

- SUBJECT:** Requiring universities to report sexual assault allegations
- COMMITTEE:** Higher Education — favorable, without amendment
- VOTE:** 6 ayes — C. Turner, Stucky, Button, Frullo, Pacheco, Smithee
2 nays — Schaefer, Wilson
3 absent — Howard, E. Johnson, Walle
- SENATE VOTE:** On final passage, March 26 — 31-0
- WITNESSES:** For — (*Registered, but did not testify:* James Grace Jr., Houston Area Women's Center; Chris Kaiser, Texas Association Against Sexual Assault; Krista Del Gallo, Texas Council on Family Violence)
Against — None
On — Rex Peebles, Higher Education Coordinating Board
- BACKGROUND:** Title IX of the federal Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs or activities receiving federal financial assistance.
- DIGEST:** SB 212 would require employees of Texas postsecondary institutions to report certain sexually related incidents against a student or employee to the institution's Title IX coordinator. The bill would create an offense for failure to report an incident or making a false report.
- Incident reporting.** SB 212 would require employees of public, private, and independent institutions of higher education who witnessed or received information about an incident that the employee reasonably believed constituted sexual harassment, sexual assault, dating violence, or stalking against a student or employee to report the incident to the institution's Title IX coordinator or deputy coordinator. An employee would not include a student enrolled at the institution.

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

The report would have to include all information concerning the incident known to the reporting person that was relevant to the investigation and, if applicable, redress of the incident, including whether an alleged victim had expressed a desire for confidentiality.

An employee designated by an institution as a person with whom students could speak confidentially or who received information under circumstances that rendered the employee's communications confidential or privileged under other law would, in making a report, state only the type of incident reported and could not include any information that would violate a student's expectation of privacy. Such an employee's duty to report an incident under any other law would not be affected by the bill.

A person would not be required to make a report concerning an incident in which the person was a victim of sexual harassment, sexual assault, dating violence, or stalking. A person also would not be required to make a report on a disclosure made at a public awareness event sponsored by a postsecondary educational institution or by a student organization.

At least once every three months, the Title IX coordinator would have to submit to the institution's chief executive officer (CEO) a written report on the incident reports received, including information regarding:

- the investigation of those reports;
- the disposition, if any, of any disciplinary processes arising from those reports; and
- the reports for which the institution determined not to initiate a disciplinary process, if any.

A Title IX coordinator or deputy coordinator would have to immediately

report to the institution's CEO a reported incident that the coordinator believed could put the safety of any person in imminent danger.

At least once during each fall or spring semester, the CEO would have to submit to the institution's governing body and post on the institution's website a report concerning the reported incidents. The report could not identify any person and would have to include:

- the number of incident reports received and the number of resulting investigations;
- the disposition, if any, of any disciplinary processes arising from those incidents;
- the number of those incidents for which the institution determined not to initiate a disciplinary process; and
- any disciplinary action taken.

An institution with fewer than 1,500 students would have to submit a report for a given semester only if more than five incidents were reported.

Confidentiality. The identity of an alleged victim of a reported incident would be confidential unless waived in writing by the alleged victim. The identity would not be subject to Texas public information laws and could be disclosed only to:

- persons employed by or under contract with the institution who were necessary to conduct an investigation or related hearings;
- a law enforcement officer as necessary to conduct a criminal investigation;
- the person or persons alleged to have perpetrated the incident, to the extent required by other law; or
- potential witnesses as necessary to conduct an investigation.

Retaliation prohibited. An institution could not discipline or otherwise discriminate against an employee who made a good faith report to the institution's Title IX coordinator or cooperated with the resulting investigation, disciplinary process, or judicial proceeding. The prohibition

on retaliation would not apply to an employee who reported an incident perpetrated by the employee or who cooperated with the resulting investigation, disciplinary process, or judicial proceeding.

Immunities. A person who acted in good faith to report or assist in the investigation of an incident or who testified or otherwise participated in a disciplinary process or judicial proceeding arising from an incident would be immune from civil liability and from criminal liability for fine-only offenses that might otherwise be imposed as a result of those actions.

