
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair

2015 - 2016 Regular

Bill No: AB 967

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Subject: Postsecondary education: sexual assault cases

SUMMARY

This bill requires, as a condition of receiving state funds for student financial assistance, that the governing boards of each community college district, the California State University (CSU) Trustees, the University of California (UC) Regents, and the governing board of each independent postsecondary institution adopt and carry out a uniform process for disciplinary proceedings relating to any claims of sexual assault, as specified, and that they annually report specified information relative to sexual assault, dating violence, and stalking complaints, investigations, and outcomes, as specified.

BACKGROUND

Existing federal law:

- 1) Establishes the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) which requires public and private postsecondary educational institutions that receive federal financial aid to disclose information about crimes on and around campuses as well as establish certain rights for victims of sexual assault.
- 2) Requires institutions, under the Clery Act to collect, classify and count crime statistics, publish an Annual Security Report with crime statistics and security policies, and report crime statistics to the United States Department of Education. The Clery Act requires reporting of crimes in seven major categories, some with significant sub-categories and conditions, including crimes involving forcible and non-forcible sex offenses.
- 3) With the 2013 reauthorization of the federal Violence Against Women Act, which includes the Campus Sexual Violence Elimination Act, amended the Clery Act to, among other things, require institutions to compile statistics of incidents of sexual assault, domestic violence, dating violence and stalking. This Act also requires the Annual Security Report to contain additional information such as prevention programs, procedures once incidents are reported, and possible sanctions following an institutional disciplinary procedure. The final rule implementing changes to the Clery Act was issued in October 2014, and is effective July 1, 2015.

Existing state law requires:

- 1) The governing board of each community college district, the Trustees of the California State University (CSU), the Regents of the University of California (UC), and the governing board of independent postsecondary institutions to adopt a policy concerning campus sexual violence, domestic violence, dating violence and stalking that includes specified components, including the affirmative consent standard. (Education Code § 67386)
- 2) The governing board of each community college district, the Trustees of the CSU, the Board of Directors of the Hastings College of the Law, and the Regents of the UC to each adopt and implement at each campus or other facilities, a written procedure or protocol to ensure, to the fullest extent possible, that students, faculty and staff who are victims of sexual assault committed on grounds maintained by the institution or affiliated student organizations receive treatment and information. (EC § 67385)
- 3) Each campus of the California Community Colleges (CCC) and the CSU, and requests each campus of the UC, to post sexual violence prevention and education information on its campus website. The information must include specific components including dating violence, rape, sexual assault, domestic violence and stalking crimes, how to file a complaint, and the availability and contact information for resources for victims. (EC § 67385.7)
- 4) Each campus of the CCC and the CSU, and requests each campus of the UC, to develop policies to encourage students to report any campus crimes involving sexual violence. (EC § 67385.7)

ANALYSIS

This bill:

- 1) Requires, in order to receive state funds for student financial assistance, the governing boards of each community college district, the CSU Trustees, the UC Regents, and the governing board of each independent postsecondary institution to:
 - a) Adopt and carry out a uniform process, applicable to each campus of the institution for disciplinary proceedings relating to any claims of sexual assault.
 - b) Report by April 1, 2017, and annually thereafter until December 31, 2021:
 - i) The number of sexual assault, domestic violence, dating violence, and stalking complaints received, investigated, and not investigated by the institution.
 - ii) The number of investigations conducted in which respondents were found responsible, and not responsible, at institutional disciplinary proceedings.

- iii) The number of disciplinary sanctions imposed on respondents disaggregated by type of discipline in, at minimum, the categories of expulsion, suspension of at least 2 years, suspension of fewer than two years, and probation.
- 2) Requires the uniform process policies adopted, at minimum:
- a) Refrain from carrying out different disciplinary processes on the same campus, or alter the uniform process based on student characteristics or status, or membership on an athletic team, or the student's academic major.
 - b) Develop and implement a minimum standard of discipline of at least two years of suspension, up to expulsion, for students found responsible for specified acts.
 - c) Provide for specific forms of discipline to include expulsion, suspension, loss of financial aid or scholarships, loss of activity privileges and removal from student housing.
- 3) Clarifies that sexual assault, domestic violence, dating violence, and stalking refer to all categories of misconduct in the institution's sexual assault policies adopted pursuant to specified state law.
- 4) Requires that reporting required by the bill occur in a manner that provides appropriate privacy protections for the alleged victim and the alleged perpetrator.

