

# Analysis of the 2014 Campus Accountability and Safety Act

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## Introduction:

On July 30, 2014, Senator McCaskill (D-MO), alongside Senators Gillibrand (D-NY), Heller (R-NV), Blumenthal (D-CT), Grassley (R-IA), Ayotte (R-NH), Warner (D-VA), and Rubio (R-FL) issued a proposed bipartisan bill to make changes to the Clery Act and add other obligations for colleges and universities addressing sexual violence on campus.

Senator McCaskill and her colleagues have held myriad hearings and roundtable discussions on this topic, issued an unprecedented [questionnaire](#) to hundreds of campuses, and issued a [report](#) on the results of that survey. Concurrently, the White House Task Force continues its work, and its [First Report](#) was replete with useful resources for campuses to address these crimes.

The legislation has not passed and does not yet have a companion bill in the House. Nevertheless, we believe it is an important bill that seeks to address an important subject, and we closely read the legislation to provide a review of the changes and some analysis regarding their potential impact on college campuses. While this Bill is not perfect, we believe that it could make significant improvements to the Clery and Title IX compliance regime. We hope that some of the inconsistencies with other laws and other technical issues we point out below can be fixed in the legislative process. We will provide updates to this document as these potential changes occur.

Following are three sections. In the first, we translate the Bill's legislative language into plain language. In the second, we provide some analysis on the practical impact of such legislation if it were to pass. Lastly you'll find a red line of the proposed legislation against the current Clery Act.

## I- Substantive Notes on the Bill, by Section:

Section 2: Amendments to the Clery Act, 20 U.S.C. 1092(f):

- Annual Security Reports must be published on the institution's website.
- Add to the statement of policies on law enforcement the memorandum of understanding between law enforcement and the institution.
- Disclose the numbers for the following: sex offenses reported, investigated, adjudicated, referred to external law enforcement, accused individuals found responsible by the student discipline process, accused individuals found not responsible, and proceedings closed without resolution.
- Add a description of the final sanctions imposed by the institution for each offense perpetrated.
- Do not identify victims or accused individuals in the crime statistics.

- Use definitions from VAWA for domestic violence, dating violence, and stalking-- otherwise use NIBRS or UCR, and if no definition is available, the Secretary will establish one.
- The already required education programs must be created in consultation with local, State, and national sexual assault, dating violence, domestic violence, and stalking victim advocacy, victim services, or prevention organizations, and local law enforcement.
- Policy statement on the prohibition of domestic violence, dating violence, stalking, and sexual assault must include the fact that these are crimes, will be reported and counted as crimes under the Clery Act, and that, if it's what the victim wants, the college will cooperate with local law enforcement.
- "Responsible employees" are also campus security authorities.
- The Secretary, in consultation with the AG, will develop a standardized climate assessment to be administered through a portal annually by all recipient institutions. The Bill is specific as to the topics the survey must cover. The Secretary will publish a report on the survey results.
- The Department of Education will put out guidance about reconciling Clery and Title IX, how they interact, and how to clarify and resolve any discrepancies or inconsistencies between them.
- The Secretary will establish regulations.

#### Section 3: Coordination With Local Law Enforcement—Amending 20 U.S.C. 1011.

- Coordinate with local law enforcement and update an MOU every two years. Institutions must delineate responsibilities, share information to the extent allowable under law, determine protocol for investigations, and agree on training requirements. Penalties may be waived if an institution can prove that local law enforcement refused to work with them despite a good faith effort on behalf of the institution.
- Secretary will establish regulations.

#### Section 4: University Support for Survivors of Sexual Violence, Amending 20 U.S.C. 1011

- Establish a policy designating one or more person(s) as a confidential advisor who can receive anonymous reports. This person cannot be a student or a "responsible employee" but may have another role at the institution. Campuses can also partner with external victim services organizations and designate someone there as this advisor.
- The confidential advisor:
  - is trained to perform victim-centered trauma-informed interviews which can be used in campus or criminal proceeding
  - Similarly to the Title IX Coordinator, informs victims of control over possible next steps, including reporting options, available remedies and resources on and off campus, reasonable and available interim measures. Also informs the victim about victim rights and institutional responsibilities.
- Appoint an adequate number of confidential advisors, to be determined by the Secretary through negotiated rulemaking.
- Provide an online reporting system for anonymous crime disclosures--the campus would not be required to investigate these reports.
- Provide on the institution's website the following:
  - the phone number and URL for a local, state, or national hotline for sexual assault victims.

- information on where to get a rape kit done, including information on transportation to a facility and possible reimbursement.
- name and contact information for the confidential advisor, as well as remedies and other reporting options.
- Provide an amnesty clause for students who report sexual violence in good faith so they are not charged with student conduct violations that are revealed during the report, such as underage drinking.