Such a person also could not be subjected to any disciplinary action by the institution at which the person was enrolled or employed for any violation of the institution's code of conduct reasonably related to an incident for which suspension or expulsion would not be a possible punishment.

The bill's immunities would not apply to a person who perpetrated or assisted in the perpetration of a reported incident.

Offenses. SB 212 would make it an offense for a person who was required to make a report to the Title IX coordinator and knowingly failed to make the report or knowingly filed a false report with the intent to harm or deceive. Such an offense would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000). If it was shown at trial that the actor intended to conceal the incident the offense would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

An institution would be required to terminate an employee whom it determined had committed an offense.

Compliance. The CEO of each institution would have to annually certify in writing to the Texas Higher Education Coordinating Board that it was in substantial compliance with the bill's requirements. If the coordinating board determined that an institution was not in substantial compliance, it could assess an administrative penalty of up to \$2 million. In determining the amount of the penalty, the coordinating board would have to consider the nature of the violation and number of students enrolled at the

institution.

The coordinating board would have to provide the institution with written notice of its reasons for assessing the penalty, and the institution could appeal. An institution could not pay a penalty using state or federal money. Funds collected from an administrative penalty would be deposited to the sexual assault program fund.

The coordinating board would be required to annually submit to the governor, lieutenant governor, House speaker and relevant legislative standing committees a report on compliance with the bill, including a summary of institutions found not to be in substantial compliance and any penalties assessed during the preceding calendar year. The initial report would be due by January 1, 2021.

The coordinating board would have to adopt rules necessary to implement and enforce the bill's requirements in a manner that complied with federal law regarding confidentiality of student educational information.

Training. The commissioner of higher education would have to establish an advisory committee to develop recommended training for persons required to report incidents and for Title IX coordinators and deputy coordinators. The committee would have to consist of eight institution CEOs or their representatives and one representative of a sexual assault or family violence advocacy group.

The committee would have to develop the recommended training by December 1, 2019. These provisions would expire September 1, 2020.

Effective dates. The incident reporting requirements would apply beginning January 1, 2020.

The bill would take effect September 1, 2019, except that the requirements for the training advisory committee would take immediate effect if the bill was finally passed by a two-thirds record vote of the membership of each house. Otherwise, those requirements would take effect September 1,

2019.

**SUPPORTERS
SAY:**

SB 212 would provide a safe and reliable structure for reporting incidents of sexual assault, sexual harassment, dating violence, and stalking against college students and employees. While studies have shown that as many as one in five women experience some form of sexual assault while in college, actual data is lacking. The reporting required by the bill would establish the prevalence of these incidents and would raise awareness of the problem. The reporting would ensure that universities did not cover up incidents. As victims learn they are not alone, more are likely to come forward and report.

The bill would ensure victims' privacy except when confidentiality was waived by the victim or when necessary to conduct an appropriate investigation. This would balance students' need to seek help with their expectations of privacy.

Most Texas higher education institutions already require certain employees to report sexual assault to the institution's Title IX office. SB 212 would ensure uniformity in reporting from institutions throughout the state. Title IX coordinators would be required to report to the institution's president all reported incidents, including their investigation and disposition. The information would be publicly reported on each institution's website so students knew the extent of the problem on their campus.

The criminal penalties for failure to report and the administrative penalties on universities that were not in substantial compliance are necessary to ensure colleges and universities take the reporting requirements seriously.

**OPPONENTS
SAY:**

SB 212, while well intentioned, could result in deficiencies in investigating and prosecuting sexual assault and related crimes at universities. The reporting requirements of SB 212 could be overly broad and require employees to report even rumors of sexual incidents. This could lead to over-reporting by employees concerned about a criminal offense for failure to report an incident. Universities would have difficulty

investigating rumored or fabricated reports. It is not the role of state government to mandate reporting requirements on private colleges and universities.

University Title IX offices are not the appropriate places for investigating crimes that would be better addressed by law enforcement authorities who have the training and resources to determine if charges should be filed.