

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 1735
By: Howard et al. (Watson)
Higher Education
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 1735 ensures all of Texas' public and private institutions of higher education have safe and equitable policies in place to address campus sexual assault.

In 2015, the Texas Legislature required all public institutions of higher education to establish a basic policy on campus sexual assault. Last session, the legislature added private institutions of higher education to this provision, and required both types of schools to implement a public awareness campaign and to allow online reporting of sexual assault, sexual harassment, stalking, and dating violence.

Despite these reforms, data indicates that sexual violence continues to be a significant, and underreported problem on our public and private campuses. For example, one UT-Austin study found that six percent of victims who disclosed the offense disclosed it to someone at the institution. The same study found that only 39 percent of victims knew where to go to get help.

Texas institutions have a moral and a legal duty to reduce campus sexual violence as much as possible. They are also required by federal law (Title IX and the Clery Act, for example) to investigate claims of sexual violence in a prompt and equitable way.

H.B. 1735 provides a comprehensive update to the required policies and procedures that all Texas institutions of higher education must follow to prevent and respond to allegations of sexual assault, sexual harassment, stalking, and dating violence. In short, it creates a "Texas IX" that prevents violence, educates students, supports survivors, and ensures all parties to a disciplinary process are treated fairly. (Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 1735 amends current law relating to sexual harassment, sexual assault, dating violence, and stalking at public and private postsecondary educational institutions; and provides an administrative penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Higher Education Coordinating Board (THECB) in SECTION 1 (Section 51.295, Education Code) of this bill.

Rulemaking authority previously granted to THECB is rescinded in SECTION 4 (Sections 51.9365 and 51.9366, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 51, Education Code, by adding Subchapter E-3, as follows:

SUBCHAPTER E-3. SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, AND STALKING

Sec. 51.281. DEFINITIONS. Defines "coordinating board" as the Texas Higher Education Coordinating Board (THECB). Defines "dating violence," "sexual assault," "stalking," "postsecondary educational institution," and "sexual harassment."

Sec. 51.282. POLICY ON SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, AND STALKING. (a) Requires each postsecondary educational institution to adopt a policy on sexual harassment, sexual assault, dating violence, and stalking applicable to each student enrolled at and each employee of the institution. Requires the policy to:

(1) include:

(A) definitions of prohibited behavior;

(B) sanctions for violations;

(C) the protocol for reporting and responding to reports of sexual harassment, sexual assault, dating violence, and stalking;

(D) interim measures to protect victims of sexual harassment, sexual assault, dating violence, or stalking during the pendency of the institution's disciplinary process, including protection from retaliation, and any other accommodations available to those victims at the institution; and

(E) a statement regarding:

(i) the importance of a victim of sexual harassment, sexual assault, dating violence, or stalking going to a hospital for treatment and preservation of evidence, if applicable, as soon as practicable after the incident;

(ii) the right of a victim of sexual harassment, sexual assault, dating violence, or stalking to report the incident to the institution and to receive a prompt and equitable resolution of the report; and

(iii) the right of a victim of a crime to choose whether to report the crime to law enforcement, to be assisted by the institution in reporting the crime to law enforcement, or to decline to report the crime to law enforcement; and

(2) be approved by the institution's governing board before final adoption by the institution.

(b) Requires each postsecondary educational institution to make the institution's sexual harassment, sexual assault, dating violence, and stalking policy available to students, faculty, and staff members by including the policy in the institution's student handbook and personnel handbook and by creating and maintaining a web page dedicated solely to the policy that is easily accessible through a clearly identifiable link on the institution's Internet website home page.

(c) Requires each postsecondary educational institution to require each entering freshman or undergraduate transfer student to attend an orientation on the institution's sexual harassment, sexual assault, dating violence, and stalking policy before or during the first semester or term in which the student is enrolled at the institution. Requires the institution to establish the format and content of the orientation. Provides that the orientation is authorized to be provided online and is required to include the statements described by Subsection (a)(1)(E).

