

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 1467 (Cervantes)  
Version: April 28, 2021  
Hearing Date: June 14, 2022  
Fiscal: Yes  
Urgency: No  
TSG

**SUBJECT**

Student safety: sexual assault procedures and protocols: sexual assault counselors

**DIGEST**

This bill: (1) clarifies the nature of the relationship between college sexual assault counselors and the campus Title IX office; (2) addresses confidentiality in the student-sexual assault counselor relationship; and (3) requires the chancellor of the California State University (CSU) system to submit copies of policy orders relating to campus discrimination, harassment, and retaliation to the legislative policy committees of jurisdiction.

**EXECUTIVE SUMMARY**

Campus-related sexual violence remains a significant threat not only to the safety and well-being of college students, but also to equal access to educational opportunity. The effort to combat this problem and provide timely, appropriate support to victims has given rise to a significant body of state law to go along with related federal laws and campus policies. This bill proposes three primary changes or clarifications to those state laws. First, the bill requires sexual assault counselors, who have a supportive and therapeutic role, to operate independently of the campus Title IX office, whose role is more investigatory. Second, the bill completely forbids campus sexual assault counselors from breaking their confidentiality with the victims they are serving, presumably in a further effort to draw clear boundaries between support services and investigatory functions. Finally, as to the CSU system specifically, the bill: (1) authorizes the chancellor to consult with a range of interested parties on executive orders regarding policy on campus sexual violence; and (2) directs the chancellor to submit the content of any such orders to the Legislature's education policy committees.

The bill is author sponsored. Support comes from women legislative leaders who believe that the bill will improve campus response to incidents of sexual violence. There is no known opposition. The bill passed out of the Senate Education Committee by a vote of 6-0. If the bill passes out of this Committee, it will next be heard in the Senate Appropriations Committee.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) States that no person in the U.S. shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. (Title IX of the Education Amendments of 1972 to the Civil Rights Act of 1964; 20 U.S.C. § 1681 *et seq.*)
- 2) Mandates that recipients of federal financial assistance comply with the procedural requirements outlined in the Title IX implementing regulations. To do so, a recipient must: (1) disseminate a specified notice of nondiscrimination; (2) designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX; and (3) adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee sex discrimination complaints. (34 C.F.R. §§ 106.9, 106.8(a), 106.8(b).)
- 3) Requires the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions to adopt policies concerning campus sexual violence, domestic violence, dating violence, and stalking that include:
  - a) an affirmative consent standard;
  - b) detailed and victim-centered policies and protocols; and
  - c) the use of a preponderance of the evidence standard in determining whether the elements of the complaint against the respondent have been established sufficiently for consequences to be imposed on the respondent. (Ed. Code § 67386.)
- 4) Requires the governing board of each community college district, the Trustees of the CSU, the Board of Directors of the Hastings College of the Law, and the Regents of the UC to 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 receive treatment and information. If appropriate on-campus treatment facilities are unavailable, the written procedure or protocols may provide for referrals to local community treatment centers. (Ed. Code § 67385.)
- 5) Provides that the victim of a sexual assault has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a sexual assault counselor if the privilege is claimed by any of the following:
  - a) the holder of the privilege;

- b) a person who is authorized to claim the privilege by the holder of the privilege;  
or
  - c) a person who was the sexual assault counselor at the time of the confidential communication, but that person may not claim the privilege if there is no holder of the privilege in existence or if the counselor is otherwise instructed by a person authorized to permit disclosure. (Evid. Code § 1035.8.)
- 6) Defines “sexual assault counselor,” for purposes of the sexual assault counselor-victim privilege, to include, among others, a person who is engaged in sexual assault counseling on the campus of a public or private institution of higher education. (Evid. Code § 1035.2)

This bill:

