

HB 705-FN - VERSION ADOPTED BY BOTH BODIES

8Jan2020... 2806h
 5Mar2020... 0048h
 06/16/2020 1496s

2019 SESSION

19-0074
 04/05

HOUSE BILL 705-FN

AN ACT relative to sexual assault, sexual misconduct in institutions of higher education, and the rights of victims of crime.

SPONSORS: Rep. Cushing, Rock. 21; Rep. T. Smith, Hills. 17; Rep. Sykes, Graf. 13

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill:

I. Increases the maximum recovery for crime victims from the victims' compensation fund; establishes confidentiality procedures for information used to support restitution to the victims' compensation fund; expands the offenses covered by the crime victims' bill of rights; expands the rights available to crime victims; requires the department of justice to develop a crime victims' rights card and establish professional guidelines for victims' assistance providers; and establishes a committee on the needs of crime victims and the enforcement of crime victims' rights.

II. Allows an action based on the sexual assault or incest statutes to be commenced at any time.

III. Removes the exception for legally married spouses from certain sexual assault offenses.

IV. Prohibits the sale of over-the-counter rape test kits in New Hampshire.

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

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears ~~[in brackets and struck through]~~.

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT relative to sexual assault, sexual misconduct in institutions of higher education, and the rights of victims of crime.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Short Title. Sections 1-10 of this act shall be known as the Crime Victims' Rights Enhancement Act of 2020.

2 New Paragraphs; Department of Justice; Office of Victim/Witness Assistance. Amend RSA 21-M:8-b by inserting after paragraph VII the following new paragraphs:

VIII. The office of victim/witness assistance shall develop a crime victims' rights card that describes in clear fashion a summary of the rights of crime victims under New Hampshire victims' rights laws and other information helpful to victims of crime. The office shall oversee the printing and the distribution of the card to first responders to provide to victims as soon as practicable.

IX. The office of victim/witness assistance shall develop and publish a set of professional guidelines for victims' assistance providers in the state of New Hampshire.

3 Department of Justice; Claimant Eligibility and Compensation. Amend RSA 21-M:8-h, V to read as follows:

V. The claimant may be reimbursed for reasonable out-of-pocket expenses, medical expenses, funeral expenses, counseling expenses, rehabilitative expenses, expenses associated with the victim's participation in post-conviction proceedings and victim-offender dialogue programs or other restorative justice programs, and lost wages directly resulting from the crime. Claimants eligible under subparagraph I(a)(4) may be reimbursed for the costs of removing the tattoo with an identifying mark. No reimbursement shall be paid unless the claimant has incurred reimbursable expenses of at least \$100. There shall be a [~~\$30,000~~] **\$40,000** maximum recovery per claimant per incident. If expenses paid through the victims' assistance program fund are later covered by insurance settlements, civil suit settlements, or restitution, or through any other source, the claimant shall reimburse the fund for the amount of expenses recovered.

4 Department of Justice; Claimant Eligibility and Compensation. Amend RSA 21-M:8-h, VIII to read as follows:

VIII. Any person who was a victim of a crime under investigation by the cold case homicide unit as established in [~~New Hampshire Laws 2009, 269:1~~] **RSA 21-M:8-m** shall be eligible for victim's compensation regardless of the date of the crime. [~~Compensation under this paragraph shall be limited to counseling expenses and expenses associated with the victim's participation in pre- and post-conviction proceedings incurred after the effective date of this paragraph.~~]

5 New Paragraph; Department of Justice; Claimant Eligibility and Compensation. Amend RSA 21-M:8-h by inserting after paragraph XI the following new paragraph:

XII. Notwithstanding paragraph II, any person who was a child victim of physical or sexual abuse, or any person who was a child when a parent or sibling was a victim of homicide, shall be eligible for victims compensation regardless of the date of the crime.

Compensation under this paragraph shall be limited to counseling expenses and expenses associated with the victim's participation in pre- and post-conviction proceedings incurred after the effective date of this paragraph.

6 Department of Justice; Rights of Crime Victims. Amend RSA 21-M:8-k to read as follows:

21-M:8-k Rights of Crime Victims.

I. As used in this section:

(a) "Victim" means a person who suffers direct or threatened physical, emotional, psychological or financial harm as a result of the commission or the attempted commission of a crime. "Victim" also includes the immediate family of any victim who is a minor or who is incompetent, or the immediate family of a homicide victim, or the surviving partner in a civil union.

(b) "Crime" means a violation of a penal law of this state for which the offender, upon conviction, may be punished by imprisonment for more than one year or an offense expressly designated by law to be a felony; **a misdemeanor sexual offense; an offense listed in RSA 173-B:1, I; a violation of a protective order under RSA 458:16, III; or after arraignment, a violation of a protective order issued under RSA 173-B.**

II. To the extent that they can be reasonably guaranteed by the courts and by law enforcement and correctional authorities, and are not inconsistent with the constitutional or statutory rights of the accused, crime victims are entitled to the following rights:

(a) The right to be treated with fairness and respect for [~~their~~] **the victim's safety**, dignity, and privacy throughout the criminal justice process.

