

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

AB 1138 (Weber) – As Amended March 30, 2023

**SUBJECT:** Postsecondary education: sexual assault and sexual violence prevention: transportation services

**SUMMARY:** Requires campuses of the California Community Colleges (CCC), the California State University (CSU), the University of California (UC), and independent universities to provide students with transportation to a rape crisis center for the purpose of having a sexual assault forensic exam (SAFE) kit administered. Specifically, **this bill:**

- 1) Requires the local governing board of each CCC district, the trustees of the CSU, the regents of the UC, and the governing boards of the independent postsecondary institutions to provide students with free and, to the extent possible, confidential transport to and from a rape crisis center for a medical examiner to administer a SAFE kit.
- 2) Permits the transportation provided in (1) to be funded either by the institution or, as part of the services provided through a memorandum of understanding between the institution and the rape crisis center. The transportation may include a campus health center staff transporting the student to and from a rape crisis center.
- 3) Requires by June 30, 2025, for each community college district, the trustees of the CSU, the regents of the UC, and the appropriate governing bodies of the independent postsecondary institutions will submit a report to the legislature on whether transportation in (1) was provided to students and the manner in which the students received the transportation to the rape crisis center.
- 4) Defines SAFE Kit as a Sexual Assault Forensic Examination Kit.

**EXISTING LAW:**

- 1) Establishes the following requirements as a condition for the receipt of state funding for student financial assistance for CCC, CSU, UC, and independent universities:
  - a) Adopt a policy concerning sexual assault, domestic violence, dating violence, and stalking involving a student, both on and off campus. The policy shall include an affirmative consent standard, as defined, in determining whether consent was given by both parties to engage in the sexual activity;
  - b) Adopt detailed and victim-centered policies and protocols regarding sexual assault, domestic violence, dating violence, and stalking involving a student that aligns with best practices and professional standards. Establishes the minimum requirements for the policy, as defined;
  - c) To the extent feasible, enter into memoranda of understanding, agreement, or collaborative partnership with existing on-campus and community-based organizations, including rape crisis centers and domestic violence centers, to provide students with or

refer students to the appropriate entities for the following services: counseling, health, mental health, victim advocacy, and legal assistance;

- d) Implement a comprehensive prevention and outreach program addressing sexual violence, dating violence, and stalking. At a minimum, the outreach program will include a process for informing the student body, campus organizations, athletic programs, and student groups of the institution's overall sexual assault policy, the practical implications of affirmative consent standards, and the rights and responsibilities of students. Outreach programs will be included at every incoming student's orientation and will include specific information relating to dating and intimate partner violence, as defined (Education Code Section 67386).
- 2) Stipulates no provision of the Donahue Higher Education Act will apply to the UC unless the UC Regents adopts the provision (EDC Section 67400).

**FISCAL EFFECT:** Unknown

**COMMENTS:** *Author's statement.* As depicted by the author, "victims of sexual assault should have immediate assistance from organizations dedicated to providing resources and services. But for many college students, these resources are not located on campus. Some of the resources can be more than an hour away. This bill would help students who might not have access to a car or reliable transportation, receive the help they need after a sexual assault."

*Sexual assault and sexual harassment on college campuses.* In 2007, *The Campus Sexual Assault Study*, prepared for the U.S. Department of Justice, stated that one in five women are sexually assaulted while in college. In 2020, the Association of American Universities published the results of two surveys conducted in 2015 and in 2019 which examined the prevalence of sexual assault and misconduct at colleges and universities throughout the United States. The surveys found the following:

- The rate of nonconsensual sexual contact by physical force or inability to consent for undergraduate women ranged from 14% to 32%;
- The rate of nonconsensual sexual contact by physical force or inability to consent increased from 2015 to 2019 by 3 percentage points for undergraduate women and 2.4 percentage points for undergraduate men.
- Among all students 41.8% reported experiencing at least one sexually harassing behavior since enrolling in college.
- 37.1% of students felt they were very or extremely knowledgeable about the definition of sexual assault and where to get help, but only 31.5% felt they knew how to report it.

