
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 636 **Hearing Date:** July 14, 2015
Author: Medina
Version: April 29, 2015
Urgency: No **Fiscal:** No
Consultant: LT

Subject: *Postsecondary Education: Student Safety*

HISTORY

Source: Author

Prior Legislation: AB 1433 (Gatto), Chapter 798, Statutes of 2014

Support: Rancho Santiago Community College District; Association of Independent California Colleges and Universities; Association for Los Angeles Deputy Sheriffs; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California Community Colleges Chancellor's Office; California District Attorneys Association; California Narcotic Officers Association; Los Angeles Police Protective League; Riverside Sheriffs Association; Los Angeles County District Attorney's Office; North Orange County Community College District

Opposition: University of California Student Association

Assembly Floor Vote: 79 - 0

PURPOSE

The purpose of this bill is to provide specific circumstances under which a postsecondary institution must release an alleged assailant's name to local law enforcement.

Existing federal law requires, under Title IX and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), colleges and universities as a condition of federal student aid program participation, to (a) publish annual campus security reports, maintain crime logs, provide timely warnings of crimes that present a public safety risk, and maintain ongoing crime statistics; and (b) establish certain rights for victims of sexual assault, including notification to victims of legal rights, availability of counselling, safety options for victims, and offering prevention and awareness programs. (20 U.S.C. § 1681-1688; 20 U.S.C. § 1092 (f).)

Existing law states that the governing board of each community college district (CCD), the Trustees of the California State University (CSU), the Regents of the University of California (UC), and the governing boards of independent postsecondary institutions receiving public funds for student financial assistance shall require the appropriate officials at each campus within their respective jurisdictions to compile records of all occurrences reported to campus police, campus

security personnel, or campus safety authorities of, and arrests for, crimes that are committed on campus and that involve violence, hate violence, theft, destruction of property, illegal drugs, or alcohol intoxication. (Ed Code § 67380 (a)(1)(A).)

Existing law requires that the information concerning the crimes compiled be available within two business days following the request of any student or employee of, or applicant for admission to, any campus within their respective jurisdictions, or to the media, unless the information is the type of information exempt from disclosure, as specified. (Ed Code § 67380 (a)(3)(A).)

Existing law requires the governing board of each CCD, the CSU Trustees, the UC Regents, and the governing boards of independent postsecondary institutions receiving public funds for student financial assistance to adopt rules requiring each of their respective campuses to enter into written agreements with local law enforcement agencies that clarify operational responsibilities for investigations of specified violent crimes occurring on each campus. (Ed Code § 67381 (b).)

Existing law requires the governing board of each CCD, the CSU Trustees, the Board of Directors of Hastings College of the Law, and the UC Regents to each adopt, and implement at each of their respective campuses or other facilities, a written procedure or protocols to ensure, to the fullest extent possible, that students, faculty, and staff who are victims of sexual assault committed on grounds maintained by the institution or affiliated student organizations, receive treatment and information. (Ed Code § 67385 (a).)

Existing law states that the written procedures or protocols must contain at least the following information:

- The college policy regarding sexual assault on campus;
- Personnel on campus who should be notified, and the procedures for notification, with the consent of the victim;
- Legal reporting requirements, and procedures for fulfilling them;
- Services available to victims, and personnel responsible for providing these services, such as the person assigned to transport the victim to the hospital, to refer the victim to a counseling center, and to notify the police, with the victim's concurrence;
- A description of campus resources available to victims, as well as appropriate off-campus services;
- Procedures for ongoing case management, including procedures for keeping the victim informed of the status of any student disciplinary proceedings in connection with the sexual assault, and the results of any disciplinary action or appeal, and helping the victim deal with academic difficulties that may arise because of the victimization and its impact;
- Procedures for guaranteeing confidentiality and appropriately handling requests for information from the press, concerned students, and parents; and,

- Each victim of sexual assault should receive information about the existence of at least the following options: criminal prosecutions, civil prosecutions, the disciplinary process through the college, the availability of mediation, alternative housing assignments, and academic assistance alternatives. (Ed Code § 67385 (b).)

Existing law requires public postsecondary educational institution campuses to develop policies to encourage students to report any campus crimes involving sexual violence to the appropriate campus authorities. (Ed Code § 67385 (c).)

