

## **BILL ANALYSIS**

Senate Research Center  
85R30361 KJE-D

C.S.H.B. 16  
By: Lozano et al. (Watson)  
Higher Education  
5/17/2017  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Interested parties suggest that the underreporting of sexual harassment, sexual assault, dating violence, and stalking incidents at public and private institutions of higher education increases the need for prevention efforts and support systems for victims. H.B. 16 seeks to address this need and increase awareness by requiring institutions of higher education to implement new policies on sexual harassment, sexual assault, dating violence, and stalking, and establish an online reporting system, among other measures. (Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 16 amends current law relating to sexual harassment, sexual assault, dating violence, and stalking at public and private postsecondary educational institutions.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Higher Education Coordinating Board in SECTION 1 (Section 51.265, Education Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 51, Education Code, by adding Subchapter E-2, as follows:

#### **SUBCHAPTER E-2. SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, AND STALKING**

Section 51.251. DEFINITIONS. Defines "coordinating board," "dating violence," "postsecondary educational institution," "sexual assault," "sexual harassment," and "stalking."

Sec. 51.252. POLICY ON SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, AND STALKING. (a) Requires each postsecondary educational institution (institution) to adopt a policy on campus sexual harassment, sexual assault, dating violence, and stalking. Requires that the policy:

(1) include certain definitions, sanctions, protocols, measures, and statements; and

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

(b) Requires each institution to make the institution's campus 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 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 institution to require each entering freshman or undergraduate transfer student to attend an orientation on the institution's campus 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:

(1) is authorized to be provided online; and

(2) is required to include the statements described by Subsection (a)(1)(E) (relating to a statement regarding the importance of a certain victim going to a hospital for treatment and preservation of evidence and certain rights of the victim).

(d) Requires each institution to develop and implement a comprehensive prevention and outreach program on campus sexual harassment, sexual assault, dating violence, and stalking. Requires that the program address a range of strategies to prevent campus sexual harassment, sexual assault, dating violence, and stalking, including certain measures.

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

Sec. 51.253. ONLINE REPORTING SYSTEM. (a) Requires each institution to develop and establish or contract with a third party to develop and establish an online reporting system through which a student enrolled at or an employee of the institution may report to the institution an allegation of sexual harassment, sexual assault, dating violence, or stalking committed against or witnessed by the student or employee, regardless of the location at which the alleged incident occurred.

(b) Requires that the online reporting system enable a student or employee to report the alleged incident anonymously and be easily accessible through a clearly identifiable link on the institution's Internet website home page.

(c) Requires a protocol for reporting sexual harassment, sexual assault, dating violence, or stalking adopted under Section 51.252 to comply with this section.

Sec. 51.254. AMNESTY FOR STUDENTS REPORTING CERTAIN INCIDENTS. (a) Prohibits an institution from taking any disciplinary action against a student enrolled at the institution who in good faith reports to the institution being the victim of, or a witness to, an incident of sexual harassment, sexual assault, dating violence, or stalking for a violation by the student of the institution's code of conduct occurring at or near the time of the incident, regardless of the location at which the incident occurred or the outcome of the institution's disciplinary process regarding the incident, if any.

(b) Authorizes an institution to investigate to determine whether a report of an incident of sexual harassment, sexual assault, dating violence, or stalking was made in good faith.

(c) Provides that a determination that a student is entitled to amnesty under Subsection (a) is final and is prohibited from being revoked.

(d) Provides that Subsection (a) does not apply to a student who reports the student's own commission or assistance in the commission of sexual harassment, sexual assault, dating violence, or stalking.

(e) Prohibits this section from being construed to limit an institution's ability to provide amnesty from application of the institution's policies in circumstances not described by Subsection (a).

Sec. 51.255. 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 an 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 51.261. Requires the institution, in determining whether to investigate the alleged incident, to consider certain factors.

(b) Requires an institution, if an 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 an 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. 51.256. DISCIPLINARY PROCESS FOR CERTAIN VIOLATIONS. Requires an 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 take certain actions.

Sec. 51.257. STUDENT WITHDRAWAL OR GRADUATION PENDING DISCIPLINARY CHARGES. (a) Provides that if a student withdraws or graduates from an 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 an institution, on request by another 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. 51.258. TRAUMA-INFORMED INVESTIGATION TRAINING. Requires each peace officer employed by an institution to complete training on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking.

Sec. 51.259. MEMORANDA OF UNDERSTANDING REQUIRED. Requires an 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. 51.260. RESPONSIBLE OR CONFIDENTIAL EMPLOYEE. (a) Requires each institution to:

(1) designate one or more employees to act as responsible employees for certain purposes and one or more employees as persons to whom students enrolled at the institution are authorized to speak to 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) Prohibits a confidential employee designated under Subsection (a)(1)(B) from disclosing any communication made by a student to the employee unless the student consents to the disclosure or the employee is required to make the disclosure under state or federal law.

Sec. 51.261. CONFIDENTIALITY. (a) Provides that the protections provided by this section apply to certain persons.

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

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

(2) may be disclosed only to certain institutions, law enforcement officers, or health care providers.

(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 an institution is confidential and 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. 51.262. REPORT. (a) Requires each institution to annually submit to the institution's governing body a report concerning any reports of sexual harassment, sexual assault, dating violence, or stalking received by the institution during the preceding academic year. Provides that the report is prohibited from identifying any person and is required to include certain information.

(b) Provides that a report submitted under Subsection (a) is public information subject to disclosure under Chapter 552, Government Code, and a private or independent institution of higher education (IHE) is a governmental body with respect to such a report for purposes of that chapter.

Sec. 51.263. COMPLIANCE. (a) Requires the Texas Higher Education Coordinating Board (THECB), if THECB determines that an IHE is not in substantial compliance with this subchapter, to report that determination to the legislature for consideration of whether to reduce the allocation of state funding to the IHE for the following academic year.

(b) Authorizes THECB, if THECB determines that a private or independent IHE is not in substantial compliance with this subchapter, to assess a certain administrative penalty against the IHE. Requires THECB, in determining the amount of the penalty, to consider the nature of the violation and the number of students enrolled at the IHE.

(c) Requires THECB, if THECB takes an action under Subsection (a) or (b) against an institution, to provide to the institution written notice of THECB's reasons for taking the action.

(d) Authorizes an institution against which THECB takes an action under Subsection (a) or (b), as applicable, to appeal the action taken in the manner provided by Chapter 2001 (Administrative Procedure), Government Code.

(e) Prohibits a private or independent IHE from paying an administrative penalty assessed under Subsection (b) using state or federal money.

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

Sec. 51.264. ADVISORY COMMITTEE. (a) Requires the Texas commissioner of higher education (commissioner) establish an advisory committee to make recommendations to THECB regarding rules for adoption under Section 51.265 and develop recommended training for responsible and confidential employees designated under Section 51.260 and for Title IX coordinators at 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 an 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. 51.265. RULES. (a) Requires THECB to adopt rules as necessary to implement and enforce this subchapter, including rules that define relevant terms and 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. Repealer: Section 51.9363 (Campus Sexual Assault Policy), Education Code.

SECTION 3. Provides that this Act applies beginning January 1, 2018.

SECTION 4. Requires each public or private institution, not later than January 1, 2018, to develop and establish the online reporting system required under Section 51.253, Education Code, as added by this Act.

SECTION 5. Effective date: upon passage or September 1, 2017.