

SENATE THIRD READING
SB 493 (Jackson)
As Amended August 24, 2020
Majority vote

SUMMARY:

This bill requires, by January 1, 2022, except as specified, that any postsecondary institution that receives state financial assistance, comply with various requirements pertaining to student sexual harassment protections and, provide students with procedural protections relating to claims of sexual harassment.

Major Provisions

This bill requires the governing board or body of each postsecondary institution that receives state financial assistance to:

- 1) Disseminate a notice of nondiscrimination to each employee, volunteer and individual or entity contracted with the institution
- 2) Designate at least one employee of the institution to coordinate its efforts to comply with this bill's requirements
- 3) Adopt rules and procedures for the prevention of sexual harassment.
- 4) Adopt and publish on its website grievance procedures related to the prompt and equitable resolution of sexual harassment complaints.
- 5) Publish on its website the name, title and contact information for the Title IX coordinator or other employee designated to coordinate the institution's efforts to comply with this bill's requirements and individuals with the authority to investigate complaints or to institute corrective measures, as specified.
- 6) Provide training for each employee engaged in the grievance procedure.
- 7) Include annual training for residential life student and nonstudent staff for the trauma-informed handling of reports regarding incidents of sexual harassment or violence at an institution with on-campus housing.
- 8) Notify employees of the obligation to report sexual harassment to appropriate school officials.
- 9) Provide training to all employees on the identification of sexual harassment.
- 10) Authorize enforcement of these provisions through a civil action brought pursuant to existing law, as specified.

COMMENTS:

Scope of the problem. In August of 2014 the United States Department of Justice Office on Violence Against Women (OVW) funded the Bureau of Justice Statistics (BJS) to develop and test a pilot campus climate survey that could be implemented by schools or researchers. BJS

contracted with RTI International, a nonprofit research organization, to collaborate on the design and implementation of the Campus Climate Survey Validation Study (CCSVS). The CCSVS surveyed more than 23,000 students across nine higher education institutions found that:

- 1) One in five female students in their fourth year of college had experienced attempted or completed sexual assault while in college.
- 2) Freshman women were at greater risk for sexual assault during the first months of the school year (August-October) than at any other time throughout college.
- 3) About 65% of surveyed rape victims reported the incident to a friend, family member, or roommate. Less than 10% reported it to police or school officials.

In 2015, the Association of American Universities (AAU) published a report on sexual assault and sexual misconduct. Based on a survey of more than 150,000 students at 27 universities, their findings indicated:

- 1) 11.7% of student respondents reported experiencing some form of nonconsensual sexual contact.
- 2) The most common reason for not reporting sexual assault and sexual misconduct victimization was that students did not consider the victimization to be serious enough.
- 3) Other common reasons for not reporting sexual assault and sexual misconduct included fear that nothing would be done, embarrassment, and emotional distress.

Changes to federal Title IX rules. The United States Department of Education rescinded guidance issued by the previous administration that is related to how institutions of higher education are to comply with Title IX, and issued new guidance in September 2017. In November 2018, the US Department of Education released proposed changes to the Title IX rule, and the new rule was formally adopted on May 6, 2020. Campuses were required to implement the rule by August 14, 2020. Some of the most significant changes include:

- 1) Allows schools to use the "preponderance of evidence" or the more demanding "clear and convincing evidence" standard – but requires the elected evidentiary standard to be used in all cases, including those involving faculty and staff.
- 2) Allows institutions to choose whether to have mandatory reporting for all employees or to designate some employees to be confidential resources for college students to discuss sexual harassment without automatically triggering a report to the Title IX office. Notice includes a report of a sexual harassment to the Title IX Coordinator or to an official with authority to institute corrective measures on the recipient's behalf, charges a school with actual knowledge, and triggers the school's response obligations.
- 3) Requires that that postsecondary institutions hold live disciplinary hearings in sexual misconduct cases and allow cross-examination of witnesses, and explicitly prohibit postsecondary schools from employing the "single investigator" model.

Committee comments. The substantial amendments taken in the Assembly Appropriations Committee are the result of a year of collaboration that includes the author, the sponsors,

California's higher education segments, student organizations, and staff across numerous committees. The amendments taken were intended to accomplish a series of goals for the sake of addressing clarity, cost, interaction with federal law, and implementation timelines. These amendments broadly included:

- 1) Language to ensure certain provisions are consistent with existing law, which include explicit references to existing law and definition clarifications.
- 2) Amendments to reduce potential costs as well as ensure clarity regarding the scope of institutions' obligations and ensure the requirements are feasible for institutions to implement, accounting for differences among school systems and across individual institutions and campuses. Significant amendments include removing private right of action language included in the previous version of the bill (while preserving the use of an existing private right action authorized in current law), refining the definition of "responsible employee" to provide clarity regarding which individuals are responsible for reporting sexual harassment and to clarify the scope of an institution's responsibility when a "responsible employee" is aware of sexual harassment (but fails to report), and clarifying that no additional staff required to be hired to carry out obligations under the bill.
- 3) Provisions to address the interaction of the bill with federal law, including language rendering inoperative provisions of the bill that are in conflict with federal law for the duration of the conflict, and delaying implementation for one year until January 1, 2022.