(b) The right to be informed about the criminal justice process and how it progresses.

(c) The right to be free from intimidation and to be reasonably protected from the accused throughout the criminal justice process, **including the right to relocate for the victim's safety.**

(d) The right to [~~be notified of all court proceedings~~] **reasonable and timely notice of all court proceedings, including post-conviction proceedings, and administrative proceedings including parole and probation.**

(e) The right [~~to attend trial and all other court proceedings the accused has the right to attend~~] **on the same basis as the accused to attend trial and all other court proceedings, including post-conviction proceedings.**

(f) The right to confer with the prosecution and to be consulted about the disposition of the case, including plea bargaining.

(g) The right to have inconveniences associated with participation in the criminal justice process minimized.

(h) The right to be notified if presence in court is not required.

(i) The right to be informed about available resources, financial assistance, and social services.

- (j) The right to **full and timely** restitution, as granted under RSA 651:62-67 or any other applicable state law, or victim's compensation, under RSA 21-M:8-h or any other applicable state law, for their losses.
- (k) The right to be provided a secure, but not necessarily separate, waiting area during court proceedings.
- (l) The right to be advised of case progress and final disposition.
- (m) The right of confidentiality of the victim's address, place of employment, and other personal information.
- (n) The right to the prompt return of property when no longer needed as evidence.
- (o) The right to have input in the probation presentence report impact statement.
- (p) The right to appear and ~~[make a written or oral victim impact statement at the sentencing of the defendant or, in the case of a plea bargain, prior to any plea bargain agreement. No victim shall be subject to questioning by counsel when giving an impact statement]~~ **be heard at any disposition and any proceeding involving the release, plea, sentencing, or parole of the accused, including the right to be notified of, to attend, and to make a written or oral impact statement at the sentence review hearings and sentence reduction hearings. No victim shall be subject to questioning by counsel when being heard.**
- (q) The right to be notified of an appeal, an explanation of the appeal process, the time, place and result of the appeal, and the right to attend the appeal hearing.
- (r) The right to be notified of, to attend, and to make a written or oral victim impact statement at the sentence review hearings and sentence reduction hearings. No victim shall be subject to questioning by counsel when giving an impact statement.
- (s) The right to be notified of any change of status such as prison release, permanent interstate transfer, or escape, and the date of the parole board hearing, when requested by the victim ~~[through the victim advocate]~~.
- (t) The right to address or submit a written statement for consideration by the parole board on the defendant's release and to be notified of the decision of the board, when requested by the victim ~~[through the victim advocate]~~.
- (u) The right to all federal and state constitutional rights guaranteed to all victims of crime on an equal basis, and notwithstanding the provisions of any laws on capital punishment, the right not to be discriminated against or have their rights as a victim denied, diminished, expanded, or enhanced on the basis of the victim's support for, opposition to, or neutrality on the death penalty.
- (v) The right to access to restorative justice programs, including victim-initiated victim-offender dialogue programs offered through the department of corrections.
- (w) The right to be informed of the filing of a petition for post-conviction DNA testing under RSA 651-D.
- (x) ***The right to have the prosecuting attorney notify the victim's employer, if requested by the victim, of the necessity of the victim's cooperation and testimony in a court proceeding that may necessitate the absence of the victim from work for good cause.***

II-a.(a) In any case where the victim informs the court that he or she requires assistance in making an oral or written impact statement permitted under this section, the court shall allow the victim to designate a representative to write or speak on the victim's behalf.

(b) The victim's impact statement shall not be limited to the injuries, harm, or damages noted in the information or indictment, but may include all injuries, harm, and damages suffered as a result of the commission or attempted commission of the crime whether or not the injuries, harm, or damages were fully determined or discovered at the time the information or indictment was filed.

III. Nothing in this section shall be construed as creating a cause of action against the state, a county or municipality, or any of their agencies, instrumentalities, or employees. Nothing in this section shall be construed as creating any new cause of action or new remedy or right for a criminal defendant.

IV. The attorney general shall annually provide copies of current crime victims statutes, if available as a single publication from a commercial publisher, without charge only upon request of the members of the house criminal justice and public safety committee and senate judiciary committee.

7 Department of Justice; Restitution to the Victims' Assistance Fund. RSA 21-M:8-l is repealed and reenacted to read as follows:

21-M:8-l Restitution to the Victims' Assistance Fund.

I. Notwithstanding RSA 651:63, a court may order restitution to the victims' assistance fund as part of a sentence, to the extent that moneys were awarded to the victim of the crime from the victims' assistance fund, if the court finds that:

- (a) Restitution shall replenish the victims' assistance fund.
- (b) The victims' assistance fund has not been reimbursed for the moneys expended from another source.

II. If restitution to the fund is ordered, the amount of assistance provided by the fund shall be established by copies of bills submitted to the victims' assistance commission reflecting the amount paid from the fund and stating that the services for which payment was made were for uninsured pecuniary losses.

III.(a) The victim's residential address, telephone number, and other contact information, and the victim's Social Security number shall be confidential and shall be redacted by the victims' assistance commission from any document used to establish the amount paid from

the fund for the purpose of restitution.

