

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO
CORRECTED INTRODUCED**

LLS NO. 19-0405.02 Conrad Imel x2313

SENATE BILL 19-170

SENATE SPONSORSHIP

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HOUSE SPONSORSHIP

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A BILL FOR AN ACT

101 **CONCERNING AN INQUIRY INTO A COLLEGE APPLICANT'S**
102 **NONACADEMIC CONDUCT PRIOR TO ADMISSION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill prohibits a state institution of higher education (institution) from inquiring about an applicant's criminal history, or disciplinary history at an elementary, secondary, or postsecondary institution (disciplinary history), prior to admission; except that the institution may inquire about any pending criminal charges against the applicant and an applicant's prior convictions or disciplinary history for

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

stalking, sexual assault, and domestic violence.

An institution that accepts a form of application that may be used to apply to other institutions of higher education is prohibited from considering any criminal or disciplinary history information provided on that application that the institution is prohibited from inquiring into on its own application. An institution that accepts a form of application that is designed by a national application service, tailored for admission to a specific degree program, and used in other states may consider criminal history information provided on that application.

An institution's review of an otherwise qualified applicant's disclosed criminal history or disciplinary history must be made in a reasonable amount of time. An institution must provide an appeals process for an otherwise qualified applicant denied admission based on the applicant's criminal or disciplinary history.

An institution is required to post its policies regarding inquiries into an applicant's criminal and disciplinary history on its website and file such policies with the Colorado commission on higher education (commission). An institution must notify the commission at least 30 days before making any changes to such policies.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 23-5-106.5 as
3 follows:

4 **23-5-106.5. Authority of governing boards - student**
5 **applications - criminal and disciplinary history inquiry - exceptions**
6 **- definitions.** (1) FOR THE PURPOSES OF THIS SECTION, UNLESS THE
7 CONTEXT OTHERWISE REQUIRES:

8 (a) "ACADEMIC INSTITUTION" MEANS ANY ELEMENTARY OR
9 SECONDARY SCHOOL OR ANY POSTSECONDARY EDUCATION INSTITUTION.

10 (b) "CONVICTION" MEANS A CONVICTION BY A JURY VERDICT OR
11 BY ENTRY OF A VERDICT OR ACCEPTANCE OF A GUILTY PLEA OR A PLEA OF
12 NOLO CONTENDERE BY A COURT. "CONVICTION" DOES NOT INCLUDE A
13 PLEA TO A DEFERRED JUDGMENT AND SENTENCE UNTIL THE DEFERRED
14 JUDGMENT AND SENTENCE IS REVOKED.

1 (2) (a) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION,
2 THE GOVERNING BOARD OF ANY STATE INSTITUTION OF HIGHER
3 EDUCATION SHALL NOT INQUIRE INTO, OR REQUIRE DISCLOSURE OF, AN
4 APPLICANT'S CRIMINAL HISTORY, OR DISCIPLINARY HISTORY AT ANOTHER
5 ACADEMIC INSTITUTION, ON ANY FORM OF APPLICATION, INCLUDING
6 ELECTRONIC APPLICATIONS, FOR ADMISSION TO THE STATE INSTITUTION OF
7 HIGHER EDUCATION.

8 (b) THE APPLICATION OR INSTRUCTIONS FOR THE APPLICATION FOR
9 ADMISSION TO A STATE INSTITUTION OF HIGHER EDUCATION MUST INFORM
10 AN APPLICANT OF THE APPLICANT'S RIGHTS PURSUANT TO THIS SECTION,
11 INCLUDING THE RIGHT TO APPEAL A DECISION MADE BASED ON ANY
12 INFORMATION REQUIRED TO BE DISCLOSED PURSUANT TO SUBSECTION (3)
13 OF THIS SECTION, AND THAT, PURSUANT TO SECTION 24-72-702, THE
14 APPLICANT IS NOT REQUIRED TO DISCLOSE ANY INFORMATION CONTAINED
15 IN SEALED RECORDS.

