Making Sense of the Fair Campus and Safe Campus Acts

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About the Program

This summer, two pieces of legislation were introduced which would significantly alter the ways in which colleges and universities are able to respond to sexual violence on campus: the Fair Campus Act (H.R. 3408) and the Safe Campus Act (H.R. 3403). Clearly all student affairs professionals are concerned about the problem of sexual violence on campus. However, the Fair Campus and Safe Campus Acts are of particular interest to fraternity and sorority professionals due to the possible implications of the legislation on the work of their functional areas in addition to those of other campus partners.

Safe Campus Act

- **H.R. 3403**
- Referred to the House Committee on Education and the Workforce.

Safe Campus Act: Educational Programs

- Institutions are "encouraged" to offer educational programs on sexual violence including:
  - Reporting sexual violence,
  - Bystander intervention, and
  - Fostering health relationships.
- Institutions should provide access to these programs:
  - Annually for students
  - As soon as possible for new students.

Learning Outcomes

This presentation will discuss both proposals and discuss how they could alter or change how institutions and headquarters are currently addressing Title IX cases. Upon program completion:

- Participants will be able to summarize the key provisions of the Fair Campus and Safe Campus Acts.
- Participants will be able to discern the provisions of both the Fair Campus and the Safe Campus Act.
- Participants will be able to explain the ways in which the Fair Campus and Safe Campus Acts would change existing federal requirements under Title IX and the Clery Act.
- Participants will be able to describe the next steps in the legislative process for the Fair Campus and Safe Campus Acts.
Safe Campus Act: Support Services
Institutions shall provide appropriate resources for students impacted by sexual violence including:
• Care,
• Support, and
• Guidance

Safe Campus Act: Campus Security Authorities
• Institutions would be prevented from classifying “an adult volunteer advisor to a student organization, or any employee of a student organization who is not also an employee of the institution” as a campus security authority under the Clery Act.
• Institutions would also be prohibited from denying recognition to a group because the advisor will not register as a campus security authority under the Clery Act.

Safe Campus Act: Training
Institutions must provide appropriate annual training on the law to:
• Campus security personnel,
• Campus disciplinary committee members,
• Other relevant institutional personnel, and
• Student resident assistants.

Safe Campus Act: Referral to Law Enforcement
Upon receipt of written consent from the alleged victim, the institution shall report an allegation of sexual violence to local law enforcement within 48 hours.

Safe Campus Act: Confidentiality Request
• Law enforcement does not need to be notified if the alleged victim “provides a written notification to the institution that the individual does not want the allegation to be investigated by a law enforcement agency.”
• However, if the alleged victim requests confidentiality the institution cannot “initiate or otherwise carry out any institutional disciplinary proceeding” (including interim measures).

Safe Campus Act: Law Enforcement Investigation
• During the law enforcement investigation of a sexual violence allegation, the institution may not begin any disciplinary proceedings regarding the allegations, other than interim measures.
• The law enforcement investigation is assumed to last 30 days and an additional 30 day period(s) while the agency continues “to investigate the allegation and that the public interest is best served by preventing the institution from beginning its own investigation and disciplinary proceeding.”
**Safe Campus Act: Title IX Investigation**

- The requirement to complete a timely investigation under Title IX (the 60 day standard) will be interpreted to begin only when the law enforcement agency allows the institution to initiate its disciplinary proceeding.
- An accredited campus police department with sworn officers can carry out this investigation, if authorized by local law enforcement.

**Safe Campus Act: Interim Sanctions**

- Institutions may impose interim sanctions unless the institution “determines that the imposition of such a sanction is a reasonable measure to promote campus safety and student well-being.”
- Students may not be temporarily suspended for more than 15 days which can be extended by 30 days if after a hearing the institution determines “the student poses an immediate threat to campus safety and student well-being.”

**Safe Campus Act: Interim Sanctions**

- Institutions may impose “a temporary suspension for a period of not more than 10 days on the operations” on a student organization.
- Institutions may not impose interim sanctions when the alleged victim and law enforcement request that interim sanctions not be imposed.