(d) Requires each postsecondary educational institution to develop and implement a comprehensive prevention and outreach program on sexual harassment, sexual assault, dating violence, and stalking. Requires the program to:

(1) address a range of strategies to prevent sexual harassment, sexual assault, dating violence, and stalking, including a victim empowerment program, a public awareness campaign, primary prevention, bystander intervention, and risk reduction; and

(2) include providing to students information regarding the protocol for reporting incidents of sexual harassment, sexual assault, dating violence, and stalking adopted under Subsection (a), including the name, office location, and contact information of the institution's Title IX coordinator, by e-mailing the information to each student at the beginning of each semester or other academic term and including the information in the orientation required under Subsection (c).

(e) Requires each postsecondary educational institution, as part of the protocol for responding to reports of sexual harassment, sexual assault, dating violence, and stalking adopted under Subsection (a), to:

(1) to the greatest extent practicable based on the number of counselors employed by the institution, ensure that each alleged victim or alleged perpetrator of an incident of sexual harassment, sexual assault, dating violence, or stalking and any other person who reports such an incident are offered counseling provided by a counselor who does not provide counseling to any other person involved in the incident; and

(2) notwithstanding any other law, allow an alleged victim or alleged perpetrator of an incident of sexual harassment, sexual assault, dating violence, or stalking to drop a course in which both parties are enrolled without any academic penalty.

(f) Requires each postsecondary educational institution, each biennium, to review the institution's sexual harassment, sexual assault, dating violence, and stalking policy and, with approval of the institution's governing board, revise the policy as necessary.

Sec. 51.285. VICTIM REQUEST NOT TO INVESTIGATE. (a) Authorizes an institution, if an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking reported to a postsecondary educational institution requests the institution not to investigate the alleged incident, to investigate the alleged incident in a manner that complies with the confidentiality requirements under Section 51.291. Requires the institution, in determining whether to investigate the alleged incident, to consider:

(1) the seriousness of the alleged incident;

(2) whether the institution has received other reports of sexual harassment, sexual assault, dating violence, or stalking committed by the alleged perpetrator or perpetrators;

(3) whether the alleged incident poses a risk of harm to others; and

(4) any other factors the institution determines relevant.

(b) Requires an institution, if a postsecondary educational institution decides not to investigate an alleged incident of sexual harassment, sexual assault, dating violence, or stalking based on the alleged victim's request not to investigate, to take any steps the institution determines necessary to protect the health and safety of the institution's community in relation to the alleged incident.

(c) Requires a postsecondary educational institution to inform an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking who

requests the institution not to investigate the alleged incident of the institution's decision whether to investigate the alleged incident.

Sec. 51.286. **DISCIPLINARY PROCESS FOR CERTAIN VIOLATIONS.** Requires a postsecondary educational institution that initiates a disciplinary process concerning an allegation that a student enrolled at the institution violated the institution's code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking to:

(1) provide to the student and the alleged victim a prompt and equitable opportunity to present witnesses and other evidence relevant to the alleged violation during the disciplinary process;

(2) ensure that both the student and the alleged victim have reasonable and equitable access to all evidence relevant to the alleged violation in the institution's possession, including any statements made by the alleged victim or by other persons, information stored electronically, written or electronic communications, social media posts, or physical evidence, redacted as necessary to comply with any applicable federal or state law regarding confidentiality; and

(3) take reasonable steps to protect the student and the alleged victim from retaliation and harassment during the pendency of the disciplinary process.

Sec. 51.287. **STUDENT WITHDRAWAL OR GRADUATION PENDING DISCIPLINARY CHARGES.** (a) Provides that if a student withdraws or graduates from a postsecondary educational institution pending a disciplinary charge alleging that the student violated the institution's code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking, the institution:

(1) is prohibited from ending the disciplinary process or issuing a transcript to the student until the institution makes a final determination of responsibility; and

(2) is required to expedite the institution's disciplinary process as necessary to accommodate both the student's and the alleged victim's interest in a speedy resolution.

(b) Requires a postsecondary educational institution, on request by another postsecondary educational institution, to provide to the requesting institution information relating to a determination by the institution that a student enrolled at the institution violated the institution's code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking.