- 1) Specifies that a campus sexual assault counselor has to be independent from the Title IX office.
- 2) Requires that a campus sexual assault counselor be appointed based on experience and a demonstrated ability to effectively provide sexual violence victim services and response.
- 3) Prohibits a campus sexual assault counselor, regardless of whether the victim wishes the victim’s identity to remain confidential, from notifying the university or any other authority, including law enforcement, of the identity of the victim or any witness of the alleged circumstances surrounding the reported sexual misconduct unless otherwise required by applicable state or federal laws.
- 4) Authorizes the chancellor of the CSU system to collaborate with specified stakeholders and experts when reviewing and updating any executive orders relating to discrimination, harassment, and retaliation for the purpose of enforcing or implementing the requirement to provide treatment and information for students, faculty, and staff who are victims of sexual assault.
- 5) Directs the chancellor of the CSU system to submit the text of all executive orders related to this bill as part of an annual report to the respective chairs of the Assembly Committee on Higher Education and the Senate Committee on Education.

### COMMENTS

1. Data on the scope of the problem of sexual violence on campuses

There is ample evidence of an epidemic of sexual harassment and sexual violence taking place on higher education campuses, at locations connected with those campuses, and in the course of extracurricular activities associated with the campus.

There is also strong evidence demonstrating that this epidemic negatively impacts survivors' ability to thrive and succeed in the educational setting. Because the overwhelming majority of victims are female and because other vulnerable populations, including LGBTQ individuals and people of color, are disproportionately impacted, addressing sexual harassment and violence in the educational context is not merely a public safety issue. It is also, fundamentally, a civil rights issue.<sup>1</sup>

## 2. Responsive campus legal obligations relevant to this bill

Government and colleges have adopted a complex and intersecting set of laws, regulatory guidance, and campus policies designed to try to prevent sexual violence from happening in the first place and to provide support for survivors when it does.

At the apex of this body of law sits Title IX of the Education Amendments of 1972, typically referred to simply as "Title IX." (20 U.S.C. § 1681 *et seq.*) The text of Title IX speaks broadly and outlaws discrimination based on sex at any educational institution that receives federal aid. In essence, Title IX is intended to ensure that all students have equal access to education and education-related activities regardless of their sex or gender. Subsequent administrative regulations and judicial rulings have applied this mandate across many aspects of the educational system, including admissions, discrimination in housing and facilities, courses, educational activities, counseling, student financial aid, student health and insurance benefits, marital or parental status, and athletics.

Of particular relevance to this bill, regulations and case law have also interpreted Title IX to require educational institutions to take specific steps to try to prevent and address sexual harassment and sexual violence of students by their peers, employees, faculty, or third parties. Among many other things, these rules mandate that colleges and universities have a Title IX office responsible for receiving, investigating, and addressing reports that incidents of sexual harassment or violence have taken place.

Through state law and policy, California has embraced Title IX and given further shape to the requirements of Title IX. For example, existing California law directs every public college and university in the state to develop, publish, and disseminate written policy and protocols for responding to reports of sexual harassment and sexual violence. (Ed. Code § 67385.) Recent state legislation has provided further detail. Under those laws, California has adopted the "affirmative consent" standard in relation to sexual encounters and mandated trainings for students about consent, sexual assault,

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<sup>1</sup> For statistical detail on the prevalence of this issue and its discriminatory impact, *see* Sen. Com. on Judiciary Analysis of Sen. Bill No. 493 (2019-2020 Reg. Sess.) as amended Feb. 21, 2019 at pp. 4-6. Victims' stories, such as those provided through the Clap Back Project, speak to the human impact behind these numbers. *See, e.g.,* Meyerhoff, *The Clapback: An Investigation of the Sexual Assault and Rape Climate at Cal Poly San Luis Obispo* (2019) <https://the-clapback.com/> (as of Jun. 3, 2022).

bystander intervention, and campus protocols for preventing and responding to incidents of sexual violence. (SB 967, Ch. 748, Stats. 2014.) Most recently, in 2020, California set forth detailed legal requirements for campus procedures in response to complaints of sexual harassment and sexual violence. (SB 493, Jackson, Ch. 303, Stats. 2020.)