(b) In cases involving stalking, sexual offenses, domestic violence, and homicide, in addition to the information listed in subparagraph (a), the victim's employer's name, telephone number, address, and other contact information; and the victim's medical or mental health provider's name, telephone number, address, and other contact information shall be confidential and shall not be disclosed for any purpose, absent a court order.

8 Committee on the Needs of Victims of Crime and the Enforcement of Crime Victims' Rights Established.

I. There is established a committee on the needs of crime victims and the enforcement of crime victims rights. The members of the committee shall be as follows:

(a) Five members of the house of representatives, appointed by the speaker of the house of representatives.

(b) One member of the senate, appointed by the senate president.

II. The committee shall:

(a) Review the needs and services for victims of crime, and provide recommendations concerning addressing needs and enhancing services for victims of crime.

(b) Review the existing mechanisms and resources for the enforcement of the rights of victims of crimes and provide recommendations on enhancing enforcement of the rights of victims' rights.

(c) Solicit testimony and input from the victims of crime and members of the general public.

(d) Study other matters related to the needs of victims of crime as the committee may determine.

III. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee. The members of the committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

IV. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate house clerk, the governor, and the state library on or before November 1, 2020.

9 Crime Victim Employment Leave Act; Right to Leave Work. Amend RSA 275:62, I to read as follows:

I. **Pursuant to the rights of crime victims under RSA 21-M:8-k, II(e)**, an employer shall permit an employee who is a victim of a crime to leave work so that the employee may attend court or other legal or investigative proceedings associated with the prosecution of the crime.

10 Unemployment Compensation; Disqualification for Benefits. Amend RSA 282-A:32, I(a)(3) to read as follows:

(3) **Pursuant to the rights of crime victims under RSA 21-M:8-k, II(c)**, the individual reasonably believes that separation from employment is necessary to protect himself or herself or any member of his or her immediate family from domestic abuse, as defined in RSA 173-B:1. The existence of domestic abuse shall be verified by the department, through reasonable documentation, and the department shall keep such information confidential;

11 Limitation of Actions; Actions Based on Sexual Assault and Related Offenses. Amend RSA 508:4-g to read as follows:

508:4-g Actions Based on Sexual Assault and Related Offenses. A person, alleging to have been subjected to any offense under RSA 632-A or an offense under RSA 639:2[, ~~who was under 18 years of age when the alleged offense occurred, may commence a personal action based on the incident within the later of:~~

~~I. Twelve years of the person's eighteenth birthday; or~~

~~II. Three years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of]~~ **may commence a personal action at any time.**

12 Bodily Injury Actions Against Governmental Units; Limitation on Actions. Amend RSA 507-B:7 to read as follows:

507-B:7 Limitation on Actions.

I. Except as provided in paragraph II, no actions shall be maintained against the governmental unit under this chapter unless the same is commenced within 3 years after the time of injury or damage, except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of. As a condition precedent to commencement of the action, the clerk of the governmental unit shall be notified by registered mail within 60 days after the time of the injury or damage or discovery of the injury or damage, if it could not reasonably have been discovered at the time of the occurrence of the injury or damage, as to the date, time and location where the injury or damage occurred, and provided that in any case where lack of written notice, actual

knowledge or reasonable opportunity to obtain knowledge of any injury or damage within the 60-day period is alleged by the governmental unit, the burden of proof shall be on the governmental unit to show that it was substantially prejudiced thereby.

II. A person, alleging to have been subjected to any offense under RSA 632-A or an offense under RSA 639:2 by a governmental unit, may commence an action at any time after the injury or damage occurs. The requirement for notification to the clerk of the governmental unit shall not apply to an action based on an offense under RSA 632-A or RSA 639:2.

13 Aggravated Felonious Sexual Assault. Amend RSA 632-A:2, I(h) to read as follows:

(h) When[, ~~except as between legally married spouses,~~] the victim has a disability that renders him or her incapable of freely arriving at an independent choice as to whether or not to engage in sexual conduct, and the actor knows or has reason to know that the victim has such a disability.

14 Aggravated Felonious Sexual Assault. Amend RSA 632-A:2, I(j)-(k) to read as follows:

(j) When[, ~~except as between legally married spouses,~~] the victim is 13 years of age or older and under 16 years of age and:

(1) the actor is a member of the same household as the victim; or

(2) the actor is related by blood or affinity to the victim.

(k) When[, ~~except as between legally married spouses,~~] the victim is 13 years of age or older and under 18 years of age and the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit.

15 Felonious Sexual Assault. Amend RSA 632-A:3, II-III to read as follows:

II. Engages in sexual penetration with a person[, ~~other than his legal spouse,~~] who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 4 years or more; or

III. Engages in sexual contact with a person [~~other than his legal spouse~~] who is under 13 years of age.

16 Sexual Assault. Amend RSA 632-A:4, I(b) and (c) to read as follows:

(b) When the actor subjects another person[, ~~other than the actor's legal spouse,~~] who is 13 years of age or older and under 16 years of age to sexual contact where the age difference between the actor and the other person is 5 years or more.