Existing law urges campuses to adopt policies that eliminate barriers for victims who come forward to report sexual assaults, and to advise students regarding these policies. These policies may include, but are not necessarily limited to, exempting the victim from campus sanctions for being in violation of any campus policies, including alcohol or substance abuse policies or other policies of the campus, at the time of the incident. (Ed Code § 67385 (d).)

Existing law requires any report made by a victim or an employee regarding specified violent crimes, sexual assault, or a hate crime which is received by a campus security authority and has been made by the victim for purposes of notifying the institution or law enforcement, to be disclosed immediately, or as soon as practicably possible, to the local law enforcement agency with which the institution has a written agreement clarifying operational responsibilities for investigations. (Ed Code § 67380 (a)(6)(A).)

Existing law stipulates that the report must not identify the victim without his or her consent, and that if the victim does not consent, the alleged assailant also shall not be identified. (Ed Code § 67380 (a)(6)(A).)

This bill requires a postsecondary institution to disclose the identity of an alleged assailant to local law enforcement even if the victim does not consent to being identified if the institution determines that he or she represents a serious and ongoing threat to the safety of persons or the institution, and that the immediate assistance of law enforcement is necessary to contact or to detain him or her.

This bill requires the institution to immediately inform the victim of that disclosure.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.”(Defendants’ February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Legislation

The author states that “this bill strikes the appropriate balance to support victims and to protect the larger campus community.”

2. Background: Federal Law Requirements for PostSecondary Educational Institutions

Under Title IX of the Higher Education Amendments of 1972 and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, postsecondary educational institutions receiving federal financial aid are required to disclose information about crimes on and around campuses (Clery Act), as well as establish certain rights for victims of sexual assault (Title IX). Title IX prohibits sex-based discrimination in education. If an institution knows, or reasonably should know, about discrimination, harassment, or violence that is creating a “hostile environment” for any student, it must act to eliminate it, remedy the harm caused, and prevent its recurrence. The rights provided under Title IX include notification to victims of the right to file a complaint, available counseling services, the results of disciplinary proceedings, and the option for victims to change their academic schedule or living arrangements, and requires postsecondary institutions to offer prevention and awareness programs to new students and employees regarding rape, domestic and dating violence, sexual assault, and stalking.

The United States Department of Education Office for Civil Rights (OCR) is responsible for enforcing campus compliance with Title IX requirements. In the past several years, OCR has issued strengthened guidance to colleges outlining campuses responsibilities and obligations to promptly investigate and respond to sexual violence. In May 2014, OCR publically identified campuses under investigation for failing to comply with the federal requirements. The initial list of campuses under investigation by OCR contained 55 institutions; by January 2015 the list had grown to 94 institutions.

3. Confidentiality Provisions

According to *Questions and Answers on Title IX and Sexual Violence*:

For Title IX purposes, if a student requests that his or her name not be revealed to the alleged perpetrator or asks that the school not investigate or seek action against the alleged perpetrator, the school should inform the student that honoring the request may limit its ability to respond fully to the incident, including pursuing disciplinary action against the alleged perpetrator. The school should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs...

If the student still requests that his or her name not be disclosed to the alleged perpetrator or that the school not investigate or seek action against the alleged perpetrator, the school will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported [the crime].”

(See United States Department Office of Civil Rights

<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.)

Thus, federal law allows an institution to override the confidentiality wishes of a victim in some instances. The school may weigh the request for confidentiality against its obligation to provide a safe and nondiscriminatory environment for all students, including the reporting student.

In contrast, current California law gives the victim exclusive control over whether the perpetrator’s name is disclosed to the law enforcement agency. It states that a report to law enforcement must be made “without identifying the victim, unless the victim consents to being identified...If the victim does not consent to being identified, the alleged assailant shall not be identified in the information disclosed to the local law enforcement agency.” (Ed Code § 67380 (a)(6)(A).) While the confidentiality provisions were well-intentioned, the language prohibits a postsecondary educational institution from sharing the name of an assailant even under circumstances in which the institution believes assistance from law enforcement is necessary to protect the student body and the broader campus community.

