

SB 748 (Portantino) Trespass: private universities.

PROBLEM

Private, nonprofit colleges and university campuses are experiencing difficulties addressing persons who pose a threat to the safety and well-being of students, faculty, staff, or the broader campus community using existing trespassing laws.

Currently, private nonprofit colleges and universities attempt to utilize California Penal Code Section 602, regarding trespassing on private property. This also includes the use of *no trespassing letters* to indicate consent has been withdrawn for an individual to be on campus.

In recent years, some district attorney offices have expressed reservations about issuing trespass on the strength of these letters and the applicability of Penal Code Section 602 to private, non-profit colleges and universities. Further, trespassing letters meant to serve as continuing notice of a revocation of the right to occupy private property have become ineffective in many campus communities due to the lack of clear legal guidance on enforcement. The lack of an effective enforcement tool means that individuals who have been advised that permission to use the campus has been revoked simply return to campus, often engaging in the same behavior that caused their permission to be revoked, until they are asked to leave. They leave, only to return again, and again. Repeat offenders learn that they are able to return to these campuses with little concern about consequences.

SB 748 recognizes that private, nonprofit colleges and universities have a responsibility to ensure the physical safety of their campus community. They face similar public safety challenges as their public higher education counterparts, and SB 748 assists private nonprofit colleges and universities by expanding Penal Code 626, which applies to public colleges and universities, and public and private K-12 schools to include California's private, nonprofit higher education sector.

BACKGROUND

The sponsors, the Association of Independent Colleges and Universities (AICCU) represents over eighty (80) private nonprofit colleges and universities in California that collectively serve over 380,000 students and employ over 75,000 full-time persons.

The majority of AICCU's member institutions are residential in nature and house the traditional 18 to 24 year-old college age group, in addition to some graduate and faculty/staff housing. This is a major differentiation from a typical private business, but currently these colleges and universities must depend on PC 602 to ensure campus safety.

Such colleges and universities have found that without a criminal protective order or civil restraining order, the university's options for enforcing trespassing by persons who have been banned from campus based on concerning or illegal behavior are limited. Some schools have struggled to get a response from local law enforcement to help remove unwelcome persons from a campus and most find great difficulty getting restraining orders.

The difficulty presented by Penal Code Section 602.1(a) is the requirement that there be a refusal to leave. As written, a person must refuse to leave the premises upon being confronted about the interference. Many persons who return to a campus after being advised that they have been prohibited from accessing the campus based on past behavior often agree to leave once confronted by the police. Only 3 of the 85 AICCU institutions have a campus police. If police respond, the person leaves, returns to campus and police are called again – an inefficient cycle of response is created. This does little to protect or allay the fears of those being impacted by unwanted attention, threats or intimidation.

Section 602(o) handles this dilemma with time provisions: owners may provide notice to local law enforcement that a person is not welcome, effectively creating an outstanding, temporary prohibition on access to the property. Unfortunately, some campuses have heard from local district attorney offices that 602(o) is inapposite for the college or university, as the campus is open to the public, or parts of the campus are quasi-public. The Penal Code contemplates exactly this issue for public institutions of higher education in section 626.2-626.6.

There have been rulings that if a portion of the campus is open to the public, such as a library or event, then those areas of the private campus are now public and the pathways to access those areas may be deemed public. These interpretations render parts of PC 602 section useless and unenforceable.

SUMMARY

This bill expands the type of educational institutions covered by Penal Code 626 to include California's private nonprofit colleges and universities. Current statute only includes public colleges and universities, and public and private K-12 schools.

The inclusion of private nonprofit colleges and universities in Penal Code 626 will create clear standards for the enforcement of trespassing of private, non-profit universities. This bill recognizes that the nonprofit sector of higher education has similar responsibilities and is confronting similar public safety challenges as their public counterparts. It will help create safer college campuses by ensuring there is the ability to adequately enforce trespassing at these colleges and universities.

EXISTING LAW

Private, nonprofit colleges and universities must use sections of Penal Code 602 to deal with trespassing of non-affiliates of campus, but as outlined above it has proven to be ineffective in many cases.

Penal Code Sec 626 provides UC, CSU, and CCC, and public and private K-12 schools powers to is-

sue stay away orders and clear guidance on how to enforce trespassing. For example, 626.6 is a commonly used citation for violators of non-affiliates to the campus property. Agents of the college or university can tell an individual person to leave if that person's behavior is disruptive to university business. If the person refuses, they can be arrested. If the person who is told to leave comes back within seven days, they can be arrested. If the person shows up repeatedly a university can work with a district attorney's office to have a campus ban added to the probation terms of the person they want to keep away.

SUPPORT

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Association of Independent California Colleges and Universities (AICCU) (Sponsor)