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 DIGEST
 

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SB 230 Reengrossed

2021 Regular Session

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Present law requires, by February 15th annually, each criminal justice agency, including college and university campus police departments, to report all of the following information for the prior calendar year to the Louisiana Commission on Law Enforcement and the Administration of Criminal Justice:

- (1) The number of sexually-oriented criminal offenses reported.
- (2) The status of each sexually-oriented criminal offense case reported.
- (3) The number of sexual assault collection kits submitted for analysis.
- (4) The number of reported sexual assault collection kits requiring analysis.
- (5) The number of reported sexual assault collection kits received.
- (6) The number of unreported sexual assault collection kits received.
- (7) The number of reported sexual assault collection kits that were untested due to judicial or investigative reasons.

Also requires each criminal justice agency, including college and university campus police departments, to provide written notification if it does not have:

- (1) Any sexually-oriented criminal offenses reported.
- (2) Any reported sexual assault collection kits in its possession.
- (3) Any unreported sexual assault collection kits in its possession.

Proposed law requires that each report by a college or university police department also be transmitted to the institution's system president, chancellor, and Title IX coordinator. Requires that the chancellor have the report posted on the institution's website. Otherwise retains present law.

Present law provides for the "Campus Accountability and Safety Act".

Present law defines "institution", "president", and "sexually-oriented offense".

Proposed law redefines "president" as "system president" and deletes "sexually-oriented offense". Adds several definitions as follows:

- (1) "Chancellor" means the chief executive officer of a public postsecondary education institution.
- (2) "Confidential advisor" means a person designated by an institution to provide emergency and on-going support to students who are alleged victims of power-based violence.
- (3) "Employee" means:
  - (a) An administrative officer, official, or employee of a public postsecondary education board or institution.

- (b) Anyone appointed to a public postsecondary education board or institution.
- (c) Anyone employed by or through a public postsecondary education board or institution.
- (d) Anyone employed by a foundation or association related to a public postsecondary education management board or institution.

"Employee" does not include a student enrolled at a public postsecondary institution.

- (4) "Institution" means a public postsecondary education institution.
- (5) "Power-based violence" means any form of interpersonal violence intended to control or intimidate another person through the assertion of power over them and shall include, at a minimum, the following:
  - (a) Dating violence (R.S. 46:2151(C)).
  - (b) Domestic and family violence (R.S. 46:2121.1(2) and 2132(3)).
  - (c) Nonconsensual observation of another person's sexuality without the other person's consent, including voyeurism (R.S. 14:283.1), video voyeurism (R.S. 14:283), nonconsensual disclosure of a private image (R.S. 14:283.2), and peeping tom activities (R.S. 14:284).
  - (d) Sexual assault (R.S. 14:41, 42 through 43.5, 89, 89.1, and 106).
  - (e) "Sexual exploitation" which means an act attempted or committed by a person for sexual gratification, financial gain, or other advancement through the abuse of another person's sexuality including prostituting another person (R.S. 14:46.2 and 82 through 86).
  - (f) "Sexual harassment" which means unwelcome sexual advances, requests for sexual favors, and other verbal, physical, or inappropriate conduct of a sexual nature when the conduct explicitly or implicitly affects an individual's employment or education, unreasonably interferes with an individual's work or educational performance, or creates an intimidating, hostile, or offensive work or educational environment and has no legitimate relationship to the subject matter of a course or academic research.
  - (g) Stalking (R.S. 14:40.2) and cyberstalking (R.S. 14:40.3).
  - (h) Unlawful communications (R.S. 14:285).
  - (i) Unwelcome sexual, sex or gender-based conduct that is objectively offensive, has a discriminatory intent, and lacks a bona fide academic purpose.
- (6) "Responsible employee" means an employee of a public postsecondary education institution who receives a complaint or witnesses an incident of power-based violence. "Responsible employee" does not include an employee designated as a confidential advisor pursuant to R.S. 17:3399.15(A) or an employee who has privileged communications with a student as provided by law.
- (7) "System president" means the president of a public postsecondary education system.
- (8) "Title IX coordinator" means the individual designated by a public postsecondary education institution as the institution's official for coordinating the institution's efforts to comply with and carry out its responsibilities under Title IX of the Education Amendments of 1972.

