

Date of Hearing: April 17, 2018

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 1896 (Cervantes) – As Amended April 4, 2018

[Note: This bill is doubled referred to the Assembly Judiciary Committee will be heard by that Committee as it relates to issues under its jurisdiction.]

SUBJECT: Sexual assault counselor-victim privilege

SUMMARY: Modifies the definition of “sexual assault counselor” to specifically include individuals working in this capacity on an institution of higher education campus. Specifically, **this bill:**

- 1) Expands the definition of a “sexual assault counselor” to include a person who is engaged in a program on the campus of a public institution of higher education, whose primary purpose is the rendering of advice or assistance to victims of sexual assault and who has received a certificate evidencing completion of a training program in the counseling of sexual assault victims issued by a counseling center that meets the criteria for the award of a grant established pursuant to the Penal Code and who meets one of the following requirements:
 - a) Is a psychotherapist as defined in Section 1010 of the Evidence Code; has a master’s degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape crisis counseling; and,
 - b) Has 40 hours of training and is supervised by an individual who qualifies as a counselor. The training, supervised by a person qualified as described, shall include such areas as law, medicine, societal attitudes, crisis intervention, and role playing, among others.
- 2) Makes various Legislative findings and declarations, including:
 - a) The incidents of sexual assault occurring on college campuses is a growing and pervasive problem in California and across the United States.
 - b) According to the Rape, Abuse & Incest National Network, 11.2 percent of college students in the United States experience rape or other forms of sexual assault.
 - c) There have been high-profile incidents of sexual assault at several universities in California.
 - d) Enduring incidents of sexual assault can negatively affect the physical and mental health of a student survivor, as well as hamper academic outcomes.
 - e) Sexual assault counselors are an invaluable resource to student survivors of sexual assault, and provide them with essential services and support.
 - f) Existing law, specifically Section 1035.2 of the Evidence Code, provides a legal privilege for confidential communications between sexual assault counselors and survivors.

- g) There is uncertainty among practicing sexual assault counselors as to whether this privilege extends to counselors who provide these services and support to students on college campuses.
- h) The intent of this act is to remove that uncertainty, and declare that this privilege extends to sexual assault counselors who practice at college campuses and has done so since the creation of the privilege.
- i) The amendments to Section 1035.2 of the Evidence Code made by this act do not establish or support in any way that the privilege was not conferred on sexual assault counselors who practiced on college campuses before the enactment of those amendments.
- j) This act is intended as a signal that the privilege existed previously and will continue to exist after its enactment.

EXISTING LAW:

- 1) Defines “sexual assault counselor” to include a person who is engaged in any office, hospital, institution, or center commonly known as a rape crisis center, whose primary purpose is the rendering of advice or assistance to victims of sexual assault and who meets certain requirements. (Evidence Code Section 1035.2)
- 2) Establishes a privilege for a victim of a sexual assault to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a sexual assault counselor, if the privilege is claimed by the holder of the privilege, a person who is authorized to claim the privilege by the holder of the privilege, or the person who was the sexual assault counselor at the time of the confidential communication, except as specified. (Evidence Code Section 1035.8)
- 3) Requires each private postsecondary educational institution and private vocational educational institution to adopt and implement a written procedure or protocols to ensure, to the fullest extent possible, that students, faculty, and staff who are victims of sexual assault shall receive treatment and information, including services available to victims, and personnel responsible for providing these services to refer the victim to a counseling center, and to notify the police, with the victim’s concurrence. (Education Code Section 94385)

FISCAL EFFECT: Unknown.

COMMENTS: *Need for the bill.* According to the author, “...existing law provides a legal privilege to confidential communications between survivors and sexual assault counselors. However, there is significant confusion and divided opinions about whether this privilege extends to sexual assault counselors working with survivors who are students at a public college or university.”

The author notes that this uncertainty may deprive student survivors of sexual assault from having confidence that the advice and support they receive from sexual assault counselors is truly confidential.

Background. In June 2014, the California State Auditor (CSA) issued a report, titled Sexual Harassment and Sexual Violence: California Universities Must Better Protect Students by Doing More to Prevent, Respond to, and Resolve Incidents. The CSA examined two University of California (UC) (UC Berkeley and UCLA), and two California State University (CSU) (CSU Chico and CSU San Diego) campuses and found that while staff in key roles receive adequate training on this topic, other employees who may be the first point of contact do not. In addition, none of the universities provided its sexual harassment policy to all employees at the start of each year nor posted the policy where large numbers of students could view them. The report included recommendations that the universities post their policies in additional prominent locations frequented by students and properly distribute and post their policy on sexual harassment.

A Joint Oversight Hearing of the Joint Legislative Audit Committee, the Assembly Committee on Higher Education, and the Assembly Select Committee on Campus Climate was held on September 24, 2015. California's postsecondary education institutions reported that they had taken steps to address the concerns raised in the audit reports and to respond to statutory changes and regulatory guidance by improving processes and outcomes on their campuses. Both the UC and CSU updated their sexual harassment and assault policies, initiated mandatory prevention and response trainings for all students and employees, and established confidential victim advocate offices on every campus. The CSU and UC appointed system-wide officers charged with ensuring Title IX compliance. The California Community Colleges Chancellor's Office reported advising districts on how to comply with new state and federal mandates.

Arguments in support. The California State Student Association (CSSA) is a co-sponsor of AB 1896, and notes that, "...this bill would provide clarification that sexual assault counselors working on a public college or university have the protection of legal privilege, and communications between them and a victim would be confidential. AB 1896 does not require public colleges or universities to provide students with a counselor, or change the training requirements."

Prior Legislation. Over the span of the last several years, the Legislature has introduced multiple bills to address Title IX concerns and provide protections to victims of sexual harassment and assault, including, but not limited to:

SB 169 (Jackson) of 2017, required K-12 schools to use a "preponderance of evidence" standard to decide whether an incident of sexual harassment or violence occurred; required higher education institutions to, among other things, adopt rules and procedures for the prevention of sexual harassment, and adopt and post on their Web sites the grievance and investigation procedures to resolve complaints of sexual harassment. SB 169 was vetoed by the Governor.

SB 1375 (Jackson), Chapter 655, Statutes of 2016 required all schools receiving federal funding post the following information on their Web site: the name and contact information of their Title IX Coordinator; the rights of a pupil and the public, and the responsibilities of the school under Title IX; a description of how to file a complaint under Title IX. SB 1375 also required the State Superintendent of Public Instruction to electronically send an annual letter to all schools notifying them of this responsibility.

AB 2654 (Bonilla, Chapter 107, Statutes of 2016) required postsecondary educational institutions to post their written policy on sexual harassment on their Internet Web sites. AB

2654 also required the policy to include information on the complaint process and the timeline for the complaint process. The policy must include information on where to obtain the specific rules and procedures for pursuing available remedies and resources, both on and off campus.

SB 967 (DeLeón, Chapter 748, Statutes of 2014) required the governing boards of California community college districts, the Trustees of the CSU system, and the Regents of the UC, as well as the governing boards of independent postsecondary institutions in California to adopt victim-centered sexual assault, domestic violence, dating violence, and stalking policies as a condition of receiving state funds for student financial assistance.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Student Association
California State University

Opposition

None on file

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