**Safe Campus Act: Title IX Safe Harbor**

- The legislation states no institution can be viewed to have violated Title IX for failing to investigate an allegation of sexual violence or delaying its investigation in compliance with these provisions.

**Safe Campus Act: Amnesty**

- Institutions would be prevented from imposing sanctions against any victim of sexual violence or bystander witness “on the grounds that the student engaged in conduct prohibited under the institution’s code of conduct (other than violent conduct).”

**Safe Campus Act: Due Process**

- Institutions cannot impose sanctions on a student or a student organization for an allegation of sexual violence except “under a formal hearing or similar adjudicatory proceeding, in accordance with institutional disciplinary proceedings.”
**Safe Campus Act: Notice**

Institutional disciplinary proceeding must afford students and student organizations facing an allegation of sexual violence the following protections:

- Written notice at least two weeks before the start of the hearing which includes:
  - “Description of all rights and responsibilities,
  - Statement of all relevant details of the allegation, and
  - a specific statement of the sanctions which may be imposed.”

**Safe Campus Act: Due Process**

- The institution must provide every student against who an allegation of sexual violence is made “a meaningful opportunity to admit or contest the allegation.”

**Safe Campus Act: Access to Evidence**

Institutions must provide all parties to hearing have access to all evidence, including “inculpatory and exculpatory evidence,” at least one week in advance including:

- “Complainant statements,
- Third-party witness statements,
- Electronically stored information,
- Written communications,
- Social media posts, and
- Demonstrative evidence.”

**Safe Campus Act: Attorney or Advocates**

- Institutions must allow the parties to be represented by an attorney or advocate at any meeting or proceeding.
- The advocate must be allowed “to ask questions in the proceeding, file relevant papers, examine evidence, and examine witnesses.”

**Safe Campus Act: Confronting Witnesses**

- The institution must allow for the parties to “safely confront witnesses, including the complainant, in an appropriate manner.”
- This can include the submission of written questions to the adjudicator during a disciplinary proceeding.
- The legislation specifically states that the sexual history of the complainant is “presumptive improper” except any sexual history with the accused.

**Safe Campus Act: Conflict of Interest**

The institutions must avoid conflicts of interests as well as comingling roles and functions. No individual shall carry out more than one of the following roles:

- Victim counselor and victim advocate,
- Investigator,
- Prosecutor,
- Adjudicator, or
- Appellate adjudicator.
Safe Campus Act: Standard of Proof

• Institutions may establish any “standard of proof” that the institution considers appropriate.

Safe Campus Act: Judicial Review

• Students sanctioned by institutions for sexual violence may challenge those sanctions in U.S. district court within 1 year.
• The courts can find for the student only if the decision was “arbitrary, capricious, or contrary to law.”
• The courts may award students “compensatory damages, reasonable court costs, attorney fees, including expert fees, and any other relief in equity or law that the court deems appropriate.”

Safe Campus Act: Student Handbook

• Institutions must publish in the student handbook the disciplinary procedures used for resolving allegations of sexual violence.
• Furthermore, these procedures must publish this “statement in the form of a contract between the institution and its students and student organizations.”

Safe Campus Act: Single Sex Exemption

• The legislation would restate Congress’ commitment to the single-sex exemption for student organizations under Title IX.
• The legislation would also prevent any institution of higher education from requiring a single-sex student organization to accept members of the other sex.

Fair Campus Act

• H.R. 3408
• Currently has only 1 co-sponsor, Rep. Susan W. Brooks [R-IN-5].
• Referred to the House Committee on Education and the Workforce.

The Fair Campus Act contains the same or very similar provisions as the Safe Campus Act regarding:

• Education programs,
• Support services,
• Campus security authorities,
• Training,
• Interim sanctions,
• Amnesty,
• Due process,
• Judicial review,
• Student handbook, and
• Single-sex exemption.
**Fair Campus Act: Educational Programs**

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- Institutions may not impose interim sanctions when the alleged victim and law enforcement request that interim sanctions not be imposed.

**Fair Campus Act: Title IX Safe Harbor**

- The legislation states no institution can be viewed to have violated Title IX for deferring its disciplinary proceeding at the request of law enforcement investigating an allegation of sexual violence.