According to the Author:

According to the author, "Sexual harassment and assault impede a student's right to receive an education free of sex-based discrimination. SB 493...addresses the gap in California law as it concerns institutions of higher education by putting in place required processes for schools to respond to alleged sexual harassment and assault, including notice and posting requirements to ensure students are aware of such processes and their rights, as well as transparent procedures for investigating complaints to ensure a fair and equitable process for all students. This bill would require colleges and universities to publish the contact information for individuals responsible for investigating complaints and instituting corrective measures, the rules and procedures for prevention of sexual harassment and grievance procedures providing for the prompt and equitable resolution of sexual harassment complaints."

"The bill would also require schools to provide training to employees engaged in the grievance procedures on trauma informed best practices for investigating sexual harassment or sexual assault complaints as well as training on implicit bias and the history of institutional racism and racial inequities in school disciplinary processes."

"This bill provides clarity for higher education institutions and a guaranteed common baseline process for California students in higher education when it comes to the enforcement of their civil right to equal access to education."

Arguments in Support:

Equal Rights Advocates, a sponsor of SB 493, shared correspondence with the committee. They wrote that, "Sexual harassment and violence in higher education is pervasive. According to research published by the American Association of University Women, during college, 62% of women and 61% of men experience sexual harassment. More than 1 in 5 women and nearly 1 in

18 men are sexually assaulted in college. Historically marginalized groups are more likely to experience sexual violence, including women, students of color, and LGBTQI students."

"Students who experience sexual violence not only suffer physically and emotionally, but are also denied equal access to education. Among the many harmful results of campus harassment and assault is the "pushout" that occurs when schools fail to take appropriate steps to respond to these incidents. An estimated 34% of student survivors drop out of college"

"SB 493 addresses this gap in state law and responds to the attacks on students' civil rights at the federal level by outlining transparent, fair and equitable processes for institutions of higher education to follow when responding to incidents of sexual harassment, including sexual violence, in order to comply with existing law and provide a fair process for all parties to protect the civil rights, safety and well-being of students."

The University of California wrote concerning the amendments taken in Assembly Appropriations, noting that "Responding appropriately to matters of sexual misconduct of any student on our campuses is of paramount importance. Following years of effort, the UC reformed our Title IX policies to ensure a fair process to those accused and to those bringing complaints. Many schools around the country did the same, and we remain steadfast in our commitments. We are also working diligently to implement new Title IX regulations passed by the US Department of Education, which come at a time when our nation is still grappling with the far-reaching impacts of sexual harassment and violence. The US Department of Education's action reverses some hard-fought social and policy gains. Senate Bill 493 provides clarity at this time, and sufficient time to implement the law."

Arguments in Opposition:

There is no opposition on file to the legislation as amended on August 24, 2020.

FISCAL COMMENTS:

According to the Assembly Appropriations Committee, one-time Proposition 98 General Fund (GF) cost pressures in the 2021-22 fiscal year, potentially in the low millions of dollars, to California Community Colleges (CCCs), California State Universities (CSUs), and University of California (UCs), respectively, to make changes to recently revised Title IX policy and provide training for responsible employees and hearing officers. Potential ongoing Proposition 98 GF cost pressures of an unknown amount to CCCs, CSUs, and UCs, should litigation related to the bill's provisions arise, and minor costs to provide training to new employees and hearing officers.

VOTES:

SENATE FLOOR: 30-8-0

YES: Allen, Archuleta, Atkins, Beall, Bradford, Caballero, Chang, Dodd, Durazo, Galgiani, Glazer, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Mitchell, Monning, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

NO: Bates, Borgeas, Grove, Jones, Moorlach, Morrell, Nielsen, Stone

ASM HIGHER EDUCATION: 9-3-0

YES: Medina, Arambula, Bloom, Gabriel, Irwin, Levine, Low, Santiago, Weber

NO: Choi, Kiley, Patterson

ASM JUDICIARY: 9-2-1

YES: Mark Stone, Chau, Chiu, Gonzalez, Holden, Kalra, Maienschein, Petrie-Norris, Reyes

NO: Kiley, Obernolte

ABS, ABST OR NV: Gallagher

ASM APPROPRIATIONS: 14-4-0

YES: Gonzalez, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Diep, Eggman, Gabriel, Eduardo Garcia, Petrie-Norris, Quirk, Robert Rivas

NO: Bigelow, Megan Dahle, Fong, Voepel

UPDATED:

VERSION: August 24, 2020

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