

Floor Amendment to SB 679-FN

1 Amend the title of the bill by replacing it with the following:

2
3 AN ACT requiring institutions of higher education to adopt policies on sexual misconduct.

4
5 Amend the bill by replacing all after the enacting clause with the following:

6
7 1 New Chapter; Sexual Misconduct at Institutions of Higher Education. Amend RSA by
8 inserting after chapter 188-G the following new chapter:

9 CHAPTER 188-H

10 SEXUAL MISCONDUCT AT INSTITUTIONS OF HIGHER EDUCATION

11 Adoption of Policies

12 188-H:1 Definitions. In this subdivision:

13 I. "Commission" means the higher education commission established in RSA 21-N:8-a.

14 II. "Director" means the director of the department of education, division of educator support
15 and higher education.

16 III. "Division" means the department of education, division of educator support and higher
17 education.

18 IV. "Institution of higher education" means a public, private, non-profit, or for-profit school
19 chartered, incorporated, or otherwise organized in this state legally authorized to award a degree at
20 an associate level or above with an established physical presence in this state.

21 V. "Reporting party" means a student or employee who reports having experienced an
22 incident of sexual misconduct to the institution.

23 VI. "Responding party" means a student or employee who has been accused of an alleged
24 incident of sexual misconduct.

25 VII. "Student" means an individual who is enrolled at least half-time in a credit-bearing
26 program through a public or private degree-granting postsecondary institution of higher education
27 whether part-time, full-time, or as an extension student, or who has taken a leave of absence or who
28 has withdrawn due to being a victim of sexual misconduct.

29 VIII. "Sexual misconduct" means an incident of sexual violence, dating violence, domestic
30 violence, gender-based violence, violence based on sexual orientation or gender identity or

Floor Amendment to SB 679-FN
- Page 2 -

1 expression, sexual assault or harassment, or stalking, as defined by each institution in its code of
2 conduct, in a manner consistent with applicable federal definitions.

3 188-H:2 Adoption of Policies Required.

4 I. Each institution of higher education shall adopt a policy on sexual misconduct, consistent
5 with applicable state and federal law, which shall be publicly available on campus in locations where
6 students regularly congregate including, but not limited to, dining and recreational facilities,
7 libraries, bookstores, student unions and student centers, and the common areas of dormitories and
8 other student housing locations, and shall be made available, upon request, to an applicant, student,
9 or employee of the institution and shall be publicly available on the institution's website in an
10 accessible format not later than the first week of classes in each academic year. The institution shall
11 update the website annually. The policy shall be trauma-informed, and shall be developed in
12 coordination with the institution's Title IX coordinator, and the local rape crisis center or domestic
13 violence center. In addition, the institution may consider input from various internal and external
14 entities including, but not limited to institutional administrators, personnel affiliated with on-
15 campus and off-campus health care centers, personnel affiliated with on-campus, when available,
16 and local, confidential resources advisors, residence life staff, students, the division of state police,
17 and the police department and the county attorney having jurisdiction in the city or town where the
18 institution's primary campus is located. The policy shall be developed in a culturally competent
19 manner in order to reflect the diverse needs of all students. The policy shall include, but not be
20 limited to:

21 (a) Procedures by which students and employees at the institution may report or disclose
22 alleged incidents of sexual misconduct regardless of where the offense occurred.

23 (b) Information on where to receive immediate emergency assistance following an
24 alleged incident of sexual misconduct which shall include, but shall not be limited to:

25 (1) The name and location of the nearest medical facility where an individual may
26 request that a medical forensic exam be administered by a trained sexual violence forensic health
27 care provider, including information on transportation options and information on reimbursement
28 for travel costs, if any.

29 (2) The contact information for a rape crisis center and a domestic violence center
30 and a description of the services provided by such centers.

31 (3) The telephone number and website for a national 24-hour hotline, as well as any
32 state or local resources, that provides information on sexual misconduct.

33 (4) Information on any programs that may financially assist a student with the cost
34 of emergency medical assistance.

35 (c) Descriptions of and contact information for the types of counseling and health, safety,
36 academic, and other support services available within the local community or region or through a
37 rape crisis center or domestic violence center, or the name and contact information for organizations

Floor Amendment to SB 679-FN
- Page 3 -

1 that support students accused of sexual misconduct, which shall include but not be limited to the
2 name and contact information for a confidential resources advisor and a description of the role of and
3 services provided by the confidential resources advisor and the name and contact information for the
4 institution's Title IX coordinator.