(c) In the absence of any of the circumstances set forth in RSA 632-A:2, when the actor engages in sexual penetration with a person[, ~~other than the actor's legal spouse,~~] who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 4 years or less.

17 New Chapter; Over-the-Counter Rape Test Kit. Amend RSA by inserting after chapter 359-Q the following new chapter:

CHAPTER 359-R

OVER-THE-COUNTER RAPE TEST KIT

359-R:1 Sale of Over-the-Counter Rape Test Kit Prohibited.

I. No person shall sell or offer for sale in the state of New Hampshire an over-the-counter rape test kit. Any person who sells a kit in violation of this section shall be guilty of a violation and shall be fined not more than \$1,000 for each offense.

II. In this section, an "over-the-counter rape test kit" means a sexual assault forensic exam kit for sale to members of the public, that allows an individual to independently collect evidence of a sexual assault outside of a hospital or other designated health care setting.

III. Nothing in this section shall affect any right of action under RSA 358-A.

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

CHAPTER 188-H

SEXUAL MISCONDUCT AT INSTITUTIONS OF HIGHER EDUCATION

Adoption of Policies

188-H:1 Definitions. In this subdivision:

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

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

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

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

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

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

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

VIII. "Sexual misconduct" means an incident of sexual violence, dating violence, domestic violence, gender-based violence, violence based on sexual orientation or gender identity or expression, sexual assault or harassment, or stalking, as defined by each institution in its code of conduct, in a manner consistent with applicable federal definitions.

188-H:2 Adoption of Policies Required.

I. Each institution of higher education shall adopt a policy on sexual misconduct, consistent with applicable state and federal law, which shall be publicly available on campus 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 shall be made available, upon request, to an applicant, student, or employee of the institution and shall be publicly available on the institution's website in an accessible format not later than the first week of classes in each academic year. The institution shall update the website annually. The policy shall be trauma-informed, and shall be developed in coordination with the institution's Title IX coordinator, and the local rape crisis center or domestic violence center. In addition, the institution may consider input from various internal and external entities including, but not limited to institutional administrators, personnel affiliated with on-campus and off-campus health care centers, personnel affiliated with on-campus, when available, and local, confidential resources advisors, residence life staff, students, the division of state police, and the police department and the county attorney having jurisdiction in the city or town where the institution's primary campus is located. The policy shall be developed in a culturally competent manner in order to reflect the diverse needs of all students. The policy shall include, but not be limited to:

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

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

(1) The name and location of the nearest medical facility where an individual 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 rape crisis center and a domestic violence center and a description of the services provided by such centers.

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

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

(c) Descriptions of and contact information for the types of counseling and health, safety, academic, and other support services available within the local community or region or through a rape crisis center or domestic violence center, or the name and contact information for organizations that support students accused of sexual misconduct, which shall include but not be limited to the name and contact information for a confidential resources advisor and a description of the role of and services provided by the confidential resources 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.

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

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

(e) The process for requesting supportive measures reasonably available from the institution which shall include, but not be 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, 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 and procedures for students to notify the institution that a protective 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 investigating, adjudicating, and resolving sexual misconduct complaints, including an explanation of all procedures which shall be followed to obtain investigatory reports and gather evidence, and potential sanctions which may be imposed, as well as clear statements advising students that:

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

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

- (3) An investigation, including any hearings and resulting disciplinary proceedings, shall be conducted by an individual who receives not less than annual training on issues relating to sexual misconduct, 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 of an alleged incident of sexual misconduct and the responding party may be accompanied by an advisor or support person of their choice, which may include an advocate or counsel, to meet with the institution's investigator or other fact finder and may consult with an advisor or support person, which may include an advocate or counsel, during any meetings and disciplinary proceedings; provided, however, that the institution may establish rules regarding how the proceedings will be conducted which may include guidelines on the extent to which the advisor or support person for each party may participate in a meeting or disciplinary proceeding and any limitations on participation which shall apply equally to both parties; and provided further, that the institution shall adopt reasonable measures to provide for the involvement of the advisor or support person for each party but the availability of the advisor or support person shall not significantly delay a meeting or disciplinary proceeding.
- (5) The reporting party and the responding party shall be provided with a copy of the institution's policies regarding the submission and consideration of evidence that may be used during a disciplinary proceeding and shall have equal opportunity to present evidence and witnesses on their behalf during a disciplinary proceeding; provided, however, that each party shall be provided with timely and equal access to all relevant evidence that shall be used in the determination of a discipline.
- (6) There shall be restrictions 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 shall 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 any time for appeal, unless good cause for additional time is shown, and they shall be informed of any process for appealing the decision.
- (8) If an institution offers an appeal as a result of procedural errors, previously unavailable relevant evidence that could significantly impact the outcome of a case or where the sanction is disproportionate to the findings, the reporting party and the responding party shall be provided with an equal opportunity to appeal decisions regarding responsibility or sanctions.
- (9) The institution shall not publicly disclose the identity of the reporting party and the responding party, except as necessary to carry out a disciplinary process or as permitted under state or federal law.
- (10) The institution's disciplinary proceedings shall not serve as a substitute for the criminal justice process.
- (h) A summary of the institution's employee disciplinary process as it pertains to sexual misconduct.
- (i) 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 acts of sexual misconduct.

