

- SUBJECT:** Addressing sexual assault at institutions of higher education
- COMMITTEE:** Higher Education — committee substitute recommended
- VOTE:** 9 ayes — Lozano, Raney, Alonzo, Alvarado, Button, Clardy, Howard, Morrison, Turner
- 0 nays
- WITNESSES:** For — Chris Kaiser, Texas Association Against Sexual Assault; Aaron Setliff, Texas Council on Family Violence; Mary McKinnon; (*Registered, but did not testify*: Gwen Daverth, Texas Campaign to Prevent Teen Pregnancy; Cris Dishman; CJ Grisham; Sacha Jacobson; Jennifer Thibeaux;)
- Against — None
- On — Elizabeth Medina, Concordia University Texas; Heather Hadlock, Independent Colleges and Universities of Texas; Ray Bonilla, Texas A&M University System; Bill Franz, Texas Higher Education Coordinating Board; Andrew Cantey, Tyler Junior College; LaToya Smith, University of Texas at Austin
- BACKGROUND:** HB 699 by Nevárez, enacted by the 84th Legislature in 2015, required each Texas higher education institution to adopt a policy on campus sexual assault, including definitions of prohibited behavior, sanctions for violations, and the protocol for reporting and responding to campus sexual assault. The bill established Education Code, sec. 51.9363.
- DIGEST:** CSHB 16 would repeal Education Code, sec. 51.9363 and add a new subchapter under ch. 51 with requirements for policies on reporting and responding to campus sexual harassment, sexual assault, dating violence, and stalking at the state's higher education institutions and private or independent colleges or universities approved for purposes of the tuition equalization grant program.

Campus policies. CSHB 16 would require public and certain private higher education institutions to establish a policy on sexual harassment, sexual assault, dating violence, and stalking. 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; and
- a statement emphasizing the importance of victims going to a hospital for treatment and preservation of evidence as soon as practicable and of reporting the 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. The policy would need to be made available to the students, faculty, and staff members by including it in the institution's student and employee handbook and on a web page on the institution's website 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 as soon as practicable after the incident and that criminal matters should be handled primarily by law enforcement.

The bill would require institutions to develop and implement a comprehensive prevention and outreach program, which would address strategies to prevent campus incidents of sexual harassment, sexual assault, dating violence, and stalking. The program would include a victim empowerment program, a public awareness campaign, primary prevention, bystander intervention, and risk reduction.

Institutions also could adopt a policy that included incidents other than

sexual harassment, sexual assault, dating violence, or stalking.

Online reporting system. CSHB 16 would require higher education institutions to establish an online reporting system for students and employees of the institution anonymously to report allegations of sexual harassment, sexual assault, dating violence, and stalking, regardless of where the alleged incident occurred. The bill would require institutions to develop and establish the online reporting system by January 1, 2018.

Amnesty for reporting. The bill would provide amnesty for minor violations of the institution's code of conduct occurring at or near the time of the incident to students who made good faith reports on being either a victim of or witness to sexual harassment, sexual assault, dating violence, or stalking. Amnesty would not be extended to an individual who reported the individual's own involvement in the commission of an act of sexual harassment, sexual assault, dating violence, and stalking. Institutions could investigate and determine whether or not the report was made in good faith.

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 alleged incident, 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 an alleged incident, the institution would have to inform the victim and take the necessary steps to protect the health and safety of the institution's community.

Disciplinary process for certain violations. An institution that initiated a disciplinary process against a student enrolled there who had violated its 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 with a meaningful opportunity to admit or contest the alleged violation at a disciplinary proceeding, ensure that both the student and the alleged victim had reasonable and complete access to all evidence related to the alleged violation in a specified timeframe, and permit the student and the alleged victim to safely question witnesses of the alleged violation in an appropriate manner, as determined by the institution.

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 withdrew or graduated, CSHB 16 would prohibit the institution from ending the disciplinary process or issuing a transcript to the student until the institution made a final determination of responsibility. The institution also would be required to expedite its disciplinary process to accommodate the student'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 enrolled at the first institution violated its code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking.

Trauma-informed investigation training. The bill would require peace officers employed by higher education institutions 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 of sexual harassment, sexual assault, dating violence, and stalking.

Designated employees. CSHB 16 would require an institution to designate one or more personnel to act as responsible employees for the purposes of Title IX and one or more employees to whom students enrolled at the institution could speak confidentially concerning sexual harassment, sexual assault, dating violence, and stalking. Institutions would have to inform students about these designated employees.

The bill would also require the commissioner of higher education to establish an advisory committee to develop recommended training for these designated employees. The committee would meet annually to review and update the training as necessary.

Confidentiality. CSHB 16 would provide confidentiality for alleged victims, persons who reported an incident, and persons found to have been wrongfully accused of sexual harassment, sexual assault, dating violence, or stalking. Unless waived in writing, the identity of these individuals would be confidential and not subject to disclosure under the Public Information Act. The person's identity could be disclosed only to the institution as necessary to investigate a report, a law enforcement officer as necessary to conduct a criminal investigation, or a health care provider in an emergency situation. Information on an incident disclosed to a health care provider employed by an institution would be confidential and could be shared only with the victim's consent. The health care provider would have to share aggregate data or other non-identifying information on an incident with the institution's Title IX coordinator.