5 (d) The rights and obligations of students and employees to:

6 (1) Notify or decline to notify law enforcement, including campus, local and state
7 police, of an alleged incident of sexual misconduct.

8 (2) Receive assistance from campus authorities in making any such notification.

9 (3) Obtain a court- or institution-issued protective order against a responding party
10 of the incident of sexual misconduct.

11 (e) The process for requesting supportive measures reasonably available from the
12 institution which shall include, but not be limited to, options for changing academic, living, campus
13 transportation, or working arrangements or taking a leave of absence in response to an alleged
14 incident of sexual misconduct, how to request those changes, and the process to have any such
15 measures reviewed.

16 (f) The contact information for the closest local, state, and federal law enforcement
17 agencies with jurisdiction over matters involving sexual misconduct and procedures for students to
18 notify the institution that a protective order has been issued under state or federal law and the
19 institution's responsibilities upon receipt of such notice.

20 (g) A summary of the institution's procedures for investigating, adjudicating, and
21 resolving sexual misconduct complaints, including an explanation of all procedures which shall be
22 followed to obtain investigatory reports and gather evidence, and potential sanctions which may be
23 imposed, as well as clear statements advising students that:

24 (1) The process shall be uniformly applied for all disciplinary proceedings relating to
25 any claims of sexual misconduct.

26 (2) Timely and detailed notice shall be given, upon such time as the institution
27 decides to proceed with an institutional disciplinary process, to the reporting party and the
28 responding party describing the date, time, and location, if known, and a summary of the factual
29 allegations concerning the violation.

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

34 (4) The reporting party of an alleged incident of sexual misconduct and the
35 responding party may be accompanied by an advisor or support person of their choice, which may
36 include an advocate or counsel, to meet with the institution's investigator or other fact finder and
37 may consult with an advisor or support person, which may include an advocate or counsel, during

Floor Amendment to SB 679-FN
- Page 4 -

1 any meetings and disciplinary proceedings; provided, however, that the institution may establish
2 rules regarding how the proceedings will be conducted which may include guidelines on the extent to
3 which the advisor or support person for each party may participate in a meeting or disciplinary
4 proceeding and any limitations on participation which shall apply equally to both parties; and
5 provided further, that the institution shall adopt reasonable measures to provide for the involvement
6 of the advisor or support person for each party but the availability of the advisor or support person
7 shall not significantly delay a meeting or disciplinary proceeding.

8 (5) The reporting party and the responding party shall be provided with a copy of the
9 institution's policies regarding the submission and consideration of evidence that may be used
10 during a disciplinary proceeding and shall have equal opportunity to present evidence and witnesses
11 on their behalf during a disciplinary proceeding; provided, however, that each party shall be
12 provided with timely and equal access to all relevant evidence that shall be used in the
13 determination of a discipline.

14 (6) There shall be restrictions on evidence considered by the fact finder including,
15 but not limited to, the use of evidence of prior sexual activity or character witnesses.

16 (7) The reporting party and the responding party shall be informed in writing of the
17 results of a disciplinary proceeding not later than 7 business days after a final determination of a
18 complaint, not including any time for appeal, unless good cause for additional time is shown, and
19 they shall be informed of any process for appealing the decision.

20 (8) If an institution offers an appeal as a result of procedural errors, previously
21 unavailable relevant evidence that could significantly impact the outcome of a case or where the
22 sanction is disproportionate to the findings, the reporting party and the responding party shall be
23 provided with an equal opportunity to appeal decisions regarding responsibility or sanctions.

24 (9) The institution shall not publicly disclose the identity of the reporting party and
25 the responding party, except as necessary to carry out a disciplinary process or as permitted under
26 state or federal law.

27 (10) The institution's disciplinary proceedings shall not serve as a substitute for the
28 criminal justice process.

29 (h) A summary of the institution's employee disciplinary process as it pertains to sexual
30 misconduct.

31 (i) The range of sanctions or penalties the institution may impose on students and
32 employees found responsible for a violation of the applicable institutional policy prohibiting acts of
33 sexual misconduct.