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

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

Sexual Misconduct Climate Surveys and Task Force

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

188-H:5 Task Force on Sexual Misconduct.

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

- (a) The chancellor of the university system of New Hampshire, or designee.
- (b) The chancellor of the community college system of New Hampshire, or designee.
- (c) The director of higher education, division of educator support and higher education, department of education, or designee.
- (d) Two representatives of the private 4-year colleges in New Hampshire, with not more than one representative from any such college, appointed by the governor and council on recommendation by the New Hampshire College and University Council.
- (e) The president of the New Hampshire Association of Campus Law Enforcement Administrators, or designee.
- (f) The commissioner of the department of health and human services, or designee.
- (g) The attorney general, or designee.
- (h) The following members, who shall be appointed by the governor, one of whom shall be a student attending a public institution of higher education in this state; one of whom shall be a student attending a private institution of higher education in this state; one of whom shall be a student attending an institution in the community college system of New Hampshire; one of whom shall be a representative of the university of New Hampshire recommended by the president of the university; 3 of whom shall be representatives recommended by the New Hampshire Coalition Against Domestic and Sexual Violence; one of whom shall be a representative recommended by the New Hampshire Campus Consortium Against Sexual and Interpersonal Violence; one of whom shall be a researcher with experience in the development and design of sexual misconduct climate surveys; one of whom shall be a researcher of statistics, data analytics, or econometrics with experience in higher education survey analysis; one of whom shall be a representative of the Prevention Innovations Research Center at the University of New Hampshire; and one of whom shall represent Every Voice New Hampshire.

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

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

- (a) Utilize best practices from peer-reviewed research and consult with individuals with expertise in the development and use of sexual misconduct climate surveys by institutions of higher education.
- (b) Review sexual misconduct climate surveys which have been developed and previously utilized by institutions.
- (c) Provide opportunities for written comment from organizations that work directly with victims and survivors of sexual misconduct to ensure the adequacy and appropriateness of the proposed content.
- (d) Consult with institutions on strategies for optimizing the effectiveness of the survey.
- (e) Account for the diverse needs and differences of the state's institutions of higher education.

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

- (a) The number of incidents, both reported and unreported, of sexual misconduct at the institution of higher education.
- (b) When and where incidents of sexual misconduct occurred.
- (c) Student awareness of institutional policies and procedures related to campus sexual misconduct.
- (d) Whether a student reported the sexual misconduct, and if so, to which campus resource or law enforcement agency such 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, such as the involvement of force, incapacitation, or coercion.
- (h) Demographic information that could be used to identify at-risk groups including but not limited to gender.
- (i) Perceptions of campus safety among members of the campus community and confidence in the institution's ability to protect against and respond to incidents of sexual misconduct.
- (j) Whether the student has chosen to withdraw or taken a leave of absence from the institution or transferred to another institution due to either being the reporting party or responding party in an allegation of sexual misconduct.
- (k) Whether the student has withdrawn from any classes or been placed on academic probation as a result of the incident.
- (l) Other questions as determined by the task force.

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

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

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

- (a) The results of the survey.
- (b) The annual security report required under 20 U.S.C. section 1092, otherwise known as the Clery Act.
- (c) A link to the division's statewide data on sexual misconduct climate survey data as set forth in paragraph VIII.

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

Collaboration With Law Enforcement

188-H:6 Collaboration With Law Enforcement.

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

- (a) Delineate sharing protocols for investigative responsibilities.
- (b) Provide protocols for investigations, including standards for notification and communication and measures to promote evidence preservation.
- (c) Coordinate training, programing, and requirements on issues related to sexual misconduct.
- (d) Ensure that reporting parties are able to move safely and comfortably between classes, extracurriculars, sports, and campus jobs.
- (e) Develop a protocol for sharing information about specific crimes, which may include a mechanism for sharing information anonymously, that:
 - (1) Requires that the reporting party authorized or requested that such information be shared and is fully and accurately informed about what procedures shall occur if the information is shared; and
 - (2) Is carried out in a manner that is consistent with the General Education Provisions Act, 20 U.S.C. section 1221, and any other applicable provisions under state law.
- (f) Establish the methods for sharing the Clery Act reporting requirements and for facilitating the issuance of timely warnings and emergency notifications required by the Clery Act relative to crimes that may pose a serious threat to the campus or near campus communities.
- (g) Develop methods for notifying the appropriate county attorney's office.
- (h) Update such policies and procedures biennially.

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

III. Notwithstanding any general or special law to the contrary, a member of the department of state police or a local police department who acts as a first responder to a report of sexual misconduct at an institution of higher education shall receive training in the awareness of dating violence, domestic violence, sexual assault, and stalking and in trauma-informed response, subject to appropriation.

Confidential Resource Advisors

188-H:7 Confidential Resource Advisors.

