

# HB 4306 - Core Issues & Suggested Changes - 9/28/21

The reason for these additional suggestions to the current purposed changes are for 1. Close the gaps for legal application 2. Ensure the changes achieve the intended goal in terms of reaching the target populations. 3. To create a new foundation of law on which we can build to establish accountability, prevention, and secure future justice, while also providing protection for our institutions and most importantly the necessary safety for our young adults.

## Close the Gap of Liability (Terms of Duty & Intent)

### ❖ General Liabilities Defined for CSC (Person vs. The Institution)

An action for liability against *ANY individual, employee, volunteer, representative, agent, professional student, or person(s)*, alleged to have committed the CSC that caused or led/resulted in injury while:

- Employers Liability for Employees

- Scope of Work & Intentional Acts of CSC - Operates outside their scope of work and/or performs an intentional act of CSC while providing purported medical care.

- ✓ Critical addition for execution of CSC civil suits against universities and colleges for athletes

- “Duties Owed” to Athletes & Other Students by Universities and Colleges

(All Failures in both Univ. Of Michigan & MSU Cases)

- Owed Duty of Care – Specific duty of care owed to students and especially athletes due to their unique relationship to the university; and institutions thus become liable for person(s) who performs a wrongful and/or negligent acts against these individuals due to breach of duty.

- Duty to Act Reasonably - Failure to provide services, exercise reasonable care, communicates incorrect information and/or misleads, misrepresents the events, the assistance, needs, and/or statements of the victim; conducts any concerted effort to “coverup” conceal, hide evidence, knowledge, and/or render equitable actions; and the harm resulting from any of the failures to act either (1) made the injury worse because of the failure, or (2) the victim suffered because of the other’s reliance on the undertaking, or (3) causes law enforcement, and other aids or agents to abandon efforts toward the victim, which either prolongs rescue and/or dismissal of events, resulting and/or caused additional injury to the victim.

- Duty to Maintain Safe Premises - Failure to secure premises, failure to protect from harm by third parties and take precautions to prevent harm, and failure to adhere to landowners’ duty of authorized/unauthorized use of facilities etc.

**Justification:** There is a need to address, better identify and define the liability and responsibility when it comes to acts of CSC that occur within employer-based institutions such as universities and colleges. The need stems from the historical ability of institutions to escape accountability and evade the “owed duties” onus due to governmental immunity and “employer knowledge”, which translated to employers’ lack of responsibility for the individual employee that takes actions outside of routine “protocols”. These additions above are a way to clearly establish a construct that can be used to better regulate and guide institutions, while holding them accountability and responsible for their employees’ actions given the distinct circumstances, special relationships and duties owed to both athletes and students specifically for CSC within a universities or colleges.

### ❖ Notice Requirement Expanded – Actual vs. Constructive Knowledge or “Notice”

Currently Use Focus on Actual Knowledge/Notice – Knew or Must have known

- Actual vs. Constructive Knowledge

- Expand to Use and Incorporate Constructive Knowledge/Notice – Should have known, had reason to know, or had **“Reasonable Notice”** (through exercising reasonable inquiry, care, circumstance and/or ordinary intelligence should or would have known or was/would have been aware), of any general red-flag misconduct, CSC, threats and/or risks of harm to athletes or students.

- “Notice” Applies to All Federal and State Regulations, Directives and Laws; and any other general regulations, laws or guidelines from other governing agencies or entities given to post-secondary institutions (i.e., Title IX, Federal Law-Clery Act, NCAA etc.)

- **Example:** Title IX federally mandated regulations regarding athletes, discrimination, and gender (which included sexual violence) in 1980 applicable to all universities, colleges, and institutions; And/or the Federal Clery Act of 1990, which requires all campuses to publicly outline policies and procedures they have put into place to improve campus safety and to prevent and support victims of sexual assault and violence.
  - ✓ Critical addition for execution of CSC civil suits against universities and colleges for athletes

**Justification:** These types of mandates indicated above do effectually put universities, colleges, and other agencies “On Notice”, and provides them with either or both, Actual and Constructive Knowledge of potential threats, risks, and safety issues. It should be understood that “Notice” pertains to the public outlining and implementation of mandated policies, procedures, guidelines, regulations, directives and/or laws.

In the context of CSC, Constructive Knowledge includes owed duty of care and owed duty to prevent harm and qualifies as reasonable notice. In a college and/or sports athletic setting, this reasonable notice applies due to the fact that these agencies are still compelled to take additional precautions to prevent harm based on their generalized knowledge that violent acts are likely to occur on campus (i.e., Federal Clery Act of 1990). Thus, institutions failure to adhere, implement or outline any such policies and/or procedures etc., cannot claim lack of “notice” or knowledge, and likewise can neither claim they “*did not know, should not have known or had no reason to know, nor had reasonable notice*” about any potential injury.

## Ensure Changes Reach the Goals of Intended Populations (Section 3(a)& (b))

- ❖ **BROADEN THE LANGUAGE** used to describe the Abuse of Authority, Types of Purported Care, and Profession of Person(s) in Authority. (*All critical additions for execution of CSC civil suits against universities/colleges for Athletes*)
  - **Expanding & Broadening the Language Used for Descriptions**
    - “Abuse of Authority” can consist of the victim being: *Groomed and/or coerced; Required to submit, adhere, and/or comply; Caused/forced to yield to demands and/or requests; Instructed to ingest and/or use any medications, illicit drugs, concoctions, or potions.*
    - Other Types of Purported Care to Include: *Any procedures, evaluations, consultations, or general appointments.*
    - Expand profession of Person(s) in Authority: *ANY person(s) in authority over the victim, NOT ONLY A PHYSICIAN.*
      - **Example of Broaden Personnel Language:** *ANY person(s) in authority over the victim, to include any individual, employee, volunteer, representative, agent, professional student, or person(s) providing clinical care, alleged to have committed the criminal sexual conduct and/or any other person.*

**Justification:** To ensure the full intended population is reached and to decrease the risk of failing the victims during the pursuit of legal justice based upon the limitations of a single word left to define ALL the specific ways a person(s) abuses authority. There are numerous ways and methods authority can be misused to take advantage of an individual, coercion is only one way, whereas grooming is another and the most common. Grooming is not a time limited form of authority abuse as some may believe. It is fundamental not to limit the language of the types of care received, to the point that it does not meet the goal of capturing the various forms of care possibly provided.

Additionally, it is crucial to broaden the type of personnel so that it comprehensively captures the breath of person(s) who have authority over, closely engage with, and/or have significant contact with individuals receiving treatment or any type of medical care. A physician’s span of control extends beyond just the context of treatment or purported care, and as such, this Physician may operate out of the scope of his/her work, and/or could be classified under another personnel title other than “Physician”, and thus technically not be the “victim’s Physician”. Therefore, it is essential to allow for the real possibility that some other clinical personnel variant that treats and provides purported care to athletes and others, may also abuse authority, and potentially commit an act of CSC (i.e., Medical Student Doctor, Nurse, Aid, Medical Researcher and/or any other additional medical or non-medical personnel in the room that may be complicity involved etc.).