Since 1990, due to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act or Clery Act, all colleges and universities who receive any federal funding must submit a report once a year disclosing information about certain crimes, including: the prevalence of stalking, intimidation, dating violence, domestic violence, sexual assault and hate crimes that occur on or around the campus. The data provided by these reports is available to the public disaggregated by campus on the U.S. Department of Education website under the Campus and Security database. In 2021, California had 659 institutions with a total of 1,024 campuses

that provided crime data to the US Department of Education. In 2021 there were 445 rapes, 404 incidents of fondling, 22 statutory rapes, 352 incidents of domestic violence, 168 incidents of dating violence, and 408 incidents of stalking reported that occurred on or new California postsecondary education campuses. Committee staff notes the above figures are only reported incidents of sexual violence and sexual assault and do not account for any unreported cases which occur on college campuses throughout the state.

*Action taken to prevent sexual harassment and sexual violence on campus.* Since the enactment of the Clery Act in 1990 and Title IX in 1972, which prohibits sex discrimination and sexual harassment on postsecondary campuses, various subsequent pieces of state and federal legislation have been enacted to instill protections for survivors of sexual harassment and sexual violence. Beginning chronologically:

- *California* - AB 1825 (Reyes), Chapter 933, Statutes of 2005, required employers with more than 50 employees to provide two hours of training and education regarding sexual harassment to supervisors every two years. SB 396 (Lara), Chapter 858, Statutes of 2017, changed this requirement to include that businesses, of five or more employees, provide sexual harassment training to all employees and stipulated the training would be conducted every two years. This also applies to all postsecondary education institutions in the state who employ more than five employees.
- *California* - AB 1088 (Oropeza), Chapter 647, Statutes of 2005, required the CCC, the CSU, and requested the UC to undertake various activities to provide students with educational and prevention information regarding sexual violence. This included providing specified information during campus orientation and on the campus website. AB 2683 (Gabriel), Chapter 798, Statute of 2022 built upon this requirement by specifying that the CCC, the CSU, independent institutions of higher education, and private for-profits are required, and the UC is requested, to provide annual sexual harassment and sexual violence beginning in the 2024 fall semester.
- *Federal* – S. 47 (Leahy), Public law 113-4, *Violence Against Women (VAWA) Reauthorization Act of 2013* and subsequent regulations as established by the Federal Registrar 79FR 62751, required postsecondary institutions to offer training to students, employees, and faculty of the institutions on the prevention of dating violence, domestic violence, sexual assault, and stalking. However, the statute and regulations do not require that all students or employees take or attend the training, it simply says that the institutions must offer them.
- *California* – SB 493 (Jackson), Chapter 303, Statute of 2020, required postsecondary education institutions to adopt rules and procedures for the prevention of sexual harassment and to adopt and post on their websites the grievance procedures to resolve complaints of sexual harassment.
- *Federal* – Proposed changes to the Title IX regulations. In June of 2022, the Biden Administration released new Title IX regulations. The proposed changes re-bench Title IX as protecting all students including, specific rules for pregnant students, LGBTQI+ students, and parenting students from sex discrimination and sexual harassment. The rules are in the final phase of revision after undergoing public comment and the official

rules should be published in May 2023 with final implementation commencing in the fall of 2023.