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

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

II. The institution shall designate existing categories of employees that may serve as confidential resource advisors. The designation of an existing category of employees shall not preclude the institution from designating a new or existing employee as a confidential

resource advisor or in another confidential role. An institution may partner with a local, state, or national victim advocacy organization to provide a confidential resource advisor under this section. An institution that enrolls fewer than 1,000 residential students may partner with another institution or rape crisis center within the state to provide the services under this section. An institution shall ensure that any partnership entered into under this paragraph shall result in a confidential resource advisor being available to students within a reasonable distance to the student's institution.

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

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

- (a) Reporting options and the effects of each option.
- (b) Counseling services available on campus and through a local rape crisis center or domestic violence center.
- (c) Medical and health services available on campus and off campus.
- (d) Campus escort services for security.
- (e) Available academic and residence life accommodations.
- (f) Student loan counseling for students considering temporary permanent withdrawal or half time enrollment regarding loan deferment, forbearance, or other student loan programs.
- (g) The investigative and disciplinary process of the institution.
- (h) The legal process carried out through local, state, and federal law enforcement agencies.
- (i) That the institution's disciplinary process is not to be considered a substitute for the criminal justice process.
- (j) Any limits on the ability of the confidential resource advisor to provide privacy or confidentiality to the student.

V. The confidential resource advisor:

- (a) May, if appropriate and if directed by the reporting party, assist the reporting party in contacting or reporting to campus or local law enforcement agencies.
- (b) Shall notify the student of their rights and the institution's responsibilities regarding a protection order, no contact order, and any other lawful orders issued by the institution or by a criminal, civil, or tribal court.
- (c) Shall not be required to report an 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 and employees.
- (d) May attend an administrative or institution-based adjudication proceeding as the advisor or support person of the student's or employee's choice.
- (e) Shall not disclose confidential information without the prior written consent of the student or employee who shared the information.
- (f) Shall not provide services to more than one party in an incident and shall ensure confidentiality is maintained.

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

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

VIII. 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 crisis services or campus or law enforcement services, the institution shall not discipline, penalize, or otherwise retaliate against the confidential resource advisor for representing the interest of the reporting party.

188-H:8 Privilege for Confidential Resource Advisors.

I. In this section:

- (a) "Confidential communication" means information transmitted between a victim, as defined in paragraph (b), of an alleged sexual assault, alleged domestic abuse, alleged sexual harassment, or alleged stalking, and a confidential resource advisor in the course of that relationship and in confidence by means which, so far as the victim is aware, does not disclose the information to a third person. The presence of an interpreter for the hearing impaired, a foreign language interpreter, or any other interpreter necessary for that communication to take place shall not affect the confidentiality of the communication nor shall it be deemed a waiver of the privilege. The term includes all information received by the confidential resource advisor in the course of that relationship.

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

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

- (1) A third person present to assist communication with the victim.
- (2) A third person present to assist a victim who is physically challenged.
- (3) Co-participants in support group counseling of the victim.

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

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

- (a) The victim or an attorney on the victim's behalf.
- (b) The guardian of the victim, if the victim has been found incompetent by a court of competent jurisdiction.
- (c) A minor victim who is emancipated, married, or over the age of 15, unless, in the opinion of the court, the minor is incapable of knowingly waiving the privilege. A guardian ad litem shall be appointed in all cases in which there is a potential conflict of interest between a victim under the age of 18 and their parent or guardian.

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

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

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

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

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

- (1) The probative value of the information, in the context of the particular case, outweighs its prejudicial effect on the victim's emotional or physical recovery, privacy, or relationship with the confidential resource advisor.
- (2) That the information sought is unavailable from any other source.
- (3) That there is a substantial probability that the failure to disclose that information will interfere with the defendant's right to confront the witnesses against him or her and the defendant's right to a fair trial.

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

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

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

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

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

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

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

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

Awareness Programming

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

- I. An explanation of consent as it applies to sexual activity and sexual relationships.
- II. The role drugs and alcohol play in an individual's ability to consent.
- III. Information on options relating to the reporting of an incident of sexual misconduct, the effects of each option, and the methods to report an incident of sexual misconduct, including confidential and anonymous disclosure.
- IV. Information on the institution's procedures for resolving sexual misconduct complaints and the range of sanctions or penalties the institution may impose on students and employees found responsible for a violation.
- V. The name, contact information, and role of the confidential resource advisor.
- VI. Strategies for bystander intervention and risk reduction.
- VII. Opportunities for ongoing sexual misconduct prevention and awareness campaigns and programming.

Training for Individuals and Institutions

Involved in the Disciplinary Process

188-H:10 Training for Individuals Involved in the Disciplinary Process. An individual who participates in the implementation of an institution of higher education's disciplinary process, including an individual responsible for resolving complaints of reported incidents, shall have training or experience in handling sexual misconduct complaints and the operations of the institution's disciplinary process.