Sec. 51.288. **TRAUMA-INFORMED INVESTIGATION TRAINING.** Requires each peace officer employed by a postsecondary educational institution to complete training on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking.

Sec. 51.289. **MEMORANDA OF UNDERSTANDING REQUIRED.** Requires a postsecondary educational institution, to facilitate effective communication and coordination regarding allegations of sexual harassment, sexual assault, dating violence, and stalking at the institution, to enter into a memorandum of understanding with one or more local law enforcement agencies, sexual harassment, sexual assault, dating violence, or stalking advocacy groups, and hospitals or other medical resource providers.

Sec. 51.290. **RESPONSIBLE AND CONFIDENTIAL EMPLOYEE; STUDENT ADVOCATE.** (a) Requires each postsecondary educational institution to:

(1) designate:

(A) one or more employees to act as responsible employees for purposes of Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681 et seq.); and

(B) one or more employees as persons to whom students enrolled at the institution may speak confidentially concerning sexual harassment, sexual assault, dating violence, and stalking; and

(2) inform each student enrolled at the institution of the responsible and confidential employees designated under Subdivision (1).

(b) Authorizes a postsecondary educational institution to designate one or more students enrolled at the institution as student advocates to whom other students enrolled at the institution may speak confidentially concerning sexual harassment, sexual assault, dating violence, and stalking. Requires the institution to notify each student enrolled at the institution of the student advocates designated under this subsection.

(c) Prohibits a confidential employee designated under Subsection (a)(1)(B) or a student advocate designated under Subsection (b) from disclosing any communication made by a student to the employee or advocate unless the student consents to the disclosure or the employee or advocate is required to make the disclosure under state or federal law.

Sec. 51.291. CONFIDENTIALITY. (a) Provides that the protections provided by this section apply to:

(1) an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking reported to a postsecondary educational institution;

(2) a person who reports to a postsecondary educational institution an incident of sexual harassment, sexual assault, dating violence, or stalking, who sought guidance from the institution concerning such an incident, or who participated in the institution's investigation of such an incident; and

(3) a person who is alleged in a report made to a postsecondary educational institution to have committed or assisted in the commission of sexual harassment, sexual assault, dating violence, or stalking if, after completing an investigation, the institution determines the report to be unsubstantiated or without merit.

(b) Provides that the identity of a person described by Subsection (a), unless waived in writing by the person:

(1) is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code; and

(2) is authorized to be disclosed only to:

(A) the postsecondary educational institution to which the report described by Subsection (a) is made as necessary to conduct an investigation of the report;

(B) a law enforcement officer as necessary to conduct a criminal investigation of the report described by Subsection (a); or

(C) a health care provider in an emergency situation, as determined necessary by the institution.

(c) Provides that a disclosure under Subsection (b) is not a voluntary disclosure for purposes of Section 552.007 (Voluntary Disclosure of Certain Information When Disclosure Not Required), Government Code.

(d) Provides that information regarding an incident of sexual harassment, sexual assault, dating violence, or stalking disclosed to a health care provider or other medical provider employed by a postsecondary educational institution is confidential and that the information is authorized to be shared by the provider only with the victim's consent. Requires the provider to provide aggregate data or other nonidentifying information regarding those incidents to the institution's Title IX coordinator.

Sec. 51.292. COMPLIANCE. (a) Authorizes THECB, if THECB determines that a postsecondary educational institution is not in substantial compliance with this subchapter, to assess an administrative penalty against the institution in an amount not to exceed \$2 million. Requires THECB, in determining the amount of the penalty, to consider the nature of the violation and the number of students enrolled at the institution.

(b) Requires THECB, if THECB assess an administrative penalty against a postsecondary educational institution under Subsection (a), to provide to the institution written notice of THECB's reasons for assessing the penalty.

(c) Authorizes a postsecondary educational institution assessed an administrative penalty under Subsection (a) to appeal the penalty in the manner provided by Chapter 2001 (Administrative Procedure), Government Code.

(d) Prohibits a postsecondary education institution from paying an administrative penalty assessed under Subsection (b) using state or federal money.

