



## Federal Legislation of Interest – July 10, 2017

### Campus Accountability and Safety Act (CASA)

S. 856

PRIMARY SPONSORS: Claire McCaskill (D-MO) and Dean Heller (R-NV)

Number of co-sponsors: 19 (bipartisan) – 10 original co-sponsors

H.R. 1949

PRIMARY SPONSORS: Carolyn Maloney (D-NY) and Patrick Meehan (R-PA)

Number of co-sponsors: 19 (2Rs and 17Ds)

**COMMENTS** – This bill has been around for several congressional sessions but it has changed in many ways, some very dramatic. Various sexual assault advocacy groups have supported it, though some raised serious concerns about past iterations. This version has addressed the carefully documented concerns raised by SurvJustice and other sexual assault organizations last year and avoids opening title IX, which would be a non-starter. The bill is well considered to get broad support from the campus violence and violence against women communities. Supporters of the bill include SurvJustice and End Rape on Campus.

Co-sponsors in the Senate include Chuck Grassley, Marco Rubio, and Joni Ernst, all very influential senators. Though he's not a co-sponsor yet this year, last year Lindsey Graham joked that "the bill would likely secure 90 votes in the Senate, assuming that the other 10 would be people who didn't show up that day." It's not clear what would happen in the House but it wouldn't be a surprise to see it move forward in the Senate, perhaps quickly as an amendment to another moving vehicle.

### How you can get involved

If you support the bill, here are some options:

- contact the primary sponsors of the bill and offer your formal support of the bill
- send letters of support to the primary sponsors in the House and Senate

- send letters of support to all current sponsors and co-sponsors of the bill
- send letters to the chairs of committees considering the bill asking for their help in moving the bill forward
- send letters to all Members of the House and Senate urging their support
- get involved with the coalition of organizations working to pass the bill
- put information about the bill and its importance on your website
- lobby in favor of the bill (if your funding permits)

If you have concerns about the bill, here are some options:

- contact organizations who support the bill and ask questions about your concerns
- ask to sit down with appropriate staff of the primary sponsors and have a conversation about your concerns
- prepare a summary, position paper, or alternative version of the bill and provide it to the primary sponsors

Members of Congress working on sexual assault should be cultivated as allies. Be aware that it's always best to work behind the scenes to try to get the changes you want. Sometimes that's easier than you think. Going public with your opposition should wait until you've exhausted other options.

## **BILL SUMMARY/ANALYSIS –**

### Clery Act changes

The Jeanne Clery Act, part of the Higher Education Act of 1965, aims to provide transparency around campus crime policy and statistics. It requires colleges and universities that receive federal funding to disseminate a public annual security report to employees and students every October 1<sup>st</sup>. The report must include statistics of campus crime for the preceding 3 calendar years, plus details about efforts taken to improve campus safety. The report must, also, include policy statements regarding (but not limited to) crime reporting, campus facility security and access, law enforcement authority, incidence of alcohol and drug use, and the prevention of/response to sexual assault, domestic or dating violence, and stalking.

This bill adds fondling, incest, and statutory rape to the list of crimes that colleges and universities must annually report. (The law already requires reporting of domestic violence, dating violence, and stalking). It removes the previous crime of “sex offenses, forcible or nonforcible” and replaces it with rape. It defines rape as that under Uniform Crime Reporting Program.

**Rape** = penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. Attempts or assaults to commit rape are also included; however, statutory rape and incest are excluded.

Fondling, incest, and statutory rape are defined as they are under the National Incident Based Reporting System.

**Forcible Fondling** = the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

**Incest** = nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. (Note that this varies by state. In DC, for example, it is within the 4<sup>th</sup> degree of consanguinity. Universities will be responsible for reporting it in accordance with the laws of the state where the University is located.)

**Statutory Rape** = nonforcible sexual intercourse with a person who is under the statutory age of consent. (Note that the age of consent varies by state from 16 to 18 years old. Universities will be responsible for reporting it in accordance with the laws of the state where the University is located.)

Domestic violence, dating violence, and stalking are defined as they are under VAWA.

**Domestic Violence** = felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

**Dating Violence** = violence committed by a person-

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and  
(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship.

