

Senate Bill 19-007 requires institutions of higher education to update their policies on sexual misconduct in accordance with new State mandates. Institutions of higher education are defined within the bill as all accredited campuses within Colorado, including state, private, local district, and area technical colleges. The new regulations include making known options following sexual misconduct, the resources available, the procedures for investigation, new adjudications, the informing of protections for persons involved, training on awareness and prevention of sexual misconduct, reporting to the Department of Higher Education, and biennial summits. In accordance with the bill, all new policies and additions must be promoted through postings on the institution's website annually, along with the distribution of policy information.

The objective of the bill is to reduce sexual misconduct on college campuses, including sexual intimidation, exploitation, harassment, and assault. The National Sexual Violence Resource Center reports, one in five female students and one in sixteen male students will experience sexual misconduct while attending college (NSVRC, 2015). In 2016, Congressional Documents stated sexual misconduct victims feared poor treatment and lacked the knowledge needed to report incidents, affecting the number of incidents reported. In addition, 21 percent of colleges and universities are not providing training for faculty and staff on how to respond to sexual misconduct, moreover, 30 percent do not provide any sexual misconduct training for students (Washington, 2016).

Sexual misconduct has the potential to create various negative non-pecuniary externalities. A non-pecuniary externality is a cost incurred by someone as a consequence of the

actions of others, who have not appropriately accounted for these costs. Regardless of the events leading to an incident of sexual misconduct, the voluntary action of an abuser directly inflicts harm on a victim, leading to negative non-pecuniary externalities. These negative non-pecuniary externalities can include poor academic performance, higher risk of dropping out, fear, agitation, insomnia, panic attacks, chronic pain, generalized anxiety, depression, suicidality, substance abuse, sexual dysfunction, and posttraumatic stress disorder (Morean, et al., 2018; Mengo & Black, 2015).

Given the various negative non-pecuniary externalities resulting from sexual misconduct and the prevalence of it within institutions of higher education, government intervention is warranted. Economic analysis of Senate Bill 19-007 finds a positive net impact from the promotion of informing students, as well as the creation of negative non-pecuniary externalities within the proposed investigation process. This briefing identifies the positive effect the bill will likely have in deterring sexual misconduct within institutions, the negative externalities it generates and provides potential amendments.

By requiring institutions to inform students of their options, the resources available, procedures for investigation, and protections for persons involved it alleviates concerns victims have regarding the process for reporting an incident of sexual misconduct. Students who are informed of how to report incidents and are aware of the resources available, are able to more easily report incidents and utilize resources. In addition, requiring the protections for persons involved to be known reassures students they will not be self-incriminating for other offenses leading to incidents, such as underage drinking. The promotion of information has the potential to increase the likelihood of reporting, the number of students who utilize resources, and to discourage abusers due to the increased risk of being reported.

The requirement to offer training on awareness and prevention of sexual misconduct will educate institutions on what it is and how to prevent it. This will likely reduce incidents by signaling to students what constitutes a violation before it happens and informing them of ways to prevent it. By reporting the training to the Department of Higher Education it will keep the State informed and provide comparative information which can be used to investigate what forms of training are more effective.

Biennial summits organized by the Planning Committee will help facilitate communication between institutions, officials, staff, and students. Expert speakers on sexual misconduct will be able to provide insights for institutions on how to prevent and handle sexual misconduct incidents. Reports of the events given to the Education Committees of both the Senate and House will inform the State of institutional levels of sexual misconduct, keeping both committees informed on the subject. These summits are expected to help initiate institutional collaboration on how to best combat sexual misconduct.

The proposed bill will require institutions to investigate claims for certain off-campus events, in addition to on-campus incidents. The negative non-pecuniary externalities a student encounters from sexual misconduct leads to negative effects on and off campus, directly affect their education. By requiring institutions to be involved within certain off-campus incidents, it allows the institution to help reduce the negative non-pecuniary externalities affecting a student's education and allows the institution greater grounds to investigate. This will help in deterring sexual misconduct by increasing the ability of a victim to report incidents to their institution, and increases the risk an abuser has of being reported. The only issue being the vagueness regarding what constitutes 'certain off-campus events', requiring further clarification.

