

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON HIGHER EDUCATION
Mike Fong, Chair
AB 2096 (Petrie-Norris) – As Introduced February 5, 2024

SUBJECT: Restraining orders: educational institutions

SUMMARY: Expands the authorization to public postsecondary education institutions for a chief administrative officer (CAO) of a postsecondary education institution to seek a temporary restraining order or an injunction on behalf of a student, who has experienced a credible threat to their safety made off campus, in order to protect the student from an escalation of violence on campus. Specifically, **this bill:**

- 1) Strikes “private” from the definition of the “Postsecondary Education Institution.” Expands the definition of “Postsecondary Education Institutions” to order to provide CAOs of institutions of vocational, profession, or postsecondary education in the State of California the opportunity to seek temporary restraining orders or injunctions on behalf of students who have received threats of violence off campus in order to protect the students from an escalation of violence on campus.
- 2) Makes technical changes and nonsubstantive changes to the Code of Civil Procedures.

EXISTING LAW:

- 1) Permits a chief administrative officer of a postsecondary education institution or their designee to seek a temporary restraining order or an injunction on behalf of a student if the following has occurred:
 - a) A student has received a credible threat off-campus that could be reasonable construed to be carried out on campus; and,
 - b) The student has provided written consent (Code of Civil Procedure (CCP) 527.85, subdivision (a)).
- 2) Defines the following for purposes of clarifying who can seek a temporary restraining order or injunction on behalf of a student at a postsecondary education institution:
 - a) “CAO” means the principal, president, or highest ranking official of the postsecondary educational institution;
 - b) “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose and can include: following or stalking a student to or from school, entering the school campus, following a student during school hours, making telephone calls to a student, and sending correspondence to a student by any means;
 - c) “Petitioner” means the chief administrative officer or their designee who petitions for a temporary restraining order or an injunction;

- d) “Postsecondary education institution” means a private institution of vocational, professional, or postsecondary education;
 - e) “Respondent” means the person against whom the temporary restraining order and order after hearing are sought and, if the petition is granted, the restrained person;
 - f) “Student” means an adult currently enrolled in or applying of admission to a postsecondary education institution;
 - g) Temporary restraining order” and “order after hearing” means orders that include defined terms that restrict the respondent from contact with the student, as defined; and,
 - h) “Unlawful Violence” means any assault or battery, or stalking that is prohibited by Penal Code Section 646.9, but shall not include lawful acts of self-defense or defense of others (CCP Section 527.85, subdivision (b)).
- 3) Sets forth the terms and conditions by which a restraining order or injunction sought by the chief administrator of a postsecondary education instruction may be considered by the court including reference for how the respondent will be contacted, how the respondent may appeal the request, and the duration of the injunction once granted by the court (CCP Section 527.78 subdivision (c) – (x)).
- 4) Enacts the “Kristen Smart Campus Safety Act of 1998” which requires the governing boards of California Community Colleges (CCC), the California State University (CSU), and the University of California (UC) to adopt rules requiring each of their campuses to enter into a written agreement with local law enforcement clarifying the responsibility of investigations for Part 1 violent crimes, sexual assaults, and hate crimes that occur on campus (Education Code Section 67381).

FISCAL EFFECT: Unknown

COMMENTS: *Committee Staff note this measure was heard in the Assembly Judiciary Committee on March 12, 2024 and was a consent item, with a vote of 10 - 0. Please refer to the Committee’s analysis of the measure for a full discussion of the bill as it pertains to the jurisdiction of the Judiciary Committee.*

Need for the measure. As depicted by the author, “AB 2096 will better protect students, faculty, and staff at California’s many public postsecondary institutions by expanding the eligible use of School Violence Restraining Orders (SVROs). SVROs were originally established in California in 2009 out of a situation at a private, postsecondary institution where, although a student had made threats of violence, a general restraining order to protect everyone on campus was unavailable because restraining orders are generally limited to protecting specific, named individuals. An SVRO allows an official of the postsecondary institution to seek and receive, first, a temporary restraining order against an individual and, later, a longer-lasting order against an individual who has made threats against a student, teacher, or the campus at large. This type of restraining order may only be granted if the threat of violence is for an act that would likely take place on the school's campus. These orders prohibit the restrained party from having firearms and ammunition while the order is in place and can include the threatened student’s family and household members as protected parties.”