#### Section 5. Program Participation Agreements

Nonsubstantive, adds clauses for institutions to certify compliance with new sections.

#### Section 6. Enforcement and Training, Subpoena Authority

- The Secretary will establish a TIX website with:
  - Name and contact information for the Title IX Coordinator for each educational institution, including a description of the coordinator's role and other relevant officials who receive reports of sexual violence.
  - The Department's pending investigations, findings, actions, agreements, and reviews related to sexual harassment. Indicate whether it is a complaint or compliance review. Information must become available after OCR receives a written complaint and determines that it should be opened for investigation, but must exclude personally identifiable information.
- Training responsible EEs and others
  - Defines a responsible employee as an employee who has authority to redress sexual harassment and a duty to report complaints to the Title IX Coordinator.
  - The Secretary and AG will determine minimum training requirements for responsible employees. These employees will provide reporters with a written explanation of rights and options.
- Anyone involved in the grievance procedures has to have training or experience handling sexual violence complaints and also the operations of the grievance procedures.
  - The training must include items such as: information on working with and interviewing sexual violence victims; the kind of conduct that constitutes sexual violence; information on consent and the role of drugs and alcohol, effects of trauma, and cultural awareness training.
- There must be a uniform campus-wide process for disciplinary proceedings relating to claims of sexual violence. Institutions may not use a different process for matters based on status of characteristics of a student (for example, for students who are athletes or members of a certain organization).
- The relevant offices within the Departments of Education and Justice must have subpoena power to carry out this title.
- Institutions must annually report to the Departments of Education and Justice the name of the Title IX Coordinator, description of the role of the coordinator and other relevant officials, and documentation of training received by the Coordinator.

#### Section 7. Training for Campus Personnel on Victim Centered, Trauma-Informed (Forensic) Interviews. Amends 42 USC 14045b.

- Allows grants in this section to extend to train campus personnel in conducting victim-centered, trauma-informed interviews. This term is then defined.

## **II- Analysis of the Impact of the Bill:**

### **Section 2. Amendments to the Clery Act:**

Section (1)(A) would amend the Clery Act to include publication on the website. If amended, the Clery Act would require that each institution, “prepare, publish, and distribute, through appropriate publications or mailings and on the website of the institution, to all current students and employees.” Practically, almost all institutions have moved away from printing giant Annual Security Reports (which are often tossed on residence hall floors by student recipients) towards posting complete Annual Security Reports on the institution’s website. On or before October 1, the institution issues a notice to students by e-mail or other electronic means noting the availability of the ASR, describing the ASR, providing a link to the posted ASR and providing information on how one may obtain a paper copy. Many institutions only print paper copies on demand, a practice accepted by the Department of Education. If the Bill passes in this form, strictly read it would require institutions to both create “appropriate publications or mailings” **and** upload to the website, meaning that institutions who have moved completely online would have to once again print paper documents. This can be solved by simply requiring that the ASR be posted on the institution’s website and encouraging additional publication. Note that the Department of Education, in sub-regulatory guidance, has looked askance at efforts to publish the ASR as part of a larger document, stating that the ASR should be stand-alone.

Section (1)(C) of the Bill would require additional statistical reporting of the results of cases adjudicated through the institution’s disciplinary process. Note that this would be a significant departure from Clery Act crime reporting because traditionally colleges and universities count, for Clery Act purposes, *reports* of such crimes to Campus Security Authorities and/or local law enforcement. We have always advised that the result is rarely, if ever, relevant. If there is an accusation of rape in a Clery Act geographic location, we count the statistic, even if the respondent is found not guilty in a court of law or not responsible through the judicial process, or if neither process is ever used. This change would make the outcome of these processes reportable for the first time and could cause confusion. It is also not clear whether this change would maintain the traditional Clery concentration on geographic location of crimes or would move over to a Title IX type analysis where geography is not as relevant. Such a change would continue a fundamental shift to Clery that began with some VAWA changes requiring action that had nothing to do with geography. Are institutions expected to only report results on campus investigation and discipline for such cases if the incident occurred on Clery Act geography? A best practice for institution judicial codes is to include language allowing the institution to take action against those who violate Federal, state, or local law where there is a nexus to the college. In the Bill’s current reading, it is unclear whether or not the results of off-campus incidents that are adjudicated through the college judicial process via the nexus would be counted for disclosure. We are wary of confusing everyone by expanding Clery beyond the four geographic areas just in the area of sexual violence and attempting to reconcile the numbers between reports and adjudications. There are many reasons adjudications do not occur on campus. Some examples are the accused is unknown; the victim does not wish to move forward and the balance of confidentiality and safety falls in favor of the victim’s confidentiality based on the particular facts; the accused is not a member of the campus community; or the accused withdraws pending a hearing.

