

The Problem of Good Intentions: Challenges Arising From State Mandated University-Wide Sexual Reporting

Andrew Little, Chris Riley

Legislatures and regulators struggle to create effective legal mechanisms to address the misreporting and underreporting of sexual misconduct on college campuses. The problems are clear: how does the law balance the desire to fully support victims of sexual misconduct by providing access to supportive measures and complaint resolution options, while also honoring the desire of some victims not to have private information shared with others? While some employees have failed to report known instances of sexual misconduct based on inappropriate grounds, others do so based on a desire to respect the victim's wishes. How should these problems, which may stem from organizational cultures, be solved through legislation or regulation? Federal laws--Title IX and the Clery Act--impose reporting duties on only some employees, based on their particular role, but beginning in 2019, the Texas Legislature went a step further and mandated university-wide sexual misconduct reporting for all employees. The penalties for failure to report are severe: termination and prosecution. While well-intentioned, this new Texas law nevertheless creates many problems that undermine its effectiveness. We address Texas Senate Bill 212 in its larger national context, offer several general critiques, highlight the special problems associated with the application of the law at faith-based universities, and make suggestions for university administrators and future legislative action in an attempt to refine the scope of the law to better address the underreporting problem. Key Words: mandated reporting, sexual misconduct, employee, state, Texas, Title IX, Senate Bill 212