

SENATE

JOSEPH RAFFERTY, DISTRICT 34, CHAIR  
MATTHEA DAUGHTRY, DISTRICT 24  
DAVID C. WOODSOME, DISTRICT 33

HILLARY RISLER, LEGISLATIVE ANALYST  
ELIAS MURPHY, COMMITTEE CLERK



HOUSE

MICHAEL F. BRENNAN, PORTLAND, CHAIR  
REBECCA J. MILLETT, CAPE ELIZABETH  
DAVID HAROLD MCCREA, FORT FAIRFIELD  
JANICE S. DODGE, BELFAST  
W. EDWARD CROCKETT, PORTLAND  
SUZANNE M. SALISBURY, WESTBROOK  
PAUL A. STEARNS, GUILFORD  
HEIDI H. SAMPSON, ALFRED  
SHEILA A. LYMAN, LIVERMORE FALLS  
TIMOTHY M. ROCHE, WELLS

STATE OF MAINE  
ONE HUNDRED AND THIRTIETH LEGISLATURE  
COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS

TO: Senator Anne Carney, Senate Chair  
Representative Thomas Harnett, House Chair  
Joint Standing Committee on Judiciary

FROM: Senator Joseph Rafferty, Senate Chair JR (HAR)  
Representative Michael Brennan, House Chair MS CHAIR  
Joint Standing Committee on Education and Cultural Affairs

DATE: March 31, 2022

RE: Public Records Exception Review of LD 1727

---

We are writing to request review of LD 1727, An Act Concerning Sexual Misconduct on College Campuses, pursuant to Title 1, section 434, subsection 2. The committee held a public hearing on the bill in compliance with the public hearing requirement of Title 1, section 434, subsection 1. The majority of the committee voted OTP-AM; the draft committee amendment changes the title and amends the bill. A copy of the majority draft committee amendment approved by those on that report is attached.<sup>1</sup>

The proposed majority amendment enacts a new chapter of law governing sexual violence, intimate partner violence and stalking at institutions of higher education in this State. The chapter includes provisions regarding adoption of policies and related procedures, establishes a Higher Education Interpersonal Violence Advisory Commission, requires institutions of higher education to have confidential resource advisors, requires awareness programming and training for those involved in these issues on campuses, reporting requirements, and requires institutions of higher education to enter into and maintain memoranda of understanding with Department of Health and Human Services-funded sexual assault support centers and domestic violence resource centers.

---

<sup>1</sup> The minority report on the bill is OTP-AM; the minority amendment changes the title and replaces the bill with a resolve. The minority amendment does not implicate the provisions of Title 1, section 434, subsection 2.

The proposed majority committee amendment has three provisions that we are asking to be reviewed:

1) The amendment provides that the identity of a reporting party and a responding party and all information relating to an incident of sexual violence, intimate partner violence, or stalking is confidential, and may not be disclosed by the institution except as necessary to carry out a disciplinary process or as otherwise permitted under state or federal law;

2) The amendment creates a position of a confidential resource advisor at higher education institutions, which may be provided through a contract or partnership with a local, state, or national victim advocacy organization, and provides that communications between the reporting party and the confidential resource advisor are privileged from disclosure; and

3) The amendment allows the confidential resource advisor to receive confidential criminal history record information for the purpose of planning for the safety of the person the confidential resource advisor is advising; confidential criminal history record information may only be used for this purpose and may not be further disseminated.

§12952, sub. 6  
P.10  
§12956, sub. 510  
PP 17-18  
§12956, sub. 511  
P.18

With respect to the statutory criteria in Title 1, section 434, subsection 2, we offer the following comments on the draft majority report on LD 1727:

- A. *Whether the record protected by the proposed exception needs to be collected and maintained.*
- B. *The value to the agency or official or to the public in maintaining a record protected by the proposed exception.*

A&B. It is important for students and employees at higher education institutions to be able to seek guidance and assistance when experiencing incidents of sexual violence, intimate partner violence, and stalking, and to know that the records related to their experience will be kept confidential. Without this protection, many who experience sexual violence, intimate partner violence or stalking will not feel safe in seeking out that guidance or asking for help.

- C. *Whether federal law requires a record covered by the proposed exception to be confidential.*

C. The federal Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. §1232g; 34 CFR Part 99) provides students with certain privacy protections with respect to the student's education records maintained by a school. In addition, federal Title IX regulations (34 C.F.R. Part 106) state as a general rule that a school recipient must keep confidential the identity of any person who has reported sexual harassment, or who has been reported to be a perpetrator of sexual harassment and that if a complainant desires supportive measures, the recipient can, and should, keep the complainant's identity confidential, unless it is necessary to provide the supportive measure.

(2)

*D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records.*

D. The proposed exception does protect an individual's privacy interest in traumatic experiences related to sexual violence, intimate partner violence and stalking, and the majority of the committee strongly believes that these privacy interests substantially outweigh the public interest in the disclosure of these records.

*E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records.*

E. We do not believe paragraph E is applicable.

*F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records.*

F. We do not believe paragraph F is applicable.

*G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records.*

G. We believe public disclosure could jeopardize the safety of the persons reporting or responding to reports of incidents of sexual violence, intimate partner violence, or stalking and that their safety substantially outweighs the public interest in the disclosure of records. This is especially important in regards to the confidential resource advisor's receipt of confidential history record information solely for the purpose of safety planning for the person that they are advising.

*G-1. Whether public access to the record ensure would ensure that members of the public are able to make informed health and safety decisions.*

G-1. We do not believe that public access to the records would ensure members of the public are able to make informed health and safety decisions, and that to the extent this paragraph is applicable, the privacy interests involved substantially outweigh the public interest.

*H. Whether the proposed exception is as narrowly tailored as possible.*

H. Yes, we believe the language crafted in this manner and that keeping this information confidential is appropriate. The amendment allows institutions of higher education to disclose information where otherwise required for a disciplinary proceeding or as otherwise permitted under state or federal law; provisions relating to privileged communications is narrowly tailored

to the role of the confidential resource advisor; and the confidential criminal history record information may only be disclosed to the confidential resource advisor for the purpose of safety planning and may not be further disseminated.

*I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.*

I. Incidents of sexual violence, intimate partner violence and stalking are a critical issue on campuses of higher education institutions, and it is important that those who need resources are able to access them confidentially. This bill provides an additional avenue and resource for these students, outside of the federal Title IX structure, that seeks to address this critical need, and the confidentiality provisions are key to ensuring that students can access the guidance and resources they need.

Thank you for your consideration of our comments. Please contact us if you have any questions or need additional information. We look forward to discussing this with your committee in work session.