Section (2) prohibits statistics from identifying the victim. Practically, this is already the case and changes little if anything for campuses. It also defines the VAWA crimes, which were defined in the VAWA changes, and adds the ability for the Department of Education to find additional definitions for crimes which, practically, they already do (as they did in the VAWA Negotiated Rulemaking). This section does not appear to represent a significant change.

Section (3) adds the requirement that the institution's policy on dating violence, domestic violence, sexual assault and stalking be developed in "consultation with local, State, and national sexual assault, dating violence, domestic violence, and stalking victim advocacy, victim services, or prevention organizations, and local law enforcement." While this is a best practice, the strict language makes it difficult to comply. If taken literally, each institution must consult with local, State, **and** national organizations. Frankly, state and national organizations do not have enough bandwidth to consult individually with 5,000 or so institutions, as each institution will be required to call on them. Practically, the Bill should allow for national organizations and large colleges and universities to come up with model language, in consultation with these groups, that could be adopted by other institutions.

Section (3)(B) is an awkwardly written response to the VAWA Negotiated Rulemaking, but it is consistent with those proposed rules. Importantly, it maintains the victim's role in the driver's seat of deciding who will be involved in his or her case, the Title IX coordinator, campus judicial/conduct, campus law enforcement or local law enforcement. New York does not have a mandatory reporting over and above the victim's wishes (as is the case in some states).

Section (4) is ministerial.

Section (5) requires that the Title IX coordinator be a Campus Security Authority. We have always advised that the Title IX coordinator, as an individual with substantial responsibility for student and campus activities, is a Campus Security Authority. Any confusion about this issue should be clarified by this legislative change.

Section (5) provides one of the most surprising, and hopeful, aspects of the legislation. Prior to this Bill, all the discussions around climate surveys have assumed that each institution would conduct one, at untold expense and complication, plus requiring each institution to get approval from its Human Subjects Review Board. While this would be doable for large research institutions, smaller and non-traditional institutions without strong research arms may face significant difficulty accomplishing this task.

The legislation goes in the direction that we have been discussing for some time--centralizing the climate survey through a single portal of the Department of Education. Colleges would be responsible for sending students to that portal, but the Department of Education would conduct the survey. The logistics of this would still have to be worked out. If a survey is to be anonymous, it is unclear how the Department would assess the number of students at an institution who participated and provide the data from their answers. It is also unclear how institutions can "ensure that an adequate, random, and representative sample size of students enrolled at the institution complete the survey." Practically, institutions can "lead horses to water, but cannot make them drink." The longer the survey, the less likely students are to

complete it. Institutions cannot *force* compliance. This idea is well-intentioned, and we hope that a path to this can be found that is workable and also provides us with good data. SUNY campuses are already conducting annual campus climate assessments, though not necessarily through surveys.

The next section significantly raises fines for violations from \$35,000 to \$150,000. The Department of Education would, for the first time, get to use the funds collected for further administration and enforcement of the Clery Act. This may result in a bounty mindset and may impact the judgment of auditors and enforcers, whose jobs, salaries, and budgets could expand significantly if they can bring home enough in fines.

These provisions would take effect one year after enactment if the Bill does pass and is signed into law.

### **Section 3. Coordination with Local Law Enforcement:**

This section of the Bill would add an additional section to the Higher Education Act strengthening memoranda of understanding with local law enforcement and requiring that these MOUs be updated every 2 years. Waivers would be available for those institutions for whom local law enforcement refuses to enter into an MOU (and the local law enforcement that does not enter into an MOU would be referred to the Department of Justice). Many institutions already enter into such agreements (in New York State it is the law for all private and public colleges). It may be less clear for non-traditional campuses at what point they are required to enter into an MOU with a locality.

This provision would take effect one year after enactment if the Bill does pass and is signed into law. The Department of Education could impose a civil penalty of up to 1 percent of an institution's operating budget for each year that an institution does not properly enter into, or attempt to enter into, such an MOU. The Department of Education would be required to engage in negotiated rulemaking to implement this provision.

### **Section 4. University Support for Survivors of Sexual Violence:**

This section requires institutions to designate one or more person as a "confidential advisor" who can receive anonymous reports. From the description, this advisor is intended to duplicate some of the responsibilities of the Title IX Coordinator, which are also outlined in VAWA and its regulations, but without the obligation to investigate (and thus, the ability to keep reports confidential). The responsibilities that mirror existing duties of the Coordinator and designees include notifying victims about their rights, the institution's obligations, available remedies and resources on and off campus, and the victim's right to choose options and remedies.