34 II. Each institution of higher education shall provide draft policies and substantive changes
35 by electronic or regular mail to internal and external entities, with instructions on how to comment
36 and a reasonable length of time in which comments will be accepted. However, once an institution

Floor Amendment to SB 679-FN
- Page 5 -

1 has adopted such policies as required by this section, the opportunity for review and comment by
2 internal and external entities shall only apply to substantive changes in those policies.

3 188-H:3 Notice of Rights. Each institution of higher education shall provide both the accuser
4 and the responding party with written notice of the institution's decision to proceed with an
5 institutional disciplinary process regarding an allegation of sexual misconduct sufficiently in
6 advance of a disciplinary hearing to provide both the reporting and responding parties with the
7 opportunity to meaningfully exercise their rights to a proceeding that is prompt, fair, and impartial;
8 which shall include the opportunity to both parties to present witnesses and other evidence, and any
9 other due process rights afforded to them under institutional policy. The written notice shall include
10 the information required to be posted on the institution's website pursuant to this chapter.

11 Sexual Misconduct Climate Surveys and Task Force

12 188-H:4 Sexual Misconduct Climate Surveys. Each institution of higher education shall
13 biennially conduct a sexual misconduct climate survey of all students at said institution. Each
14 institution's sexual misconduct climate survey shall include a base set of common questions
15 recommended by the task force on sexual misconduct and approved by the director, hereinafter
16 described as the "base survey." The director shall provide a copy of the base sexual misconduct
17 climate survey to all institutions biennially. Each institution shall also be permitted to append their
18 own campus-specific questions to the base survey, provided that these questions do not require the
19 disclosure of any personally-identifying information and are not unnecessarily traumatizing for
20 victims of sexual violence. Within 120 days after completion of a sexual misconduct climate survey,
21 each institution shall submit a summary of the results to the director and shall also post a summary
22 of the results on the institution's website in an easily accessible manner.

23 188-H:5 Task Force on Sexual Misconduct.

24 I. There shall be a task force on sexual misconduct at institutions of higher education. The
25 task force shall consist of the following members:

- 26 (a) The chancellor of the university system of New Hampshire, or designee.
27 (b) The chancellor of the community college system of New Hampshire, or designee.
28 (c) The director of higher education, division of educator support and higher education,
29 department of education, or designee.
30 (d) Two representatives of the private 4-year colleges in New Hampshire, with not more
31 than one representative from any such college, appointed by the governor and council on
32 recommendation by the New Hampshire College and University Council.
33 (e) The president of the New Hampshire Association of Campus Law Enforcement
34 Administrators, or designee.
35 (f) The commissioner of the department of health and human services, or designee.
36 (g) The attorney general, or designee.

Floor Amendment to SB 679-FN
- Page 6 -

(h) The following members, who shall be appointed by the governor, one of whom shall be a student attending a public institution of higher education in this state; one of whom shall be a student attending a private institution of higher education in this state; one of whom shall be a student attending an institution in the community college system of New Hampshire; one of whom shall be a representative of the university of New Hampshire recommended by the president of the university; 3 of whom shall be representatives recommended by the New Hampshire Coalition Against Domestic and Sexual Violence; one of whom shall be a representative recommended by the New Hampshire Campus Consortium Against Sexual and Interpersonal Violence; one of whom shall be a researcher with experience in the development and design of sexual misconduct climate surveys; one of whom shall be a researcher of statistics, data analytics, or econometrics with experience in higher education survey analysis; one of whom shall be a representative of the Prevention Innovations Research Center at the University of New Hampshire; and one of whom shall represent Every Voice New Hampshire.

II. The task force shall develop a base sexual misconduct climate survey for distribution to institutions of higher education and provide such institutions with any related recommendations respecting the content, timing, and application of the survey. The task force shall deliver its base survey and related recommendations, including but not limited to, recommendations on achieving statistically valid response rates, to each institution of higher education no less often than biennially and for the first time by March 31, 2021.

III. In developing the base sexual misconduct climate survey, the task force shall:

(a) Utilize best practices from peer-reviewed research and consult with individuals with expertise in the development and use of sexual misconduct climate surveys by institutions of higher education.

(b) Review sexual misconduct climate surveys which have been developed and previously utilized by institutions.