16 (c) (I) A STATE INSTITUTION OF HIGHER EDUCATION THAT ACCEPTS
17 A FORM OF APPLICATION THAT MAY ALSO BE USED TO APPLY FOR
18 ADMISSION TO ANY OTHER INSTITUTION OF HIGHER EDUCATION SHALL NOT
19 CONSIDER ANY INFORMATION PROVIDED BY THE STUDENT ON THAT
20 APPLICATION THAT THE STATE INSTITUTION OF HIGHER EDUCATION IS
21 PROHIBITED FROM INQUIRING INTO PURSUANT TO THIS SECTION.

22 (II) NOTWITHSTANDING ANY PROVISION OF THIS SECTION, A STATE
23 INSTITUTION OF HIGHER EDUCATION MAY CONSIDER CRIMINAL CONVICTION
24 HISTORY IF INFORMATION PERTAINING TO SUCH HISTORY IS PROVIDED ON
25 AN APPLICATION THAT IS DESIGNED BY A NATIONAL APPLICATION SERVICE,
26 TAILORED FOR ADMISSION TO A SPECIFIC DEGREE PROGRAM, AND USED BY
27 POSTSECONDARY EDUCATION INSTITUTIONS IN OTHER STATES. AN

1 APPLICANT DENIED ADMISSION BASED ON INFORMATION PROVIDED ON AN
2 APPLICATION PURSUANT TO THIS SUBSECTION (2)(c)(II) THAT AN
3 INSTITUTION WOULD OTHERWISE BE PROHIBITED FROM INQUIRING INTO
4 PURSUANT TO THIS SECTION HAS THE RIGHT TO APPEAL THAT DECISION
5 PURSUANT TO SUBSECTION (4)(b) OF THIS SECTION.

6 (d) EXCEPT AS AUTHORIZED PURSUANT TO ANY OTHER SECTION OF
7 LAW, THE GOVERNING BOARD OF ANY STATE INSTITUTION OF HIGHER
8 EDUCATION MAY NOT OBTAIN THE CRIMINAL HISTORY, OR DISCIPLINARY
9 HISTORY AT ANOTHER ACADEMIC INSTITUTION, OF AN APPLICANT AT ANY
10 TIME PRIOR TO ADMITTING THE APPLICANT.

11 (e) A STATE INSTITUTION OF HIGHER EDUCATION MAY NOT USE AS
12 THE BASIS FOR REJECTION OF AN APPLICANT ANY INFORMATION THAT THE
13 INSTITUTION IS PROHIBITED FROM COLLECTING PURSUANT TO THIS
14 SECTION, REGARDLESS OF HOW THAT INFORMATION IS OBTAINED.

15 (3) NOTWITHSTANDING ANY REQUIREMENT IN THIS SECTION, THE
16 GOVERNING BOARD OF A STATE INSTITUTION OF HIGHER EDUCATION, ON
17 ANY FORM OF APPLICATION FOR ADMISSION, MAY INQUIRE INTO ANY OF
18 THE FOLLOWING:

19 (a) AN APPLICANT'S PRIOR CONVICTIONS FOR STALKING, SEXUAL
20 ASSAULT, AND DOMESTIC VIOLENCE;

21 (b) AN APPLICANT'S PRIOR DISCIPLINARY HISTORY AT ANOTHER
22 ACADEMIC INSTITUTION FOR STALKING, SEXUAL ASSAULT, AND DOMESTIC
23 VIOLENCE;

24 (c) ANY CRIMINAL CHARGES PENDING AGAINST THE APPLICANT;
25 AND

26 (d) AN APPLICANT'S EDUCATIONAL RECORDS RELATED TO
27 ACADEMIC PERFORMANCE.