Additionally the author contents the need for the measure as, “unfortunately, students and staff at public, postsecondary institutions in California cannot currently utilize the remedy enumerated above. All they can do under current law is ask for their Chief Administrative Officer to notify the threatening person that they are not welcome on campus or rely on law enforcement and criminal remedies, including trespassing and disorderly conduct offenses, which are misdemeanor offenses, and neither are firearm prohibiting. AB 2096 simply proposes to extend this protection in current law to all postsecondary institutions in California, so that students and faculty can access all available remedies to keep them safe.”

AB 2096 (Petrie-Norris) provides parity between private and public higher education institutions in California by extending a tool used by private higher education institutions since 2010 to protect students on campus from threats of violence that occur off-campus. This measure would authorize the chief executive officers of CCC campuses, the presidents of CSU campuses and the chancellors of UC campuses with the authority to seek temporary restraining orders or injunctions on behalf of students who have had a threat of violence that occurred off-campus.

Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1998 and the Title IX of the Education Amendments of 1972. Colleges and universities have an obligation to safe and supportive educational environments for all students. According to the American Council on Education, the Federal Government has focused on campus safety through two laws: the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) and the Title IX of the Education Amendments of 1972 (Title IX).

The Clery Act was enacted in 1990 to address security failings that lead to the death of a 19 year old who was murder in her campus residence hall in 1986. Jeanne Clery’s parents had publicly stated that if they had known that the university their daughter intended to attend had 38 violent crimes in three years, they would never have allowed her to attend. The Clery Act requires postsecondary institutions, who receive federal funding, to do the following:

- 1) Produce an annual security report to current and prospective students and employees;
- 2) Maintain a security log of all crimes reported to the institution’s police department or security office within the last 60 days;
- 3) Provide warnings of crimes that represent a threat to the safety of students and employees; and,
- 4) Maintain eight years of crime statistics that occur on campus, in residential facilities and on public property near the campus.

The crimes which are reported as part of the Clery Act include murder, sex offense, robbery, aggravated assault, burglary, motor vehicle theft, arson, liquor law violations, drug-related violations, weapon possession, and hate crimes. The U.S. Department of Education monitors compliance with the Clery Act and has fined institutions in the past for their noncompliance with the laws. In September 2020, the University of California, Berkeley was fined \$2.35 million by the Department of Education, as it was found the UC campus has failed to comply with the Clery Act by misclassifying incidents and failing to issue emergency notifications in two incidents that occurred on campus in 2013 and 2017.

Established in 1972, Title IX protects students who elect to participate in education programs from experiencing discrimination based on their sex. The U.S. Department of Education confirmed in June 2021, that Title IX protections extend to protect students from discrimination based on sexual orientation and discrimination against gender identity.

Title IX requires each postsecondary education institution who receives federal funding to have a Title IX coordinator and adhere to procedures for the adjudication of complaints of sex-based harassment. According to the Office for Civil Rights at the U.S. Department of Health and Human Services sex-based harassment or gender-based harassment which can be reported under Title IX reporting requirements include:

- Sexual Harassment – unwelcomed conduct of a sexual nature; including, unwelcomed sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature; and,
- Sexual Violence – physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent; including, rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.

Once a violation occurs, and the survivor elects to inform the Title IX coordinator an investigation process will commence leading to a finding of whether or not the discrimination occurred. The due process procedures established by Title IX are to provide to restore educational equity for the complainant and if necessary corrective disciplinary sanctions to the respondent.

If a postsecondary education institution does adhere to Title IX, the U.S. Justice Department Civil Rights Division, will investigate the institution and either withhold federal funding or seek judicial intervention if the institution is found to have violated students' rights under Title IX.