(c) Provide opportunities for written comment from organizations that work directly with victims and survivors of sexual misconduct to ensure the adequacy and appropriateness of the proposed content.

(d) Consult with institutions on strategies for optimizing the effectiveness of the survey.

(e) Account for the diverse needs and differences of the state's institutions of higher education.

IV. The base sexual misconduct climate surveys shall gather information on topics that may include, but shall not be limited to:

(a) The number of incidents, both reported and unreported, of sexual misconduct at the institution of higher education.

(b) When and where incidents of sexual misconduct occurred.

Floor Amendment to SB 679-FN
- Page 7 -

1 (c) Student awareness of institutional policies and procedures related to campus sexual
2 misconduct.

3 (d) Whether a student reported the sexual misconduct, and if so, to which campus
4 resource or law enforcement agency such report was made, and, if not, the reason for the student's
5 decision not to report.

6 (e) Whether a student was informed of or referred to local, state, campus or other
7 resources, or victim support services, including appropriate medical care and legal services.

8 (f) Whether a student was provided the option of protection from retaliation, access to
9 school-based accommodations, and criminal justice remedies.

10 (g) Contextual factors, such as the involvement of force, incapacitation, or coercion.

11 (h) Demographic information that could be used to identify at-risk groups including but
12 not limited to gender.

13 (i) Perceptions of campus safety among members of the campus community and
14 confidence in the institution's ability to protect against and respond to incidents of sexual
15 misconduct.

16 (j) Whether the student has chosen to withdraw or taken a leave of absence from the
17 institution or transferred to another institution due to either being the reporting party or responding
18 party in an allegation of sexual misconduct.

19 (k) Whether the student has withdrawn from any classes or been placed on academic
20 probation as a result of the incident.

21 (l) Other questions as determined by the task force.

22 V. The base sexual misconduct climate survey shall collect anonymous responses and shall
23 not provide the disclosure of any identifying information.

24 VI. There shall be established within the division a data repository for all summaries of
25 sexual misconduct climate surveys submitted by institutions of higher education to the division in
26 accordance with this section. An institution of higher education shall submit its sexual misconduct
27 climate survey, accompanied by the anonymized raw data supporting such survey, to the director.
28 The director shall ensure that the sexual misconduct climate survey data submitted by all
29 institutions will be available to the public in an easily accessible manner on the division's website.

30 VII. Each institution of higher education shall publish on the institution's website in an
31 easily accessible manner:

32 (a) The results of the survey.

33 (b) The annual security report required under 20 U.S.C. section 1092, otherwise known
34 as the Clery Act.

35 (c) A link to the division's statewide data on sexual misconduct climate survey data as
36 set forth in paragraph VIII.

Floor Amendment to SB 679-FN
- Page 8 -

VIII. The director shall adopt rules, pursuant to RSA 541-A, including deadlines for dissemination and collection of survey information, consistent with the purposes of this statute, and shall promote the effective solicitation to achieve the highest practical response rate, collection, and publication of statistical information gathered from the state's institutions of higher education.

Collaboration With Law Enforcement

188-H:6 Collaboration With Law Enforcement.

I. Each institution of higher education shall adopt policies and procedures with the local law enforcement agency having primary jurisdiction over the city or town wherein the institution's primary campus is located to establish the respective roles and responsibilities of each party related to the prevention of and response to on-campus and off-campus sexual misconduct. Institutions of higher education and local law enforcement agencies shall develop policies and procedures that comply with all applicable state and federal confidentiality and privacy laws and:

(a) Delineate sharing protocols for investigative responsibilities.

(b) Provide protocols for investigations, including standards for notification and communication and measures to promote evidence preservation.

(c) Coordinate training, programing, and requirements on issues related to sexual misconduct.

(d) Ensure that reporting parties are able to move safely and comfortably between classes, extracurriculars, sports, and campus jobs.

(e) Develop a protocol for sharing information about specific crimes, which may include a mechanism for sharing information anonymously, that:

(1) Requires that the reporting party authorized or requested that such information be shared and is fully and accurately informed about what procedures shall occur if the information is shared; and

(2) Is carried out in a manner that is consistent with the General Education Provisions Act, 20 U.S.C. section 1221, and any other applicable provisions under state law.

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

(g) Develop methods for notifying the appropriate county attorney's office.

(h) Update such policies and procedures biennially.