Enclosure: LD 1727 Draft Majority Committee Amendment

Cc: Members, Joint Standing Committee on Education and Cultural Affairs

Committee: EDU  
Drafter: HAR  
File Name: G:\COMMITTEES\EDU\Bill Amendments\130th 2nd\024802.docx  
LR (item)#: 0248(02)  
New Title?: Yes  
Date: 3/31/2022

**Vote: OTP-AM/OTP-AM**  
**Majority Committee Amendment**

Committee Amendment “ ” to LD 1727, An Act Concerning Sexual Misconduct on College Campuses

Amend the bill by striking out the title and substituting the following:

**‘An Act Concerning Interpersonal Violence on College Campuses’**

Amend the bill as follows:

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

**12-C.**

<u>Education: Higher</u>	<u>Higher Education</u>	<u>Expenses</u>	<u>20-A MRSA §12954</u>
<u>Education</u>	<u>Sexual Misconduct</u>	<u>Only</u>	
	<u>Interpersonal Violence</u>		
	<u>Advisory Commission</u>		

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

**CHAPTER 441**

**SEXUAL MISCONDUCT VIOLENCE, INTIMATE PARTNER VIOLENCE AND STALKING AT INSTITUTIONS OF HIGHER EDUCATION**

**§12951. Definitions**

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

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

**2. Employee.** "Employee" means an individual who is employed by an institution of higher education, including a full-time, part-time or contracted employee, or an individual who was employed by an institution of higher education, including a full-time, part-time or contracted employee, but has taken a leave of absence or terminated the employment as a result of having

been a victim of sexual misconduct violence, intimate partner violence or stalking or for any other reason.

**3. Institution of higher education.** "Institution of higher education" or "institution" means any degree granting educational institution regulated under chapter 409 that is located in this State, any university in the University of Maine System, any college in the Maine Community College System and the Maine Maritime Academy a public, private, non-profit or for profit postsecondary school chartered, incorporated, or otherwise organized in the state with an established physical presence in the state.

**4. Interpersonal violence climate survey.** "Interpersonal violence climate survey" means the survey developed pursuant to section 12954, subsection 7.

**5. Intimate Partner Violence.** "Intimate partner violence" means any of the acts that constitute abuse under Title 19-A, Section 4002, subsection 1, paragraphs A-H that are committed by a person who is or has been in a social relationship of an intimate nature regardless of whether the individuals were or are sexual partners.

**46. Reporting party.** "Reporting party" means a student or employee who reports having experienced an alleged incident of sexual misconduct violence, intimate partner violence or stalking at an institution of higher education.

**57. Responding party.** "Responding party" means an individual who has been accused of an alleged incident of sexual misconduct violence, intimate partner violence or stalking at an institution of higher education.

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

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

**10. Sexual violence.** "Sexual violence" means conduct that constitutes:

A. Any crime under Title 17-A, chapter 11;

B. Unauthorized dissemination of certain private images pursuant to Title 17-A, section 511-A;

C. Aggravated sex trafficking or sex trafficking pursuant to Title 17-A, section 852 or 853; or

D. Sexual harassment under Title 14, section 6000.

**11. Stalking.** "Stalking" means conduct that constitutes the crime of stalking under Title 17-A, Section 210-A.

**812. Student.** "Student" means an individual who is enrolled or is seeking to be enrolled in a postsecondary institution in this State and is a candidate for a degree or diploma or graduate certificate or has taken a leave of absence as a result of having been a victim of sexual violence, intimate partner violence or stalking credit bearing program at an institution of higher education, or who was enrolled in a credit bearing program at an institution of higher

~~education, but has taken a leave of absence or has withdrawn from the program as a result of having been a victim of sexual misconduct or for any other reason.~~

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

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

- A. The neurobiological impact of trauma;
- B. The influence of societal stereotypes or other misconceptions relating to the causes and impacts of trauma on an individual experiencing the trauma caused by sexual misconduct intimate partner violence;
- C. Methodologies for avoiding perpetuation of the trauma caused by sexual misconduct intimate partner violence; and
- D. How to conduct an effective investigation of trauma.

#### **§12952. Adoption of policies and related procedures**

**1. Adoption of policy required.** No later than July 1, 2023, Each institution of higher education shall adopt a policy and related procedures on sexual ~~misconduct~~, violence, intimate partner violence and stalking referred to in this section as "the policy," in accordance with this section and consistent with applicable state and federal law. ~~The policy must be publicly available on each institution's campus website and in student handbooks. Notices of policy availability and outreach for victims of sexual violence, intimate partner violence and stalking must be posted at campus locations where students regularly congregate. The institution shall update the institution's website annually.~~

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

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

A. Procedures by which students and employees at the institution may report or disclose alleged incidents of sexual ~~misconduct~~ violence, intimate partner violence or stalking regardless of where the alleged incident occurred;

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

- (1) The name and location of the nearest medical facility where a reporting party may request that a medical forensic exam be administered by a trained sexual violence

forensic health care provider, including information on transportation options and information on reimbursement for travel costs, if any;

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

(3) The telephone number and website for ~~a confidential statewide sexual assault helpline and a~~ the national 24-hour hotline and ~~any state or local resources that provide information on sexual misconduct~~; and

(4) Information on any programs that may financially assist a reporting party with the cost of emergency medical assistance *including the victims' compensation fund pursuant to Title 5, chapter 316-A*;

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

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

(1) Notify or decline to notify law enforcement, including campus, local and state police, of an alleged incident of sexual ~~misconduct violence, intimate partner violence or stalking~~;

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

(3) Obtain a court or institution-issued protection order against a responding party involved with the alleged incident of sexual ~~misconduct violence, intimate partner violence or stalking~~;

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

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

G. A summary of the institution's procedures for *informal resolution, investigating, adjudicating and resolving* sexual ~~misconduct violence, intimate partner violence or stalking~~ complaints against students, *regardless of where the alleged offense occurred*.



including an explanation of all procedures that must be followed to obtain investigatory reports and gather evidence, and potential sanctions or penalties that may be imposed. The policy must provide that:

(1) The procedure be uniformly applied, to the extent practicable, for all disciplinary proceedings relating to any claims of sexual misconduct violence, intimate partner violence or stalking;

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

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

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

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

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

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

(8) If any appeal is allowed based on a claim of procedural errors, previously unavailable relevant evidence that could significantly impact the outcome of a disciplinary proceeding or the sanction's or penalty's being disproportionate to the

~~offense, the reporting party and the responding party be provided with an equal opportunity to make the appeal;~~

~~(95) The institution may not publicly disclose the identity of the reporting party or the responding party, except as necessary to carry out a disciplinary proceeding or as otherwise permitted under state or federal law; and~~

~~(106) It is communicated that the institution's disciplinary proceedings may not serve as a substitute for the criminal justice process; and~~

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

~~H. A summary of the institution's employee disciplinary process as it pertains to sexual misconduct violence, intimate partner violence or stalking; and~~

~~I.H. The range of sanctions or penalties the institution may impose on students and employees found responsible for a violation of the applicable institutional policy prohibiting sexual misconduct violence, intimate partner violence or stalking.~~

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

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

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

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

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

① **6. Confidentiality.** The identity of a reporting party and a responding party and all information relating to an incident of sexual misconduct violence, intimate partner violence or stalking is confidential, and may not be disclosed by the institution except as necessary to carry out a disciplinary process or as otherwise permitted under state or federal law.