In September 2021, the Justice Department (department) reached a \$1.6 million agreement to remedy Title IX violations at San José State University (SJSU). The department determined SJSU had failed for more than a decade to adequately respond to complaints of sexual harassment, including sexual assault, of female student-athletes by an athlete trainer. The department also found that SJSU retaliated against two SJSU employees who attempted to inform the campus of the trainer's behavior. In addition to providing financial relief to the survivors, SJSU will be required to make systemic changes to the Title IX office on campus. As a result of the settlement and disclosure of the improper activity on campus, the President of SJSU resigned in October of 2021.

An important distinction of Title IX and the Clery Act is both laws governing specific crimes or threats that occur on campus or near campus (in the case of Clery Act). Neither address the course of action a postsecondary institution should undertake if informed of a threat of violence against a student that occurred off-campus. AB 2096 (Petrie-Norris) seeks to remedy an existing loophole in the Federal laws governing the safety procedures on campus.

Campus safety on public higher education campuses. The Education Code has a section dedicated to student safety, EDC sections 67380 – 67386. Contained within those sections is the Kirsten Smart Campus Safety Act of 1998, which requires campuses to have an agreement with local law enforcement on how investigations into violent crimes, sexual assaults, and hate crimes

will occur on campus. Unless the “threat” is a threat of sexual assault or a hate crime, the chapter on Student Safety is mute on how threats on-campus are to be handled.

The California Code of Regulations (CCR) for the CCC contains requirements for a “Public Safety Compact” to be developed by a community college and stakeholders including campus police, on how to deliver public-safety related services on campus. The regulations specifically state, “public safety services must adhere to principles of diversity, equity, and inclusion, and accessibility, and in particular advance access to education, educational equity, and opportunities for student success by creating safe, secure, peaceful, and inclusive campus environments in which all persons may fully develop their individual potential without fear or undue risk of physical or emotional harm” (CCR 59700). A cursory review of community college districts found most districts refer students to either campus or local police if a threat is made on campus.

The CSU has a zero tolerance policy with regard to violence or threats of violence on campus. The CSU is committed to protecting every member of the campus community and perceives any threat of violence as an infringement on their desire to maintain an educational environment free from violence. Every person is encouraged to report any threats of on-campus violence to the campus police or security, who will then either investigate the threat or in accordance with their agreement with local law enforcement, pass off the threat to the local authorities.

The UC Community Safety Plan specifically states that, “students, faculty, staff, patients and visitors must be secure on our campuses and confident that the University is a supportive environment that is responsive to their needs. The Community Safety Plan creates a structure for achieving that goal. It calls for transforming UC’s culture, policies and practices to ensure that all members of the community feel welcomed, respected and protected from harm.” Each UC campus has campus police who each respond to threats made on-campus.

While each of the public higher education segments have a plan to address threats on campus, there is no formal procedure for how to address threats off-campus that could result in a threat on campus. AB 2096 (Petrie-Norris) establishes an avenue by which a campus could seek a temporary restraining order or an injunction on behalf of a student who has received a threat of violence off-campus in order to protect the student on-campus and the greater campus community.

Arguments in support. Giffords elevates the need for AB 2096 (Petrie-Norris) as, “School Violence Restraining Orders were established due to a situation at a private, postsecondary institution where, although a student had made threats of violence, a general restraining order to protect everyone on campus was unavailable because restraining orders are generally limited to protecting specific named individuals. This restraining order prohibits restrained parties from having firearms and ammunition while the order is in place and can include the threatened student’s family and household members as protected parties. Unfortunately, this remedy is currently limited to private, postsecondary universities, and thus not currently available for campuses and students as a whole at public postsecondary institutions. AB 2096 helps protect all students at public postsecondary institutions by allowing them to seek a civil, firearm, and ammunition-prohibiting restraining order from those who have made credible threats of harm.”

REGISTERED SUPPORT / OPPOSITION:

Support

Consumer Protection Policy Center/USD School of Law
Giffords

Opposition

None on file.

Analysis Prepared by: Ellen Cesaretti-Monroy / HIGHER ED. / (916) 319-3960