**Fair Campus Act: Amnesty**

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**The Safe Campus & Fair Campus Acts: Next Steps**

- Referred to the House Committee on Education and the Workforce.
- Reauthorization of the Higher Education Act

**The Safe Campus & Fair Campus Acts: Support and Opposition**

**Support**

- North American Interfraternity Conference
- FIRE
- NAS

**Opposition**

- Know Your IX
- SAFEr

**QUESTION & ANSWER**
To amend the Higher Education Act of 1965 to protect victims of sexual violence, to improve the adjudication of allegations related to sexual violence, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

July 29, 2015

Mr. Salmond (for himself, Mr. Sessions, and Ms. Granger) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Higher Education Act of 1965 to protect victims of sexual violence, to improve the adjudication of allegations related to sexual violence, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Safe Campus Act of 2015”.

SEC. 2. INSTITUTION OF HIGHER EDUCATION REQUIREMENTS FOR PROTECTING VICTIMS OF SEXUAL VIOLENCE AND INVESTIGATING AND ADJUDICATING ALLEGATIONS OF SEXUAL VIOLENCE.

(a) In general.—Title I of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) is amended by adding at the end the following new part:

“PART F—TREATMENT OF ALLEGATIONS OF SEXUAL VIOLENCE

SEC. 161. APPLICATION; DEFINITION.

“(a) Application.—The requirements of this part shall apply to any institution of higher education receiving Federal financial assistance under this Act, including financial assistance provided to students under title IV, other than a foreign institution of higher education.

“(b) Definitions.—In this part, the following definitions shall apply:

“(1) Covered allegation.—The term ‘covered allegation’ means, with respect to an institution of higher education, an allegation that a student of the institution committed an act of sexual violence, or that members of a student organization of the institution or the organization itself committed or were involved in creating a hostile environment resulting in an act of sexual violence.
“(2) Institutional disciplinary proceeding.—The term ‘institutional disciplinary proceeding’ means the process by which an institution of higher education investigates and adjudicates a covered allegation and imposes a sanction with respect to the allegation, in accordance with the institution’s own code of conduct or similar internal rules.

“(3) Sexual violence.—The term ‘sexual violence’ means, with respect to an institution of higher education—

“(A) aggravated sexual abuse under section 2241 of title 18, United States Code;

“(B) assault resulting in substantial bodily injury under section 113(a)(7) of title 18, United States Code;

“(C) battery, as defined under the applicable criminal law of the jurisdiction in which the institution is located;

“(D) rape, as defined under the applicable criminal law of the jurisdiction in which the institution is located;

“(E) sexual abuse under section 2242 of title 18, United States Code; and
“(F) sexual assault, as defined under the applicable criminal law of the jurisdiction in which the institution is located.

“SEC. 162. EDUCATION, REPORTING, AND STUDENT CARE STRATEGIES FOR PREVENTING SEXUAL VIOLENCE.

“(a) Education Programs.—

“(1) In general.—Each institution of higher education which is subject to this part is encouraged to provide education programs designed to address sexual violence that, at a minimum, provide training for reporting covered allegations, intervening as a bystander, and fostering development of healthy relationships.

“(2) Access to programs.—The institution is encouraged—

“(A) to provide access to the programs required under this subsection for each student during each academic year; and

“(B) to ensure new students are made aware of the programs and can access them as soon as possible after beginning the course of study at the institution.

“(b) Support Services.—Each institution of higher education which is subject to this part shall devote appro-
appropriate resources for the care, support, and guidance for students affected by sexual violence.

“(c) Role of Volunteer Advisors to Student Organizations.—An institution of higher education which is subject to this part—

“(1) may not designate an adult volunteer advisor to a student organization, or any employee of a student organization who is not also an employee of the institution, as a campus security authority under section 485 or regulations implementing that section; and

“(2) may not deny recognition to a student organization because an advisor or employee described in paragraph (1) does not register or serve as a campus security authority under section 485 or regulations implementing that section.

