education, the Commissioner of Health and Human Services and the joint

1 standing committee of the Legislature having jurisdiction over education matters a report
2 on the number of allegations, investigations, findings and actions regarding sexual
3 misconduct by students and employees.