(ii) The type of relationship.

(iii) The frequency of interaction between the persons involved in the relationship.

**Stalking** = engaging in a course of conduct directed at a specific person that would cause a reasonable person to—(A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress

The bill, also, adds additional reporting requirements related to rape and fondling including the number of the accused who were students, and the details of cases that went through the school disciplinary. It requires that education programs be developed in consultation with advocacy, victim services, or prevention organizations and local law enforcement. It places

deadlines on notification of the accuser and the accused within 5 days of the outcome determination of a disciplinary proceeding, or any change to the results. Title IX coordinators on campus will be considered a campus security authority.

The Department of Education must develop a standardized, confidential online survey tool on student experiences of domestic violence, dating violence, sexual assault, and stalking. The survey must include questions on incidents, whether student knows institutional policies, if victim reported and to whom, whether victim was informed of on- and off-campus resources, whether the perpetrator was a student, if the victim reported to law enforcement, and why victim chose to report or not report to law enforcement. DOE shall use this data to publish a report every 2 years and put it on their website. Colleges and Universities must report campus-level results on their own website.

#### Coordination with local law enforcement

The bill amends the Higher Ed Act to require colleges and universities to coordinate with local law enforcement in creating a MOU to clearly delineate responsibilities and share information (in accordance with confidentiality laws) about domestic violence, dating violence, sexual assault, and stalking. It must address protocols for investigations and notifications, coordinated training, and sharing information about crimes that requires informed victim authorization (may include protocols for anonymous sharing). Violations of these law enforcement coordination requirements may result in fines up to 1% of the school's budget. Money collected from these fines will go toward VAWA campus grants.

#### Sexual Assault Response Coordinators

Creates a requirement for each campus to have 1 or more Sexual Assault Response Coordinators, based on the size of the campus. The sexual assault response coordinator must have experience and demonstrated ability to effectively provide victim services related to domestic violence, dating violence, sexual assault, or stalking. The coordinator must be an individual who has protection under State law to provide privileged communication. The campus is able to formally partner with victim service organizations to provide sexual assault response coordinators if it is necessary in order to have that privileged communication. Training would be required for all sexual assault response coordinators.

The sexual assault response coordinator must inform the victim of:

- victim's rights under law and reporting options
- victim's rights and options under the campus policies

- information on the process of campus investigation and disciplinary proceedings
- information on criminal investigation and adjudication
- description of scope and possible sanctions through campus and criminal process
- that campus process is not equivalent to, or a substitute for, the criminal justice process
- any limitations of privacy or confidentiality with the sexual assault response coordinator

The sexual assault response coordinator may:

- serve as liaison between victim and higher education responsible employee or law enforcement
- assist victim in contacting and reporting to higher education responsible employee or law enforcement

The sexual assault response coordinator will have the authority to work with necessary staff to implement reasonable accommodations for the victim, including change in living arrangement or class schedule. Any requests for accommodations made by the sexual assault response coordinator will not trigger an investigation. The sexual assault response coordinator must provide confidential services and cannot be required to report crimes to the institution or law enforcement in a way that identifies the victim unless State law requires otherwise.

Any employee of the College or University who receives a report must notify the victim of services provided by the sexual assault response coordinator. Website of the University must include:

- name and contact information for the sexual assault response coordinator(s)
- reporting options, including confidential options, for victims
- process of school investigation and disciplinary proceedings
- process of investigation and adjudication in the criminal justice system
- potential reasonable accommodations
- telephone number and website address for a hotline providing information to domestic violence, dating violence, sexual assault, and stalking victims
- location and transportation options for the nearest medical facility where victim can get a forensic exam administered by a SANE nurse
- information about the school's amnesty policy (every college and university must have an amnesty policy that does not sanction reporting student for alcohol/drug violations)

Colleges and universities are able to set up an online anonymous reporting system, if they choose, to help track crime patterns on campus.