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

III. Notwithstanding any general or special law to the contrary, a member of the department of state police or a local police department who acts as a first responder to a report of sexual

Floor Amendment to SB 679-FN
- Page 9 -

misconduct at an institution of higher education shall receive training in the awareness of dating violence, domestic violence, sexual assault, and stalking and in trauma-informed response, subject to appropriation.

Confidential Resource Advisors

188-H:7 Confidential Resource Advisors.

I. Each institution of higher education shall establish a campus security policy that includes the designation of at least one confidential resource advisor. The confidential resource advisor:

- (a) May have another role at the institution;
- (b) Shall not be a student or a Title IX coordinator; and
- (c) Shall be appointed based on experience and a demonstrated ability of the individual to effectively provide victim services related to sexual misconduct.

II. The institution shall designate existing categories of employees that may serve as confidential resource advisors. The designation of an existing category of employees shall not preclude the institution from designating a new or existing employee as a confidential resource advisor or in another confidential role. An institution may partner with a local, state, or national victim advocacy organization to provide a confidential resource advisor under this section. An institution that enrolls fewer than 1,000 residential students may partner with another institution or rape crisis center within the state to provide the services under this section. An institution shall ensure that any partnership entered into under this paragraph shall result in a confidential resource advisor being available to students within a reasonable distance to the student's institution.

III. The confidential resource advisor shall receive training in the awareness and prevention of sexual misconduct and in trauma-informed response and coordinate with on-campus and off-campus rape crisis centers and domestic violence centers within a reasonable time after being designated as a confidential resource advisor.

IV. The confidential resource advisor shall inform the student or employee, or provide resources about how to obtain, including in written format:

- (a) Reporting options and the effects of each option.
- (b) Counseling services available on campus and through a local rape crisis center or domestic violence center.
- (c) Medical and health services available on campus and off campus.
- (d) Campus escort services for security.
- (e) Available academic and residence life accommodations.
- (f) Student loan counseling for students considering temporary permanent withdrawal or half time enrollment regarding loan deferment, forbearance, or other student loan programs.
- (g) The investigative and disciplinary process of the institution.
- (h) The legal process carried out through local, state, and federal law enforcement agencies.

Floor Amendment to SB 679-FN
- Page 10 -

1 (i) That the institution's disciplinary process is not to be considered a substitute for the
2 criminal justice process.

3 (j) Any limits on the ability of the confidential resource advisor to provide privacy or
4 confidentiality to the student.

5 V. The confidential resource advisor:

6 (a) May, if appropriate and if directed by the reporting party, assist the reporting party
7 in contacting or reporting to campus or local law enforcement agencies.

8 (b) Shall notify the student of their rights and the institution's responsibilities regarding
9 a protection order, no contact order, and any other lawful orders issued by the institution or by a
10 criminal, civil, or tribal court.

11 (c) Shall not be required to report an incident to the institution or a law enforcement
12 agency unless otherwise required to do so by state or federal law and shall provide confidential
13 services to students and employees.

14 (d) May attend an administrative or institution-based adjudication proceeding as the
15 advisor or support person of the student's or employee's choice.

16 (e) Shall not disclose confidential information without the prior written consent of the
17 student or employee who shared the information.

18 (f) Shall not provide services to more than one party in an incident and shall ensure
19 confidentiality is maintained.

20 VI. Nothing in this section shall be construed to limit either party's right of cross
21 examination of the advisor in a civil or criminal proceeding if the advisor testifies after written
22 consent has been given. A confidential resource advisor shall not act as a counselor or therapist
23 unless the confidential resource advisor is licensed as a counselor in this state and the reporting
24 party engages the confidential resource advisor in that capacity.

25 VII. Notice to a confidential resource advisor of an alleged act of sexual misconduct or a
26 confidential resource advisor's performance of a service under this section shall not be considered
27 actual or constructive notice of such an alleged act to the institution of higher education at which the
28 confidential resource advisor is employed or provides contracted services.

29 VIII. If a conflict of interest arises for an institution in which a confidential resource advisor
30 is advocating for a reporting party's need for sexual assault crisis services or campus or law
31 enforcement services, the institution shall not discipline, penalize, or otherwise retaliate against the
32 confidential resource advisor for representing the interest of the reporting party.

33 188-H:8 Privilege for Confidential Resource Advisors.

