

Date of Hearing: April 21, 2015

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 967 Williams – As Amended March 26, 2015

SUBJECT: Postsecondary education: sexual assault cases

SUMMARY: Establishes minimum disciplinary standards and reporting requirements for sexual assault complaints received by California Community College districts (CCD), California State University (CSU), the University of California (UC) and independent postsecondary educational institutions. Specifically, **this bill:**

- 1) Requires, in order to receive state funds for student financial assistance, the governing board of a CCD, the Trustees of the CSU, the Regents of the UC, and the governing board of each independent postsecondary institution to adopt and carry out a uniform process, applicable to each campus, for disciplinary proceedings related to claims of sexual assault.
- 2) Requires the policies to conform to the following:
 - a) The institution shall not carry out a different disciplinary process on the same campus for a matter of sexual violence, or alter the uniform process based on the status or characteristics of a student who will be involved in that disciplinary proceeding, including characteristics such as a student's membership on an athletic team, a student's academic major, or any other characteristic or status of a student.
 - b) The institution shall 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, rape by a foreign object, sexual battery, threat of sexual assault, and any other forms of sexual assault.
 - c) Requires minimum standards to 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) Requires, in order to receive state funds for student financial assistance, the governing board of a CCD, the Trustees of the CSU, the Regents of the UC, and the governing board of each independent postsecondary institution to report all of the following on an annual basis:
 - a) The number of sexual assault cases that were investigated by the institution;
 - b) The number of sexual assault cases that were referred for a disciplinary proceeding at the institution;
 - c) The number of sexual assault cases that were referred to local or state law enforcement;
 - d) The number of alleged perpetrators who were found responsible at the disciplinary proceedings of the institution;

- e) The number of alleged perpetrators who were found not responsible at the disciplinary proceedings of the institution;
 - f) A description of and the number of final sanctions imposed by the institution for each offense perpetrated; and,
 - g) The number of disciplinary proceedings at the institution that closed without resolution.
- 4) Defines “sexual assault” to include, but not be limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or a threat of sexual assault involving a student, whether on or off campus.
- 5) Requires the information to be reported in a manner that provides appropriate protections for the privacy of those involved, including, but not necessarily limited to, protection of the confidentiality of the alleged victim and of the alleged perpetrator.

EXISTING LAW:

- 1) Requires the governing board of public, private, and independent postsecondary educational institution that receives public funds for student financial assistance to compile records of crimes on campus, make crime records available upon request, and to disclose a reported Part 1 violent crime, sexual assault, or hate crime, to the local law enforcement agency where the campus is located. (Education Code Section 67380, 67383)
- 2) Requires, under the Kristen Smart Campus Safety Act, UC Regents, CSU Trustees, CCD governing boards, and independent colleges that meet specified conditions to enter into specific written agreements with local law enforcement agencies regarding the coordination and responsibilities for investigating Part 1 violent crimes which occur on campus. (EDC Section 67381)
- 3) Requires public postsecondary educational institutions to each adopt, and implement at each campus or other facilities, a written procedure or protocols 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. The written procedures or protocols must contain specified information. (EDC Section 67385.)
- 4) Requires public postsecondary educational institutions, and requests UC, in collaboration with campus- and community-based victim advocacy organizations, to provide as part of campus orientations, educational and preventive information about sexual violence and to develop policies to encourage students to report any campus crimes involving sexual violence. (EDC Section 67385.7.)
- 5) Requires public and independent postsecondary institutions, as a condition of receipt of student aid funds, to adopt a policy concerning campus sexual violence, domestic violence, dating violence, and stalking that includes specified components and standards, including an "affirmative consent" standard for determining whether consent was given by both parties to sexual activity. Establishes a preponderance of evidence as the evidentiary standard for determining if sexual violence/harassment occurred. (EDC Section 67386)

- 6) Requires, under the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), public and private postsecondary educational institutions that participate in the federal financial aid program to disclose information about crimes on and around campuses. (20 U.S.C. section 1092(f))
- 7) Requires, under federal Title IX (20 U.S.C. sections 1681-1688), public and private postsecondary educational institutions that participate in the federal financial aid program to establish certain rights for victims of sexual assault, including:
 - a) Institutions are responsible for immediately and effectively responding to any sexual harassment or violence that creates a hostile environment. The institution must eliminate the harassment or violence, prevent its recurrence, and address its effects. Regardless of whether a student chooses to file a complaint with the institution, the institution is responsible for investigating and taking appropriate steps to resolve the situation. A criminal investigation does not relieve the school of its duty under Title IX.
 - b) Institutions must have and distribute policies against sex discrimination; the policy must state that inquiries concerning Title IX may be referred to the institution's Title IX coordinator or to the Office of Civil Rights (OCR).
 - c) Institutions must have a designated Title IX coordinator and notify students and employees of the name and contact information for the Title IX coordinator. The coordinator is responsible for overseeing all complaints of sex discrimination, which include harassment and assault, and identifying and addressing patterns or systemic problems.
 - d) Institutions are required to have and make known the procedures for students to file complaints of sex discrimination, and procedures must provide for prompt and equitable resolution of sex discrimination complaints. All complainants must have the right to present his or her case, including the right to a full investigation, to present witnesses and evidence, and to an appeal process (available to both parties).
 - e) Establishes a preponderance of the evidence standard (more likely than not) when determining if sexual harassment or violence occurred.
 - f) Provides complainants the right to be notified of the outcome of the complaint, including the sanction. Complainants cannot be required to abide by a nondisclosure agreement.
 - g) Authorizes grievance procedures to include voluntary informal methods (such as mediation) for resolving some types of sexual harassment complaints. However, mediation is not appropriate in cases involving allegations of sexual assault.