### **§12953. Notice to proceed**

Each institution shall provide a reporting party and a responding party with written notice of the institution's decision to hold a disciplinary proceeding regarding an allegation of sexual misconduct sufficiently in advance of a disciplinary proceeding to provide the reporting and responding parties with the opportunity to meaningfully exercise their rights. The disciplinary proceeding must provide due process and be prompt, fair and impartial and include the opportunity for both parties to present witnesses and other evidence. The written notice must

include the information required to be posted on the institution's publicly accessible website pursuant to section 12952, subsection 51.

**§12954. Higher Education Sexual Misconduct Interpersonal Violence Advisory Commission**

**1. Establishment.** The Higher Education Sexual Misconduct Interpersonal Violence Advisory Commission, established by Title 5, section 12004-I, subsection 12-C and referred to in this chapter as "the commission," is created for the purpose of developing and advising the commissioner on a base sexual misconduct interpersonal violence climate survey for dissemination to institutions of higher education and providing recommendations on the content, timing and application of the survey and reporting to the joint standing committee having jurisdiction over higher education matters.

**2. Membership.** The commission consists of the following 2022 members:

A. The commissioner or designee;

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

C. The following 79 members appointed by the commissioner:

(1) Two A members representing a statewide coalition against of sexual assault support centers;

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

(3) A member representing a coalition of Wabanaki women representing a tribal coalition against sexual assault and domestic violence;

(4) A member representing a statewide organization for disability rights;

(5) A member representing a statewide organization for lesbian, gay, bisexual and transgender people of the State; and

(6) A member representing a coalition of students and victims against sexual violence national advocacy organization focused on passing state legislation written by students and survivors addressing campus sexual violence; and

(7) A member representing a statewide coalition of domestic violence resource centers;

(8) A member representing an organization that advocates for immigrant communities in this State; and

(9) A representative from a civil legal services provider representing sexual assault survivors; and

D. The following 11 members appointed by the Governor:

(1) A student attending a public institution of higher education in this State;

(2) A student attending a private institution of higher education in this State;

(3) A student attending an institution in the Maine Community College System;

(4) A representative of the University of Maine System recommended by the Chancellor of the University of Maine System;

(5) A representative of a private institution of higher education recommended by a Maine association of independent colleges;

(6) A representative of the Maine Community College System recommended by the President of the Maine Community College System;

(7) A Title IX coordinator at a public institution of higher education in this State;

(8) A Title IX coordinator at a private institution of higher education in this State;

(9) A researcher with experience in the development and design of ~~sexual misconduct~~ interpersonal violence climate surveys;

(10) A researcher of statistics, data analytics or econometrics with experience in higher education survey analysis; and

(11) A representative of a health center at an institution of higher education with experience dealing with campus sexual violence.

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

4. Terms; vacancies; compensation. Each appointed member serves a 2-year term ~~and continues serving until either reappointed or the member's successor is appointed. In the event of a vacancy on the commission, the member's unexpired term must be filled through an appointment by the appointing authority for the vacant seat for the balance of the unexpired term. except that, of those members first appointed, five appointed by the governor and five appointed by the commissioner must be appointed for a one-year term. The term of office of each member must be designated at the time of appointment. Members of the commission may serve after the expiration of their terms until a successor has been appointed. Members are compensated in accordance with Title 5, chapter 379.~~

5. Quorum. A quorum of the commission consists of ~~11~~ *two-thirds of appointed members.*

6. Duties. Beginning ~~March 31, 2022, July 1, 2023~~ and biennially thereafter, the commission shall provide to the commissioner the sexual misconduct climate survey developed in accordance with subsections 7 and 8 and any related recommendations, including but not limited to recommendations on achieving statistically valid response rates. *The commission may make recommendations on legislative and policy actions or enforcing and carrying out the provisions of this chapter and may undertake research development and program initiatives consistent with this section. The commission shall meet at least 4 times a year. Subcommittees of the commission may meet as necessary. The commission may accept funds from the federal government, from a political subdivision of the State, or from an individual, foundation, or corporation and may expend these funds for purposes that are consistent with this subsection. The commission may develop bylaws to fulfill this section.*

7. Fund established. *The higher education interpersonal violence advisory commission fund is established as a nonlapsing fund for the purpose of receiving funds accepted by the commission under subsection 6.*

78. Development of ~~sexual misconduct interpersonal violence climate survey.~~ The commission must develop the ~~sexual misconduct interpersonal violence climate survey~~ by:

A. Using best practices from peer-reviewed research and in consultation with individuals with expertise in the development and use of ~~sexual misconduct interpersonal violence climate surveys~~ by institutions of higher education;

B. Reviewing ~~sexual misconduct~~ interpersonal violence climate surveys that have been developed and previously used by institutions;

C. To ensure the adequacy and appropriateness of the proposed content, providing opportunities for written comment from organizations that work directly with victims and survivors of sexual ~~misconduct~~ violence, intimate partner violence and stalking;

D. Consulting with institutions on strategies for optimizing the effectiveness of the survey; and

E. Accounting for the diverse needs and differences of the State's institutions of higher education.

**89. Information to be gathered.** The ~~sexual misconduct~~ interpersonal violence climate survey must collect anonymous responses, and may not require the disclosure of personally identifiable information. and The survey must include the survey requirements of the federal Violation Against Women Act Reauthorization of 2022 and the must be designed, without being duplicative of the federal requirements, to gather the following information:

A. The number of incidents, both reported and unreported, of sexual ~~misconduct~~ violence, intimate partner violence and stalking at each institution of higher education;

B. ~~The timing and location of incidents of sexual misconduct~~ Generally, when or where incidents of sexual violence, intimate partner violence or stalking occurred, including but not limited to on-campus, off-campus, abroad, online or elsewhere, but without requiring students to disclose specific information about any incident;

C. Student awareness of the institution's policies and procedures related to sexual ~~misconduct~~ violence, intimate partner violence and stalking;

D. Whether a student reported sexual ~~misconduct~~ violence, intimate partner violence or stalking and, if so, to which campus resource or law enforcement agency the report was made, and, if not, the reason for the student's decision not to report;

E. Whether a student was informed of or referred to local, state, campus or other resources or victim support services, including appropriate medical care and legal services;

F. Whether a student was provided the option of protection from retaliation, access to school-based accommodations and criminal justice remedies;

G. Contextual factors of each incident of sexual ~~misconduct~~ violence, intimate partner violence or stalking, such as the involvement of force, incapacitation, ~~or~~ coercion or drug or alcohol facilitation;

H. Demographic information that could be used to identify at-risk groups including but not limited to gender, race and sexual orientation;

I. Perceptions of campus safety among members of the campus community and confidence in the institution's ability to protect against and respond in a timely and trauma-informed manner to incidents of sexual ~~misconduct~~ violence, intimate partner violence or stalking;