STAFF COMMENTS

- 1) **Need for the bill.** According to the author, there need to be severe outcomes to truly act as a deterrent and address rape culture on a campus. The author opines that universities must at least consider suspension for a minimum of two years if an individual is found guilty of sexual assault. In addition, the author is concerned that there is very little accountability for the outcome of adjudication proceedings for campus sexual assault cases.

This bill provides clear and consistent direction to universities on handling rulings on campus sexual assault cases through the campus adjudication system by requiring a two year suspension for students found responsible for rape, forced sodomy, forced oral copulation, and rape by a foreign object. It also provides for specified reporting on the number of sexual assault, domestic violence, dating violence, and stalking complaints received, investigated, and not investigated by the institution, and the outcomes of disciplinary proceedings and investigations.

- 2) **National Guidelines.** The Association of Student Conduct Administrators (ASCA) is a national membership association that, among other things, facilitates best practices of student conduct administration and conflict resolution on college and university campuses. ASCA notes that, given the spectrum of sexual misconduct, there must also be a spectrum of sanctions available, and recommends that sanctioning guidelines rather than absolute sanctions be used for two main reasons: 1) the circumstances of every case are unique and 2) mandatory sanctions may deter reporting of incidents and/or lead decision-makers to reach an inappropriate

decision about responsibility in order to avoid a certain sanction. ASCA also suggests that sanctions should be relative and appropriate for the violation.

In its "2014 White Paper: Student Conduct Administration & Title IX: Gold Standard Practices for Resolution of Allegations of Sexual Misconduct on College Campuses" ASCA acknowledges that while the "one size fits all" concept is challenging for campuses, there are guiding principles that should underlie all student conduct policies and procedures and recommended practices required of universities in responding to allegations of sexual misconduct.

Association of Student Conduct Administrators (ASCA) notes that the goals, restrictions, and outcomes of law enforcement investigations and campus conduct investigations are different, and notes in its white paper that, unlike the courts which use a "beyond a reasonable doubt" standard to determine if someone committed a crime, the student adjudication process uses a "preponderance of evidence" standard, to determine if a student "more likely than not" violated institutional policies. Law enforcement investigates to determine whether or not a crime occurred. Campus conduct officials investigate to determine whether or not a policy was violated including whether a hostile environment was created by such conduct. ASCA notes that finding a student "guilty" of "rape" or any other criminal offense through a campus conduct process, could result in an appeal in the courts for failing to meet legal standards and/or due process rights of the accused, potentially jeopardizing the ability for colleges to respond promptly to separate a student from the campus community when needed. ASCA cites a specific example in which an appellate court reversed an institution's finding of assault and battery because the university's violation was predicated on the behavior being unlawful. That case was remanded back to the university to vacate the violation and remove the penalties that were imposed.

- 3) ***Uniform disciplinary process versus uniform disciplinary sanctions.*** This bill removes the discretion to apply sanctions/discipline on a case by case basis and instead requires that an institution develop and implement a minimum standard of discipline of at least two years suspension, up to expulsion, for students found responsible for rape, forced sodomy, forced oral copulation, and rape by a foreign object. The committee may wish to consider the following questions:
 - a) In light of the less rigorous standard, of "preponderance of evidence," should the institution's adjudication proceedings be making findings that the student is "responsible" for criminal acts such as rape, forced sodomy, forced oral copulation, or rape by a foreign object rape?
 - b) Will disciplinary panels be more hesitant to find a student in violation of sexual assault policies based on "preponderance" given a statutorily required minimum sanction?
 - c) Could "findings" of responsibility for acts that are criminal, versus acts that are violations of an institution's adopted policies, and the subsequent discipline, be subject to challenge as exceeding the campus' authority?