34 I. In this section:

35 (a) "Confidential communication" means information transmitted between a victim, as
36 defined in paragraph (b), of an alleged sexual assault, alleged domestic abuse, alleged sexual
37 harassment, or alleged stalking, and a confidential resource advisor in the course of that

Floor Amendment to SB 679-FN
- Page 11 -

1 relationship and in confidence by means which, so far as the victim is aware, does not disclose the
2 information to a third person. The presence of an interpreter for the hearing impaired, a foreign
3 language interpreter, or any other interpreter necessary for that communication to take place shall
4 not affect the confidentiality of the communication nor shall it be deemed a waiver of the privilege.
5 The term includes all information received by the confidential resource advisor in the course of that
6 relationship.

7 (b) "Victim" means any person alleging sexual misconduct, as defined by the institutions'
8 policies and procedures, who consults a confidential resource advisor for the purpose of securing
9 support, counseling or assistance concerning a mental, physical, emotional, legal, housing, medical,
10 or financial problem caused by an alleged act of sexual misconduct, or an alleged attempted sexual
11 misconduct.

12 II.(a) A victim has the privilege to refuse to disclose and to prevent any other person from
13 disclosing a confidential communication made by the victim to a confidential resource advisor,
14 including any record made in the course of support, counseling, or assistance of the victim. Any
15 confidential communication or record may be disclosed only with the prior written consent of the
16 victim. This privilege terminates upon the death of the victim. The privilege and confidentiality
17 under this subparagraph shall extend to:

18 (1) A third person present to assist communication with the victim.

19 (2) A third person present to assist a victim who is physically challenged.

20 (3) Co-participants in support group counseling of the victim.

21 (b) Persons prevented from disclosing a confidential communication or record pursuant
22 to subparagraph (a) shall be exempt from the provisions of RSA 631:6.

23 III. The privilege may be claimed or waived in all civil, administrative, and criminal legal
24 proceedings, including discovery proceedings, by the following persons:

25 (a) The victim or an attorney on the victim's behalf.

26 (b) The guardian of the victim, if the victim has been found incompetent by a court of
27 competent jurisdiction.

28 (c) A minor victim who is emancipated, married, or over the age of 15, unless, in the
29 opinion of the court, the minor is incapable of knowingly waiving the privilege. A guardian ad litem
30 shall be appointed in all cases in which there is a potential conflict of interest between a victim
31 under the age of 18 and their parent or guardian.

32 IV. Waiver as to a specific portion of communication between the victim and the confidential
33 resource advisor shall not constitute a waiver of the privilege as to other portions of the confidential
34 communication between victim and confidential resource advisor, relating to the alleged crime.

35 V. In criminal proceedings when a defendant seeks information privileged under this
36 chapter in discovery or at trial, the procedure below shall be followed:

Floor Amendment to SB 679-FN
- Page 12 -

1 (a) A written pretrial motion shall be made by the defendant to the court stating that
2 the defendant seeks discovery of records of a confidential resource advisor or testimony of a
3 confidential resource advisor. The written motion shall be accompanied by an affidavit setting forth
4 specific grounds as to why discovery is requested and showing that there is a substantial likelihood
5 that favorable and admissible information would be obtained through discovery or testimony. No
6 discovery or hearing shall occur pursuant to the information sought to be disclosed for at least 3
7 business days after the filing of a motion for disclosure.

8 (b) The only information subject to discovery from the records of a confidential resource
9 advisor or which may be elicited during the testimony of a confidential resource advisor are those
10 statements of the victim which relate to the alleged crime being prosecuted in the instant trial.

11 (c) Prior to admission of information at deposition, trial, or other legal proceeding, when
12 a claim of privilege has been asserted and whether or not the information was obtained through
13 discovery, the burden of proof shall be upon the defendant to establish by a preponderance of the
14 evidence that:

15 (1) The probative value of the information, in the context of the particular case,
16 outweighs its prejudicial effect on the victim's emotional or physical recovery, privacy, or
17 relationship with the confidential resource advisor.

18 (2) That the information sought is unavailable from any other source.

19 (3) That there is a substantial probability that the failure to disclose that
20 information will interfere with the defendant's right to confront the witnesses against him or her
21 and the defendant's right to a fair trial.