The Bill says that this confidential advisor cannot be a "responsible employee" or a student, may have another role at the institution, and also may be an outside person if the school is partnering with a local organization. Keep in mind that the confidential advisor must also be available to employee victims, making certain individuals, such as campus counselors, less appropriate for this designation. However, it is likely that if this Bill passes, the norm would be

to have multiple confidential advisors, perhaps designating different advisors for different sections of the community, such as faculty, staff, and students--much like deputy Title IX Coordinators. Of course, these advisors must receive training. Their names and contact information must be published on the campus website, along with remedies and reporting options.

The language prohibiting this person from being a student should be clarified. While we agree that an institution should not appoint a full-time undergraduate to such a role, we would not want to have to ban such an employee from taking any classes at all, lest they become a student. Exceptions should be made for graduate and doctoral student status, and for continuing education. This may seem picayune but, as currently written, could be ripe for an audit finding by the Department of Education that such an employee was taking a doctoral course in counseling (seemingly a good thing), therefore the institution appointed a "student" and is subject to the whopping fine outlined below. Clarifying language changing this limit to undergraduate student would ameliorate this issue.

Institutions must also create an online reporting system for anonymous crime disclosures. Interestingly, institutions would not then be responsible for investigating all of the anonymous reports, which is a shift from Title IX guidance. In addition, campus websites must include information about how and where to get a rape kit done, including information on transportation to a facility and reimbursement. websites must also include the phone number and URL for a local, state, or national hotline for sexual assault victims. Providing information about external and local resources is a best practice at SUNY and many other colleges across the country.

Lastly, this section requires an amnesty provision for students who, when reporting sexual violence in good faith, reveal other violations of the student conduct code. Institutions often see this occur with violations relating to alcohol. It is a best practice at SUNY and across the country to encourage reporting regardless of the involvement of drugs and alcohol, and many campuses have published written statements assuring victims that those who come forward will not be charged with such violations as underage drinking while reporting a sexual assault. SUNY's July 2014 guidance on complying with the VAWA proposed regulations includes sample amnesty policy language: <http://system.suny.edu/media/suny/content-assets/documents/generalcounsel/SUNY-VAWA-Guidance-2014.pdf>

This provision would take effect (requiring the campuses to appoint these individuals) the earlier of one year after the Department of Education, via negotiated rulemaking, determined what an appropriate number is, or 3 years after enactment, if the Bill does pass and is signed into law. The Department of Education could impose a civil penalty of up to 1 percent of an institution's operating budget for each year an institution does not meet these requirements.

## **Section 5. Program Participation Agreements:**

Under this section, PPA's would be updated to include certification of compliance with the provisions described above.

## **Section 6. Enforcement and Training; Subpoena Authority:**

This provision of the Bill would require that the Department of Education establish a Title IX website containing information on Title IX coordinators (each institution would be required to provide the name and contact information for the Title IX Coordinator within 30 days of the enactment of the Bill), describing their roles, and providing information on Title IX investigations. Practically, this seems to match what the White House already is working on in the [Notalone.gov](http://Notalone.gov) site, but perhaps puts more teeth into such a site.

The next provision requires training for the “responsible employee” as determined by the Department of Education. The bill would codify a definition for “responsible employee” that is generally consistent with [recent Title IX guidance \(see a briefer version here\)](#). The Bill makes responsible employees seem less ubiquitous than the Title IX guidance because the Bill’s language requires these employees to provide those who report sexual harassment with a written explanation of rights and options. Title IX guidance and VAWA require such written explanations, but this Bill seems to require it to come from the responsible employee who received the report. This is a departure from the idea that the written information must be provided, and the specific person providing it is not important. Generally, even the Title IX Coordinator is not required to provide every victim information--instead, as a *Coordinator*, s/he ensures that the correct information was indeed provided to a complainant, even if the Coordinator does not personally provide the information.

The next provision would require that others who are involved in implementing these programs receive training, not later than one year after enactment of the Bill. Practically, this is already a best practice and institutions should be devoting resources to training these professionals. The Bill establishes certain topics that would be covered, which are also within the scope of best practices. SUNY’s [July 2014 guidance](#) on complying with the VAWA proposed regulations includes significant material on such trainings.

The following provision requires uniform enforcement of campus disciplinary proceedings relating to claims of sexual violence regardless of the respondent’s membership on an athletic team. Practically, this seems like a recipe for ineffective and uneven enforcement and we know of no institution that has a separate judicial process for athletes (in which, it is assumed, they are held to lower standards) than for non-athletes. Those institutions must exist, however, as some responded to Senator McCaskill’s survey that this is their practice. SUNY campuses hold all students to the same judicial code and process. Regardless of whether this Bill is ever enacted into law, it is not a stretch to say this is a best practice and having “separate but equal” judicial processes will result in “inherently unequal” practices, and institutions using such regimes should strongly consider switching to a single judicial program for all students, regardless of athletic skill.

The Department of Education could impose a civil penalty of up to 1 percent of an institution’s operating budget for each year an institution does not meet these requirements. Penalties collected would be transferred to OCR, to enforce these provisions.

