

1 **HIGHER EDUCATION RESPONSES TO ALLEGATIONS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kim F. Coleman**

5 Senate Sponsor: Todd Weiler

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts provisions related to reports of sexual violence at postsecondary
10 institutions.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ enacts provisions that prohibit a postsecondary institution from imposing a sanction
15 on a student for violating the institution's code of conduct under certain
16 circumstances;
- 17 ▶ enacts provisions related to a postsecondary institution engaging with an off-campus
18 law enforcement agency in response to an allegation of sexual violence;
- 19 ▶ enacts other provisions related to the duties of a postsecondary institution in
20 circumstances related to an allegation of sexual violence; and
- 21 ▶ creates criminal offenses related to retaliation against a victim of or a witness to an
22 act of sexual violence under certain circumstances.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**

28 ENACTS:

29 **53B-28-301**, Utah Code Annotated 1953

- 30 [53B-28-302](#), Utah Code Annotated 1953
- 31 [53B-28-303](#), Utah Code Annotated 1953
- 32 [53B-28-304](#), Utah Code Annotated 1953

33

34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section **53B-28-301** is enacted to read:

36 **Part 3. Campus Sexual Violence**

37 **53B-28-301. Definitions.**

38 As used in this part:

39 (1) "Alleged perpetrator" means an individual whom a victim alleges committed an act
40 of sexual violence against the victim.

41 (2) "Code of conduct" means an institution's student code of conduct, student code of
42 ethics, honor code, or other policy under which the institution may sanction a student.

43 (3) "Covered allegation" means an allegation made to an institution that an individual
44 committed an act of sexual violence.

45 (4) "Law enforcement agency" means an off-campus law enforcement agency of the
46 unit of local government with jurisdiction to respond to a covered allegation.

47 (5) "Sexual violence" means:

48 (a) sexual abuse as described in 18 U.S.C. Sec. 2242;

49 (b) aggravated sexual abuse as described in 18 U.S.C. Sec. 2241;

50 (c) assault resulting in substantial bodily injury as described in 18 U.S.C. Sec.
51 113(a)(7);

52 (d) sexual assault;

53 (e) dating violence;

54 (f) domestic violence; or

55 (g) stalking.

56 (6) "Student" means an individual enrolled in an institution.

57 (7) "Victim" means a student who alleges that the student was a victim of sexual

58 violence.

59 Section 2. Section **53B-28-302** is enacted to read:

60 **53B-28-302. Code of conduct violation -- Report of sexual violence.**

61 An institution may not sanction a student for a code of conduct violation related to the
62 use of drugs or alcohol if:

63 (1) the student is:

64 (a) a victim of an act of sexual violence; or

65 (b) a witness to an act of sexual violence;

66 (2) the student reports to the institution, in good faith, a covered allegation related to
67 the act of sexual violence described in Subsection (1); and

68 (3) the institution learns of the student's code of conduct violation due to the student's
69 report described in Subsection (2).

70 Section 3. Section **53B-28-303** is enacted to read:

71 **53B-28-303. Institution engagement with a law enforcement agency -- Articulate**
72 **and significant threat -- Notification to victim.**

73 (1) (a) An institution shall keep confidential from a law enforcement agency a covered
74 allegation reported to the institution by the victim of the covered allegation.

75 (b) Notwithstanding Subsection (1)(a), an institution may engage with a law
76 enforcement agency in response to a covered allegation described in Subsection (1)(a):

77 (i) if the victim consents to the institution engaging with the law enforcement agency;
78 or

79 (ii) in accordance with Subsection (2).

80 (2) (a) Subject to Subsection (3), an institution that receives a report described in
81 Subsection (1)(a) may engage with a law enforcement agency in response to the covered
82 allegation if the institution determines, in accordance with Subsection (2)(b), that the
83 information in the covered allegation creates an articulable and significant threat to individual
84 or campus safety at the institution.

85 (b) To determine whether the information in a covered allegation creates an articulable

86 and significant threat described in Subsection (2)(a), the institution shall consider, if the
87 information is known to the institution, at least the following factors:

88 (i) whether the circumstances of the covered allegation suggest an increased risk that
89 the alleged perpetrator will commit an additional act of sexual violence or other violence;

90 (ii) whether the alleged perpetrator has an arrest history that indicates a history of
91 sexual violence or other violence;

92 (iii) whether records from the alleged perpetrator's previous postsecondary institution
93 indicate that the alleged perpetrator has a history of sexual violence or other violence;

94 (iv) whether the alleged perpetrator is alleged to have threatened further sexual
95 violence or other violence against the victim or another individual;

96 (v) whether the act of sexual violence was committed by more than one alleged
97 perpetrator;

98 (vi) whether the circumstances of the covered allegation suggest there is an increased
99 risk of future acts of sexual violence under similar circumstances;

100 (vii) whether the act of sexual violence was perpetrated with a weapon; and

101 (viii) the age of the victim.

102 (3) An institution shall:

103 (a) before engaging with a law enforcement agency in accordance with Subsection (2),
104 provide notice to the victim of the following:

105 (i) the institution's intent to engage with a law enforcement agency;

106 (ii) the law enforcement agency with which the institution intends to engage; and

107 (iii) the reason the institution made the determination described in Subsection (2); and

108 (b) in engaging with a law enforcement agency under Subsection (2):

109 (i) maintain the confidentiality of the victim; and

110 (ii) disclose the minimum information required to appropriately address the threat
111 described in Subsection (2)(a).

112 (4) Nothing in this section supersedes:

113 (a) an obligation described in Section [62A-3-305](#), [62A-4a-403](#), or [78B-3-502](#); or

114 (b) a requirement described in Part 2, Confidential Communications for Institutional
115 Advocacy Services Act.

116 Section 4. Section **53B-28-304** is enacted to read:

117 **53B-28-304. Criminal retaliation against a victim or a witness.**

118 (1) As used in this section:

119 (a) "Bodily injury" means the same as that term is defined in Section [76-1-601](#).

120 (b) "Damage" means physical damage to an individual's property.

121 (2) An individual is guilty of a third degree felony if the individual inflicts bodily
122 injury or damage:

123 (a) upon a victim of or a witness to an act of sexual violence alleged in a covered
124 allegation; and

125 (b) in retaliation for the victim's or the witness's:

126 (i) report of the covered allegation; or

127 (ii) involvement in an investigation initiated by the institution in response to the
128 covered allegation.

129 (3) An individual is guilty of a third degree felony if the individual:

130 (a) communicates an intention to inflict bodily injury:

131 (i) upon a victim of or a witness to an act of sexual violence alleged in a covered
132 allegation; and

133 (ii) in retaliation for the victim's or the witness's:

134 (A) report of the covered allegation; or

135 (B) involvement in an investigation initiated by the institution in response to the
136 covered allegation; and

137 (b) (i) intends the communication described in Subsection (3)(a) as a threat against the
138 victim or the witness; or

139 (ii) knows that the communication described in Subsection (3)(a) will be viewed as a
140 threat against the victim or the witness.