J. Whether a reporting party was satisfied with the institution of higher education's response to the reporting party's report;

K. Whether the student has chosen to withdraw or take a leave of absence from the institution or transferred to another institution due to being either the reporting party or the

responding party in an allegation of sexual ~~misconduct~~ violence, intimate partner violence and stalking;

L. Whether the student has withdrawn from any classes or been placed on academic probation as a result of an incident of sexual ~~misconduct~~ violence, intimate partner violence or stalking; and

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

**§12955. Sexual ~~misconduct~~ Interpersonal violence climate survey dissemination; aggregate data collection; reporting**

**1. Dissemination; conduct.** The commissioner shall provide the ~~sexual misconduct interpersonal violence~~ climate survey biennially to each institution, and each institution shall biennially conduct the ~~sexual misconduct interpersonal violence~~ climate survey on each campus. Each institution may append campus-specific questions to the survey, as long as any additional questions do not require the disclosure of any personally identifiable information and are not unnecessarily traumatizing for victims of sexual ~~misconduct~~ violence, intimate partner violence and stalking. All students must be offered an opportunity to complete *part or all of the ~~sexual misconduct interpersonal violence~~ climate survey.*

**2. Report to commissioner; website.** Within 120 days after completion of the ~~sexual misconduct interpersonal violence~~ climate survey, each institution shall submit a summary of the results and the raw *aggregate* data, with any personally identifiable information removed or redacted, supporting the results to the commissioner and post the following on the institution of higher education's publicly accessible website *in a way that does not personally identify any student:*

A. The summary of the results of the survey;

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

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

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

**4. Protection of personal information.** *The interpersonal violence climate survey must be designed to collect anonymous responses and may not publicly disclose any personally identifying information. A higher education institution may not use or attempt to use information collected through the interpersonal violence survey to identify or contact any individual student on campus, nor may the results of the survey be used as the basis for any type of investigation, disciplinary or legal proceeding.*

→ **§12956. Confidential resource advisors** ←

**1. Confidential resource advisor designated.** Each institution shall designate at least one confidential resource advisor to provide emergency and ongoing support to survivors of sexual violence. The confidential resource advisor must be designated based on experience in

sexual violence or domestic violence advocacy and a demonstrated ability to effectively provide victim services related to sexual ~~misconduct~~-violence, intimate partner violence or stalking. The confidential resource advisor may have another role at the institution of higher education, but may not be a student or a Title IX coordinator and may not have any other job responsibilities that may create a conflict of interest, including but not limited to a general counsel, director of athletics, dean of students or any employee who serves on the judicial or hearing board or to whom an appeal might be made. The confidential resource advisor must maintain a physical presence on campus that provides the confidential resource advisor a place to meet discretely and privately with students or employees in-person or remotely. An institution may contract or partner with a local, state or national victim advocacy organization to provide a confidential resource advisor under this subsection.

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

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

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

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

C. Training regarding awareness and prevention of sexual ~~misconduct~~-violence, intimate partner violence or stalking, federal policies, the institution's policy under section 12952 and trauma-informed response; and

D. Twenty hours of educational training annually on issues related to sexual violence including but not limited to the awareness and prevention of sexual violence, intimate partner violence and stalking and a trauma-informed response.

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

**5. Information and resources.** A confidential resource advisor is responsible for providing the following information and resources regarding incidents of sexual ~~misconduct~~ violence, intimate partner violence or stalking to students and employees:

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

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

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

D. When requested, campus escort services for security;

E. Available *supportive measures* including academic and residential life accommodations;

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

G. The institution's investigative, ~~and~~ disciplinary *and non-disciplinary* process;

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

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

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

**6. Direct assistance.** *If requested by the reporting party, the confidential resource advisor, using only the student or employee's identifying information, shall coordinate with the appropriate institutional personnel to arrange possible school-provided supportive measures, including those available through any memoranda of understanding with sexual assault support centers and domestic violence resource centers, and including but not limited to:*

*A. Changes in academic, dining, housing, transportation or campus employment;*

*B. Access to counseling and other mental health services;*

*C. Excused absences, academic counseling and tutoring;*

*D. Academic coursework accommodations;*

*E. Financial resources that are under the control of the institution, including if a student has to withdraw from a class or school entirely, such as tuition credit, opportunities to withdraw or re-enroll in a course without academic or financial penalty, and continued eligibility for scholarships and honors; and*

*Supportive measures may also be obtained, when appropriate, through disability services and the Title IX Coordinator at the higher education institution.*

**67. Additional actions.** *A confidential resource advisor, regarding an alleged incident of sexual ~~misconduct~~ violence, intimate partner violence or stalking:*

*A. Shall notify all school staff who are involved in providing or enforcing supportive measures or accommodations of their duties;*

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

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

*CD. May not be required to report the incident to the institution or a law enforcement agency unless otherwise required to do so by state or federal law and shall provide confidential services to students or employees;*



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

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

FG. May not provide services to both the reporting party and the responding party to the incident of sexual misconduct violence, intimate partner violence or stalking; an

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

78. Notice. Notice to a confidential resource advisor of an alleged incident of sexual misconduct violence, intimate partner violence or stalking or a confidential resources advisor's performance of a service under this section may not be considered actual or constructive notice of such an alleged incident to the institution of higher education at which the confidential resource advisor is employed or provides contracted services.

89. Retaliation. An institution may not discipline, penalize or otherwise retaliate against a confidential resource advisor for representing the interest of the student by advocating for the student's need for sexual assault crisis services or campus law enforcement services. If a conflict of interest arises for an institution in which a confidential resource advisor is advocating for a reporting party's need for sexual assault support services or campus or law enforcement services, the institution may not discipline, penalize or otherwise retaliate against the confidential resource advisor for representing the interest of the reporting party.

910. Privileged communications. Notwithstanding any provision of law to the contrary, except with regard to reporting, cooperating in an investigation or giving evidence pursuant to Title 22, chapter 958-A or 1071, or except at the request or with the consent of a victim of sexual assault, a confidential resource advisor may not be required to testify in any civil or criminal action, suit or proceeding at law or in equity about any information that the confidential resource advisor may have acquired in providing sexual assault counseling services. A confidential resource advisor or a rape crisis center may not be required to disclose to the court any records, notes, memoranda or documents containing confidential communications. When a court in the exercise of sound discretion determines the disclosure necessary to the proper administration of justice, information communicated to, or otherwise learned by, that confidential resource advisor in connection with the provision of sexual assault counseling services is not privileged and disclosure may be required. Nothing in this subsection prohibits a confidential resource advisor from testifying in a civil or criminal proceeding involving a person to whom the confidential resource advisor has provided services if that person has provided specific written consent to that confidential resource advisor. Communications between a reporting party and a confidential resource advisor are privileged from disclosure as follows:

A. A reporting party may refuse to disclose and may deny permission to a confidential resource advisor to disclose confidential written or oral communications between the reporting party and the confidential resource advisor and any written records, notes, memoranda or reports concerning the victim.