“(d) Training.—Each institution of higher education which is subject to this part shall provide appropriate annual training to campus security personnel, campus disciplinary committee members, and other relevant institutional personnel regarding the requirements of this part, and shall at a minimum require each student who serves as a resident advisor in housing facilities which are owned or supervised by the institution to participate in this training and demonstrate knowledge of the require-
ments of this section regarding the reporting of allegations to law enforcement agencies and the effects of the confidentiality exception under section 163(a)(2).

"SEC. 163. ROLE OF LAW ENFORCEMENT AGENCIES IN INVESTIGATION OF ALLEGATIONS OF SEXUAL VIOLENCE.

"(a) Referral of Allegations.—

"(1) Referral.—Except as provided in paragraph (2), if an institution of higher education which is subject to this part receives a covered allegation, along with written consent to proceed from the alleged victim, the institution shall report and refer the allegation to the law enforcement agency of the unit of local government with jurisdiction to respond to such allegations in the location of the institution immediately, but not later than 48 hours after receiving written consent from the alleged victim.

"(2) Confidentiality Exception.—

"(A) In general.—Paragraph (1) does not apply if the individual who is the alleged victim of an act of sexual violence included in the covered allegation provides a written notification to the institution that the individual does not want the allegation to be investigated by a law enforcement agency."
“(B) Effect of notification of confidentiality.—If an individual provides a notification to the institution under this paragraph with respect to an allegation, the institution may not initiate or otherwise carry out any institutional disciplinary proceeding with respect to the allegation, including imposing interim measures described in subsection (c), but only if the individual includes in the notification a statement that the individual understands the effect under this subparagraph of providing the notification.

“(b) Restrictions on institutional disciplinary proceedings during period of law enforcement investigation.—

“(1) In general.—During the period in which a law enforcement agency is investigating a covered allegation reported by an institution under subsection (a), the institution may not initiate or otherwise carry out any institutional disciplinary proceeding with respect to the allegation, except to the extent that the institution may impose interim sanctions under subsection (c).

“(2) Period of law enforcement investigation described.—For purposes of this sub-
section and subsection (c), the period in which a law
enforcement agency is investigating an allegation re-
ported under subsection (a) shall be considered—

“(A) the 30-day period beginning on the
date on which the institution reported the alle-
gation to the agency, together with

“(B) any subsequent 30-day period for
which the agency notifies the institution that it
is continuing to investigate the allegation and
that the public interest is best served by pre-
venting the institution from beginning its own
investigation and disciplinary proceeding.

“(3) TOLLING.—For purposes of satisfying any
federally prescribed time period for an institution to
complete an adjudication of an allegation to which
this subsection applies, the time period shall be
deemed to begin upon the expiration of the period in
which the law enforcement agency is investigating
the allegation, in accordance with this subsection.

“(4) PERMITTING INVOLVEMENT OF ACCRED-
ITED CAMPUS PUBLIC SAFETY DEPARTMENTS.—Not-
withstanding paragraph (1), if an institution of
higher education operates an accredited public safety
department that employs sworn officers, such de-
partment may carry out investigative functions with
respect to an allegation provided to a law enforce-
ment agency under subsection (a) if authorized to do
so by the law enforcement agency.

“(c) PERMITTING INSTITUTION TO IMPOSE INTERIM
SANCTIONS.—

“(1) IN GENERAL.—During the period in which
a law enforcement agency is investigating a covered
allegation reported by an institution under sub-
section (a), the institution may impose interim sanc-
tions against the subject of the allegation with re-
spect to the allegation (including temporary suspen-
sions, no contact orders, adjustments of class sched-
ules, or changes in housing assignments) and carry
out investigations and adjudications with respect to
the imposition of such sanctions, but only if the in-
stitution determines that the imposition of such a
sanction is a reasonable measure to promote campus
safety and student well-being.

“(2) SPECIAL RULES FOR DURATION OF PERI-
ODS OF TEMPORARY SUSPENSIONS.—

“(A) STUDENTS.—Subject to paragraph
(3), if the subject of an allegation is a student,
an institution may impose a temporary suspen-
sion for a period of not more than 15 days as
an interim sanction under this subsection, and
may extend the suspension for additional periods of not more than 30 days per period if, pursuant to a hearing held in accordance with the requirements of section 164 for each such additional period, the institution finds that extension is necessary because the student poses an immediate threat to campus safety and student well-being.