The next provision changes the statute of limitations for filing a complaint with OCR to not later than 180 days after the date of graduation or disaffiliation with an institution.



Practically, the Department of Education will have to determine how this is defined; it is not always clear when a student disaffiliates or what would happen if the student reaffiliates by returning to campus. This may result in complaints regarding incidents and college response that are 6 years old or older, as some students take 6 years or even more to earn a degree (plus the additional 180 day following graduation or separation).

The next provision gives the relevant offices between the Departments of Education and Justice subpoena power. While institutions typically comply with data requests from these offices, providing them with subpoena power will allay any concerns administrators and college staff may have had about providing information that is often quite private and sensitive to a government agency without a subpoena.

### **Section 7. Training for Campus Personnel on Victim-Centered Trauma-Informed (Forensic) Interviews:**

This section would increase VAWA grant money to train campus personnel in conducting victim-centered, trauma-informed (forensic) interviews. This type of training will be important, especially for smaller and non-traditional institutions. The language would also be amended to cover these interviews, which seek to elicit information about the traumatic event in question, giving the victim the option of having the interview recorded and receiving a copy of the recorded interview.

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July 31, 2014

**Tracked Changes of Proposed Bill: Campus Accountability and Safety Act**

(f) Disclosure of campus security policy and campus crime statistics

(1) Each eligible institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42, other than a foreign institution of higher education, shall on August 1, 1991, begin to collect the following information with respect to campus crime statistics and campus security policies of that institution, and beginning September 1, 1992, and each year thereafter, prepare, publish, and distribute, through appropriate publications or mailings and on the website of the institution, to all current students and employees, and to any applicant for enrollment or employment upon request, an annual security report containing at least the following information with respect to the campus security policies and campus crime statistics of that institution:

(A) A statement of current campus policies regarding procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution's response to such reports.

(B) A statement of current policies concerning security and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(C) A statement of current policies concerning campus law enforcement, including—

(i) the law enforcement authority of campus security personnel;

(ii) the memorandum of understanding between the institution and local law enforcement that is required under section 124 (or, if such requirement has been waived, a description of the working relationship of campus security personnel with State and local law enforcement agencies; and the working relationship of campus security personnel with State and local law enforcement agencies, including whether the institution has agreements with such agencies, such as written memoranda of understanding, for the investigation of alleged criminal offenses; and  
~~(iii) policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate law enforcement agencies, when the victim of such crime elects or is unable to make such a report.~~

(D) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(E) A description of programs designed to inform students and employees about the prevention of crimes.

(F) Statistics concerning the occurrence on campus, in or on noncampus buildings or property, and on public property during the most recent calendar year, and during the 2 preceding calendar years for which data are available—

(i) of the following criminal offenses reported to campus security authorities or local police agencies:

(I) murder;

(II) sex offenses, forcible or nonforcible;

(III) robbery;

(IV) aggravated assault;

(V) burglary;

(VI) motor vehicle theft;

(VII) manslaughter;

(VIII) arson;

(IX) arrests or persons referred for campus disciplinary action for liquor law violations, drug-related violations, and weapons possession; and

(ii) of the crimes described in subclauses (I) through (VIII) of clause (i), of larceny-theft, simple assault, intimidation, and destruction, damage, or vandalism of property, and of other crimes involving bodily injury to any person, in which the victim is intentionally selected because of the actual or perceived race, gender, religion, national origin, sexual orientation, gender identity, ethnicity, or disability of the victim that are reported to campus security authorities or local police agencies, which data shall be collected and reported according to category of prejudice; and

(iii) of domestic violence, dating violence, and stalking incidents that were reported to campus security authorities or local police agencies.

(G) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity at off-campus student organizations which are recognized by the institution and that are engaged in by students attending the institution, including those student organizations with off-campus housing facilities.

(H) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws and a statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws and a description of any drug or alcohol abuse education programs as required under section [1011i](#) of this title.

(I) A statement advising the campus community where law enforcement agency information provided by a State under section [14071 \(j\)](#) <sup>[2]</sup> of title [42](#), concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.

(J) A statement of current campus policies regarding immediate emergency response and evacuation procedures, including the use of electronic and cellular communication (if appropriate), which policies shall include procedures to—

(i) immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff

occurring on the campus, as defined in paragraph (6), unless issuing a notification will compromise efforts to contain the emergency;

- (ii) publicize emergency response and evacuation procedures on an annual basis in a manner designed to reach students and staff; and
- (iii) test emergency response and evacuation procedures on an annual basis.

(K)(i) With respect to the criminal activity described in subparagraph (F)(i)(II), the eligible institution shall prepare by not later than 1 year after the date of enactment of the Campus Accountability and Safety Act, and annually thereafter, the following additions:

(I) The number of cases that were investigated by the institution.