The training shall include, but not be limited to:

- I. Information on working with and interviewing persons subjected to sexual misconduct.
- II. Information on particular types of conduct that constitute sexual misconduct, including same-sex dating violence, domestic violence, sexual assault, and stalking.
- III. Information on consent and the role drugs and alcohol may play in an individual's ability to consent.
- IV. The effects of trauma, including any neurobiological impact on a person.
- V. Cultural competence training regarding how sexual misconduct may impact students differently depending on factors that contribute to a student's cultural background, including but not limited to national origin, sex, ethnicity, religion, gender identity, gender expression, and sexual orientation.
- VI. Ways to communicate sensitively and compassionately with a reporting party of sexual misconduct including, but not limited to, an awareness of responding to a reporting party with consideration of that party's cultural background and providing services to or assisting in locating services for the reporting party. Ways to communicate sensitively with a responding party, including an awareness of the emotional impact of being wrongly accused.
- VII. Training and information regarding how dating violence, domestic violence, sexual assault, and stalking may impact students with developmental or intellectual disabilities.

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

Reporting Requirements

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

- I. The total number of allegations of dating violence, domestic violence, sexual assault, and stalking reported to the institution's Title IX coordinator by a student or employee of the institution against another student or employee of the institution.
- II. The number of law enforcement investigations initiated in response to complaints of sexual misconduct brought forward by students or employees of the institution against another student or employee of the institution, if known.
- III. The number of students found responsible for violating an institution's policies prohibiting sexual misconduct.
- IV. The number of students found not responsible for violating an institution's policies prohibiting sexual misconduct.
- V. The number of disciplinary actions imposed by the institution as a result of a finding of responsibility for violating an institution's policies prohibiting sexual misconduct. The report shall provide information in an anonymous manner that complies with state and federal privacy laws.

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

Enforcement and Penalty

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

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

- I. An institution of higher education shall enter into and maintain a memorandum of understanding with a rape crisis center or domestic violence center to:
 - (a) Assist in developing the institution's policies, programing, and training regarding sexual misconduct involving students or employees.
 - (b) Provide an off-campus alternative for students and employees of the institution to receive free and confidential sexual assault crisis services, including access to a sexual assault nurse examiner if available, or free and confidential domestic violence crisis services in response to sexual misconduct.
 - (c) Ensure that a student or employee of the institution may access free and confidential counseling and advocacy services either on campus or off campus.
 - (d) Ensure cooperation and training between the institution and the crisis center or agency to ensure an understanding of the roles that the institution, crisis center, and agency should play in responding to reports and disclosures of sexual misconduct against students and employees of the institution and the institution's protocols for providing support and services to such students and employees.
- II. A memorandum of understanding may include an agreement, including a fee structure, between the rape crisis center or domestic violence center and the institution of higher education to provide confidential victim services. Confidential victim services may include case consultation and training fees for confidential resource advisors, consultation fees for the development and implementation of student education and prevention programs, the development of staff training and prevention curriculum, and confidential on-site office space for an advocate from a rape crisis center or domestic violence center to meet with students.
- III. The commission may waive the requirements of this section in the case of an institution that demonstrates that it acted in good faith but was unable to obtain a signed memorandum.

19 Effective Date.

- I. Sections 1-7 and sections 9-16 of this act shall take effect 60 days after its passage.
- II. Section 18 of this act shall take effect 180 days after its passage.
- III. The remainder of this act shall take effect upon its passage.

LBAO
19-0074
Amended 6/22/20

HB 705-FN- FISCAL NOTE

AS AMENDED BY THE SENATE (AMENDMENT #2020-1496s)

AN ACT relative to sexual assault, sexual misconduct in institutions of higher education, and the rights of victims of crime.

FISCAL IMPACT: ☒ State ☒ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable	Indeterminable	Indeterminable
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Victim's Assistance Fund and the University System of New Hampshire			

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

Sections 1-10 relative to the rights of victims of crime, increasing the cap on assistance for victims of crime, and establishing a committee to study the needs of crime victims and enforcement of statutes governing crime victims' rights:

This bill would amend the Crime Victims' Bill of Rights and the Victim's Compensation Program statutes. The amendment to the Bill of Rights would update and clarify the language used. The Department of Justice will be required to provide copies of current crime victim statutes to the legislature upon request. The bill also establishes a committee on the needs of crime victims and enforcement of crime victims' rights. The Department of Justice indicates these amendments, particularly the production of crime victim statutes, would lead to a minor increase in costs to the Department. The bill would also increase the maximum recovery per claimant from Victim Assistance Fund from \$30,000 to \$40,000. The Department of Justice administers victim claimant eligibility for certain crime related reimbursements from the Victim's Assistance Fund. Pursuant RSA 106-L:10, the Victim's Assistance Fund receives 16.67% of penalty assessment funds collected. The Department is not able to predict the amount of penalty assessment revenue or the number of cases that will be brought before the Victim's Compensation Board. Therefore, the overall fiscal impact is indeterminable. Below is a five-year average of revenue received and funds paid from the fund out at the current \$30,000 cap. Funds remaining at the end of a fiscal year are carried forward into the next fiscal year.

5 Year Average SFY 2015-SFY 2019:

Revenue: \$715,525
Expenditures: \$668,160
Remaining Funds Available: \$47,365

Sections 11-12 extending the statute of limitations for civil actions based on a sexual assault:

This language was not sent to the Office of Legislative Budget Assistant for a fiscal note, however there may be an indeterminate fiscal impact on the on the New Hampshire judicial and correctional systems. There is no way to determine the number of additional actions that may be brought as a result to this bill.