The aspects of the bill stated above are projected to reduce the presence of sexual misconduct within institutions, however new adjudications, such as the prohibiting of cross-examinations, have the potential to create various negative non-pecuniary externalities. Cross-examinations have been said to deter the reporting of sexual misconduct (Salovey, 2019), although there is no statistical data to support these claims (Johnson, 2019). For the purpose of criminal proceedings cross-examinations have been recognized as a vital part in determining the truth and for this reason, is protected under the Constitution (Cohn).

Forgoing cross-examinations may allow for an investigation less distressing for victims, however, it leads to various negative non-pecuniary externalities. It has the potential to incentivize sexual misconduct, for institutional investigations will not be as vigorous, and risks allowing abusers off the hook. By prohibiting cross-examinations it allows institutions to determine the guilt of students based on an investigation lacking a vital process used to help determine the truth. And so, even known it might provide a less upsetting investigation for victims, the risk of incentivizing sexual misconduct and the guilty being found innocent is a negative non-pecuniary externalities working against the goal of the bill.

The aim of Senate Bill 19-007 is to reassure the safety of students seeking higher education by discouraging sexual misconduct and lessening the associated negative non-pecuniary externalities. Overall the bill is likely to have a positive net impact in reducing sexual misconduct, however prohibiting cross-examination acts against this and will likely lead to an increase of negative non-pecuniary externalities. In regards to an institution's ability to investigate certain off-campus events, further clarification is needed.

Potential amendments to Senate Bill 19-007 involve expanding an institution's ability to investigate certain off-campus events to all incidents involving a student or students. No matter

where sexual misconduct occurs the non-pecuniary externalities affect a student's education, and warrant institutional involvement. In cases where the abuser is a member of the institution and the victim not, the institution should be allowed to investigate the incident following victim approval and or be able to implement disciplinary actions following criminal charges. For instances where the victim is a member of the institution and the abuse, not the institution should be made aware to help lessen the negative non-pecuniary externalities.

Cross-examination should not be prohibited and instead, be regulated. It has been found to be a vital part in helping determine truth and prohibiting it generates various negative non-pecuniary externalities. To limit the deterrence of following through with investigations due to the fear of cross-examinations, the process should be held individually and in private. Each person involved should have a representative from the institution to examine the other party, with limits on the relevance to questions. By limiting the potential stresses cross-examinations can cause for those reporting incidents, it allows the negative non-pecuniary externalities created by prohibiting the process to be resolved.

Upon these amendments, the bill has an increased probability of reducing sexual misconduct and the associated negative non-pecuniary externalities. Conditional to these amendments, the Senate Bill 19-007 should be passed.

WORK CITED

Ada Meloy, Washington, (2019) “Why are campus sexual assaults not handled by law enforcement?” The Washington Post, https://www.washingtonpost.com/opinions/why-are-campus-sexual-assaults-not-handled-by-law-enforcement/2014/07/04/f58385ec-0222-11e4-8bb2-6b921949ecfa_story.html?noredirect=on&utm_term=.31ad78658b51

Washington, Congressional Documents, (Sep 13, 2016). “As students begin academic year, norton introduces resolution to designate september as 'national campus sexual assault awareness month’”. (2016). (). Washington: Federal Information & News Dispatch, Inc. Retrieved from ProQuest Central; Social Science Premium Collection Retrieved from <https://colorado.idm.oclc.org/login?url=https://search-proquest-com.colorado.idm.oclc.org/docview/1819466180?accountid=14503>

Baker M. R., Frazier P. A., Greer C., Paulsen J. A., Howard K., Meredith L. N., Shallcross S. L. (2016). Sexual victimization history predicts academic performance in college women.