(II) The number of cases that were referred for a disciplinary proceeding at the institution.

(III) The number of cases that were referred to local or State law enforcement.

(IV) The number of alleged perpetrators that were found responsible by the disciplinary proceeding at the institution.

(V) The number of alleged perpetrators that were found not responsible by the disciplinary proceeding at the institution.

(VI) A description of the final sanctions imposed by the institution for each offense perpetrated.

(VII) The number of disciplinary proceedings at the institution that have closed without resolution.

(ii) The Secretary shall provide technical assistance to eligible institutions to assist in meeting such additional preparation obligations.

(2) Nothing in this subsection shall be construed to authorize the Secretary to require particular policies, procedures, or practices by institutions of higher education with respect to campus crimes or campus security.

(3) Each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42, other than a foreign institution of higher education, shall make timely reports to the campus community on crimes considered to be a threat to other students and employees described in paragraph (1)(F) that are reported to campus security or local law police agencies. Such reports shall be provided to students and employees in a manner that is timely, that withholds the names of victims as confidential, and that will aid in the prevention of similar occurrences.

(4) (A) Each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42, other than a foreign institution of higher education, that maintains a police or security department of any kind shall make, keep, and maintain a daily log, written in a form that can be easily understood, recording all crimes reported to such police or security department, including—

- (i) the nature, date, time, and general location of each crime; and
- (ii) the disposition of the complaint, if known.

(B)(i) All entries that are required pursuant to this paragraph shall, except where disclosure of such information is prohibited by law or such disclosure would jeopardize the confidentiality of the victim, be open to public inspection within two business days of the initial report being made to the department or a campus security authority.

(ii) If new information about an entry into a log becomes available to a police or security department, then the new information shall be recorded in the log not later than two business days after the information becomes available to the police or security department.

(iii) If there is clear and convincing evidence that the release of such information would jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until that damage is no longer likely to occur from the release of such information.

(5) On an annual basis, each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42, other than a foreign institution of higher education, shall submit to the Secretary a copy of the statistics required to be made available under paragraph (1)(F). The Secretary shall—

(A) review such statistics and report to the authorizing committees on campus crime statistics by September 1, 2000;

(B) make copies of the statistics submitted to the Secretary available to the public; and

(C) in coordination with representatives of institutions of higher education, identify exemplary campus security policies, procedures, and practices and disseminate information concerning those policies, procedures, and practices that have proven effective in the reduction of campus crime.

(6)(A) In this subsection:

(i) The terms ‘dating violence’, ‘domestic violence’, and ‘stalking’ have the meaning given such terms in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)).

(ii) The term “campus” means—

(I) any building or property owned or controlled by an institution of higher education within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner related to, the institution’s educational purposes, including residence halls; and

(II) property within the same reasonably contiguous geographic area of the institution that is owned by the institution but controlled by another person, is used by students, and supports institutional purposes (such as a food or other retail vendor).

(iii) The term “noncampus building or property” means—

(I) any building or property owned or controlled by a student organization recognized by the institution; and

(II) any building or property (other than a branch campus) owned or controlled by an institution of higher education that is used in direct support of, or in relation to, the institution’s educational

purposes, is used by students, and is not within the same reasonably contiguous geographic area of the institution.

(iv) The term “public property” means all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution if the facility is used by the institution in direct support of, or in a manner related to the institution’s educational purposes.

(v) The term ‘sexual assault’ means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

(B) In cases where branch campuses of an institution of higher education, schools within an institution of higher education, or administrative divisions within an institution are not within a reasonably contiguous geographic area, such entities shall be considered separate campuses for purposes of the reporting requirements of this section.

(7) (A) The statistics described in clauses (i) and (ii) of paragraph (1)(F)---

(i) shall not identify victims of crimes or persons accused of crimes; and

(ii) shall be compiled in accordance with the following definitions:

(I) For the offenses of domestic violence, dating violence, and stalking, such statistics shall be compiled in accordance with the definitions used in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)).

(II) For offenses not described in subclause (I), such statistics shall be compiled in accordance with—

(aa) either the National Incident-Based Reporting System or the Uniform Crime Reporting Program of the Federal Bureau of Investigation, if a definition is available; and

(bb) if an offense is not defined in either the National Incident-Based Reporting System or the Uniform Crime Reporting Program of the Federal Bureau of Investigation, a definition provided by the Secretary.

(B) The Secretary shall establish and make publicly available a definition for any offense that—

(i) is required to be reported in accordance with paragraph (1)(F);

(ii) is not an offense described in subparagraph (A)(i)(I); and

(iii) is not defined in either the National Incident-Based Reporting System or the Uniform Crime Reporting Program of the Federal Bureau of Investigation.