Sections 13-16 removing the exception for married minors from the definition of sexual assault:

The bill removes the exception for legally married spouse from certain sexual assault offenses.

The bill affects penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2021	FY 2022
Class A Misdemeanor	\$77	\$79
Simple Criminal Case	\$300	\$314
Routine Criminal Felony Case	\$484	\$498
Appeals	Varies	Varies

It should be noted that average case cost estimates for FY 2021 and FY 2022 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.		
Judicial Council		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	\$825/Case	\$825/Case
Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Contract Attorney – Major Crimes (aggravated felonious sexual assault, felonious sexual assault and first degree assault)	\$2,490/Case	\$2,490/Case
Assigned Counsel – Major Crimes (aggravated felonious sexual assault, felonious sexual assault and first degree assault)	\$100/Hour up to \$8,000	\$100/Hour up to \$8,000
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
Department of Corrections		
FY 2019 Average Cost of Incarcerating an Individual	\$44,400	\$44,400
FY 2019 Annual Marginal Cost of a General Population Inmate	\$5,071	\$5,071
FY 2019 Average Cost of Supervising an Individual on Parole/Probation	\$576	\$576
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department would likely absorb the cost within its existing budget. If the Department needs to prosecute significantly more cases or handle more appeals, then costs may increase by an indeterminable amount.

Section 17 prohibiting the sale of over-the-counter rape test kits:

The bill prohibits the sale of over-the-counter rape test kits and contains a penalty that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2021	FY 2022
Violation Level Offense	\$52	\$54
Appeals	Varies	Varies
It should be noted that average case cost estimates for FY 2021 and FY 2022 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types.		

NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable

The Department of Justice indicates the bill makes the sale of such kits a violation-level offense. The Department of Justice would not be involved in the prosecution of such offenses, which would be handled by county and local prosecutors. Appeals from any convictions would be handled by the Department's Criminal Justice Bureau and could be done within the current budget.

The Department of Safety indicates the potential revenue associated with the \$1,000 fine cannot be determined as information on sales of sexual assault kits is not available. Such kits are currently purchased by the Department of Justice and provided free of charge to hospitals and other facilities where evidence may be collected. The Department assumes there would be no impact on the Department's expenditures.

Section 18 requiring institutions of higher education to adopt policies on sexual misconduct:

Finally, the bill establishes, for institutions of higher education, policy and practice requirements that support the prevention of and response to sexual misconduct on campus. Requirements would include adoption of specified policies; biennial administration of a sexual misconduct climate survey with state task force input and oversight; collaboration with local law enforcement; adoption of security policy; designation of a confidential resource advisor; mandatory awareness programming for students and employees; training of safety, security, Title IX, and disciplinary process staff; anonymous incident reporting capacity; and formal reporting to the Department of Education and to government officials.

The University System of New Hampshire indicates a number of the actions required may already be taking place, and could be expanded, or modified as needed generally within current budgets and the effort required at individual institutions would vary. The System identified three provisions of this bill that would result in significant expense to support compliance across most institutions including: the administration of a biennial climate survey, annual mandatory awareness programming for students/employees, neither of which are currently conducted on a regular recurring basis by any institution, and the designation of a confidential resource advisor for Plymouth State University (PSU), Keene State College (KSC), and Granite State College (GSC). The System has provided the following cost estimates on these three provisions (see detailed cost breakdowns below table):

	FY 2020	FY 2021	FY 2022	FY 2023
Climate Survey	\$0	\$16,000	\$192,000	\$0
Awareness Programming	\$0	\$100,000	\$25,000	\$25,000
Confidential Resource Advisors	\$0	\$150,000	\$150,000	\$150,000
Total	\$0	\$266,000	\$367,000	\$175,000

Climate Survey

- Create a survey to incorporate task force base questions
 - Eight (8) employees for 40 hours each at an estimated total personnel cost rate of \$50/hour rate = \$16,000. This would be a one-time expense incurred in FY 2021.
- Administer survey, analyze and report
 - Consultant for 480 hours at \$200/hour = \$96,000. This would be a biennial expense, first incurred in FY 2022.
- Survey participation incentive for validating response rate
 - Approximately 9,600 students (30% of 32,000 University of New Hampshire students) at \$10/each = \$96,000. This would be a biennial expense, first incurred in FY 2022.

Awareness Programming

- Online Education Module
 - Module development of \$100,000. This would be a one-time expense incurred in FY 2021.
 - Annual charge for an estimated 49,000 faculty, staff, adjuncts, and students (un duplicated 12-month headcount) of \$25,000. This would be an annual expense first incurred in FY 2022.

Confidential Resource Advisors

- Contract with authorized crisis centers

- \$50,000 for each PSU, KSC, and GSC, for \$150,000 total. This would be an annual expense first incurred in FY 2021.

The Department of Education states it would incur no additional costs under this bill.

The Community College System of New Hampshire has not responded to the request for fiscal information concerning the language contained in section 18 when it was in SB 679.

AGENCIES CONTACTED:

Departments of Justice, Corrections, Education and Safety, the Judicial Branch, the New Hampshire Association of Counties, the University System of New Hampshire and the Community College System of New Hampshire