B. Except as provided in paragraph C, a confidential resource advisor may not be required through oral or written testimony or through production of documents to disclose to a court in

C.958-A = Adult Protective Services Act  
L. 1071 = Child Protection

criminal or civil proceedings or to any agency or person any confidential communications between the reporting party and the confidential resource advisor;

C. Privileged communications may be disclosed in the following circumstances:

(1) When disclosure is required under Title 22, chapter 958-A or 1071 and that disclosure is in accordance with provisions of either chapter;

(2) When a court in the exercise of its discretion determines the disclosure of the information necessary to proper administration of justice, an inspection of records may be held in camera by the judge to determine whether those records contain relevant information. This proceeding does not entitle an opposing party to examine the records unless those records are made available by the court; or

(3) When a reporting party dies or is incapable of giving consent and disclosure is required for an official law enforcement investigation or criminal proceeding regarding the cause of the victim's death or incapacitation.

**1011. Confidential criminal history record information.** Notwithstanding any provision of law to the contrary, a criminal justice agency, whether directly or through any intermediary, may disseminate confidential criminal history record information to a confidential resource advisor for the purpose of planning for the safety of a victim of sexual assault the party the confidential resource advisor is advising. A confidential resource advisor who receives confidential criminal history record information pursuant to this subsection shall use it solely for the purpose authorized by this subsection and may not further disseminate the information.

**12. Cross-examination.** Nothing in this section may be construed to limit either party's right of cross-examination of the confidential resource advisor in a civil or criminal proceeding if the confidential resource advisor testifies after written consent has been given.

### **§12957. Awareness programming**

An institution of higher education, with guidance from its Title IX coordinator, local law enforcement and the rape crisis sexual assault support center or the domestic violence support resource center identified in the institution's policy under section 12952, shall provide mandatory annual sexual misconduct prevention and awareness programming on sexual violence, intimate partner violence and stalking for all incoming students and all employees of the institution. The institution shall make available awareness training to all returning students of the institution. The prevention and awareness programming must that includes:

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

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

**3. Options for reporting.** Information on options relating to the reporting of an incident of sexual misconduct violence, intimate partner violence or stalking, the probable effects and potential outcomes of each option and the methods to report an incident of sexual misconduct violence, intimate partner violence or stalking, including confidential and anonymous disclosure;

**4. Institution's procedures; sanctions and penalties.** Information on the institution's procedures for resolving sexual misconduct complaints concerning sexual violence, intimate partner violence and stalking and the range of sanctions or penalties the institution may impose on students and employees found responsible for a violation;

**5. Contact information.** The name, contact information and role of the confidential resource advisor, information about the local sexual assault support center, their confidential services and how to access those services, information about the local domestic violence resource center, their confidential services and how to access those services, as well as the name and contact information of all other confidential personnel at the institution;

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

**7. Ongoing prevention and awareness.** Opportunities for ongoing sexual misconduct violence, intimate partner violence and stalking prevention and awareness programming, including through ongoing campaigns; and

**8. Sensitivity; marginalized groups.** An approach to training that recognizes and is sensitive to the disproportionate impacts and rate of occurrence of sexual violence, intimate partner violence and stalking on fact that members of certain marginalized groups, are more likely to experience sexual misconduct including but not limited to people of color, people with disabilities and LGBTQ+ people.

**§12958. Training for Title IX coordinators, campus safety personnel and individuals involved in the disciplinary process**

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

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

**A.** Information about providing a trauma-informed response when working with and interviewing victims of an alleged incident of sexual misconduct violence, intimate partner violence or stalking;

**B.** Information on particular types of conduct that constitute sexual misconduct violence, intimate partner violence, including same-sex dating violence, domestic violence, sexual assault and stalking;

**C.** Information on affirmative consent and the role drugs and alcohol may play in an individual's ability to consent;

**D.** The effects of trauma, including any neurobiological impact on an individual;

**E.** Cultural competency training regarding how sexual misconduct violence, intimate partner violence and stalking 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;

F. Methods of communicating sensitively and compassionately with a reporting party 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 and ~~communicating an awareness of the emotional impact of being wrongly accused~~; and

G. Training and information regarding how ~~dating violence, domestic violence, sexual assault~~ *sexual violence, intimate partner violence* and stalking may impact students with developmental or intellectual disabilities; and

H. ~~Methods of communicating sensitively with a responding party, including an awareness of the emotional impact of an allegation of sexual violence, intimate partner violence and stalking.~~

### **§12959. Reporting**

1. Report. By October 1, ~~2021~~ 2023 and annually thereafter, an institution of higher education shall prepare and submit to the commissioner, the Commissioner of Health and Human Services and the joint standing committee of the Legislature having jurisdiction over higher education matters *the Annual Security Report required under the federal Jeanne Clery Disclosure of Campus Security Policy and campus Statistic Act, codified as subsection (f) of 20 U.S.C. section 1092.* a report that includes the following:

A. ~~The total number of alleged incidents of sexual misconduct reported to the institution's Title IX coordinator by a student or employee of the institution against another student or employee of the institution;~~

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

C. ~~The number of students found responsible for violating the institution's policy prohibiting sexual misconduct;~~

D. ~~The number of students found not responsible for violating the institution's policy prohibiting sexual misconduct;~~

E. ~~The number of sanctions or penalties imposed by the institution as a result of a finding of responsibility for violating the institution's policy prohibiting sexual misconduct. The report must provide information in a manner that keeps confidential any personally identifiable information in compliance with state and federal privacy laws; and~~

F. ~~The number of students or employees who used a confidential resource advisor without instigating a Title IX investigation. The report must provide information in a manner that keeps confidential any personally identifiable information in compliance with state and federal privacy laws.~~

### **§12960. Immunity**

A reporting party or a witness who requests an investigation of *sexual misconduct violence, intimate partner violence or stalking* may not be subject to a disciplinary proceeding or sanction or penalty for a violation of the institution's student conduct policy related to drug or

alcohol use, trespassing or unauthorized entry of the institution's facilities or violation of the institution's policy under section 12952 that comes to the attention of the institution as part of the report or investigation unless the institution determines that the report was not made in good faith or that the violation was egregious. An egregious violation must include, but not be limited to, taking an action that places the health and safety of another person at risk. This section may not be construed to limit the ability of an institution to establish an immunity policy for student conduct violations not mentioned in this section.