“(B) STUDENT ORGANIZATIONS.—If the subject of an allegation is a student organization, an institution may impose a temporary suspension for a period of not more than 10 days on the operations of the organization as an interim sanction under this subsection, but only if the institution determines that the organization has engaged in activity that presents a significant risk to the health and physical safety of campus community members, and that the imposition of the suspension is not done merely for punitive purposes.

“(3) PERIOD IN WHICH INTERIM SANCTION IS IN EFFECT.—An interim sanction imposed under this subsection with respect to an allegation shall terminate upon the expiration of the period in which a law enforcement agency is investigating the allega-
tion (as described in subsection (b)), except that if
an indictment has been issued with respect to the al-
legation and the subject of the allegation is a stu-
dent, the institution may continue the sanction, in-
cluding a temporary suspension the duration of
which would otherwise be limited under paragraph
(2)(A), until the completion of the case or the com-
pletion of any sentence imposed.

“(4) Prohibiting imposition of interim
sanctions upon joint request of alleged vic-
tim and law enforcement.—In addition to the
period described in subsection (b)(2), an institution
may not impose an interim sanction under this sub-
section with respect to a covered allegation during
any period for which the alleged victim and the law
enforcement agency which is investigating the allega-
tion submit a joint request to the institution to not
impose such an interim sanction.

“(d) Safe Harbors.—

“(1) Institutions.—No institution of higher
education which is subject to this part shall be con-
sidered to have violated any provision of title IX of
the Education Amendments of 1972 (20 U.S.C.
1681 et seq.) or any policy or regulation imple-
menting any such provision on the grounds that the
institution did not investigate or adjudicate a covered allegation, or did not impose any sanction with respect to a covered allegation, to the extent that the institution was prohibited under this section from initiating or carrying out any institutional disciplinary proceeding with respect to the allegation.

“(2) Students.—An institution of higher education which is subject to this part may not impose a sanction on a student who is a victim of, or a bystander witness to, an act of sexual violence on the grounds that the student engaged in conduct prohibited under the institution’s code of conduct (other than violent conduct) if the institution learned that the student engaged in such conduct as part of a report of a covered allegation which was made in good faith by the student to an agent of the institution.

“(e) Privacy.—It shall not be a violation of section 444 of the General Education Provisions Act (commonly known as the ‘Family Educational Rights and Privacy Act of 1974’) (20 U.S.C. 1232g) for an institution of higher education to report an allegation to a law enforcement agency under subsection (a).

“(f) No Effect on Civil Remedies.—Nothing in this section may be construed to limit the authority of any
person to seek a civil remedy in a court of competent juris-
diction with respect to any covered allegation.

"SEC. 164. DUE PROCESS REQUIREMENTS FOR INSTITU-
TIONAL DISCIPLINARY PROCEEDINGS.

“(a) DUE PROCESS RIGHTS.—Each institution of
higher education which is subject to this part may not im-
pose any sanction on any person, including a student orga-
nization, in response to a covered allegation unless the
sanction is imposed under a formal hearing or similar ad-
judicatory proceeding, in accordance with institutional dis-
циплинеary proceedings that meet each of the following re-
quirements:

“(1) The institution shall provide all parties to
the proceeding with adequate written notice of the
allegation not later than 2 weeks prior to the start
of any formal hearing or similar adjudicatory pro-
ceeding, and shall include in such notice a descrip-
tion of all rights and responsibilities under the pro-
ceeding, a statement of all relevant details of the al-
legation, and a specific statement of the sanctions
which may be imposed.

“(2) The institution shall provide each person
against whom the allegation is made with a mean-
ingful opportunity to admit or contest the allegation.
“(3) The institution shall ensure that all parties to the proceeding have access to all material evidence, including both inculpatory and exculpatory evidence, not later than one week prior to the start of any formal hearing or similar adjudicatory proceeding. Such evidence may include but is not limited to complainant statements, third-party witness statements, electronically stored information, written communications, social media posts, and demonstrative evidence.