Proposed law requires that any responsible employee of an institution who receives information or witnesses any incident of power-based violence or retaliation committed by or against a student promptly report the incident to the campus Title IX coordinator. However, a responsible employee is not required to make a report if information is received (1) during a public forum or awareness event in which an individual may disclose an incident of power-based violence as part of educating others, (2) disclosure is made in the course of academic work product consistent with the assignment, or (3) in the course of overhearing a conversation.

Proposed law requires that a report include the following information if known:

- (1) The identity of the victim.
- (2) The identity of the alleged perpetrator.
- (3) The type of power-based violence or retaliation alleged to have been committed.
- (4) Any other information about witnesses, location, date, and time that the incident occurred.

Proposed law provides that not less than once every three months, the Title IX coordinator shall submit to the chancellor of the institution a written report on reports received, including information regarding:

- (1) The investigation of those reports.
- (2) The disposition, if any, of any disciplinary processes arising from those reports.
- (3) The reports for which the institution determined not to initiate a disciplinary process, if any.
- (4) Any complaints of retaliation and the status of the investigation of the complaints.

Proposed law requires the Title IX coordinator immediately report to the chancellor of the institution 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.

Proposed law requires the chancellor of an institution to annually submit, by October 10, to the institution's management board and post on the institution's internet website a report concerning the reports received, which shall not identify any specific person but shall include:

- (1) The number of reports received.
- (2) The number of investigations conducted as a result of the reports.
- (3) The disposition, if any, of any disciplinary processes arising from the reports.
- (4) The number of those reports for which the institution determined not to initiate a disciplinary process, if any.
- (5) Any disciplinary action taken.
- (6) The number of reports of retaliation and the findings of those investigations.

Proposed law requires the system president to annually submit, by November 15, a systemwide report to the institution's management board and the Board of Regents. Provides that the reports shall be posted on the management board's and Board of Regents' website.

Proposed law requires the Board of Regents to annually submit, by December 31, a report on power-based violence incidents to the governor and the legislature and post the report on the board's website.

Proposed law provides that a person acting in good faith who reports or assists in the investigation of a report of an incident, or who testifies or otherwise participates in a disciplinary process or judicial proceeding arising from a report of such an incident:

- (1) Shall be immune from civil liability and from criminal liability that might otherwise be incurred or imposed as a result of those actions.
- (2) May not be subjected to any disciplinary action by the institution in 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.

However, these provisions do not apply to a person who perpetrates or assists in the perpetration of the incident reported.

Proposed law provides that a responsible employee who is determined by the institution's disciplinary procedure to have knowingly failed to make a report or, with the intent to harm or deceive, made a report that is knowingly false shall be terminated.

Proposed law provides that unless waived in writing by the alleged victim, the identity of an alleged victim of an incident reported under proposed law is confidential and not subject to disclosure. However, the identity may be disclosed only to:

- (1) A person employed by or under contract with the institution to which the report is made who are necessary to conduct an investigation of the report or any related hearings.
- (2) A law enforcement officer as necessary to conduct a criminal investigation of the report.
- (3) A person alleged to have perpetrated the incident, to the extent required by other law.
- (4) A potential witness to the incident as necessary to conduct an investigation of the report.

Proposed law provides that an alleged victim has a right to obtain a copy of any report that pertains to the alleged victim.

Nothing in proposed law may be construed as prohibiting a victim from making a report to both an institution and a law enforcement agency.

Proposed law provides that an institution may not discipline, discriminate, or otherwise retaliate against an employee or student who in good faith either:

- (1) Makes a report as required by proposed law.
- (2) Cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to a report made by the employee or student.

This provision does not apply to an employee or student who either:

- (1) Reports an incident perpetrated by the employee or student.
- (2) Cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to an allegation that the employee or student perpetrated an incident.

Present law requires each institution and law enforcement and criminal justice agency located within the parish of the campus of the institution to enter into a memorandum of understanding (MOU) to clearly delineate responsibilities and share information in accordance with applicable federal and state confidentiality laws, including but not limited to trends about sexually-oriented criminal offenses occurring against students of the institution.

Proposed law requires memoranda be entered into by January 1, 2022, and thereafter maintained; substitutes "power-based violence" for "sexually-oriented criminal offenses"; and requires that each memorandum be signed by all parties to the agreement. Otherwise retains present law.