### **§12961. Memoranda of understanding**

**1. Requirement.** No later than July 1, 2023, An institution of higher education shall enter into and maintain a memorandum of understanding with a Department of Health and Human Services-funded rape crisis sexual assault support center or and domestic violence support resource center to:

A. Assist in developing the institution's policy under section 12952, programming and trauma informed response training regarding sexual misconduct violence, intimate partner violence and stalking involving students or employees;

BA. Provide an off-campus option 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;

CB. Ensure that a student or employee of the institution may access free and confidential counseling and advocacy services either on campus or off campus related to sexual violence, intimate partner violence or stalking;

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

EC. Ensure cooperation and training between the institution and the rape crisis sexual assault support center or domestic violence support resource center regarding the roles that the institution, rape crisis sexual assault support center and domestic violence support resource center should play in responding to reports and disclosures of sexual misconduct violence, intimate partner violence and stalking against students and employees of the institution and the institution's protocols for providing support and services to such students and employees;

D. Ensure that a student or employee of the institution has access to mental health services either on campus or off campus relating to sexual violence, intimate partner violence or stalking; and

E. Make referrals for civil legal representation to assist with civil protections, including but not limited to those related to protections under the federal Title IX or protection from abuse orders.

**2. Confidential victim services; fees.** A memorandum of understanding may include an agreement, including a fee structure, between the rape crisis sexual assault support center or domestic violence support resource center under subsection 1 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 implementation of sexual misconduct violence, intimate partner violence and stalking education and prevention programs for students, the development of trauma-informed response staff training and prevention curricula and private on-site office space for an advocate from the rape crisis sexual assault support center or and domestic violence support resource center to meet with students or employees.

3. Waiver of requirements. The department may waive the requirements of this section in the case of an institution that demonstrates that it acted in good faith to enter into and maintain a memorandum of understanding pursuant to this section but was unable to obtain a signed memorandum. In the event that an institution is unable to enter into and maintain a memorandum of understanding pursuant to this section, the institution must provide contact information for local rape crisis centers or domestic violence support centers on its publicly accessible website.

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

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

Upon a determination by the commissioner 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 and after reasonable notice and opportunity for a hearing, the commissioner may impose an administrative penalty for each violation not to exceed \$150,000, adjusted annually for inflation by rule, or 1% of the institution's annual operating budget, whichever is lower.

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

#### **§12963. Rulemaking**

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

### SUMMARY

This amendment, which is the majority report of the committee, does the following:

1. Removes references to "sexual misconduct" and replaces that phrase with sexual violence, intimate partner violence or stalking and defines each of those terms and amends the definition of "student";
2. Replaces references to a local rape crisis center with a sexual assault support center and a domestic violence support center to a domestic violence resource center;
3. Requires that the policy, and related procedures, be adopted no later than July 1, 2023 and that the policy must be available on each institution's campus website and in student handbooks, and that notices of policy availability and outreach for victims of sexual violence,

intimate partner violence and stalking must be posted at locations where students regularly congregate.

4. Amends the content of the policy;

5. Amends the confidentiality provision to clarify that identity of a reporting party and responding party and all information related to an incident of sexual violence, intimate partner violence or stalking confidential and may not be disclosed by the institution of higher education except as necessary to carry out a disciplinary process or as otherwise permitted under state or federal law.

6. Amends the name of the Higher Education Sexual Misconduct Advisory Commission to the Higher Education Interpersonal Violence Commission and amends its membership, initial terms of appointment, quorum requirements, and duties;

7. Provides that institutions of higher education may contract or partner with a local, state, or national organization to provide a confidential resource advisor on campus;

8. Provides that if requested by a student or employee, the confidential resource advisor must provide direct assistance coordinating with the appropriate institutional personnel to arrange possible school-provided support measures;

9. Amends the provision that provides for privileged communications between a victim and a confidential resource advisor and the conditions under which those communications are privileged from disclosure and when they may be disclosed;

10. Simplifies the reporting requirements of the institution of higher education to require that the institutions submit the Annual Security Report under the federal Clery Act;

11. Adds that the memoranda of understanding with a sexual assault support center or domestic violence resource center must help ensure that a student or employee of the institution has access to mental health services and make referrals to civil legal representation to assist with civil protections; and

12. Removes the provisions of the bill that relate to Department of Education oversight, enforcement, penalties and rulemaking.

Current law providing for privileged communications

**Title 16: COURT PROCEDURE -- EVIDENCE**

**Chapter 1: WITNESSES**

Subchapter 2: QUALIFICATIONS, PRIVILEGES AND CREDIBILITY

**§53-A. Privileged communications to sexual assault counselors**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Rape crisis center" means any publicly or privately funded agency, institution or facility existing in this State, having as its purpose to reduce the trauma of sexual assault to sexual assault victims and their families through crisis intervention, counseling, medical and legal information and dissemination of educational information pertaining to sexual assault. [RR 2013, c. 2, §29 (COR).]

B. "Sexual assault counselor" means a person who :

(1) Has undergone a program of training from a rape crisis center that includes, but is not limited to: law, medicine, societal attitudes, crisis intervention, counseling techniques and referral services; and

(2) Is either a staff member, paid or unpaid, or under the supervision of a staff member of a rape crisis center. [RR 2013, c. 2, §29 (COR).]

C. "Confidential criminal history record information" has the same meaning as in section 703, subsection 2 ([./16/title16sec703.html](https://legis.maine.gov/legis/statutes/16/title16sec703.html)). [PL 2013, c. 588, Pt. E, §8 (NEW).]

D. "Criminal justice agency" has the same meaning as in section 703, subsection 4 ([./16/title16sec703.html](https://legis.maine.gov/legis/statutes/16/title16sec703.html)).

[PL 2013, c. 588, Pt. E, §8 (NEW).]

[RR 2013, c. 2, §29 (COR).]

**2. Privileged communications.** Except with regard to reporting, cooperating in an investigation or giving evidence pursuant to Title 22, chapter 958-A ([./22/title22ch958-Asec0.html](https://legis.maine.gov/legis/statutes/22/title22ch958-Asec0.html)) or 1071, or except at the request, or with the consent of, the victim of sexual assault, a sexual assault counselor may not be required to testify in any civil or criminal action, suit or proceeding at law or in equity about any information that the sexual assault counselor may have acquired in providing sexual assault counseling services. A sexual assault counselor or a rape crisis center may not be required to disclose to the court any records, notes, memoranda or documents containing confidential communications. When a court in the exercise of sound discretion determines the disclosure necessary to the proper administration of justice, information communicated to, or otherwise learned by, that sexual assault counselor in connection with the provision of sexual assault counseling services is not privileged and disclosure may be required.

[PL 2007, c. 577, §1 (AMD).]

24



**3. Confidential criminal history record information.** A Maine criminal justice agency, whether directly or through any intermediary, may disseminate confidential criminal history record information to a sexual assault counselor for the purpose of planning for the safety of a victim of sexual assault. A sexual assault counselor who receives confidential criminal history record information pursuant to this subsection shall use it solely for the purpose authorized by this subsection and may not further disseminate the information.

[PL 2013, c. 588, Pt. E, §9 (NEW).]

SECTION HISTORY

PL 1983, c. 319 (NEW). PL 2007, c. 577, §1 (AMD). RR 2013, c. 2, §29 (COR). PL 2013, c. 588, Pt. E, §§8, 9 (AMD).