*Sexual assault forensic medical evidence kit.* As explained by the California Sexual Assault Forensic Examiners Association, sexual assault forensic medical evidence collection in California began in 1985, when the State enacted legislation requiring trained healthcare providers to use a standard state form and protocols issued by the California Office of Emergency Services for the handling of patients when collecting sexual assault forensic material. The State further required counties with a population of 100,000 or more to have trained personnel, on-call or on duty, to handle sexual assault cases and for counties with a population of one million or more, at least one trained exam team per million population is required. Examiners who complete the sexual assault forensic medical evidence examination may be: trained registered nurses, nurse practitioners, physician assistants, or physicians. Since then a myriad of changes has been made to the Penal Code regarding the handling of survivors of sexual assault in California. In 1995, the State established the California Clinical Forensic Medical Training Center to increase access to trained healthcare providers who could administer sexual assault forensic medical exams. In 2016, AB 1475 (Cooper), Chapter 210, Statute of 2016, authorized each county to establish an interagency sexual assault response (SART) team for the purpose of effectively addressing the problem of sexual assault in a given county. According to the California Sexual Assault Forensic Examiners Association, SART teams are community-based, multi-disciplinary teams comprised of law enforcement officers, prosecutors, criminalists, victim advocates, and sexual assault forensic exam teams (registered nurses, nurse practitioners, physician assistants, and physicians).

The State of California Department of Justice (DOJ) has authorized free sexual assault forensic medical exams and support to survivors. Survivors of sexual assault are entitled to a sexual assault forensic exam from a trained medical professional. The purpose of the exam is to collect forensic evidence for use in a criminal prosecution of the person who perpetrated the sexual assault, and should be done within five days of the attack. Completing the exam does not obligate the survivor to participate in the criminal prosecution of the perpetrator. Furthermore, according to the DOJ, every survivor of sexual assault has the right to have a support person with them at all phases of the medical and legal process including the exam and has the right to transportation to and from the medical examination. As delineated by the DOJ, local law enforcement are the primary method of assisting survivors in accessing the forensic exam and medical care. Additionally, rape crisis centers are available to help survivors obtain access to medical care, mental health services, legal aid, safe housing, and other services after a sexual assault, and there is at least one rape crisis center in each of the 58 counties in California.

*Arguments in support.* “We, the students of Generation Up, Inc. (GENup), a youth-led educational advocacy organization, proudly serve as the principal sponsor and writer of AB 1138, which mandates that CCC, the CSU, and requests that the UC, provide students with free and safe transportation to and from forensic exams in the aftermath of a sexual assault.”

“To reduce barriers to receiving care, AB 1138 would mandate that all students have equal access to forensic services, thus increasing the reporting of sexual assaults and fostering an environment of support for survivors. Through AB 1138, we will continue to uplift survivors of sexual violence by removing barriers to care.”

*Committee comments.* Whether it be in protecting the civil rights of college students by mandating additional sexual harassment protections for students or mandating the creation of an online database so survivors can track their rape kit, California is often seen as leading the nation in establishing protections for survivors of sexual assault and sexual violence. AB 1138 (Weber) seeks to remove any barriers students may have in accessing sexual assault forensic evidence kits after a sexual assault has transpired.

To preserve evidence and to maximize results, the DOJ recommends not showering or brushing one's teeth or changing one's clothes after an assault; therefore, the urgency of administering the sexual assault forensic evidence kit is immediate. The majority of CCC campuses do not have health centers and while CSU and UC campuses do, not every campus has a qualified medical examiner on staff who can administer the sexual assault forensic evidence kit. Furthermore, the chain of evidence for purposes of prosecution begins when the kit is administered and law enforcement agencies must submit the evidence to a crime lab within 20 days. AB 1138 (Weber) provides a reliable procedure for students to access a sexual assault forensic evidence kit when they are place bound or too traumatized to transport themselves.

Under EDC Section 67385.7, campuses of the CCC and the CSU provide information on their websites about campus and community resources to those who are victims of sexual violence and sexual assault. While not required by state law, each campus of the UC also provides information on campus and community resources to victims of sexual assault and sexual violence. Furthermore, at each campus of the CSU and the UC, there are designated staff who provide confidential emotional support and assistance to students who are experiencing sexual harassment, sexual assault, or sexual violence. These staff are known as CARE advocates at the UC and as campus advocates at the CSU. There is no systemwide requirement for the CCC to employ sexual assault advocates on campuses, some campuses such as Cerritos College elect to do so. Based on the information provided by the CSU and UC, only a few UC campuses offer transportation to students who require a sexual assault forensic evidence kit. Furthermore, the advocates who are provided on campus are not available 24/7 and therefore often address emergency situations such as sexual assaults to the local or campus police force.