As it relates to this bill in particular, California law requires that California's public institutions of higher learning have "a written procedure or protocols to ensure, to the fullest extent possible, that students, faculty, and staff who are victims of sexual assault [...] receive treatment and information." (Ed. Code § 67385(a).) The bill before this Committee impacts that requirement in two overarching ways.

### 3. Components of the bill related to the role of sexual assault counselors

First, in the case of many of California's public institutions of higher learning, the treatment component of these protocols is provided by sexual assault counselors. As described by the author:

On-campus counselors assist student survivors by providing both emotional support and information regarding on-campus and community-based resources. This can include counseling or crisis intervention, as well as assistance navigating the reporting process if a survivor wishes to file a report. Counselors may also accompany survivors to appointments, meetings, or hearings.

This bill provides some additional detail and requirements related to the role of sexual assault counselors with the intent of setting clear boundaries between the counselors' therapeutic and support roles and other campus procedures relating more to investigation and, in some instances, law enforcement.

#### *a. Sexual assault counselors must be independent from Title IX office*

The Title IX office at each college or university is responsible, among other things, for receiving and investigating reports of campus-related sexual harassment and sexual violence. The Title IX office is supposed to carry out these functions in a trauma-informed way. (Ed. Code § 66281.8(b)(2).) Nonetheless, the Title IX office's role is not therapeutic. Sexual assault counselors, by contrast, are supposed to support the victim's needs. Having the victim's full trust and confidence is crucial to carrying out this role. If the victim sees the sexual assault counselor as part of the Title IX investigatory apparatus, that trust and confidence may be hard to maintain.

Accordingly, this bill mandates that campus sexual assault counselors operate independently from the Title IX office. While the bill does not define the exact contours of that independence, presumably it would include operating out of different physical

spaces and under distinct chains of command. The author states that the bill is not intended to require that sexual assault counselors be employed by an entity other than the university.

*b. Sexual assault counselors must have certain qualifications to perform the job*

Although the role of sexual assault counselors in responding to campus-related sexual harassment and sexual violence is evidently relatively well understood across California's public colleges and universities, it does not appear that current law states what qualifications a person must have to be hired for the job. To some degree, the requisite professional experience and training can be implied from the definition of campus sexual assault counselor that appears in the Evidence Code. (Evid. Code §1302.5(b).) Technically, however, those standards specify to whom the counselor-victim privilege and duty of confidentiality applies; they do not necessarily dictate whom a college or university could hire to perform the job of sexual assault counselor. This bill fills the gap by specifying that candidates for campus sexual assault counselor "shall be appointed based on experience and a demonstrated ability to effectively provide sexual violence victim services and response."

*c. Prohibition on revealing identity*

The therapeutic and support role that sexual assault counselors are supposed to play for victims requires enormous trust. So that victims feel secure discussing what may be deeply personal, private, complex, and painful aspects of their lives, it is critical that victims have assurance that their sexual assault counselors will not disclose what the victim has revealed to them and cannot ordinarily be obligated to do so. For this reason, California law recognizes an evidentiary privilege for sexual assault counselors. (Evid. Code §§ 1035 *et seq.*) The victim can waive confidentiality however, enabling the counselor to speak freely about information revealed during communications between the two of them.

In keeping with its intent to ensure that sexual assault counselors remain a secure and trustworthy source of support to victims, this bill strictly forbids sexual assault counselors from breaking their confidentiality with the victim. Such a complete ban on revealing the identify of victims and information about their case can be justified on the policy grounds that it ensures that sexual assault counselors do not ever become entangled in the investigatory side of campus response to sexual harassment and sexual violence. For that reason, victims should feel able to speak freely about what happened to them without the fear that anything they reveal could become broader public knowledge. On the other hand, for the reasons discussed further in Comment 5, below, such a strict prohibition on revealing the identity of a victim might, in many cases, inhibit the sexual assault counselor's ability to assist the victim in ways that could be important. For example, if the victim needs help obtaining alternative housing, a sexual assault counselor might be able to assist with that, but the job could get difficult if the

counselor cannot reveal the identity of the individual seeking the change or why the change is suddenly necessary.