DOE has to create a training program for all individuals involved in implementing the school's student grievance procedure, including those responsible for resolving complaints about domestic violence, dating violence, sexual assault, stalking, or sexual misconduct, as well as all employees who have the responsibility to conduct an interview with a victim. The training must include:

- information on working with and interviewing victims of domestic violence, dating violence, sexual assault, or stalking
- training regarding the use of victim-centered, trauma-informed interview techniques
- information on types of conduct that constitute domestic violence, dating violence, sexual assault, or stalking, including same-sex incidents
- information on consent and the affect that drugs or alcohol may have on an individual's ability to consent
- the effects of trauma, including the neurobiology of trauma
- cultural awareness training on how domestic violence, dating violence, sexual assault, or stalking may impact students differently depending on their cultural background
- information on sexual assault dynamics, perpetrator behavior, and barriers to reporting

#### School disciplinary process

The institution must provide both the accuser and the accused with written notice of the institution's decision to go forward with a school disciplinary process regarding an allegation of sexual misconduct within 24 hours of the decision. The written notice shall include:

- the existence of a complaint, the conduct upon which the complaint is based, and the date the alleged incident occurred
- a description of the process and timeline for the disciplinary proceeding
- a description of the rights and protections available to the accuser and the accused
- a copy of the institution's applicable policies and related materials
- contact information for someone, who is independent of the disciplinary process, who can answer questions (from the accuser and the accused) about the process

Both the accuser and the accused student have the right to a proceeding that is prompt, fair, and impartial, which shall include the opportunity for both parties to present witnesses and other evidence, and any other due process rights afforded to them under institutional policy.

#### DOE website

DOE must establish a publicly available, searchable, and user-friendly campus safety website that includes:

- Contact information for the title IX coordinator for each institution of higher education receiving federal funds, and a brief description of the title IX coordinator’s role and the roles of other officials who may be contacted to discuss or report sexual harassment
- DOE’s pending investigations, enforcement actions, letters of finding, final resolutions, and voluntary resolution agreements for all complaints and compliance reviews under the Clery Act and title IX related to sexual harassment (excluding personally identifiable information)
- An online tool that allows for the review and download of Clery Act statistics from all colleges and universities
- Information regarding how to file complaints with DOE related to violations of title IX and of the Clery Act
- Information regarding the DOE’s policies for reviewing complaints, initiating compliance reviews, and conducting and resolving investigations related to alleged violations of title IX and of the Clery Act including:
  - contact information for at least one individual who can answer questions from institutions of higher education, complainants, and other interested parties about such policies
  - potential outcomes of an investigation
  - expected timeframe for resolution of an investigation

#### VAWA Campus Grants

The bill changes the maximum amount of institutional campus grants from \$300,000 to \$500,000. It, also, adds a purpose area to what the campus grants can be used for. The new purpose area is for training campus personnel on how to use victim-centered, trauma informed interview techniques.

#### New Grants

The bill creates a new grant program under the Higher Ed Act with funding from fines under requirement for sexual assault response coordinators. Universities who get the grants must use the funds to research best practices for preventing and responding to sexual harassment, sexual assault, domestic violence, and stalking. The research can focus on strategies to combat these crimes, strengthening victim services and/or strengthening prevention education.

The grants may, also, be used:

- to evaluate the effectiveness of victim services and education programs, and/or training of campus personnel on campus policies, protocols, and services, including instruction

on victim-centered, trauma-informed interview techniques and information on the neurobiological effects of trauma and stress on memory

- expanding and strengthening victim services and population specific services
- providing developmentally and culturally appropriate and linguistically accessible print and electronic materials on campus policies and protocols
- prevention education and awareness programs

The grants may be for up to five years and \$500,000. Preference is given to schools with the smallest endowments or lowest tuition rates, and have a demonstrated commitment to prioritizing tackling the problem of sexual assault on their campuses. Grantees under the VAWA campus grants for the past 3 grant cycles are ineligible. An equitable distribution to Tribal Colleges and Historically Black Colleges is required.

#### GAO reports

The bill requires a study of the effectiveness and efficiency of the VAWA campus grants program and the new grants program created by this bill.

Referred to Senate HELP Committee (4/5/17)

Referred to House Judiciary Committee (4/5/17)

Referred to House Education and Workforce (4/5/17)

Referred to House Subcommittee on Crime, Terrorism, Homeland Security, and Investigations (4/26/17)