Under the provisions of this bill, a postsecondary educational institution would be required to disclose the identity of the alleged perpetrator to local law enforcement if both of the following conditions are met: (1) the institution determines that the alleged assailant is a serious and ongoing threat to the safety of the campus community; and (2) the immediate assistance of local law enforcement is needed to contact or apprehend the alleged assailant.

As introduced, this bill authorized the institution to disclose the alleged assailant's identity if the aforementioned conditions were met; but did not require the institution to disclose. As amended, the institution is required to disclose the identity of the alleged assailant in all cases where those two conditions are met. Is it better to give the institution discretion instead of mandating it in every case? While disclosure may be beneficial in most cases, a situation may arise where the immediate risk of harm to the victim might weigh in favor of non-disclosure.

4. California Actions

In California, several highly publicized events and investigations have contributed to legislative attention and action on campus sexual assault. In April 2013, UC Berkeley students voted "no confidence" in the campus handling of sexual assault disciplinary actions. Subsequently, students at UC Berkeley, and at other California campuses including Occidental, University of Southern California, and UC Santa Barbara, filed complaints with OCR.

In June 2014, the Bureau of State Audits released a report noting several deficiencies in the reporting and responding to sexual assault allegations on college campuses, as well as containing recommendations for improving training of faculty and staff regarding sexual assault prevention and response. Of particular significance, the report found that the universities do not ensure that all faculty and staff are sufficiently trained on responding to and reporting these incidents to appropriate officials, and that higher education institutions must do more to properly educate students on sexual harassment and sexual violence.

(<https://www.auditor.ca.gov/reports/summary/2013-124>.)

In response, in the prior legislative session, two measures addressing sexual assault on college campuses were adopted. SB 967 (De León and Jackson), Chapter 748, Statutes of 2014, establishes a requirement for "affirmative consent" and other victim-centered standards and policies; and AB 1433 (Gatto), Chapter 798, Statutes of 2014, requires campuses to immediately report specified crimes to law enforcement.

5. Argument in Support

According to the Association of Independent California Colleges and Universities:

Education Code section 67383 states that a report to law enforcement must be made without identifying the victim, unless the victim consents to being identified. If the victim does not consent to being identified, the alleged assailant cannot be identified in the information shared with the local law enforcement agency. While this provision is well intentioned, it would prohibit a university from sharing the name of the alleged assailant even under circumstances in which the university believes assistance from law enforcement is necessary to protect the student body and the broader campus community.

AB 636 appropriately affords colleges and universities discretion with Part I violent crimes, sexual assaults or hate crimes to report the assailant's identity to police in situations where the university believes the assailant is an ongoing threat and needs the assistance of law enforcement to contact or detain the assailant. In these cases, police intervention would be extremely important to help the university assess and alleviate the public safety risks to the campus community.

Law enforcement can then make the decision whether to contact and/or detain the alleged assailant.

AB 636 continues to respect the wish for confidentiality by victims, which is important to protect victims from being further violated and encourage reporting of these offenses to university officials, particularly in cases of sexual assault. Under Title IX, universities have an affirmative obligation to prevent student-on-student sexual harassment and sexual violence. AB 636 assists colleges and universities in fulfilling their obligation under Title IX to prevent sexual violence and protect the broader campus community by allowing the university to provide the necessary information to the local police when assistance is needed.

6. Argument in Opposition

According to the University of California Student Association (UCSA):

This bill opens the door for retaliation toward a survivor in the event that an assailant becomes upset that they were reported. While UCSA wants all sexual violence to be reported, we continue to support a survivor’s right to privacy and right to choose as a primary right.

7. Prior Legislation

AB 1433 (Gatto), Chapter 798, Statutes of 2014, requires the governing board of each public, private and independent postsecondary educational institution, which receives public funds for student financial assistance, to adopt and implement written policies and procedures governing the reporting of specified crimes to law enforcement agencies.

8. Related Legislation

AB 913 (Santiago) requires that the written jurisdictional agreements between postsecondary educational institutions and local law enforcement which designate the agency responsible for investigating specified violent crimes to also make a designation with respect to the investigation of sexual assaults and hate crimes. AB 913 is currently on the suspense file in the Senate Appropriations Committee.

-- END --