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.  
If you need legal advice, please consult a qualified attorney.

Office of the Revisor of Statutes (mailto:webmaster\_ros@legislature.maine.gov) · 7 State House Station · State House Room 109 · Augusta, Maine 04333-0007

Data for this page extracted on 11/18/2021 08:05:59.

25

**Title 16: COURT PROCEDURE -- EVIDENCE**

**Chapter 1: WITNESSES**

**Subchapter 2: QUALIFICATIONS, PRIVILEGES AND CREDIBILITY**

**§53-B. Privileged communications to victim advocate; family violence**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Advocate" means an employee of or volunteer for a nongovernmental or Maine tribal program for victims of domestic or family violence who:

(1) Has undergone at least 30 hours of training; and

(2) As a primary function with the program gives advice to, counsels or assists victims, supervises employees or volunteers who perform that function or administers the program. [PL 2013, c. 478, §3 (AMD).]

A-1. "Confidential communications" means all information, whether written or oral, transmitted between a victim and a domestic violence advocate in the course of the working relationship. "Confidential communications" includes, but is not limited to, information received or given by the advocate in the course of the working relationship, advice, records, reports, notes, memoranda, working papers, electronic communications, case files, history and statistical data, including name, date of birth and social security number, that personally identify the victim. [PL 2005, c. 388, §1 (NEW).]

A-2. "Confidential criminal history record information" has the same meaning as in section 703, subsection 2 ([./16/title16sec703.html](https://legis.maine.gov/legis/statutes/16/title16sec703.html)). [PL 2013, c. 478, §4 (NEW).]

A-3. "Criminal justice agency" has the same meaning as in section 703, subsection 4 ([./16/title16sec703.html](https://legis.maine.gov/legis/statutes/16/title16sec703.html)). [PL 2013, c. 478, §5 (NEW).]

B. "Victim" means a victim of domestic or family violence. [PL 1995, c. 128, §1 (NEW).]

[PL 2013, c. 478, §§3-5 (AMD).]

**1-A. Confidential criminal history record information.** A Maine criminal justice agency, whether directly or through any intermediary, may disseminate confidential criminal history record information to an advocate for the purpose of planning for the safety of a victim of domestic violence. An advocate who receives confidential criminal history record information pursuant to this subsection shall use it solely for the purpose authorized by this subsection and may not further disseminate the information.

[PL 2013, c. 588, Pt. E, §10 (AMD).]

**2. Privileged communication.** Communications are privileged from disclosure as follows.

26

A. A victim may refuse to disclose and may deny permission to an advocate to disclose confidential written or oral communications between the victim and the advocate and written records, notes, memoranda or reports concerning the victim. [PL 1995, c. 128, §1 (NEW).]

B. Except as provided in [subsection 3 \(../16/title16sec53-B.html\)](#), a victim, advocate or advocate's agency may not be required through oral or written testimony or through production of documents to disclose to a court in criminal or civil proceedings or to any other agency or person confidential communications between the victim and the advocate. [PL 1995, c. 128, §1 (NEW).]

[PL 1995, c. 128, §1 (NEW).]

**3. Exceptions.** A person may not be required to publicly disclose the address or location of a domestic or family violence shelter or safe house, except that privileged communications may be disclosed in the following cases:

A. When disclosure is required under [Title 22, chapter 958-A \(../22/title22ch958-Asec0.html\)](#) or 1071 and that disclosure is in accordance with the provisions of either chapter; [PL 2007, c. 577, §2 (AMD).]

B. When a court in the exercise of its discretion determines the disclosure of the information necessary to the proper administration of justice, an inspection of records may be held in camera by the judge to determine whether those records contain relevant information. This proceeding does not entitle an opposing party to examine the records unless those records are made available by the court; or [PL 1995, c. 128, §1 (NEW).]

C. When a victim dies or is incapable of giving consent and disclosure is required for an official law enforcement investigation or criminal proceeding regarding the cause of that victim's death or incapacitation. [PL 1995, c. 128, §1 (NEW).]

[PL 2007, c. 577, §2 (AMD).]

#### SECTION HISTORY

PL 1995, c. 128, §1 (NEW). PL 2005, c. 388, §1 (AMD). PL 2007, c. 577, §2 (AMD). PL 2013, c. 478, §§3-6 (AMD). PL 2013, c. 588, Pt. E, §10 (AMD).

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.  
If you need legal advice, please consult a qualified attorney.

[Office of the Revisor of Statutes \(mailto:webmaster\\_ros@legislature.maine.gov\)](mailto:webmaster_ros@legislature.maine.gov) · 7 State House Station · State House Room 108 · Augusta, Maine 04333-0007

Data for this page extracted on 11/18/2021 08:05:59.

27

**Title 16: COURT PROCEDURE -- EVIDENCE****Chapter 1: WITNESSES****Subchapter 2: QUALIFICATIONS, PRIVILEGES AND CREDIBILITY****§53-C. Privileged communications to governmental victim witness advocates or coordinators**

1. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Crime" means a criminal offense in which there is a victim, as defined in this section. [PL 1999, c. 369, §1 (NEW).]

B. "Victim" means:

(1) A person against whom a crime has been committed;

(2) The immediate family of a victim of a crime if:

(a) The underlying crime is one of domestic violence or sexual assault or one in which the family suffered serious physical trauma or serious financial loss; or

(b) Due to death, age or physical or mental disease, disorder or defect, the victim is unable to participate as allowed under this chapter. [PL 1999, c. 369, §1 (NEW).]

C. "Victim witness advocate" or "victim witness coordinator" means an employee of or volunteer for a district attorney, the Attorney General or the United States Attorney whose primary job function is to advise, counsel or assist victims or witnesses of crimes, to supervise other employees or volunteers who perform that function or to administer the program. [PL 1999, c. 369, §1 (NEW).]

[PL 1999, c. 369, §1 (NEW).]

2. **Privileged communications.** Communications are privileged from disclosure as follows.

A. A victim may refuse to disclose and may deny permission to a victim witness advocate or coordinator to disclose confidential written or oral communications between the victim and the advocate or coordinator and written records, notes, memoranda or reports concerning the victim. [PL 1999, c. 369, §1 (NEW).]

B. Except as provided in subsection 3 ([./16/title16sec53-C.html](https://legis.maine.gov/legis/statutes/16/title16sec53-C.html)), a victim, advocate or coordinator or the victim advocate's or coordinator's employer may not be required, through oral or written testimony or through production of documents, to disclose to a court in criminal or civil proceedings or to any other agency or person confidential communications between the victim and the advocate or coordinator. [PL 1999, c. 369, §1 (NEW).]

[PL 1999, c. 369, §1 (NEW).]