1 (4) (a) ANY ADDITIONAL REVIEW BY A STATE INSTITUTION OF
2 HIGHER EDUCATION OF AN OTHERWISE QUALIFIED APPLICANT BASED ON
3 INFORMATION PROVIDED BY THE APPLICANT PURSUANT TO SUBSECTION (3)
4 OF THIS SECTION MUST BE COMPLETED WITHIN A REASONABLE PERIOD OF
5 TIME.

6 (b) AN APPLICANT DENIED ADMISSION BASED ON INFORMATION
7 PROVIDED BY THE APPLICANT PURSUANT TO SUBSECTION (2)(c)(II) OR (3)
8 OF THIS SECTION HAS THE RIGHT TO APPEAL THAT DECISION WITHIN THE
9 STATE INSTITUTION OF HIGHER EDUCATION. THE GOVERNING BOARD OF
10 EACH STATE INSTITUTION OF HIGHER EDUCATION SHALL ADOPT POLICIES
11 AND PROCEDURES FOR APPEALS MADE PURSUANT TO THIS SECTION.

12 (5) EACH STATE INSTITUTION OF HIGHER EDUCATION SHALL
13 PUBLISH ANY POLICY ENACTED PURSUANT TO THIS SECTION ON THE
14 INSTITUTION'S PUBLICLY ACCESSIBLE WEBSITE AND SHALL FILE SUCH
15 POLICIES WITH THE COMMISSION. A STATE INSTITUTION OF HIGHER
16 EDUCATION SHALL NOTIFY THE COMMISSION AT LEAST THIRTY DAYS
17 BEFORE ENACTING ANY CHANGE TO A POLICY FILED WITH THE
18 COMMISSION.

19 (6) NOTHING IN THIS SECTION PROHIBITS A STATE INSTITUTION OF
20 HIGHER EDUCATION FROM PROVIDING AN APPLICANT WITH INFORMATION
21 OR COUNSELING CONCERNING LICENSURE IN A PROFESSION THAT MAY
22 RESULT FROM A COURSE OF STUDY.

23 (7) A STATE INSTITUTION OF HIGHER EDUCATION MAY INQUIRE
24 INTO AN ADMITTED APPLICANT'S CRIMINAL HISTORY WHEN OBTAINING
25 INFORMATION PERTAINING TO PARTICIPATION IN CAMPUS LIFE OR STUDENT
26 HOUSING. IF AN INSTITUTION ELECTS TO MAKE SUCH INQUIRIES, THE
27 INSTITUTION SHALL CONSIDER THE FOLLOWING:

1 (a) THE NATURE AND GRAVITY OF ANY CRIMINAL CONDUCT AND
2 WHETHER IT BEARS A DIRECT RELATIONSHIP TO A PARTICULAR ASPECT OF
3 A STUDENT'S PARTICIPATION IN CAMPUS LIFE, INCLUDING BUT NOT LIMITED
4 TO CAMPUS RESIDENCY AND CAMPUS ACTIVITIES;

5 (b) THE TIME THAT HAS PASSED SINCE THE OCCURRENCE OF ANY
6 CRIMINAL CONDUCT;

7 (c) THE AGE OF THE STUDENT AT THE TIME OF THE CONDUCT
8 UNDERLYING A CRIMINAL CONVICTION;

9 (d) ANY EVIDENCE OF REHABILITATION OR GOOD CONDUCT
10 PRODUCED BY THE STUDENT; AND

11 (e) THE BENEFIT TO THE STUDENT OF PARTICIPATING IN CAMPUS
12 LIFE.

13 **SECTION 2. Act subject to petition - effective date.** This act
14 takes effect January 1, 2020; except that, if a referendum petition is filed
15 pursuant to section 1 (3) of article V of the state constitution against this
16 act or an item, section, or part of this act within the ninety-day period
17 after final adjournment of the general assembly, then the act, item,
18 section, or part will not take effect unless approved by the people at the
19 general election to be held in November 2020 and, in such case, will take
20 effect on the date of the official declaration of the vote thereon by the
21 governor.