

- SUBJECT:** Addressing sexual assault at institutions of higher education
- COMMITTEE:** Higher Education — committee substitute recommended
- VOTE:** 10 ayes — C. Turner, Stucky, Button, Frullo, Howard, E. Johnson, Pacheco, Smithee, Walle, Wilson
- 1 nay — Schaefer
- WITNESSES:** For — Rhea Shahane, Deeds Not Words; Ashka Dighe, Deeds Not Words and Its On Us; Alma Baker, It's On Us; (*Registered, but did not testify:* Adam Cahn, Cahnman's Musings; Bill Kelly, City of Houston Mayor's Office; Alissa Sughrue, National Alliance on Mental Illness-Texas; Eric Kunish, National Alliance on Mental Illness-Austin; Katherine Strandberg, Texas Association Against Sexual Assault; Lindsey Linder, Texas Criminal Justice Coalition; Knox Kimberly, Upbring; Jorge Cruz; Arthur Simon)
- Against — None
- On — (*Registered, but did not testify:* Rex Peebles and Bill Franz, Texas Higher Education Coordinating Board)
- BACKGROUND:** Education Code sec. 51.9363 requires public and private institutions of higher education to adopt a policy on sexual assault applicable to students and employees. The statute requires the policies be made available in the institutions' handbooks and on a dedicated web page, be covered during student orientation, and be the subject of a public awareness campaign.
- Title IX of the federal Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs receiving federal financial assistance.
- DIGEST:** CSHB 1735 would repeal Education Code sec. 51.9363 and add a new subchapter under ch. 51 with revised requirements for higher education institution policies on reporting and responding to campus sexual

harassment, sexual assault, dating violence, and stalking at the state's higher education institutions.

The bill would define "dating violence," "sexual assault," and "stalking" as those terms are defined in the federal Clery Act, a 1990 law requiring the disclosure of information about campus crime.

Campus policies. CSHB 1735 would require public and private higher education institutions to establish a policy on sexual harassment, sexual assault, dating violence, and stalking applicable to students and employees. The policy would have to include:

- definitions of prohibited behavior and sanctions for violations;
- a protocol for reporting and responding to reports;
- measures to protect victims from retaliation during the disciplinary process;
- a statement emphasizing the importance of victims going to a hospital for treatment and preservation of evidence as soon as practicable;
- the victim's right to report the incident to the institution and to receive a prompt and equitable resolution; and
- the victim's right to choose whether to report a crime to law enforcement, to be assisted by the institution in reporting a crime, or to decline to report a crime to law enforcement.

The policy would have to be approved by the institution's governing board and reviewed every biennium and revised if necessary. It would need to be made available in student and personnel handbooks and on a web page dedicated solely to the policy.

Institutions would have to require entering freshmen and undergraduate transfer students to attend an orientation on the policy before or during the student's first semester. The orientation could be provided online and would emphasize the importance of a victim going to a hospital for treatment and preservation of evidence and the victim's rights to report the incident to the institution and law enforcement.

Prevention and outreach. CSHB 1735 would require institutions to develop and implement a comprehensive prevention and outreach program, which would address prevention strategies, including victim empowerment, public awareness, bystander intervention, and risk reduction. The program would have to provide students information about reporting protocols, including the name, office location, and contact information of the institution's Title IX coordinator by emailing the information to students at the beginning of each semester and including it in the required orientation.

To the greatest extent practicable based on an institution's number of counselors, institutions would have to ensure that each alleged victim or alleged perpetrator of an incident and any other person who reported an incident were offered counseling provided by a counselor who did not provide counseling to any other person involved in the incident. Institutions also would have to allow an alleged victim or alleged perpetrator of an incident to drop a course in which both were enrolled without any academic penalty.

The bill would retain existing Education Code requirements that institutions provide an electronic reporting option. It also would retain a prohibition on an institution taking any disciplinary action against a student enrolled at the institution who in good faith reports being the victim of, or a witness to, an incident.

Requests not to investigate. If an alleged victim of an incident requested the institution not to investigate it, the bill would allow institutions to investigate in a way that complied with confidentiality requirements. When determining whether to investigate, the institution would have to consider:

- the seriousness of the alleged incident;
- whether the institution had received other reports of incidents committed by the alleged perpetrator or perpetrators;
- whether the alleged incident posed a risk of harm to others; and

- any other factors the institution deemed relevant.

If the institution, based on the victim's request, decided not to investigate the alleged incident, it would have to inform the victim and take any steps it deemed necessary to protect the health and safety of its community.

Disciplinary process for certain violations. An institution that initiated a disciplinary process against an enrolled student who allegedly violated the institution's code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking would be required to take certain steps. It would have to provide the student and the alleged victim a prompt and equitable opportunity to present witnesses and other relevant evidence during the disciplinary process. It also would have to ensure that both had reasonable and equitable access to all relevant evidence in the institution's possession, redacted as necessary to comply with federal or state confidentiality laws. This would include any statements by the victim or other persons, information stored electronically, written or electronic communications, social media posts, or physical evidence.

The institution also would have to take reasonable steps to protect the student and the alleged victim from retaliation and harassment during the disciplinary process.