#### 4. Components of the bill related to the role of the chancellor of the CSU system

The bill contains two components related to the role of the chancellor of the CSU system in particular. First, the bill authorizes the CSU chancellor to collaborate in making executive orders in relation to campus sexual assault policies. The second component of the bill relating to the chancellor of the CSU system is a requirement for the chancellor to forward copies of all executive orders relating to sexual violence on campus to the chairs of the California Assembly and Senate Education Committees.

Taken together, these components evince a legislative desire for greater accountability from CSU leadership in relation to how its handling of sexual harassment and sexual violence allegations. This likely stems from disturbing reports that a former CSU chancellor – who subsequently resigned in February of this year – repeatedly failed to take appropriate action in response to multiple complaints that the Vice President of Student Affairs at Fresno State University had sexually harassed members of his staff.<sup>2</sup>

#### 5. Proposed amendments

While not in opposition to the bill, the University of California (UC) provided the author with a series of proposed amendments. With some refinements discussed below, the author proposes to incorporate all of the UC's proposed changes as amendments to be taken in Committee. Those amendments may be summarized as follows.

##### *a. Avoidance of mediation where not appropriate*

The bill in print includes outdated language that requires the public college and universities to tell victims of sexual assault about the availability of “mediation” services. More recent California law outlaws the use of mediation in this context. (Ed. Code § 66281.8(b)(4)(A)(xxi)(I): “[a]n institution [...] shall not allow mediation, even on a voluntary basis, to resolve allegations of sexual violence.”) Accordingly, the amendments replace the reference to mediation in the bill with the phrase “alternative resolution or other accountability processes.”

##### *b. Counseling available regardless of location of the assault*

The bill in print also includes outdated language that implies that treatment and information is only available to students, faculty, and staff who are victims of sexual assault “committed at or upon the grounds of, or upon off-campus grounds or facilities

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<sup>2</sup> Huck et al. *Cal State Sexual Harassment Scandal: Your Questions Answered* (Apr. 11, 2022) Cal Matters <https://calmatters.org/education/higher-education/college-beat-higher-education/2022/04/california-state-university-sexual-harassment/> (as of Jun. 4, 2022).

maintained by the institution, or upon grounds or facilities maintained by affiliated student organizations.” More recent California law makes it clear that colleges and universities have an obligation to respond to incidents of sexual harassment or violence “that occur in connection with any educational activity or other program of the institution, as well as incidents that occurred outside of those educational programs or activities, whether they occurred on or off campus, if, based on the allegations, there is any reason to believe that the incident could contribute to a hostile educational environment or otherwise interfere with a student’s access to education.” (Ed. Code § 66281.8(b)(3)(B).) Accordingly, the amendments insert the phrase, “including, but not limited to” into the list of locations mentioned.

*c. Expansion to include domestic violence counselors*

The amendments adds domestic violence to the types of incidents for which the colleges and universities must provide treatment and information. Relatedly, the amendments detail the qualifications and role of domestic violence counselors.

*d. Additional details regarding counselor qualifications*

The bill in print only vaguely states what the required qualifications are for a campus sexual assault counselor. For the evidentiary privilege to attach to the relationship between the victim and the counselor, however, the counselor’s professional background must meet certain threshold standards. (Evid. Code § 1035.2(b).) With this in mind, the amendments cross-reference those standards when stating the required qualifications for serving as a campus sexual assault counselor. Because the amendments also incorporate domestic violence, the amendments include a cross-reference to the professional qualifications required for the evidentiary privilege to attach in that context as well.