Campbell R. (2013). The psychological impact of rape victims’ experiences with the legal, medical, and mental health systems. In Sisti D. A., Caplan A. L., Rimon-Greenspan H. (Eds.), *Applied ethics in mental health care: An interdisciplinary reader* (pp. 149-178). Cambridge, MA: MIT Press *Journal of Counseling Psychology*, 63, 685-692.

Eisenberg M. E., Lust K. A., Hannan P. J., Porta C. (2016). Campus sexual violence resources and emotional health of college women who have experienced sexual assault. *Violence and Victims*, 31, 274-284.

Jordan C. E., Campbell R., Follingstad D. (2010). Violence and women’s mental health: The impact of physical, sexual, and psychological aggression. *Annual Review of Clinical Psychology*, 6, 607-628.

Kilpatrick D. G., Amstadter A. B., Resnick H. S., Ruggiero K. J. (2007). Rape-related PTSD: Issues and interventions. *Psychiatric Times*, 24, 50-58.

Koss M. P., Bailey J. A., Yuan N. P., Herrera V. M., Lichter E. L. (2003). Depression and PTSD in survivors of male violence: Research and training initiatives to facilitate recovery. *Psychology of Women Quarterly*, 27, 130-142.

Perilloux C., Duntley J. D., Buss D. M. (2012). The costs of rape. *Archives of Sexual Behavior*, 41, 1099-1106.

Morean, M. E., Darling, N., Smit, J., DeFeis, J., Wergeles, M., Kurzer-Yashin, D., & Custer, K. (2018). Preventing and responding to sexual misconduct: Preliminary efficacy of a peer-led bystander training program for preventing sexual misconduct and reducing heavy drinking among collegiate athletes. *Journal of Interpersonal Violence*, , 88626051877755. doi:10.1177/0886260518777555 <https://link-springer-com.colorado.idm.oclc.org/article/10.1007%2Fs10896-018-9968-1>

Mengo, Cecillia & Black, Beverly, (2015), “Violence Victimization on a College Campus: Impact on GPA and School Dropout”, School of Social Work, University of Texas at

Arlington, TX, USA. <https://journals-sagepub-com.colorado.idm.oclc.org/doi/10.1177/1521025115584750>

Yeater, E. A., Witkiewitz, K., López, G., Ross, R. S., Vitek, K., & Bryan, A. (2018). Latent Profile Analysis of Alcohol Consumption and Sexual Attitudes Among College Women: Associations With Sexual Victimization Risk. *Violence Against Women*, 24(11), 1279–1298. <https://doi.org/10.1177/1077801218787926>

Peter Salovey, (2019) “Yale President Peter Salovey’s statement on proposed Title IX rule changes”, <https://news.yale.edu/2019/01/30/yale-president-peter-saloveys-statement-proposed-title-ix-rule-changes>

Megan Keller, (2018), Quote: Joe Cohn “Education Department's draft rules to allow cross-examination of accusers in sexual assault cases: report” <https://thehill.com/homenews/administration/414322-new-guidelines-for-campus-sexual-assault-cases-would-allow-accused>

National Sexual Violence Resource Center, (2015), “National Sexual Violence Resource Center. Info & Stats For Journalists, Statistics About Sexual Violence” https://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media-packet_statistics-about-sexual-violence_0.pdf

Lynn Hecht Schafran, (2017), senior vice president of Legal Momentum, quote from “Experts see flaws in how colleges handle sexual assault allegations”; https://www.americanbar.org/news/abanews/aba-news-archives/2017/08/experts_see_flawsin/

Andrew Miltenberg, (2017), a New York lawyer, quote from “Experts see flaws in how colleges handle sexual assault allegations”; https://www.americanbar.org/news/abanews/aba-news-archives/2017/08/experts_see_flawsin/