

BILL ANALYSIS

S.B. 212
By: Huffman
Higher Education
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Due to the prevalence of incidents of sexual harassment, sexual assault, dating violence, and stalking at institutions of higher education, there have been calls to provide a more robust and reliable reporting structure for victims and witnesses of these incidents. S.B. 212 seeks to provide such a structure by establishing reporting requirements for public, private, and independent institutions of higher education, creating a Class B misdemeanor offense for failure to make a required report, providing for an administrative penalty for a noncompliant institution, and providing for certain confidentiality standards.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes 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

S.B. 212 amends the Education Code to require an employee of a public, private, or independent institution of higher education who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking, as those terms are defined by the bill, and is alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident to promptly report the incident to the institution's Title IX coordinator or deputy Title IX coordinator. The bill requires the report, with certain exceptions, to include all information concerning the incident known to the reporting person that is relevant to the investigation and, if applicable, redress of the incident, including whether an alleged victim has expressed a desire for confidentiality in reporting the incident.

S.B. 212 requires an employee designated by the institution as a person with whom students may speak confidentially concerning sexual harassment, sexual assault, dating violence, or stalking or who receives information regarding such an incident under circumstances that render the employee's communications confidential or privileged under other law, in making the required report, to state only the type of incident reported and prohibits the employee from including any information that would violate a student's expectation of privacy. These provisions expressly do not affect the employee's duty to report an incident under any other law. The bill establishes that a person is not required to make a report concerning an incident in which the person was a victim of sexual harassment, sexual assault, dating violence, or stalking or concerning an incident of

which the person received information due to a disclosure made at a relevant public awareness event sponsored by an institution or by a student organization affiliated with the institution.

S.B. 212 requires the Title IX coordinator of an institution to submit to the institution's chief executive officer, not less than once every three months, a written report on the reports received under the bill's reporting requirement. The bill requires the Title IX coordinator or deputy Title IX coordinator to report immediately to the institution's chief executive officer an incident reported to the coordinator if the coordinator has cause to believe that the safety of any person is in imminent danger as a result of the incident. The bill requires the chief executive officer of an institution to submit to the institution's governing body at least once during each fall or spring semester a report concerning the reports received by the Title IX coordinator and containing certain information set out in the bill. The report must be posted on the institution's website. The bill requires the chief executive officer, if for any semester an institution has fewer than 1,500 enrolled students, to submit and post a report for that semester only if more than five incident reports were received during that semester.

S.B. 212 grants a person acting in good faith who reports or assists in the investigation of a report of an applicable incident or who testifies or otherwise participates in a disciplinary process or judicial proceeding arising from such a report immunity from civil liability and from criminal liability for offenses punishable by fine only that might otherwise be incurred or imposed as a result of those actions. The bill prohibits such a person from being subjected to any disciplinary action by the institution at which the person is enrolled or employed for any violation by the person of the institution's code of conduct reasonably related to the incident for which suspension or expulsion from the institution is not a possible punishment. The bill excludes from the bill's grant of immunity a person who perpetrates or assists in the perpetration of the reported incident.

S.B. 212 creates a Class B misdemeanor offense for an employee of an institution who is required to make a report of an applicable incident and knowingly fails to make the report, or, with the intent to harm or deceive, knowingly makes such a report that is false. The bill makes this provision effective January 1, 2020. The bill enhances the penalty to a Class A misdemeanor if it is shown on the trial of the offense that the actor intended to conceal the incident that the actor was required to report. The bill requires an institution to terminate the employment of an employee whom the institution determines in accordance with the institution's disciplinary procedures to have committed an applicable offense involving failure to report or making a false report.

S.B. 212 provides for the confidentiality and authorized disclosure of the identity of an alleged victim of an applicable incident, including the persons to whom the alleged victim's identity may be disclosed, and prohibits an institution from disciplining or otherwise discriminating against an employee who in good faith makes a report of an applicable incident or cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to such a report made by the employee. The bill excludes from this protection an employee who reports an applicable incident perpetrated by the employee or who cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to an allegation that the employee perpetrated such an incident.

S.B. 212 requires the chief executive officer of each institution to certify annually in writing to the Texas Higher Education Coordinating Board that the institution is in substantial compliance with the bill's provisions. The bill authorizes the coordinating board to assess an administrative penalty in an amount not to exceed \$2 million against an institution that the coordinating board determines is not in substantial compliance and requires the coordinating board, in determining the amount of the penalty, to consider the nature of the violation and the number of students enrolled at the institution. The bill provides for notice to an institution against which a penalty is assessed, the manner of appealing the penalty, and restrictions on the source of funds used to pay the penalty. The bill requires a collected penalty to be deposited to the credit of the sexual assault

program fund.

S.B. 212 requires the coordinating board to annually submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing legislative committees with primary jurisdiction over legislation concerning sexual assault at postsecondary educational institutions a report regarding compliance with the bill's provisions, including a summary of the institutions found not to be in substantial compliance and any penalties assessed during the calendar year preceding the date of the report. The bill requires the submission of the initial report not later than January 1, 2021.

S.B. 212 requires the coordinating board to adopt rules as necessary to implement and enforce the bill's provisions, including rules that ensure implementation of the bill's provisions in a manner that complies with federal law regarding confidentiality of student educational information. The bill requires the coordinating board, in adopting those rules, to use the negotiated rulemaking procedures under the Negotiated Rulemaking Act and consult with relevant stakeholders.

S.B. 212, effective on passage, or, if the bill does not receive the necessary vote, September 1, 2019, requires the commissioner of higher education to establish a nine-member advisory committee appointed by the commissioner to develop recommended training for persons required to report certain incidents under the bill's provisions and for Title IX coordinators and deputy Title IX coordinators at applicable institutions. The bill provides for the composition of the advisory committee and requires the advisory committee to develop the recommended training not later than December 1, 2019. These provisions expire September 1, 2020.

S.B. 212 amends the Government Code to make a conforming change. The bill's Education Code provisions, other than those relating to the advisory committee, apply beginning January 1, 2020.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2019.