*e. Counselors also independent of law enforcement*

The bill in print specifies that sexual assault counselors must be independent of the campus Title IX office. As discussed in Comment 2, above, the purpose behind that provision is to help maintain a boundary between the investigatory function of the latter and the supportive role of the former. Law enforcement’s role in responding to a campus-related incident of sexual assault is similarly investigatory. Entangling counselor and law enforcement functions would therefore be problematic for many of the same reasons. Accordingly, the amendments specify that campus sexual assault and domestic violence counselors must operate independently from law enforcement as well.



*f. Counseling and support services available regardless of reporting to Title IX office*

The amendments clarify that the colleges and universities are to offer domestic violence and sexual assault counseling to victims regardless of whether or not the victims elects to report the incidents in question to the Title IX office for investigation. The purpose of this policy is to maintain the boundary between the Title IX investigatory function and the support role played by the sexual assault counselors. It also serves to avoid pressuring the victim to pursue a Title IX complaint, instead leaving this decision entirely within the victim's control.

*g. Permitting counselors to break confidentiality with affirmative consent of victim*

Perhaps the most significant of the proposed amendments involves the circumstances under which a sexual assault counselor may disclose the identity of the victim. The bill in print adopts a strict policy with respect to the duty of confidentiality that the counselor owes to the victim: it must never be broken unless required by law. On the one hand, such an absolute policy can be defended on the ground that the therapeutic and supportive aspects of a counselor's services must always be paramount. Once the possibility of disclosure gets introduced into the relationship, the victim may become more reticent to open up completely with the counselor and the healing process may be hindered as a result. On the other hand, a blanket rule against breaking confidentiality can be criticized because it severely limits the range of services that a campus sexual assault counselor can provide for a student. For example, if the counselor is going to advocate on behalf of the victim for alternative housing options where the victim may feel more secure, that task will be greatly complicated if the counselor cannot give some explanation to the housing office about whom the counselor is seeking to move and why.

To enable campus sexual assault counselors to offer support services beyond pure therapy, the proposed UC amendments permit counselors to reveal the identity of the victim they are assisting so long as they have the permission of the victim to do so. Not only does this approach free the counselor to engage in a broader range of services from the victim, it also seems more consistent with trauma-informed care. It gives the victim greater control over the situation: the victim can, but does not have to, give permission to the counselor to reveal the victim's identity. In keeping with that model of care, however, an additional refinement may be advisable. The permission in question should not be a blanket, once-and-forever waiver of confidentiality, as this removes control from the victim the moment permission is given. Instead, any permission given should relate to the specific need for the disclosure and should be subject to withdrawal at any time.

A mock-up of all of the proposed amendments in context is attached to this analysis.

6. Arguments in support of the bill

According to the author:

Sexual assault counselors are in a unique position to observe, assess, and participate in the response to campus sexual assault. [...] Historically, sexual assault counselors have been exempt from having to report instances of sexual misconduct to the university or law enforcement, providing a confidential resource for survivors seeking help. To fully support survivors in a trauma-centered manner, it is vital that sexual assault counselors focus on the needs of the survivor. The role of a sexual assault counselor is to explain all options and also supports any decision the survivor makes, which may include action against the university. In these situations, the sexual assault counselor may fear losing their employment or other forms of retribution due to their support of student survivors. Campus-based sexual assault counselors and advocates should have clear protections in place in order to have an ability to act independent from the University, in the best interest of the survivor without threat or fear of retaliation from the University.

In support, the Legislative Women's Caucus writes:

AB 1467 establishes that sexual assault counselors are independent of the campus Title IX office. It also allows sexual assault counselors to maintain confidentiality when interacting with survivors of sexual assault. This bill will also help ensure that when California State University (CSU) executive orders relating to discrimination, harassment, and retaliation are reviewed, they are done so in collaboration with appropriate officers and employees. As advocates for survivors, counselors are critical to assessing and understanding changes to the varying policies, roles, and priorities at a campus. This is why counselors must be involved in the creation of university policies.