Present law requires the Board of Regents' Uniform Policy on Sexual Assault require that the MOU be updated every two years.

Proposed law deletes these provisions and instead requires that the chancellor, the Title IX coordinator, and the executive officer of the criminal justice agency annually review the MOU and make revisions as needed.

Present law requires that each MOU include:

- (1) Delineation and sharing protocols of investigative responsibilities.
- (2) Protocols for investigations, including standards for notification and communication and measures to promote evidence preservation.
- (3) Agreed-upon training and requirements for the parties to the memorandum of understanding on issues related to sexually-oriented criminal offenses for the purpose of sharing information and coordinating training to the extent possible.
- (4) A method of sharing general information about sexually-oriented criminal offenses occurring within the jurisdiction of the parties to the memorandum of understanding in order to improve campus safety.

Proposed law refers to "power-based violence" rather than "sexually-oriented offense" and requires that each memorandum be signed by all of the parties to the agreement.

Present law requires that the local law enforcement agency include information on its police report regarding the status of the alleged victim as a student at an institution.

Proposed law retains present law.

Present law provides that the institution shall not be held liable if the local law enforcement agency refuses to enter into a memorandum of understanding.

Proposed law repeals present law.

Present law requires that the Board of Regents establish uniform policies and best practices to implement measures to address the reporting of sexual harassment or sexually-oriented criminal offenses on institution campuses, the prevention of such crimes, and the medical and mental health care needed for these alleged victims.

Proposed law substitutes "power-based violence" for "sexually-oriented offense" and adds communication between institutions to the measures to be addressed by these policies and best practices; otherwise retains present law.

Proposed law requires each management board to institute policies incorporating the policies and best practices of the Board of Regents relative to power-based violence.

Proposed law requires the management board policies to direct the institutions to develop policies to provide for certain things, including confidential advisors, information on their website, online reporting, an amnesty policy, annual training of confidential advisors and responsible employees, and an inter-campus transfer policy.

Present law requires that confidential advisors designated by institutions complete certain training.

Proposed law requires such training annually and specifies certain information to be included in the training.

Present law provides that an institution that enrolls fewer than 5,000 students may partner with another institution in their system or region to provide these services. However, such action does not absolve the institution of its obligations under present law.

Proposed law requires that the board annually determine an adequate number for each institution. Otherwise retains present law.

Present law requires that each institution list on its website:

- (1) The contact information for obtaining a confidential advisor.
- (2) Reporting options for alleged victims of a sexually-oriented criminal offense.
- (3) The process of investigation and disciplinary proceedings of the institution.
- (4) The process of investigation and adjudication of the criminal justice system.
- (5) Potential reasonable accommodations that the institution may provide to an alleged victim.
- (6) The telephone number and website address for a local, state, or national hotline providing information to sexual violence victims, which shall be updated on a timely basis.
- (7) The name and location of the nearest medical facility where an individual may have a rape kit administered by an individual trained in sexual assault forensic medical examination and evidence collection, and information on transportation options and available reimbursement for a visit to such facility.

Proposed law substitutes "power-based violence" for "sexually-oriented offense" and further requires including each current memorandum of understanding between the institution and each law enforcement and criminal justice agency located within the parish of the campus.

Present law provides that an institution may provide an online reporting system to collect anonymous disclosures of crimes and track patterns of crime on campus. An individual may submit a confidential report about a specific crime to the institution using the online reporting system. Provides that if the institution uses an online reporting system, the online system shall also include information regarding how to report a crime to a responsible employee and law enforcement and how to contact a confidential advisor.

Proposed law also applies to power-based violence and requires each institution to provide an online reporting system. Otherwise retains present law.

Present law requires that the institution provide an amnesty policy for any student who reports, in good faith, sexual violence to the institution so that the student shall not be sanctioned by the institution for a nonviolent student conduct violation, such as underage drinking, that is revealed in the course of the report.

Proposed law changes reference from "sexual violence" to "power-based violence". Otherwise retains present law.

Present law requires that not later than January 1, 2016, the Board of Regents, in coordination with the attorney general and in consultation with state or local victim services organizations, shall develop a program for training for each individual who is involved in implementing an institution's student grievance procedures, including each individual who is responsible for resolving complaints of reported sex offenses or sexual misconduct policy violations, and each employee of an institution who has responsibility for conducting an interview with an alleged victim of a sexually-oriented criminal offense. Further requires that each institution ensure that the individuals and employees receive the training no later than the beginning of the 2016-2017 academic year.