The statistics described in clauses (i) and (ii) of paragraph (1)(F) shall be compiled in accordance with the definitions used in the uniform crime reporting system of the Department of Justice, Federal Bureau of Investigation, and the modifications in such definitions as implemented pursuant to the Hate Crime Statistics Act. For the offenses of domestic violence, dating violence, and stalking, such statistics shall be compiled in accordance with the definitions used in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)). Such statistics shall not identify victims of crimes or persons accused of crimes.

Comment [A1S1]: sic

(8)(A) Each institution of higher education participating in any program under this title and title IV of the Economic Opportunity Act of 1964, other than a foreign institution of higher education, shall develop and distribute as part of the report described in paragraph (1) a statement of policy regarding—

- (i) such institution's programs to prevent domestic violence, dating violence, sexual assault, and stalking;
- (ii) the procedures that such institution will follow once an incident of domestic violence, dating violence, sexual assault, or stalking has been reported, including a statement of the standard of evidence that will be used during any institutional conduct proceeding arising from such a report.

(B) The policy described in subparagraph (A) shall address the following areas:

- (i) Education programs, [developed in consultation with local, State, and national sexual assault, dating violence, domestic violence, and stalking victim advocacy, victim services, or prevention organizations, and local law enforcement](#), to promote the awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking, which shall include—
  - (I) primary prevention and awareness programs for all incoming students and new employees, which shall include—(aa) a statement that the institution of higher education prohibits the offenses of domestic violence, dating violence, sexual assault, and stalking, [including the fact that these are crimes for the purposes of this subsection and reporting under this subsection and the institution of higher education will, based on the victim's wishes, cooperate with local law enforcement with respect to any alleged criminal offenses involving students or employees of the institution of higher education](#); (bb) the definition of domestic violence, dating violence, sexual assault, and stalking in the applicable jurisdiction; (cc) the definition of consent, in reference to sexual activity, in the applicable jurisdiction; (dd) safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against a person other than such individual; (ee) information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks; and (ff) the information described in clauses (ii) through (vii); and
  - (II) ongoing prevention and awareness campaigns for students and faculty, including information described in items (aa) through (ff) of subclause (I).
- (ii) Possible sanctions or protective measures that such institution may impose following a final determination of an institutional disciplinary procedure regarding rape, acquaintance rape, domestic violence, dating violence, sexual assault, or stalking.
- (iii) Procedures victims should follow if a sex offense, domestic violence, dating violence, sexual assault, or stalking has occurred, including information in writing about—
  - (I) the importance of preserving evidence as may be necessary to the proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order;
  - (II) to whom the alleged offense should be reported;
  - (III) options regarding law enforcement and campus authorities, including notification of the victim's option to (aa) notify proper law enforcement authorities, including on-campus and local police; (bb) be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and (cc) decline to notify such authorities; and

(IV) where applicable, the rights of victims and the institution's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court.

(iv) Procedures for institutional disciplinary action in cases of alleged domestic violence, dating violence, sexual assault, or stalking, which shall include a clear statement that—

(I) such proceedings shall—(aa) provide a prompt, fair, and impartial investigation and resolution; and (bb) be conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;

(II) the accuser and the accused are entitled to the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice; and

(III) both the accuser and the accused shall be simultaneously informed, in writing, of—(aa) the outcome of any institutional disciplinary proceeding that arises from an allegation of domestic violence, dating violence, sexual assault, or stalking; (bb) The institution's procedures for the accused and the victim to appeal the results of the institutional disciplinary proceeding; (cc) of any change to the results that occurs prior to the time that such results become final; and (dd) when such results become final.

(v) Information about how the institution will protect the confidentiality of victims, including how publicly-available recordkeeping will be accomplished without the inclusion of identifying information about the victim, to the extent permissible by law.

(vi) Written notification of students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for victims both on-campus and in the community.

(vii) Written notification of victims about options for, and available assistance in, changing academic, living, transportation, and working situations, if so requested by the victim and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.

(C) A student or employee who reports to an institution of higher education that the student or employee has been a victim of domestic violence, dating violence, sexual assault, or stalking, whether the offense occurred on or off campus, shall be provided with a written explanation of the student or employee's rights and options, as described in [elasesclauses](#) (ii) through (vii) of subparagraph (B).

(9) The Secretary, in consultation with the Attorney General of the United States, shall provide technical assistance in complying with the provisions of this section to an institution of higher education who requests such assistance.

(10) Nothing in this section shall be construed to require the reporting or disclosure of privileged information.



(11) The Secretary shall report to the appropriate committees of Congress each institution of higher education that the Secretary determines is not in compliance with the reporting requirements of this subsection.