“(4) The institution shall permit each party to the proceeding to be represented, at the sole expense of the party, by an attorney or other advocate for the duration of the proceeding, including during the investigation of the allegation and other preliminary stages prior to a formal hearing or similar adjudicatory proceeding, and shall permit the attorney or other advocate to ask questions in the proceeding, file relevant papers, examine evidence, and examine witnesses (subject to paragraph (5)).

“(5) The institution shall permit each party to the proceeding to safely confront witnesses, including the complainant, in an appropriate manner, including by submitting written questions to be asked by the person serving as the adjudicator in any for-
mal hearing or similar adjudicatory proceeding, except that it shall be presumptively improper for any person to make any inquiry about the sexual history of the individual reporting the covered allegation (other than an inquiry made by the individual against whom the allegation is made, or such individual’s counsel or advocate, about the sexual history between such individual and the individual reporting the covered allegation).

“(6) The institution shall ensure that the proceeding is carried out free from conflicts of interest by ensuring that there is no commingling of administrative or adjudicative roles. For purposes of this paragraph, an institution shall be considered to commingle such roles if any individual carries out more than one of the following roles with respect to the proceeding:

“(A) Victim counselor and victim advocate.
“(B) Investigator.
“(C) Prosecutor.
“(D) Adjudicator.
“(E) Appellate adjudicator.

“(b) STANDARD OF PROOF.—An institution of higher education may establish and apply such standard of proof as it considers appropriate for purposes of any adjudica-
tion carried out as part of an institutional disciplinary pro-
ceeding under this section.

“(c) Judicial Review.—

“(1) Private right of action.—Any indi-
vidual who is aggrieved by a decision to impose a
sanction under an institutional disciplinary pro-
ceeding under this section may bring a civil action
in an appropriate district court of the United States,
but only if the action is brought not later than 1
year after the date on which the individual received
final notice of the sanction imposed on the individual
under the proceeding.

“(2) Standard for review.—In any action
brought under this subsection, the court may find
for the plaintiff only if the court finds that the im-
position of the sanction was arbitrary, capricious, or
contrary to law.

“(3) Records.—As soon as practicable after a
civil action is filed under this subsection, the institu-
tion of higher education involved shall forward the
administrative record of the institutional disciplinary
proceeding to the court.

“(4) Damages and prevailing party
fees.—In any civil action under this subsection, the
court may award the prevailing party (other than
the institution of higher education) compensatory
damages, reasonable court costs, attorney fees, in-
cluding expert fees, and any other relief in equity or
law that the court deems appropriate.

“(d) Publication in Student Handbook.—Each
institution of higher education which is subject to this part
shall publish annually in the institution’s Student Hand-
book (or equivalent publication) a statement of the proce-
dures applicable to institutional disciplinary proceedings
under this section, and shall publish such statement in the
form of a contract between the institution and its students
and student organizations.

“(e) No Right to Paid Advocate.—Nothing in
this section shall be construed to create a right for any
individual to be represented by an attorney or other advo-
cate at an institution of higher education’s expense.

“SEC. 165. PRESERVATION OF SINGLE-SEX EXEMPTION FOR
STUDENT ORGANIZATIONS.

“(a) Restatement of Congressional Position
on Title IX and Single-Sex Organizations.—Con-
gress finds as follows:

“(1) The enactment of title IX of the Education
Amendments of 1972 (commonly known as ‘title
IX’) continues to be a vital element of ensuring all
Americans have equal access to higher education.
“(2) The exemption under title IX that allows single-sex organizations to continue to flourish at institutions of higher education is still essential to developing a wide range of enrichment opportunities for students to learn and grow.

“(3) While title IX has done much to provide opportunities for women and men alike, the single-sex exemption is a part of that tapestry of opportunities, and institutions of higher education may not take actions that undermine this single-sex exemption.