**SUPPORT**

California Women's Legislative Caucus

**OPPOSITION**

None known

## **RELATED LEGISLATION**

### **Pending Legislation:**

AB 1968 (Seyarto, 2022) requires the CSU and requests the UC to develop content and presentation standards and a model internet website explaining the steps a student who is a victim of sexual assault may take immediately following the assault. The bill requires the standards and model website template to be developed in collaboration with sexual assault survivor advocates and others who work with sexual assault victims. AB 1968 is currently pending consideration before the Senate Appropriations Committee.

AB 2683 (Gabriel, 2022) requires the CCC and CSU, and requests UC and any independent institution of higher education or private postsecondary education institution that receives state financial assistance, to provide mandatory sexual harassment and sexual violence prevention training to students each year beginning September 1, 2024. AB 2683 is currently pending consideration before the Senate Appropriations Committee.

### **Prior Legislation:**

SB 437 (Jackson, Ch. 303, Stats. 2020) required postsecondary educational institutions, among other things, to adopt rules and procedures for the prevention of sexual harassment and sexual violence, and to adopt and post on their Web sites the grievance procedures to resolve complaints of sexual harassment and sexual violence.

AB 1000 (Cervantes, Ch. 125, Stats. 2019) required the governing boards of each community college district, the Trustees of the CSU, the Board of Directors of the Hastings College of the Law, and the Regents of the UC to annually review their written procedure or protocols relating to sexual assault, and to update them as necessary in collaboration with sexual assault counselors and student, faculty, and staff representatives.

AB 2654 (Bonilla, Ch. 107, Stats. 2016) required postsecondary educational institutions to post their written policy on sexual harassment on their websites. AB 2654 also required the policy to include information on the complaint process and the timeline for the complaint process. The policy must include information on where to obtain the specific rules and procedures for pursuing available remedies and resources, both on and off campus.

SB 186 (Jackson, Ch. 232, Stats. 2015) enabled the governing board of a California community college district to exercise jurisdiction over student conduct that occurs off district property in cases of sexual assault and sexual exploitation, regardless of the victim's affiliation with the college.

SB 967 (DeLeón, Ch. 748, Stats. 2014) required the governing boards of California community college districts, the Trustees of the California State University system, and the Regents of the University of California, as well as the governing boards of independent postsecondary institutions in California to adopt victim-centered sexual assault, domestic violence, dating violence, and stalking policies as a condition of receiving state funds for student financial assistance.

AB 3133 (Roos, Ch. 1117, Stats. 1982) enacted the Sex Equity in Education Act, which, similar to its federal Title IX counterpart, prohibits discrimination in California schools on the basis of sex.

**PRIOR VOTES:**

Assembly Floor (Ayes 75, Noes 0)

Assembly Appropriations Committee (Ayes 14, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)

Assembly Higher Education Committee (Ayes 10, Noes 0)

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**Amended Mock-up for 2021-2022 AB-1467 (Cervantes (A))**

**Mock-up based on Version Number 97 - Amended Assembly 4/28/21**

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 67385 of the Education Code is amended to read:

**67385.** (a) The governing board of each community college district, the Trustees of the California State University, the Board of Directors of the Hastings College of the Law, and the Regents of the University of California shall 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 or domestic violence committed at or upon locations including, but not limited to, the grounds of the institution, ~~or upon~~ off-campus grounds or facilities maintained by the institution, or ~~upon~~ grounds or facilities maintained by affiliated student organizations, shall receive treatment and information. If appropriate on-campus treatment facilities are unavailable, the written procedure or protocols may provide for referrals to local community treatment centers.

(b) The written procedure or protocols adopted pursuant to subdivision (a) shall contain at least the following information:

(1) The college policy regarding sexual assault on campus.

(2) Personnel on campus who should be notified, and procedures for notification, with the consent of the victim.

(3) Legal reporting requirements, and procedures for fulfilling them.

(4) 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.

(5) A description of campus resources available to victims, as well as appropriate off-campus services.