Conceptually, AB 1138 (Weber) is a continuation of California's efforts to remove barriers to reporting sexual assault and to increase access to resources to help survivors achieve justice. However, the implementation of the concept is fraught with questions as to how transportation to and from the medical exam can be provided to students in a safe and confidential manner. The bill in print does not address factors such as what should occur if a student is off-campus and calls for transportation, or what should transpire if the student is suffering from an injury that requires immediate medical attention, or who is liable if the transporting method is involved in an accident on the way to the medical exam. Ideally, if a student calls the campus for transportation after a sexual assault, the campus should provide the transportation regardless of where the student is calling from, and in order to mitigate concerns regarding the student's safety the campus police would be the best mode of transport; however, not every student is comfortable seeking assistance by campus police. *To honor all students' lived experiences and to avoid additional trauma, the Author's office should work with public higher education institutions to provide clarity on the method of transportation and the responsibility of the campus in providing transportation to the medical facility that administers the sexual assault forensic evidence kit.*

As delineated by the sponsors of the bill, GenUp, the purpose of AB 1138 (Weber) is to remove barriers and ensure students are provided safe and confidential transportation to and from a facility that administers a sexual assault forensic evidence kit. While a worthy cause, AB 1138 (Weber) is duplicative of existing free transportation provided to survivors of sexual assault. Furthermore, with the presence of rape centers in all 58 counties, students already have a crisis center to call for support during the exam and to assist in providing services. *Therefore if the goal is to remove barriers in accessing the aforementioned transportation, the author should consider mandating information on how to obtain the aforementioned transportation on the campus website designated for campus and community resources for students who are victims of sexual violence and sexual harassment and mandate the transportation information is included in the annual training required on sexual harassment and sexual violence prevention pursuant to Education Code 67385.7.*

*To ensure students are taken to the appropriate facility for the administering of a sexual assault forensic exam kit, the Committee has suggested and the author has accepted the following amendments:*

(2) (A) (i) In order to receive state funds for student financial assistance, if the SAFE Kit is not administered on campus pursuant to agreements entered into pursuant to paragraph (1), 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 institutions shall provide to students free of charge, and, to the extent possible, in a manner that protects student confidentiality, transportation to and from a ~~rape crisis center~~ local SAFE or SART exam center for a ~~medical examiner~~ qualified health care provider to administer the ~~SAFE~~ sexual assault forensic medical evidence kit at the center.

(ii) The transportation services provided pursuant to paragraph (i) shall be either funded by institution or as part of the services provided by the rape center as part of the memoranda of understanding, agreement, or collaborative partnership with the rape crisis center. The transportation services may be either funded Transportation services may include a campus health center staff member transporting the student to and from a ~~rape crisis center~~ local SAFE or SART exam center for a ~~medical examiner~~ qualified health care provider to administer the ~~SAFE~~ sexual assault forensic medical evidence kit at the center.

(B) On or before June 30, 2020, and on or before June 30 of each year, the Trustees of the California State University, the Regents of the University of California, and the appropriate governing bodies of each independent institution of higher education, shall report to the Legislature, pursuant to Section 9795 of the Government Code, whether their respective institutions have provided transportation to students pursuant to subparagraph (A) and the manner in which the student received the transportation to the ~~rape crisis center~~ local SAFE or SART exam center.

(C) For purposes of this subdivision, “SAFE ~~Kit~~” means the Sexual Assault Forensic Examination ~~Kit~~ and SART means a Sexual Abuse Response Team.

## REGISTERED SUPPORT / OPPOSITION:

### Support

Genup  
Ignite

**Opposition**

None on file.

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