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# SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair  
2015 - 2016 Regular

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**Bill No:** AB 636  
**Author:** Medina  
**Version:** April 29, 2015  
**Urgency:** No  
**Consultant:** Lynn Lorber  
**Hearing Date:** June 10, 2015  
**Fiscal:** No

**Subject:** Postsecondary education: student safety

**NOTE:** This bill has been referred to the Committees on Education and Public Safety. A "do pass" motion should include referral to the Committee on Public Safety.

## SUMMARY

This bill requires postsecondary education institutions to disclose to law enforcement the identity of an alleged assailant if the institution determines that the alleged assailant represents a serious or ongoing threat to the safety of the campus community and the immediate assistance of law enforcement is necessary.

## BACKGROUND

Existing federal law requires, under Title IX and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), colleges and universities, as a condition of federal student aid program participation, to:

- 1) Publish annual campus security reports, maintain crime logs, provide timely warnings of crimes that present a public safety risk, and maintain ongoing crime statistics.
- 2) Establish certain rights for victims of sexual assault, including notification to victims of legal rights, availability of counselling, the results of disciplinary proceedings, safety options for victims, and offering prevention and awareness programs. (United States Code, Title 20 §1681-1688, and §1092(f))

Existing state law:

- 1) Requires the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary education institutions receiving public funds for student financial assistance to require the appropriate officials at each campus to compile records of all occurrences reported to the campus of, and arrests for, crimes that are committed on campus that involve violence, hate violence, theft, destruction of property, illegal drugs, or alcohol intoxication. (Education Code § 67380)
- 2) Requires any report made by a victim or an employee regarding specified violent crimes, sexual assault, or a hate crime which is received by a campus security authority and has been made by the victim for purposes of notifying the institution or

law enforcement, to be disclosed immediately, or as soon as practicably possible, to the local law enforcement agency with which the institution has a written agreement clarifying operational responsibilities for investigations. (EC § 67380)

- 3) Prohibits the report from identifying the victim without his or her consent, and if the victim does not consent, the alleged assailant also shall not be identified. (EC § 67380)

## ANALYSIS

This bill requires postsecondary education institutions to disclose to law enforcement the identity of an alleged assailant if the institution makes specified determinations. Specifically, this bill.

- 1) Adds an exception to the prohibition on the disclosure to law enforcement of the identity of an alleged assailant in cases where the victim does not consent to being identified, to require postsecondary education institutions to disclose the identity of the alleged assailant to local law enforcement if the institution determines both of the following:
  - a) The alleged assailant represents a serious or ongoing threat to the safety of students, employees, or the institution.
  - b) The immediate assistance of the local law enforcement agency is necessary to contact or detain the assailant.
- 2) Requires the institution to immediately inform the victim of the disclosure.
- 3) Applies to the University of California, California State University, California Community Colleges, and any postsecondary educational institution receiving public funds for student financial aid.

## STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “In response to concerns that California university campus administrators were underreporting sexual assaults and mishandling cases in several ways, the Education Code was amended last year to require campuses to pass along reports of Part 1 violent crimes, sexual assaults and hate crimes that occur on campus to local law enforcement agencies. The goal of the requirement was to improve the working relationship between campuses and local police and sheriffs’ departments, which could result in more thorough investigations, better outcomes for victims, and safer communities. Under the requirement, victims were provided the authority to have their identity withheld from the report to law enforcement. In such cases, institutions would also be prohibited from identifying the alleged assailant. Earlier this year, concerns were raised that providing the victim exclusive control over withholding the alleged assailants name from law enforcement could inhibit the ability of university officials to protect the campus community.”

2) **What types of crimes?** This bill applies to the following crimes:

- a) Part 1 violent crimes, which includes willful homicide, forcible rape, robbery, or aggravated assault.
- b) Sexual assault, including but not be limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or the threat of any of these.
- c) Hate crimes, as described in Penal Code § 422.55.

3) **Confidentiality.** The United States Department of Education's Office for Civil Rights issued questions and answers relative to Title IX and sexual assault. This document states:

"For Title IX purposes, if a student requests that his or her name not be revealed to the alleged perpetrator or asks that the school not investigate or seek action against the alleged perpetrator, the school should inform the student that honoring the request may limit its ability to respond fully to the incident, including pursuing disciplinary action against the alleged perpetrator. The school should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

"If the student still requests that his or her name not be disclosed to the alleged perpetrator or that the school not investigate or seek action against the alleged perpetrator, the school will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported [the crime]."

<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> (pages 18-22).

Title IX allows an institution to override the confidentiality wishes of a victim in some instances. The institution may weigh the request for confidentiality against its obligation to provide a safe and nondiscriminatory environment for all students, including the victim. In contrast, existing California law gives the victim exclusive control over whether the alleged assailant's identity is disclosed to law enforcement.

This bill does not require the disclosure of the victim's identity to law enforcement.

4) **Fiscal impact.** This bill is keyed as non-fiscal.

5) **Related and prior legislation.** AB 913 (Santiago, 2015) requires the written jurisdictional agreements between postsecondary education institutions and local law enforcement regarding responsibility for investigating specified violent crimes to also make a designation with respect to the investigation of sexual assaults and hate crimes. AB 913 is pending referral in the Senate Rules Committee.

AB 1433 (Gatto, Ch. 798, Statutes of 2014) requires the governing board of each public, private and independent postsecondary educational institution, which receives public funds for student financial assistance, to adopt and implement written policies and procedures governing the reporting of specified crimes to law

enforcement agencies. AB 1433 also prohibits the disclosure of the alleged assailant's identity to law enforcement if the victim does not consent to being identified.

**SUPPORT**

Association for Los Angeles Deputy Sheriffs  
Association of Independent California Colleges and Universities  
California Association of Code Enforcement Officers  
California College and University Police Chiefs Association  
California Narcotic Officers Association  
Los Angeles County District Attorney's Office  
Los Angeles Police Protective League  
Rancho Santiago Community College District  
Riverside Sheriffs Association

**OPPOSITION**

University of California Student Association

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