22 (d) The trial court shall review each motion for disclosure of information on a case by
23 case basis and determine on the totality of the circumstances that the information sought is or is not
24 subject to the privilege established in paragraph II. In finding that the privilege shall not apply in a
25 particular case, the trial court shall make written findings as to its reasons therefor.

26 (e) The records and testimony of a confidential resource advisor shall be disclosed solely
27 to the trial judge to determine, as a matter of law, whether the information contained in the records
28 or testimony is admissible under this chapter.

29 (f) That portion of any record and testimony of a confidential resource advisor which is
30 not disclosed to the defendant shall be preserved by the court under seal for appeal. For the purpose
31 of preservation, a copy of the record shall be retained with the original released to the confidential
32 resource advisor. Costs of duplication shall be borne by the defendant.

33 (g) If, after disclosure of privileged information, the court upholds the privilege claim,
34 the court shall impose a protective order against revealing any of the information without the
35 consent of the person authorized to permit disclosure.

Floor Amendment to SB 679-FN
- Page 13 -

VI. The privilege established by this chapter shall not apply when the confidential resource advisor has knowledge that the victim has given perjured testimony and when the defendant has made an offer of proof that there is probable cause to believe that perjury has been committed.

VII. Failure of any person to testify as a witness pursuant to the provisions of this chapter shall not give rise to an inference unfavorable to the prosecution or the defense.

VIII. The victim shall have a right to interlocutory appeal to the supreme court from any decision by a court to require the disclosure of records or testimony of a confidential resource advisor.

IX. The confidential resource advisor shall have the same reporting duties under RSA 169-C:29 as other professionals, providing that this duty shall not apply where a minor is seeking relief pursuant to RSA 173-B:3 for abuse by a spouse or former spouse of the minor, or by an intimate partner who is not related to the minor by consanguinity or affinity. As used in this section, "abuse" and "intimate partners" shall be as defined in RSA 173-B:1.

Awareness Programming

188-H:9 Awareness Programming. An institution of higher education, with guidance from its Title IX coordinator, local law enforcement, and the rape crisis center or the domestic violence center, shall provide mandatory annual sexual misconduct primary prevention and awareness programming for all students and all employees of the institution that shall include:

I. An explanation of consent as it applies to sexual activity and sexual relationships.

II. The role drugs and alcohol play in an individual's ability to consent.

III. Information on options relating to the reporting of an incident of sexual misconduct, the effects of each option, and the methods to report an incident of sexual misconduct, including confidential and anonymous disclosure.

IV. Information on the institution's procedures for resolving sexual misconduct complaints and the range of sanctions or penalties the institution may impose on students and employees found responsible for a violation.

V. The name, contact information, and role of the confidential resource advisor.

VI. Strategies for bystander intervention and risk reduction.

VII. Opportunities for ongoing sexual misconduct prevention and awareness campaigns and programming.

Training for Individuals and Institutions

Involved in the Disciplinary Process

188-H:10 Training for Individuals Involved in the Disciplinary Process. An individual who participates in the implementation of an institution of higher education's disciplinary process, including an individual responsible for resolving complaints of reported incidents, shall have training or experience in handling sexual misconduct complaints and the operations of the institution's disciplinary process. The training shall include, but not be limited to:

Floor Amendment to SB 679-FN
- Page 14 -

1 I. Information on working with and interviewing persons subjected to sexual misconduct.

2 II. Information on particular types of conduct that constitute sexual misconduct, including
3 same-sex dating violence, domestic violence, sexual assault, and stalking.

4 III. Information on consent and the role drugs and alcohol may play in an individual's ability
5 to consent.

6 IV. The effects of trauma, including any neurobiological impact on a person.

V. Cultural competence training regarding how sexual misconduct may impact students differently depending on factors that contribute to a student's cultural background, including but not limited to national origin, sex, ethnicity, religion, gender identity, gender expression, and sexual orientation.

VI. Ways to communicate sensitively and compassionately with a reporting party of sexual misconduct including, but not limited to, an awareness of responding to a reporting party with consideration of that party's cultural background and providing services to or assisting in locating services for the reporting party. Ways to communicate sensitively with a responding party, including an awareness of the emotional impact of being wrongly accused.

VII. Training and information regarding how dating violence, domestic violence, sexual assault, and stalking may impact students with developmental or intellectual disabilities.

