

SENATE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

April 25, 2018  
Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB18-1391 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend reengrossed bill, page 3, line 27, strike "PROCEDURES" and  
2 substitute "EXCEPT AS PROVIDED IN SUBSECTION (3)(e) OF THIS SECTION,  
3 PROCEDURES".

4 Page 4, line 11, strike "INCLUDE" and substitute "SPECIFY EITHER" and  
5 after "EVIDENCE" insert "OR CLEAR AND CONVINCING EVIDENCE".

6 Page 5, after line 1 insert:

7 "(e) IF THE POTENTIAL PUNISHMENT FOR A VIOLATION OF THE  
8 POLICY INCLUDES EXPULSION OR SUSPENSION OF ONE SEMESTER OR  
9 LONGER, THAT THE FOLLOWING PROCEDURES APPLY INSTEAD OF  
10 SUBSECTIONS (3)(d)(II) TO (3)(d)(IV) OF THIS SECTION:

11 (I) CLEAR AND CONVINCING EVIDENCE AS THE EVIDENTIARY  
12 STANDARD IF THE FACT FINDING IS PERFORMED BY A SINGLE PERSON OR  
13 PREPONDERANCE OF THE EVIDENCE AS THE EVIDENTIARY STANDARD IF  
14 THE FACT FINDER IS A PANEL;

15 (II) OUTLINING THE PROCEDURES TO BE FOLLOWED IN THE  
16 INVESTIGATION, ADJUDICATORY HEARING, AND APPELLATE PROCESSES  
17 INCLUDING:

18 (A) SEPARATING INDIVIDUALS OR PANELS FOR THE INVESTIGATION,  
19 ADJUDICATORY HEARING, AND APPELLATE PROCESSES WHO SHALL NOT BE  
20 INVESTED IN THE OUTCOME OF A PREVIOUS STAGE OF THE PROCESS;

21 (B) PROVIDING THE COMPLAINANT AND THE RESPONDING PARTY  
22 WITH THE SAME OPPORTUNITIES TO HAVE AN ADVISOR OR OTHER PERSON,

1 INCLUDING AN ATTORNEY, PRESENT DURING ANY PART OF THE  
2 INVESTIGATION WHO MAY PARTICIPATE AT ALL STAGES OF THE  
3 INVESTIGATION, ADJUDICATORY HEARING, AND APPELLATE PROCESSES;  
4 AND

5 (C) DURING THE ADJUDICATORY HEARING, THE ISSUANCE OF ANY  
6 NECESSARY AND APPROPRIATE PROTECTIVE ORDERS FOR THE BENEFIT OF  
7 THE COMPLAINANT OR ANY WITNESS, WHICH MAY INCLUDE, BUT ARE NOT  
8 LIMITED TO, PROVISIONS FOR THE QUESTIONING OF THE COMPLAINANT  
9 OUTSIDE THE PRESENCE OF THE RESPONDENT; AND

10 (D) IF AN ADJUDICATORY HEARING PANEL IS USED, THE  
11 AVAILABILITY OF A LEGAL ADVISOR WHO IS A LICENSED ATTORNEY TO  
12 ADVISE THE PANEL."

13 Reletter succeeding paragraphs accordingly.

14 Page 5, strike lines 3 through 5 and substitute:

15 "(I) THE CONSIDERATION OF PRIOR SEXUAL CONDUCT, EXCEPT  
16 THAT WHICH IS RELEVANT TO A MATERIAL AND SUBSTANTIVE ISSUE IN THE  
17 ADJUDICATORY PROCESS AND WHERE THE PROBATIVE VALUE OUTWEIGHS  
18 ANY PREJUDICIAL VALUE; AND".

19 Page 5, line 9, before "PARTICIPATION" insert "TRUTHFUL".

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