Student withdrawal or graduation pending disciplinary charges. If a student with a pending disciplinary charge alleging the violation of an institution's code of conduct regarding an incident withdrew or graduated, CSHB 1735 would prohibit the institution from ending the disciplinary process or issuing a transcript to the student until it made a final determination of responsibility. The institution also would have to expedite its disciplinary process to accommodate both the student's and the alleged victim's interest in a speedy resolution. The bill would require an institution to provide information to another institution, upon request, relating to a determination that a student violated the code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking.

Trauma-informed training. Peace officers employed by a higher

education institutions would have to complete training on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking.

Memoranda of understanding. Institutions would have to enter into a memorandum of understanding with one or more local law enforcement agencies, advocacy groups, and hospitals or other medical resource providers to facilitate effective communication and coordination on allegations.

Designated employees. CSHB 1737 would require an institution to designate one or more employees to be responsible for Title IX. An institution would have to designate one or more employees as persons to whom students could speak confidentially concerning sexual harassment, sexual assault, dating violence, and stalking. Each enrolled student would have to be informed of the responsible and confidential employees.

An institution could designate one or more students as student advocates to whom other students could speak confidentially. An institution that designated student advocates would have to notify each enrolled student of the advocates.

Confidentiality. The bill would provide protections of confidentiality to an alleged victim, a person who reported an incident, and a person alleged to have committed or assisted in an incident determined by an institution to be unsubstantiated or without merit. Certain identity disclosures could be made to the institution, or a law enforcement officer as necessary to conduct an investigation. Disclosure also could be made to a health care provider in an emergency situation. A medical provider employed by an institution could share information only with the victim's consent.

Compliance. If the Texas Higher Education Coordinating Board determined an institution was not in substantial compliance with the bill, it would have to report the institution to the Legislature for consideration of whether to reduce state funding for the following academic year. If the determination of substantial noncompliance involved a private or

independent institution, the coordinating board could assess an administrative penalty not to exceed the institution's funding from tuition equalization grants for the preceding academic year or \$2 million, whichever was greater. In determining the penalty amount, the coordinating board would have to consider the nature of the violation and the number of students enrolled at the institution.

The coordinating board would have to provide an institution with written notice of its reasons for taking action and the institution could appeal. A private or independent institution could not pay an administrative penalty using state or federal money. Administrative penalties would be deposited to the credit of the state's sexual assault program fund.

The commissioner of higher education would be required to establish an advisory committee to recommend rules to implement the bill and to develop recommended training. The commissioner would appoint nine members to the advisory committee, each of whom would have to be a chief executive officer of an institution or a representative designated by that officer.

Equal access. In implementing the requirements of CSHB 1735, an institution would be required, to the greatest extent practicable, to ensure equal access for students or employees who were persons with disabilities. An institution would have to make reasonable efforts to consult with a disability services office of the institution, advocacy groups, and other relevant stakeholders to assist with compliance.

Effective date. The changes in law made by the bill would apply beginning August 1, 2020.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS
SAY:

CSHB 1735 would ensure Texas public and private institutions of higher education had safe and equitable policies in place to address campus

sexual assault, sexual harassment, dating violence, and stalking. It would provide a comprehensive update to the required policies and procedures for institutions to prevent and respond to alleged incidents. It would educate students on prevention, support survivors, and treat all parties to a fair disciplinary process.

The bill would not create a significant administrative burden on most colleges and universities, which already have policies in place that could be approved by the Texas Higher Education Coordinating Board. While some have expressed concern that the state should not interfere with the policies of private institutions, such institutions already are subject to many state laws. Some private institutions also receive state financial aid for students and should be required to provide the same level of protection against sexual misconduct.

The bill would address a significant problem on Texas campuses. A 2017 University of Texas study found 15 percent of undergraduate women reported being victims of sexual assault and more than 25 percent had experienced unwanted sexual touching. The bill would improve confidence in campus systems for reporting incidents by designating employees and student advocates to whom students could report violations or speak confidentially and provide trauma-informed investigation training to campus police.

While some have expressed concerns that investigations of possible criminal conduct should be made by law enforcement and not by institutions of higher education, colleges and universities have the legal right to sanction students for conduct code violations provided they ensure due process. They have an interest in expediently addressing campus safety, while criminal investigations and prosecutions can take a long time to resolve. CSHB 1735 would require fair investigations by codifying the rights of all parties to access evidence and present witnesses. It also would require institutions to enter into memoranda of understanding with local law enforcement agencies to facilitate coordination on investigations.

The bill would not conflict with provisions in federal Title IX law or

proposed guidance from the U.S. Department of Education. It would set minimum standards that guarantee all students a set of safe and equitable procedures addressing sexual violence.

OPPONENTS
SAY:

CSHB 1735 would create an administrative burden on higher education institutions that already have effective policies in place for reporting and responding to allegations concerning sexual misconduct, dating violence, and stalking. These institutions should retain the discretion to update and rewrite their policies as needed instead of having the state mandate policies for all.

In addition, it is not the role of state government to intervene in the student conduct policies of private institutions, as CSHB 1735 would do.

It is the long-established role of law enforcement to investigate and prosecute crimes, and debate is ongoing about how much schools should be handling allegations involving potential criminal conduct. The bill could result in violations of the constitutionally guaranteed due process rights of alleged perpetrators by allowing institutions to determine responsibility for an incident.