- d) Will the mandatory minimum 2 year suspension result in victims choosing not to come forward, and have the unintended consequence of resulting in fewer attackers being held accountable?
- e) While consistent process makes sense, shouldn't the institution retain the discretion to consider the evidence and circumstance surrounding the alleged assault and determine the appropriate sanction?

Staff recommends the bill be amended to delete the 2 year suspension requirement and instead require the development and implementation of consistent standards for the imposition of discipline for students found responsible for sexual assault as these acts are defined by an institution's policies in compliance with Education Code 67386.

Staff further recommends the bill be amended to insert: "It is the intent of the Legislature that the standards of discipline adopted and implemented by institutions be fair, objective and consistent, and severe enough to act as a deterrent to sexual misconduct."

- 4) **Related UC activity.** In June 2014, President Napolitano formed the President's Task Force on Preventing and Responding to Sexual Violence and Sexual Assault (Task Force). Thus far, the Task Force has produced two reports, the first in September 2014 outlined recommendations accepted by President Napolitano and reported to the Board of Regents, and the second in January 2015, provided an update on the recommendations that were implemented and discussed the next steps to implement the remaining recommendations during 2015. Two of the four remaining recommendations that the Task Force is working to implement are consistent with the provisions of this bill. These include the following:
 - a) Recommendation 2: Adopt systemwide, standard investigation and adjudication standards.
 - b) Recommendation 7: Initiate/develop a systemwide standard data collection system.
- 5) **Loss of financial aid.** This bill requires that the minimum standards provide for specific forms of discipline, including the loss of financial aid or scholarships. While some concerns have been raised that loss of financial aid may differentially affect low-income students, the provisions of this bill provide for its loss as one of several options, and would still appear to allow for some discretion on the part of the institution to determine the appropriate sanction. Staff notes, however, that the institution may not have control over eligibility for state and federal financial aid programs. The institution does likely have control over campus-based financial aid and scholarships. **Staff recommends** the bill be amended to clarify on page 3 line 3 that forms of discipline shall include loss of institutional financial aid or scholarships.
- 6) **Need for clarity and consistency.** This bill uses the terms "sexual assault" and "sexual violence."

Staff recommends the bill be amended for consistency in the use of the term within subdivision (a) by replacing these terms with “sexual assault, as these acts are defined by an institution’s policies in compliance with Education Code 67386. In addition **staff recommends** the bill be amended on page 2 line 10 to clarify that its provisions apply to “registered students” as the institution’s jurisdiction over disciplinary proceedings and actions could only be applicable to students registered at the institution.

- 7) **Clarify reporting requirements.** Federal law requires postsecondary educational institutions to compile general statistics of incidents of sexual assault, domestic violence, dating violence and stalking. Each institution’s Annual Security Report must also contain information such as prevention programs, procedures once incidents are reported, and possible sanctions following an institutional disciplinary procedure.

Federal legislation proposes the Campus Accountability and Safety Act, which includes reporting requirements that are similar to those proposed by this bill, such as the number of incidents reported to the Title IX coordinator, the number of cases processed through the student disciplinary process, and a description of the final sanction, if any was imposed.

This bill requires that the specified information be reported by April 1, 2017 and annually thereafter. **Staff recommends** the bill be amended to change the reporting date to October 1, consistent with federal reporting requirements. **Staff further recommends** the bill be amended to clarify that the report is to be posted on an institution’s website in a manner easily accessible to students.

Staff also recommends the bill be amended to add an additional category of reporting, “G) The number of cases that were closed for other reasons.”

- 8) **Privacy and confidentiality.** This bill requires that information be reported in a manner that protects the confidentiality of alleged victims and alleged perpetrators. **Staff recommends** the bill be amended in subdivision (d) line 28 to insert at the end of the sentence, “consistent with the Family Educational Rights and Privacy Act (FERPA).”

SUPPORT

California Coalition Against Sexual Assault
California Federation of Teachers

OPPOSITION

None received.