28

**3. Exceptions. Privileged communications may be disclosed in the following cases:**

**A. Disclosure may be made to the district attorney, Attorney General or the United States Attorney or their assistants; [PL 1999, c. 369, §1 (NEW).]**

**B. When disclosure is required under Title 22, chapter 958-A ([./22/title22ch958-Asec0.html](https://www.maine.gov/legis/statutes/22/title22ch958-Asec0.html)) or 1071 and that disclosure is in accordance with either chapter; [PL 2007, c. 577, §3 (AMD).]**

**C. When a court in the exercise of its discretion determines the disclosure of information necessary to the proper administration of justice, an inspection of records may be held in camera by the judge to determine whether those records contain relevant information. This proceeding does not entitle an opposing party to examine the records unless those records are made available by the court; [PL 1999, c. 369, §1 (NEW).]**

**D. When a victim dies or is incapable of giving consent and disclosure is required for an official law enforcement investigation or criminal proceeding regarding the cause of that victim's death or incapacitation; or [PL 1999, c. 369, §1 (NEW).]**

**E. Evidence of an exculpatory nature must be disclosed to the criminal defendants pursuant to the Maine Rules of Unified Criminal Procedure, Rule 16. [PL 2015, c. 431, §34 (AMD).]**

[PL 2015, c. 431, §34 (AMD).]

**SECTION HISTORY**

PL 1999, c. 369, §1 (NEW). PL 2007, c. 577, §3 (AMD). PL 2015, c. 431, §34 (AMD).

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.  
If you need legal advice, please consult a qualified attorney.

[Office of the Revisor of Statutes \(mailto:webmaster\\_ros@legislature.maine.gov\)](mailto:webmaster_ros@legislature.maine.gov) · 7 State House Station · State House Room 108 · Augusta, Maine 04333-0007

Data for this page extracted on 11/18/2021 08:05:59.

29

**Title 20-A: EDUCATION**  
**Part 3: ELEMENTARY AND SECONDARY EDUCATION**  
**Chapter 201: GENERAL PROVISIONS**

## §4008. Privileged communications

**1. Definitions.** As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Client" means a person who has actively sought or is in the process of seeking professional help from a school counselor or school social worker. [PL 1989, c. 396, §1 (AMD).]

B. "School counselor" means a person who is employed as a school counselor in a school setting and who:

(1) Is certified as a school counselor by the department; or

(2) Possesses a minimum of a master's degree in an approved program in guidance and counseling. [PL 1981, c. 693, §§5, 8 (NEW).]

C. "School social worker" means a person who is employed as a school social worker in a school setting and who:

(1) Is licensed as a social worker by the State Board of Social Worker Licensure; or

(2) Possesses a bachelor's degree and has been granted a conditional license from the State Board of Social Worker Licensure. [PL 1989, c. 396, §2 (NEW).]

[PL 1989, c. 396, §§1, 2 (AMD).]

**2. Privileged communication.** A school counselor or school social worker may not be required, except as provided by this section, to divulge or release information gathered during a counseling relation with a client or with the parent, guardian or a person or agency having legal custody of a minor client. A counseling relation and the information resulting from it shall be kept confidential consistent with the professional obligations of the counselor or social worker.

[PL 1989, c. 396, §3 (AMD).]

**3. Exceptions.** This section shall not apply to the extent that disclosure of information is necessary:

A. To comply with Title 22, chapter 1071 ([./22/title22ch1071sec0.html](https://legis.maine.gov/legis/statutes/22/title22ch1071sec0.html)); and [PL 1983, c. 781, §1 (AMD).]

B. To report to an appropriate authority or to take appropriate emergency measure when:

(1) The client's condition requires others to assume responsibility for the client; or

(2) There is clear and imminent danger to the client or others. [PL 1983, c. 806, §42 (AMD).]

30

PUBLIC RECORDS EXCEPTION REVIEW CHECKLIST

Revised 2/28/2022

A. Whether the record protected needs to be collected (Conclusion of committee of jurisdiction?)	
B. The value to the agency or official or to the public in maintaining the record (Conclusion of committee of jurisdiction?)	
C. Whether federal law requires the record to be confidential	
Does the proposed exception meet one or more of the following (D, E, F, G or I)	
D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in disclosure	
E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records	
F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records	
G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records	
G-1. Whether public access to the record ensures or would ensure that members of the public are able to make informed health and safety decisions	
H. Whether the proposed exception is as narrowly tailored as possible ( <i>applies in all reviews</i> )	
I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception	
<p><b>NOTE: 5 MRSA §95-C, sub-§1, ¶C provides that records of archival value that are transferred to the Maine State Archives for permanent retention lose their confidential status, even if the statute designates such records as confidential, when they have been in existence for 75 years.</b></p>	
<p><b><i>If the proposed exception creates broad confidentiality for an entity:</i></b> <b>2-A. Accountability review of agency or official.</b> In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.</p>	
<p><b>2-B. Accessibility of public records.</b> In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.</p>	

PUBLIC RECORDS EXCEPTION REVIEW CHECKLIST

Revised 2/28/2022

A. Whether the record protected needs to be collected (Conclusion of committee of jurisdiction?)	
B. The value to the agency or official or to the public in maintaining the record (Conclusion of committee of jurisdiction?)	
C. Whether federal law requires the record to be confidential	
Does the proposed exception meet one or more of the following (D, E, F, G or I)	
D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in disclosure	
E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records	
F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records	
G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records	
G-1. Whether public access to the record ensures or would ensure that members of the public are able to make informed health and safety decisions	
H. Whether the proposed exception is as narrowly tailored as possible ( <i>applies in all reviews</i> )	
I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception	
<b>NOTE: 5 MRS-A §95-C, sub-§1, ¶C provides that records of archival value that are transferred to the Maine State Archives for permanent retention lose their confidential status, even if the statute designates such records as confidential, when they have been in existence for 75 years.</b>	
<b><i>If the proposed exception creates broad confidentiality for an entity:</i></b> <b>2-A. Accountability review of agency or official.</b> In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.	
<b>2-B. Accessibility of public records.</b> In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.	



PUBLIC RECORDS EXCEPTION REVIEW CHECKLIST

Revised 2/28/2022

A. Whether the record protected needs to be collected (Conclusion of committee of jurisdiction?)	
B. The value to the agency or official or to the public in maintaining the record (Conclusion of committee of jurisdiction?)	
C. Whether federal law requires the record to be confidential	
Does the proposed exception meet one or more of the following (D, E, F, G or I)	
D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in disclosure	
E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records	
F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records	
G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records	
G-1. Whether public access to the record ensures or would ensure that members of the public are able to make informed health and safety decisions	
H. Whether the proposed exception is as narrowly tailored as possible ( <i>applies in all reviews</i> )	
I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception	
<b>NOTE: 5 MRSA §95-C, sub-§1, ¶C provides that records of archival value that are transferred to the Maine State Archives for permanent retention lose their confidential status, even if the statute designates such records as confidential, when they have been in existence for 75 years.</b>	
<b><i>If the proposed exception creates broad confidentiality for an entity:</i></b> <b>2-A. Accountability review of agency or official.</b> In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.	
<b>2-B. Accessibility of public records.</b> In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.	