(12) For purposes of reporting the statistics with respect to crimes described in paragraph (1)(F), an institution of higher education shall distinguish, by means of separate categories, any criminal offenses that occur—

(A) on campus;

(B) in or on a noncampus building or property;

(C) on public property; and

(D) in dormitories or other residential facilities for students on campus.

(13) Upon a determination pursuant to section [1094 \(c\)\(3\)\(B\)](#) of this title that an institution of higher education has substantially misrepresented the number, location, or nature of the crimes required to be reported under this subsection, the Secretary shall impose a civil penalty upon the institution in the same amount and pursuant to the same procedures as a civil penalty is imposed under section [1094 \(c\)\(3\)\(B\)](#) of this title.

(14)(A) Nothing in this subsection may be construed to—

(i) create a cause of action against any institution of higher education or any employee of such an institution for any civil liability; or

(ii) establish any standard of care.

(B) Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with this subsection shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action to enforce this subsection.

(15) The Secretary shall annually report to the authorizing committees regarding compliance with this subsection by institutions of higher education, including an up-to-date report on the Secretary's monitoring of such compliance.

(16)(A) The Secretary may seek the advice and counsel of the Attorney General of the United States concerning the development, and dissemination to institutions of higher education, of best practices information about campus safety and emergencies.

(B) The Secretary shall seek the advice and counsel of the Attorney General of the United States and the Secretary of Health and Human Services concerning the development, and dissemination to institutions of higher education, of best practices information about preventing and responding to incidents of domestic violence, dating violence, sexual assault, and stalking, including

elements of institutional policies that have proven successful based on evidence-based outcome measures.

(17) No officer, employee, or agent of an institution participating in any program under this title shall retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising their rights or responsibilities under any provision of this subsection.

(18) The individual at an institution of higher education that is designated as a responsible employee, as defined in Section 901(e) of the Education Amendments of 1972, shall be considered a campus security authority, as defined in section 668.46(a) of title 34, Code of Federal Regulations.

(19)(A) The Secretary shall, in consultation with the Attorney General, develop, design, and administer through an online portal, a standardized, online survey of students regarding their experiences with sexual violence and harassment. The survey shall be administered every year. The survey shall not include any personally identifiable information. The Secretary shall develop such survey tool using best practices from peer-reviewed research measuring sexual violence and harassment. In addition to the standardized questions developed by the Secretary, institutions completing the survey may request additional information from students that would increase the institutions' understanding of school climate factors unique to their campuses.

(B) In carrying out subparagraph (A), the Secretary shall require each institution participating in any program under this title, to ensure that an adequate, random, and representative sample size of students enrolled at the institution complete the survey described in subparagraph (A) not later than 1 year after the date of enactment of the Campus Accountability and Safety Act.

(C) Responses to the survey shall be submitted confidentially and shall not be included in crime statistics reported under this subsection. In addition, questions should be designed to gather information on survivor experiences, and shall therefore use trauma-informed language to prevent re-traumatization.

(D) The survey described in subparagraph (A) shall include, but is not limited to, the following topics:

(i) Those designed to determine the incidence and prevalence of sexual violence, dating violence, domestic violence, and stalking.

(ii) Those on whether students know about institutional policies and procedures.

(iii) Those on, if victims reported the violence, to whom and what response did they receive and if they were informed of, or referred to, local, State, on-campus, and or national resources.

(iv) Those on contextual factors, such as whether force, incapacitation, or coercion was involved.

(v) Those on whether the assailant was a student.

(vi) Those on whether the victim was referred to local or State law enforcement.

(E) The Secretary shall tabulate and publish an annual report on the information gained from the survey under this paragraph on the website of the Department and submit such report to Congress. The report shall include campus-level data for each school and attributed to the name of each campus.

(20) Not later than 180 days after the date of enactment of the Campus Accountability and Safety Act, the Assistant Secretary for Postsecondary Education of the Department and the Assistant Secretary for Civil Rights of the Department shall jointly develop and make publicly available guidance regarding the intersection between this subsection and title IX of the Education Amendments of 1972, in order to clarify how the provisions of this subsection and such title shall be carried out. The guidance shall include clarifying language on how this subsection and such title IX interact pertaining to sexual violence, and shall clarify and resolve any potential discrepancies or inconsistencies between the two.

(21) Notwithstanding any other provision of this Act, upon determination, after reasonable notice and opportunity for a hearing, that an eligible institution has violated or failed to carry out any provision of this subsection, or agreement made to resolve a compliance review under this subsection, or any regulation prescribed under this subsection, the Secretary may impose a civil penalty upon such institution not to exceed \$150,000, which shall be adjusted for inflation annually, for each violation or misrepresentation, or per month a survey is not completed at the standard required. The Secretary may use any such civil penalty funds to enforce and administer the provisions of this subsection.

(2248) This subsection may be cited as the “Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act”.

Effective one calendar year after enactment.