Proposed law requires that by January 1, 2022, such training include power-based violence, be on an annual basis, and specifically include responsible employees and Title IX coordinators. Further requires that each institution ensure that the training be received no later than the beginning of the 2022-2023 academic year. Requires the Board of Regents to annually review the training and revise as needed. Otherwise retains present law.

Present law requires that the Board of Regents' Uniform Policy on Sexual Assault require that institutions communicate with each other regarding transfer of students against whom disciplinary action has been taken as a result of a code of conduct violation relating to sexually-oriented criminal offenses and that institutions withhold transcripts of students seeking a transfer with pending disciplinary action relative to sexually-oriented criminal offenses until such investigation and adjudication is complete.

Proposed law instead provides that institutions shall implement a uniform transcript notation and communication policy to effectuate communication regarding the transfer of a student who is the subject of a pending power-based violence complaint or who has been found responsible for an incident of power-based violence pursuant to an institution's investigative and adjudication process. Requires the policy to be developed by the Board of Regents in consultation with the postsecondary education management boards and that it include procedures relative to the withholding of transcripts during the investigative and adjudication process.

Present law requires the administration of each institution, in consultation with campus or local law enforcement agencies, develop and distribute information to students regarding internet and cell phone safety and online content that is a potential threat to school safety. Requires certain information be included on how to recognize and report potential threats to school safety that are posted on the internet, including but not limited to posts on social media and be posted on the institution's website.

Proposed law adds providing information and instruction on power-based violence and how to report such offenses.

Present law requires that each institution administer an anonymous voluntary sexual assault climate survey to its students once every three years. Provides that the Board of Regents shall:

- (1) Develop the survey in consultation with the public postsecondary education management boards and in accordance with national best practices.
- (2) Work with the management boards in researching and selecting the best method of developing and administering the survey.
- (3) Submit a written report on survey results to the House Committee on Education, Senate Committee on Education, and the governor not later than September first following administration of the survey which summarizes results from each institution and the state as a whole.
- (4) Publish the survey results on the board's website and in any other location or venue the board deems necessary or appropriate.

Present law requires each institution to report the survey results to the Board of Regents.

Proposed law requires that each institution make every effort to maximize student participation in the survey. Also requires the institutions to send report to the institution's management board and publish the survey results on the institution's website. Otherwise retains present law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 17:3399.11, 3399.13, 3399.14, 3399.15, 3399.16, and 3399.17; adds R.S. 15:624(A)(3) and R.S. 17:3399.12 and 3399.13.1-5)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Education to the original bill

1. Adds and clarifies definitions.
2. Requires reporting of incidents of retaliation.
3. Changes reporting dates and entities required to make annual reports.
4. Requires management boards to adopt policies regarding power-based violence that require institutions to implement the policies.
5. Requires termination of an employee who is determined to have knowingly failed to make a report or who knowingly makes a false report.
6. Provides the alleged victim the right to obtain a copy of any report that pertains to the victim.
7. Adds students to the groups prohibited from being retaliated against.
8. Requires each memorandum of understanding to be annually reviewed and revised as necessary.
9. Specifies that certain information be included in the training for confidential advisors.
10. Requires annual training of responsible employees.
11. Requires the Board of Regents and the attorney general to consult with victim services organizations in developing annual training programs.
12. Expands the safety education program to include power-based violence.
13. Requires each institution to maximize student participation in the Board of Regents' power-based violence survey.
14. Incorporated compliance reporting into annual reporting requirements.
15. Deletes provisions relative to rule making.
16. Makes technical corrections.

Senate Floor Amendments to engrossed bill

1. Makes technical corrections.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Education to the reengrossed bill:

1. Revise terminology to refer to an employee's receipt of a complaint regarding an incident of power-based violence instead of his receipt of notice of such an incident.
2. Specify that the mandatory reporting requirement does not apply if information is received in the course of overhearing a conversation.
3. Add communication between institutions regarding incidents of power-based violence to list of measures to be addressed by uniform policies of the Bd. of Regents.
4. Revise procedures relative to communication between institutions and transcript withholding for transferring students.