

## **BILL ANALYSIS**

C.S.H.B. 1735  
By: Howard  
Higher Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has been reported that, despite recent legislative reforms relating to campus sexual assault at public and private institutions of higher education, sexual violence may continue to be a significant and underreported problem in those settings. C.S.H.B. 1735 seeks to address this issue by providing a comprehensive update to the policies and procedures required for such institutions with regard to allegations of sexual assault, sexual harassment, stalking, and dating violence, including preventive, educational, supportive, and disciplinary elements.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Higher Education Coordinating Board in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 1735 amends the Education Code to expand the scope of the sexual assault policy whose adoption is required for each public, private, and independent institution of higher education to also address sexual harassment, dating violence, and stalking. The bill includes among the required contents of the policy certain interim measures to protect victims of sexual harassment, sexual assault, dating violence, or stalking during the pendency of the institution's disciplinary process and a statement regarding the following:

- 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;
- the right of a victim of such conduct to report the incident to the institution and to receive a prompt and equitable resolution of the report; and
- 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.

C.S.H.B. 1735 authorizes the provision of the required orientation online and requires the orientation to include the statements required by the bill for the policy contents. The bill specifies that the required link to the policy web page from the institution's website must be a clearly identifiable link on the home page and that the policy web page must be easily accessible.

C.S.H.B. 1735 replaces the requirement for each institution to develop and implement a public awareness campaign regarding the institution's sexual assault policy with a requirement to

develop and implement a comprehensive prevention and outreach program on sexual harassment, sexual assault, dating violence, and stalking. The bill requires the program to address a range of strategies to prevent that conduct in addition to providing the information to students that was previously specified for the public awareness campaign.

C.S.H.B. 1735 authorizes an institution, if an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking reported to the institution requests the institution not to investigate the alleged incident, to investigate the alleged incident in a manner that complies with the confidentiality requirements prescribed by the bill. The bill sets out the factors the institution is required to consider in determining whether to investigate an alleged incident and requires an institution to inform an alleged victim who makes such a request of the institution's decision whether to investigate. The bill requires an institution that decides not to investigate an alleged incident based on the alleged victim's request not to do so 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.S.H.B. 1735 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 do the following:

- 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;
- 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; and
- take reasonable steps to protect the student and the alleged victim from retaliation and harassment during the pendency of the disciplinary process.

C.S.H.B. 1735 sets out requirements relating to a student who withdraws or graduates from an institution pending a disciplinary charge alleging that the student committed such a violation of the institution's code of conduct and relating to the provision of information regarding such a student to another applicable institution.

C.S.H.B. 1735 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. The bill requires each institution, to facilitate effective communication and coordination regarding such allegations, to enter into a memorandum of understanding with one or more of the following:

- local law enforcement agencies;
- sexual harassment, sexual assault, dating violence, or stalking advocacy groups; and
- hospitals or other medical resource providers.

C.S.H.B. 1735 requires each institution to designate one or more employees to act as responsible employees for purposes of Title IX of the federal Education Amendments of 1972 and 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 to inform each student enrolled at the institution of those designations. The bill authorizes an institution to designate one or more students enrolled at the institution as student advocates to whom other enrolled students may speak confidentially concerning those matters and to notify each enrolled student of such student advocates. The bill prohibits a designated confidential employee and a student advocate 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.

C.S.H.B. 1735 sets out provisions establishing the extent of confidentiality of relevant information disclosed to a health care or other medical provider employed by an institution and of the identity of the following persons:

- an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking reported to an institution;
- a person who reports such an incident to or sought guidance concerning such an incident from an institution or who participated in the institution's investigation of such an incident; and
- a person who is alleged to have committed or assisted in the commission of such an incident if, after completing an investigation, the institution determines the reported allegations to be unsubstantiated or without merit.

C.S.H.B. 1735 requires the Texas Higher Education Coordinating Board, if the coordinating board determines that a public institution of higher education is not in substantial compliance with the bill's provisions, to report that determination to the legislature for consideration of whether to reduce the allocation of state funding to the institution for the following academic year. The bill authorizes the coordinating board, if the coordinating board makes such a determination regarding a private or independent institution of higher education, to assess an administrative penalty against the institution in an amount not to exceed the greater of \$2 million or the amount of funding received by students enrolled at the institution from tuition equalization grants for the preceding academic year. The bill requires the coordinating board, in determining the amount of such a penalty, to consider the nature of the violation and the number of students enrolled at the institution. The bill provides for a notice requirement and appeal procedures for a coordinating board action taken against a noncompliant institution and sets out further requirements specifically relating to an administrative penalty in that context.

C.S.H.B. 1735 requires an institution, in implementing the bill's provisions, to ensure to the greatest extent practicable equal access for students enrolled at or employees of the institution who are persons with disabilities. The bill requires the institution to make reasonable efforts to consult with certain relevant stakeholders to assist the institution in complying with this requirement. The bill requires the coordinating board to adopt rules as necessary to implement and enforce the bill's provisions, including rules that define relevant terms and ensure implementation of the bill's provisions in a manner that complies with federal law regarding confidentiality of student educational information, and to consult with relevant stakeholders in adopting those rules. The bill requires the commissioner of higher education to establish an advisory committee to make recommendations to the coordinating board regarding rules for adoption and to develop recommended training for designated responsible and confidential employees and for federal Title IX coordinators at applicable institutions. The bill provides for the appointment, composition, and certain annual review duties of the advisory committee. The bill applies beginning August 1, 2020.

C.S.H.B. 1735 repeals the following provisions of the Education Code:

- Section 51.9363
- the headings to Sections 51.9365 and 51.9366
- Sections 51.9365(a) and (e)
- Sections 51.9366(a) and (g)

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2019.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1735 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes provisions relating to:

- authorizing an institution to designate one or more students as student advocates; and
- requiring an institution to ensure equal access for enrolled students or employees who are persons with disabilities in implementing the bill's provisions.

The substitute replaces definitions of "dating violence," "sexual assault," and "stalking" with definitions by references to federal law.

The substitute changes the date the bill's provisions apply from January 1, 2020, to August 1, 2020.