(6) 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 or domestic violence, 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.

(7) Procedures for guaranteeing confidentiality and appropriately handling requests for information from the press, concerned students, and parents.

(8) Procedures ensuring that each victim of sexual assault or domestic violence ~~should~~ receives information about the availability~~existence~~ of at least the following options:

(A) Counselors and support services for victims.

(B) Criminal prosecutions.

(C) Civil prosecutions.

(D) The disciplinary process through the college.

(E) Alternative dispute resolution or other accountability processes.

(F) ~~the availability of mediation, a~~ Alternative housing assignments ~~and a~~

(G) Academic assistance alternatives.

(c) The written procedure or protocols adopted pursuant to subdivision (a) shall be reviewed annually, and updated as necessary in collaboration with sexual assault and domestic violence counselors and student, faculty, and staff representatives.

(d) Each segment of higher education shall implement this chapter from existing funds and resources available to it.

(e) ~~(1) A s~~ Sexual assault and domestic violence counselors shall be independent from the Title IX office, and shall, at a minimum, meet the qualifications defined in Section 1035.2 and 1037.1 of the Evidence Code, respectively. ~~be appointed based on experience and a demonstrated ability to effectively provide sexual violence victim services and response.~~

(2) Services provided by sexual assault and domestic violence counselors including, but not limited to, securing alternative housing assignments and academic assistance alternatives, shall not be contingent on a victim's decision to report to the Title IX office or law enforcement.

(f) (1) A sexual assault or domestic violence counselor shall obtain specific permission from the victim before disclosing the identity of the victim, or any information that could reasonably be expected to reveal the identity of the victim, to the university or any other authority, including law enforcement, unless otherwise required to do so by applicable state or federal law.

(2) This subdivision is intend to maintain confidentiality, preserve any applicable privileges including, but not limited to, Sections 1035 through 1036.2 and Sections 1037 through 1037.8 of the Evidence Code, and protect the privacy of students requesting assistance from a sexual assault or domestic violence counselor.

~~Regardless of whether victims wish their identity to remain confidential, a sexual assault counselor shall not notify the university or any other authority, including law enforcement, of the identity of the victim or any witness or of the alleged circumstances surrounding the reported sexual misconduct unless otherwise required by applicable state or federal laws.~~

(g) For purposes of this section, all of the following apply:

(1) "Sexual assault" includes, but is not limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault.

(2) (A) "Specific permission" means all of the following:

(i) The permission is limited to disclosure to the particular people, for the particular circumstance, or for the particular purpose for which the permission was given.

(ii) The permission is limited to the counselor to whom it was given.

(iii) The permission may be withdrawn.

(B) Unlimited or general permission for disclosure is not specific permission.

**SEC. 2.** Section 89033 is added to the Education Code, to read:

**89033.** (a) The chancellor, when reviewing and updating any executive orders relating to discrimination, harassment, and retaliation for the purpose of enforcing or implementing the requirements of Section 67385, may do so in collaboration, as the chancellor deems appropriate, with any of the following:

(1) The Systemwide Title IX Office.

(2) The Executive Vice Chancellor of Academic and Student Affairs, the Associate Vice Chancellor for Student Affairs and Enrollment Management, the vice presidents for student affairs, and other executive vice chancellors and vice chancellors.

(3) The Office of General Counsel.

(4) The Vice Chancellor of Human Resources and other human resources and academic personnel officers.

(5) Campus Title IX coordinators.

(6) Presidents and provosts of the various campuses of the university.

(7) Sexual assault counselors, confidential sexual assault victims advocates, and domestic violence counselors.

(8) Representatives of the student bodies at each campus of the university.

(9) The Vice Chancellor of Administration and Finance.

(b) The chancellor shall submit the text of all executive orders to which this section applies in an annual report to the respective chairs of the Assembly Committee on Higher Education and the Senate Committee on Education.

**SEC. 3.** If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.