18 188-H:11 Institutional Training. Each institution of higher education shall ensure that its Title
19 IX coordinator and members of its special or campus police force or the campus safety personnel
20 employed by the institution are educated in the awareness of sexual misconduct and in trauma-
21 informed response.

22 Reporting Requirements

188-H:12 Data Reporting Requirements. Annually, not later than October 1, an institution of higher education shall prepare and submit to the director, the commissioner of the department of health and human services, the clerks of the senate and house of representatives, and the chairpersons of the senate and house committees with jurisdiction over education a report that includes:

I. The total number of allegations of dating violence, domestic violence, sexual assault, and stalking reported to the institution's Title IX coordinator by a student or employee of the institution against another student or employee of the institution.

II. The number of law enforcement investigations initiated in response to complaints of sexual misconduct brought forward by students or employees of the institution against another student or employee of the institution, if known.

III. The number of students found responsible for violating an institution's policies prohibiting sexual misconduct.

IV. The number of students found not responsible for violating an institution's policies prohibiting sexual misconduct.

Floor Amendment to SB 679-FN
- Page 15 -

V. The number of disciplinary actions imposed by the institution as a result of a finding of responsibility for violating an institution's policies prohibiting sexual misconduct. The report shall provide information in an anonymous manner that complies with state and federal privacy laws.

188-H:13 Amnesty. A reporting party or a witness that causes an investigation of sexual misconduct, or drug or alcohol use, shall not be subject to a disciplinary proceeding or sanction for a violation of the institution of higher education's student conduct policy related to the incident unless the institution determine that the report was not made in good faith or that the violation was egregious. An egregious violation shall include, but not be limited to, taking an action that places the health and safety of another person at risk.

Enforcement and Penalty

188-H:14 Enforcement and Penalty. Upon determination, after reasonable notice and opportunity for a hearing, that an institution of higher education has violated or failed to carry out any provision of this chapter or any rule adopted under this chapter, the director may impose a civil penalty upon such institution for each violation not to exceed \$150,000, which shall be adjusted for inflation annually, or one percent of an institution's annual operating budget, whichever is lower. The director shall use any such civil penalty funds to provide oversight of this chapter.

188-H:15 Memoranda of Understanding With Rape Crisis Centers or Domestic Violence Centers.

I. An institution of higher education shall enter into and maintain a memorandum of understanding with a rape crisis center or domestic violence center to:

(a) Assist in developing the institution's policies, programing, and training regarding sexual misconduct involving students or employees.

(b) Provide an off-campus alternative for students and employees of the institution to receive free and confidential sexual assault crisis services, including access to a sexual assault nurse examiner if available, or free and confidential domestic violence crisis services in response to sexual misconduct.

(c) Ensure that a student or employee of the institution may access free and confidential counseling and advocacy services either on campus or off campus.

(d) Ensure cooperation and training between the institution and the crisis center or agency to ensure an understanding of the roles that the institution, crisis center, and agency should play in responding to reports and disclosures of sexual misconduct against students and employees of the institution and the institution's protocols for providing support and services to such students and employees.

II. A memorandum of understanding may include an agreement, including a fee structure, between the rape crisis center or domestic violence center and the institution of higher education to provide confidential victim services. Confidential victim services may include case consultation and training fees for confidential resource advisors, consultation fees for the development and

Floor Amendment to SB 679-FN
- Page 16 -

1 implementation of student education and prevention programs, the development of staff training
2 and prevention curriculum, and confidential on-site office space for an advocate from a rape crisis
3 center or domestic violence center to meet with students.

4 III. The commission may waive the requirements of this section in the case of an institution
5 that demonstrates that it acted in good faith but was unable to obtain a signed memorandum.

6 2 Effective Date. This act shall take effect 180 days after its passage.

Floor Amendment to SB 679-FN
- Page 17 -

2020-1199s

AMENDED ANALYSIS

This bill requires institutions of higher education to adopt and make available to students policies on sexual misconduct; to develop a task force and survey on sexual misconduct and report its findings; to appoint a campus safety advisor; to collaborate with law enforcement on the investigation and prosecution of sexual misconduct incidents; to establish confidential resource advisors; to develop awareness programming; and to undertake institutional training in the awareness and prevention of sexual misconduct on campus.