“(b) Prohibiting Institutions From Requiring Single-Sex Student Organizations To Waive Title IX Protections.—An institution of higher education which is subject to this part may not—

“(1) require a student organization which is authorized under section 901(a)(6)(A) of the Education Amendments of 1972 (20 U.S.C. 1681(a)(6)(A)) to limit its membership to individuals of one sex to admit individuals as members who do not meet the organization’s membership requirements;

“(2) compel a student organization or the governing body of a student organization that is itself comprised of single-sex organizations to accept orga-
organizations or individuals that do not meet the organization’s or governing body’s membership qualifications; or

“(3) require an organization which is covered by section 901(a)(6)(A) of the Education Amendments of 1972 (20 U.S.C. 1681(a)(6)(A)) to waive its coverage under such section as a disciplinary or punitive measure.”.

(b) EFFECTIVE DATE.—The amendments made by this Act shall apply with respect to allegations made on or after the expiration of the 1-year period that begins on the date of the enactment of this Act.
Student reports sexual misconduct.
Student can access support services.

Student wishes to report anonymously.
IHE must report for Clery purposes.

IHE cannot report to police, investigate, adjudicate, or enforce interim measures.

Student reports sexual misconduct.
IHE can impose interim measures short of suspension; cannot investigate, adjudicate.

Does incident constitute criminal activity?
Does constitute criminal activity.

Police investigation is complete or they relinquish exclusive jurisdiction.

Police decide not to pursue criminal case.
Police have 30-day exclusive jurisdiction.

Police decide to pursue criminal case.
Police investigation is ongoing.

Police may retain their exclusive jurisdiction by notifying the IHE that its investigation is ongoing and a short extension is needed before allowing a campus investigation.

Police investigation is complete or they relinquish exclusive jurisdiction.
Police possesses jurisdiction, can investigate and adjudicate.

IHE possesses jurisdiction, can investigate and adjudicate.

IHE possesses jurisdiction, can investigate and adjudicate.

IHE possesses jurisdiction, can investigate and adjudicate.

IHE possesses jurisdiction, can investigate and adjudicate.
To amend the Higher Education Act of 1965 to protect victims of sexual violence, to improve the adjudication by institutions of higher education of allegations related to sexual violence, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2015

Mr. Sessions (for himself and Mrs. Brooks of Indiana) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Higher Education Act of 1965 to protect victims of sexual violence, to improve the adjudication by institutions of higher education of allegations related to sexual violence, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fair Campus Act of 2015”.

SEC. 2. INSTITUTION OF HIGHER EDUCATION REQUIREMENTS FOR PROTECTING VICTIMS OF SEXUAL VIOLENCE AND INVESTIGATING AND ADJUDICATING ALLEGATIONS OF SEXUAL VIOLENCE.

(a) In general.—Title I of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) is amended by adding at the end the following new part:

“PART F—TREATMENT OF ALLEGATIONS OF SEXUAL VIOLENCE

“SEC. 161. APPLICATION; DEFINITION.

“(a) Application.—The requirements of this part shall apply to any institution of higher education receiving Federal financial assistance under this Act, including financial assistance provided to students under title IV, other than a foreign institution of higher education.

“(b) Definitions.—In this part, the following definitions shall apply:

“(1) Covered allegation.—The term ‘covered allegation’ means, with respect to an institution of higher education, an allegation that a student of the institution committed an act of sexual violence, or that members of a student organization of the institution or the organization itself committed or were involved in creating a hostile environment resulting in an act of sexual violence.
“(2) Institutional disciplinary proceeding.—The term ‘institutional disciplinary proceeding’ means the process by which an institution of higher education investigates and adjudicates a covered allegation and imposes a sanction with respect to the allegation, in accordance with the institution’s own code of conduct or similar internal rules.

“(3) Sexual violence.—The term ‘sexual violence’ means, with respect to an institution of higher education—

“(A) aggravated sexual abuse under section 2241 of title 18, United States Code;

“(B) assault resulting in substantial bodily injury under section 113(a)(7) of title 18, United States Code;

“(C) battery, as defined under the applicable criminal law of the jurisdiction in which the institution is located;

“(D) rape, as defined under the applicable criminal law of the jurisdiction in which the institution is located;

“(E) sexual abuse under section 2242 of title 18, United States Code; and
“(F) sexual assault, as defined under the applicable criminal law of the jurisdiction in which the institution is located.