(e) Requires an administrative penalty collected under this section to be deposited to the credit of the sexual assault program fund established under Section 420.008 (Sexual Assault Program Fund), Government Code.

(f) Requires THECB to annually submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing legislative committees with primary jurisdiction over legislation concerning sexual assault at postsecondary educational institutions a report regarding compliance with this subchapter, including a summary of the postsecondary educational institutions found not to be in substantial compliance as provided by this section and any penalties assessed under this section during the preceding year.

Sec. 51.293. EQUAL ACCESS. Requires a postsecondary educational institution, in implementing the requirements under this subchapter, to, to the greatest extent practicable, ensure equal access for students enrolled at or employees of the institution who are persons with disabilities. Requires the institution to make reasonable efforts to consult with a disability services office of the institution, advocacy groups for people with disabilities, and other relevant stakeholders to assist the institution with complying with the institution's duties under this section.

Sec. 51.294. ADVISORY COMMITTEE. (a) Requires the commissioner of higher education (commissioner) to establish an advisory committee to:

(1) make recommendations to THECB regarding rules for adoption under Section 51.295; and

(2) develop recommended training for responsible and confidential employees designated under Section 51.290 and for Title IX coordinators at postsecondary educational institutions.

(b) Provides that the advisory committee consists of nine members appointed by the commissioner. Requires each member to be a chief executive officer of a postsecondary educational institution or a representative designated by that officer.

(c) Requires the advisory committee to annually review and, if necessary, update the training recommended under Subsection (a)(2).

Sec. 51.295. RULES. (a) Requires THECB to adopt rules as necessary to implement and enforce this subchapter, including rules that:

(1) define relevant terms; and

(2) ensure implementation of this subchapter in a manner that complies with federal law regarding confidentiality of student educational information, including the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

(b) Requires THECB, in adopting rules under this section, to consult with relevant stakeholders.

SECTION 2. Transfers Sections 51.9365(b), (c), and (d), Education Code, to Subchapter E-3, Chapter 51, Education Code, as added by this Act, redesignates them as Section 51.283, Education Code, and amends them as follows:

Sec. 51.283. ELECTRONIC REPORTING OPTION. (a) and (b) Creates these subsections from existing text and makes conforming changes to these subsections.

(c) Requires a protocol for reporting sexual assault adopted under Section 51.282, rather than under Section 51.9363 (Sexual Assault Policy), to comply with this section. Deletes the designation of Subsection (d).

SECTION 3. Transfers Sections 51.9366(b), (c), (d), (e), and (f), Education Code, to Subchapter E-3, Chapter 51, Education Code, as added by this Act, redesignates them as Section 51.284, Education Code, and amends them as follows:

Sec. 51.284. AMNESTY FOR STUDENTS REPORTING CERTAIN INCIDENTS. Creates this section from existing text and makes conforming changes to this section.

SECTION 4. Repealer: Section 51.9363 (Sexual Assault Policy), Education Code.

Repealer: the heading to Section 51.9365 (Electronic Reporting Option For Certain Offenses), Education Code.

Repealer: the heading to Section 51.9366 (Amnesty For Students Reporting Certain Incidents), Education Code.

Repealer: Section 51.9365(a) (relating to defining "dating violence," "postsecondary educational institution," "sexual assault," "sexual harassment," and "stalking"), Education Code.

Repealer: Section 51.9365(e) (relating to authorizing THECB to adopt rules as necessary to administer this section), Education Code.

Repealer: Section 51.9366(a) (relating to defining "coordinating board," "dating violence," "postsecondary educational institution," "sexual assault," "sexual harassment," and "stalking"), Education Code.

Repealer: Section 51.9366(g) (relating to authorizing THECB to adopt rules as necessary to administer this section), Education Code.

SECTION 5. Makes application of this Act prospective to August 1, 2020.

SECTION 6. Requires THECB, not later than September 1, 2021, to submit its initial report required under Section 51.292(f), Education Code, as added by this Act.

SECTION 7. Effective date: September 1, 2019.