FISCAL EFFECT: Unknown

COMMENTS: *Background.* College students who are victims of sexual assault are entitled to the protections and services provided to victims of the general population (law enforcement investigations, rape crisis center services, district attorney criminal prosecutions, etc.) and to the

protections and services required to be provided by colleges and universities under state and federal laws (see: Existing Law). In recent years, there has been an increasing public awareness of sexual violence occurring on and near college campuses. State and federal governments have responded through laws and regulations that seek to strengthen partnerships between colleges and local law enforcement agencies (criminal investigations) and to improve campus handling of sexual assault complaints (Title IX responsibilities).

Committee oversight. On June 30, 2014, the Assembly Higher Education Committee held a joint oversight hearing to review compliance with federal sexual harassment laws at California's public universities. There was overwhelming consensus that campuses can and should do more to protect and respond to sexual assault. At that time, the author (and former-committee chair) committed to monitor campus progress and, if necessary, introduce follow-up legislation. This past fall, the author organized three roundtable discussions: in September at UC Berkeley, in October at UC Santa Barbara, and in December at UCLA. Among the comments presented by roundtable participants and the public was a strong sentiment that campuses were not doing enough to ensure meaningful penalties for students found in violation of sexual misconduct policies. In addition, when data regarding disciplinary outcomes was presented by the institutions to the author and committee members, many members noted that data showed very few sanctions being imposed on students found in violation of sexual misconduct.

Purpose of this bill. According to the author, "the state of California has an obligation to provide a safe and secure learning environment at our college and university campuses. Students, families, and the general public need assurance that colleges and universities take campus sexual assault seriously. The Washington Post obtained data from approximately 100 institutions surveyed in 2012 and 2013; in regards to campus sanctions in sexual assault cases they discovered that out of 478 sanctions for sexual assault, only 12% resulted in expulsion and 28% resulted in suspensions."

The author believes that in order to address rape culture on college campuses, there needs to be meaningful sanctions that truly serve as a deterrent. This bill is intended to provide clear and consistent direction to colleges and universities on imposing sanctions for sexual assault, and will require reporting of adjudication outcome data to ensure compliance with these standards.

Issues to consider.

- 1) *Minimum sanctions.* This bill requires institutions to impose minimum standards of discipline of at least two years suspension, up to expulsion, for students found responsible for any of the following:
 - a) Rape
 - b) Forced sodomy
 - c) Forced oral copulation
 - d) Rape by a foreign object
 - e) Sexual battery

- f) Threat of sexual assault, and
- g) Any other forms of sexual assault.

In the past year, a handful of institutions, including Amherst College, Duke University and Vassar College, have put more emphasis on expulsion as a penalty. Most institutional policies stop short of making expulsion mandatory. Duke's policy refers to expulsion in cases of sexual misconduct as the "preferred sanction." In 2014, Dartmouth College announced a policy making expulsion the mandatory punishment for students who commit certain kinds of sexual assault (rape).

The author and committee may wish to consider narrowing the violations under which an assailant would face these minimum disciplinary standards. *Specifically, the author and committee may wish to consider removing "sexual battery, threat of sexual assault, and any other form of sexual assault" from this list.* Removing these violations from this list would not preclude a campus from imposing a suspension or expulsion, but would provide a campus with flexibility in issuing discipline based on the circumstances of the violation.

- 2) *Reporting requirements.* To ensure disciplinary reporting requirements are consistent with other laws governing campus handling of sexual assault cases, the author and committee may wish to consider the following amendments:

(b) Notwithstanding Section 67400, in order to receive state funds for student financial assistance, 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 board of each independent postsecondary institution shall report all of the following on an annual basis:

~~(1) The number of sexual assault cases that were investigated by the institution.~~

~~(2) The number of sexual assault cases that were referred for a disciplinary proceeding at the institution.~~

~~(3) The number of sexual assault cases that were referred to local or state law enforcement.~~

~~(4) The number of alleged perpetrators who were found responsible at the disciplinary proceedings of the institution.~~

~~(5) The number of alleged perpetrators who were found not responsible at the disciplinary proceedings of the institution.~~

~~(6) A description of and the number of final sanctions imposed by the institution for each offense perpetrated.~~

~~(7) The number of disciplinary proceedings at the institution that closed without resolution.~~

(1) The number of sexual assault, domestic violence, dating violence and stalking complaints received by the institution;

(2) The number of sexual assault, domestic violence, dating violence and stalking complaints investigated by the institution;

(3) The number of sexual assault, domestic violence, dating violence and stalking complaints that were not investigated by the institution;

(4) The number of investigations, conducted pursuant to (2), in which the respondent was held responsible;

(5) The number of investigations, conducted pursuant to (2), in which the evidence was found insufficient to hold the respondent responsible;

(6) The number of cases pursuant to (3) in which discipline was imposed, disaggregated by the type of discipline imposed in, at minimum, the following categories:

- (i) Expulsion
- (ii) Suspension of two years or longer
- (iii) Suspension of fewer than two years
- (iv) Probation

- 3) *Definition of sexual assault.* In conforming to the aforementioned reporting requirements, the definition of "sexual assault" as contained in this bill is no longer necessary. The author and committee may wish to consider the following amendment:

(c) For purposes of this section, ~~“sexual assault” includes, but is not limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or a threat of sexual assault involving a student, whether on or off campus.~~ “sexual assault, domestic violence, dating violence, and stalking” includes all categories of misconduct in the institution's policy adopted pursuant to section 67386.

REGISTERED SUPPORT / OPPOSITION:

Support

California Federation of Teachers
National Association of Social Workers – California Chapter
California Coalition Against Sexual Assault

Opposition

None on File

Analysis Prepared by: Laura Metune / HIGHER ED. / (916) 319-3960