Report. The bill would require higher education institutions to submit to their governing body annually a report on any reports of sexual harassment, sexual assault, dating violence, or stalking received by the institution during the preceding academic year. The report could not identify any person. Reports would be subject to disclosure under the Public Information Act, including those from applicable private or independent institutions.

Compliance. If the Texas Higher Education Coordinating Board determined an institution was not in substantial compliance with the bill, it

could reduce state funding to the institution for the following academic year in an amount determined by the board. The coordinating board could assess an administrative penalty of up to \$2 million against applicable private institutions or declare students at those institutions ineligible for tuition equalization grants. Penalty amounts would depend on the seriousness of a violation. Private institutions could not pay a penalty using state or federal money. The bill would require the board to provide both public and private institutions with written notice of its reasons for taking an action and would allow institutions to appeal such actions.

Rulemaking and effective date. The coordinating board would be required to adopt rules to implement and enforce the bill, including defining relevant terms and ensuring that implementation of the bill complied with federal law on confidentiality of student educational information.

The bill would take immediate effect if finally passed by a two-thirds vote of the membership of each house. Otherwise, it would take effect September 1, 2017, and would apply beginning with the 2017-18 academic year.

**SUPPORTERS
SAY:**

CSHB 16 would establish critical protections for victims of sexual harassment, sexual assault, dating violence, and stalking at the state's colleges and universities. The bill also would expand on current state law by specifically adding sexual harassment, dating violence, and stalking as conduct for institutions of higher education to include in their policies and procedures for responding to incidents and protecting students.

The bill would allow students and employees to use an online reporting portal to report sexual harassment, sexual assault, dating violence, and stalking without fear of retaliation or punishment. This would help increase reporting, as a majority of victims of sexual assault and related abuse are hesitant to come forward with allegations.

The bill would include enforcement mechanisms to ensure both private and public institutions provided opportunities for reporting sexual assault

and related conduct on their campuses and adequately responded to those reports. If institutions were found to be noncompliant with the bill, public institutions could lose state funding, and private institutions could be fined up to \$2 million or lose access to the state funded tuition equalization grants. The bill would allow the Texas Higher Education Coordinating Board to make determinations on compliance for individual institutions regarding specific circumstances, which would create accountability for the institutions and flexibility for the coordinating board.

CSHB 16 would require institutions to provide needed training for law enforcement on trauma situations and on sexual harassment, sexual assault, dating violence, and stalking. The bill also would require institutions to partner with community victim service providers, rape centers, and medical providers, which is essential for effective coordination and communication. One report indicates that at the University of Texas at Austin, 15 percent of female undergraduates reported being raped since their enrollment, which underscores the need for institutions of higher education to establish the protections in the bill.

The bill would provide a framework for institutions to develop policies and procedures to respond to reports of sexual abuse. Institutions could hold disciplinary proceedings to investigate and make findings, but this process would not extend beyond the possible issuance of an administrative penalty for a violation against school policy. Although these disciplinary proceedings are not court proceedings, the bill would not preclude students from having an attorney at the administrative proceeding.

The bill also would provide safeguards for those accused of sexual harassment, sexual assault, dating violence, and stalking by requiring that institutions provide the accused with access to evidence and opportunities to question witnesses. This is necessary because research indicates that false reporting occurs between 2 percent and 10 percent of the time.

The bill would comply with Title IX, and institutions would harmonize the policies developed and implemented under the bill to address sexual

abuse on campus with these federal requirements.

OPPONENTS
SAY:

CSHB 16 would offer minimal due process and privacy rights for alleged victims and perpetrators. To better protect student rights, the bill should stipulate that only noncriminal violations of institutional policy could be arbitrated through the institution and should guarantee students' rights to have a lawyer at these disciplinary proceedings.

The bill would not provide enough guidance to institutions on how to investigate allegations made through the online portal or address the possibility of increased false accusations. To guard against this possibility, institutions should ensure that the burden of proof remained on the accuser, rather than the accused, and go further to protect the rights of the accused.

CSHB 16 would guarantee amnesty for a person who made a report "in good faith" without defining the term or requiring an institution to investigate whether a report had been filed in good faith. Because there are individuals who make false claims, institutions of higher education should be required to hold disciplinary proceedings for a person found to have filed a false report or a report not made in good faith.

The bill could remove tuition equalization grants from private institutions if they were determined to have been noncompliant with the policy, which would unfairly penalize students who depend on this funding.

The bill also would duplicate Title IX requirements, which already are implemented at most institutions.

OTHER
OPPONENTS
SAY:

While the CSHB 16 rightly encourages an integrated approach to responding to sexual assault and related conduct, requirements for partnering with local law enforcement agencies, advocacy groups, and hospitals could be difficult for smaller and more rural institutions. The bill also would not provide enough guidance on what constitutes "substantial compliance," which could leave institutions unsure on how they could adequately adhere to the bill's requirements.