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TO: Senator Rafferty, Representative Brennan
Joint Standing Committee on Education and Cultural Affairs
FROM: Becky Smith, Director of Government and Community Relations
RE: Statement in opposition to LD 1727, An Act Concerning Sexual Misconduct on
College Campuses
DATE: March 8, 2022

Senator Rafferty, Representative Brennan and members of the Joint Standing Committee on Education and Cultural Affairs. My name is Becky Smith, and I am providing testimony in opposition to LD 1727, *An Act Concerning Sexual Misconduct on College Campuses* on behalf of the Maine Community College System.

It is not easy to stand before you and oppose a bill whose goal is to make our campuses safer and to make it easier for students and employees to obtain needed supports and services. In fact, we debated testifying “neither for nor against” because, despite the many problems with the bill that prevent us from supporting it, colleges should use their resources to prevent sexual violence, intimate partner violence or stalking and to assist those who have been subject to such traumatic incidents. We completely understand the Senate President’s desire to help, especially after hearing such emotional stories from advocates. However, this bill does not accomplish the goals set out by the sponsor or *The Every Voice Coalition*, the national organization he has been working with to develop this policy proposal.

When we met with *The Every Voice Coalition* and the Senate President’s staff, the Coalition made it very clear that college students, in Maine and across the country, do not know about the resources available on their campuses. That college students across the country need supports and often don’t know where to turn for help. If that is the case on our campuses, we should enhance our current trainings and information campaigns to ensure that every current student, faculty and staff member knows where on campus to turn for help in times of need, before that need arises. We should also ensure that they know about Maine’s amazing system of legal aid, counseling and crisis centers for victims of sexual assault, stalking and domestic violence—a system the Maine legislature funds, and other states do not have.

Even though *The Every Voice Coalition* did not offer examples from our campuses where a student felt we had not provided adequate resources, information or support, we committed to them, at that meeting, to use the resources at our disposal to do more. We remain committed to do just that.

This bill is incredibly complex and rather than go through the bill line-by-line in my testimony, I want to touch on a few places of agreement and a few of the larger issues. I apologize in advance for the length of my testimony.

We agree that a survey can be an effective tool in assessing the climate on our campuses, if done correctly by qualified public health survey professionals. It is important to us that any survey tool be designed in a manner to result in relevant, reliable statistical information that will inform us on campus safety issues and needed improvements to our current policies, procedures, trainings, information campaigns, supports and services that will better meet the needs of our entire campus community. If the Commission has the resources to adequately support development of this type of unbiased professional survey tool, we can agree to this requirement.

We also agree that codifying our current immunity policy would bring a level of certainty to individuals who report allegations of sexual violence, intimate partner violence or stalking, and encourage such reports. Accordingly, we support that section of the bill.

With regard to the memorandum of agreement required by the bill, our college staff members, including our Title IX coordinators, already recommend the services of the Maine Coalition to End Domestic Violence and the Maine Coalition Against Sexual Assault, to all students and staff who need specialized supports and resources. If the Legislature would like to require us to enter into formal MOUs with these organizations, we will.

There are many aspects of this bill that we do not support because they do not make our campuses meaningfully safer or simplify a complex area of the law, and they conflict with federal laws in ways that are not easily resolved by the recent inclusion of an “inoperability” provision in the amendment.

First, we are concerned that this bill creates the misimpression that our colleges do not already provide protections for students and employees who have experienced sexual violence, intimate partner violence or stalking. In reality, the community colleges already provide a broad range of supports and services to those students and employees, many of which were provided long before the passage of federal regulations in this area. The community colleges comply with the myriad requirements of the Violence Against Women Act, as well as the comprehensive Title IX regulations adopted by the federal Department of Education. The Title IX regulations were substantially revised in August of 2020 and proposed revisions favorable to those who have experienced sexual and intimate partner violence are expected to be issued for public comment in a few weeks.

This bill adds layers on top of the existing federal requirements, which will make the process more confusing to reporters and respondents, and more challenging to administer. *The Every*

Voice Coalition has stated that a goal of this bill is to make the process easier for students and employees. We believe this bill will accomplish the opposite result.

Second, a primary concern is the mandatory addition to our staff of a Confidential Resource Advisor, or CRA. *The Every Voice Coalition* told us the CRA was needed because students who experience sexual violence, but choose not to file a complaint, want a person on campus who can help them navigate the process to obtain needed supports. In practice and as a matter of law, every college's Title IX coordinator is a confidential resource advisor. Students do not need to file a complaint or participate in a disciplinary process to obtain the services of the coordinator, who is subject to the federal confidentiality law applicable to all students as well as to the confidentiality provisions of Title IX. If our students do not know this, we need to do a better job informing them of already available resources.

Our students are best served by ensuring they are aware of the supports they can obtain through a Title IX coordinator and by seeking the coordinator's help, not by creating a new position that duplicates many of the same duties. As you know, our colleges have limited staffing and the most qualified employees for the CRA role will be conflicted out under the bill. That result is not in the best interests of our students.

The CRA position is one area where this bill conflicts with federal law. The duties of the CRA include those assigned by federal law exclusively to Title IX coordinators. Those duties cannot be performed by a CRA if the incident is within the scope of Title IX and has been reported to the Title IX coordinator, even if no complaint is filed. Further, under Title IX, the colleges must provide equal resources to each party to a complaint of sexual assault, domestic or dating violence or stalking. There is no resource a college can offer to a responding party that is equal to the "privileged communications" afforded to reporting parties by a CRA. Accordingly, a college could not offer a CRA to a reporting party in any matter within the jurisdiction of Title IX, a result that will be difficult to explain, confusing and viewed as unfair.

Third, the Policy section of the bill will result in another set of campus policies and procedures governing this subject area. Because the new policies and procedures will have different definitions and a different scope than under federal law, they will be in addition to and not a substitute for their federal counterparts, making this landscape even more difficult to navigate.

Fourth, another area of concern is the Definitions section. The definitions of "student" and "employee" are overly broad and include every student who ever left without a degree and every employee who left for any reason. Those definitions extend well beyond what we understand to be the intended scope of this bill and would require the colleges to provide supports and services to former students and employees who did not leave the college because of an incident of sexual violence, intimate partner violence or stalking. When defining operational terms for a law, words matter.

We appreciate the concerns raised by the Senate President and *The Every Voice Coalition*. We recognize that other states, ones that do not have Maine's regulatory structure and robust legal aid and supports for victims of sexual violence, intimate partner violence, and stalking, have enacted portions of this national template legislation. We have identified those parts of the bill that we can support because they will meaningfully enhance our current system of resources and protections, but the remaining sections do not make our campuses meaningfully safer or provide our students and employees with a simplified process for obtaining needed supports.

We are happy to answer any questions and are willing to have experts available for work session.

Sample of links to MCCS resources and policies:

- [Make Your Move! - Maine Community College System \(me.edu\)](#)
- [Sexual-Assault-Support-Services-and-Resources.pdf \(me.edu\)](#)
- Student Sexual Misconduct and Assault, Stalking, and Relationship Violence [Procedure 501.1.pdf \(me.edu\)](#)
- Title IX Sexual Harassment [Procedure](#)