"SEC. 162. EDUCATION, REPORTING, AND STUDENT CARE STRATEGIES FOR PREVENTING SEXUAL VIOLENCE.

“(a) Education Programs.—

“(1) In general.—Each institution of higher education which is subject to this part is encouraged to provide education programs designed to address sexual violence that, at a minimum, provide training for reporting covered allegations, intervening as a bystander, and fostering development of healthy relationships.

“(2) Access to programs.—The institution is encouraged—

“(A) to provide access to the programs required under this subsection for each student during each academic year; and

“(B) to ensure new students are made aware of the programs and can access them as soon as possible after beginning the course of study at the institution.

“(b) Support Services.—Each institution of higher education which is subject to this part shall devote appro-
priate resources for the care, support, and guidance for
students affected by sexual violence.

“(c) Role of Volunteer Advisors to Student Organizations.—An institution of higher education
which is subject to this part—

“(1) may not designate an adult volunteer advi-
sor to a student organization, or any employee of a
student organization who is not also an employee of
the institution, as a campus security authority under
section 485 or regulations implementing that sec-
tion; and

“(2) may not deny recognition to a student or-
organization because an advisor or employee described
in paragraph (1) does not register or serve as a
campus security authority under section 485 or reg-
ulations implementing that section.

“(d) Training.—Each institution of higher edu-
cation which is subject to this part shall provide appro-
priate annual training to campus security personnel, cam-
pus disciplinary committee members, and other relevant
institutional personnel regarding the requirements of this
part, and shall at a minimum require each student who
serves as a resident advisor in housing facilities which are
owned or supervised by the institution to participate in
this training.
"SEC. 163. DUE PROCESS REQUIREMENTS FOR INSTITUTIONAL DISCIPLINARY PROCEEDINGS.

“(a) Due Process Rights.—Except as provided with respect to interim sanctions under section 164, each institution of higher education which is subject to this part may not impose any sanction on any person, including a student organization, in response to a covered allegation which is reported to the institution unless the sanction is imposed under a formal hearing or similar adjudicatory proceeding, in accordance with institutional disciplinary proceedings that meet each of the following requirements:

“(1) The institution shall provide all parties to the proceeding with adequate written notice of the allegation not later than 2 weeks prior to the start of any formal hearing or similar adjudicatory proceeding, and shall include in such notice a description of all rights and responsibilities under the proceeding, a statement of all relevant details of the allegation, and a specific statement of the sanctions which may be imposed.

“(2) The institution shall provide each person against whom the allegation is made with a meaningful opportunity to admit or contest the allegation.

“(3) The institution shall ensure that all parties to the proceeding have access to all material evidence, including both inculpatory and exculpatory
evidence, not later than one week prior to the start of any formal hearing or similar adjudicatory proceeding. Such evidence may include but is not limited to complainant statements, third-party witness statements, electronically stored information, written communications, social media posts, and demonstrative evidence.

“(4) The institution shall permit each party to the proceeding to be represented, at the sole expense of the party, by an attorney or other advocate for the duration of the proceeding, including during the investigation of the allegation and other preliminary stages prior to a formal hearing or similar adjudicatory proceeding, and shall permit the attorney or other advocate to ask questions in the proceeding, file relevant papers, examine evidence, and examine witnesses (subject to paragraph (5)).

“(5) The institution shall permit each party to the proceeding to safely confront witnesses, including the complainant, in an appropriate manner, including by submitting written questions to be asked by the person serving as the adjudicator in any formal hearing or similar adjudicatory proceeding, except that it shall presumptively improper for any person to make any inquiry about the sexual history
of the individual reporting the covered allegation (other than an inquiry made by the individual against whom the allegation is made, or such individual’s counsel or advocate, about the sexual history between such individual and the individual reporting the covered allegation).

“(6) The institution shall ensure that the proceeding is carried out free from conflicts of interest by ensuring that there is no commingling of administrative or adjudicative roles. For purposes of this paragraph, an institution shall be considered to commingle such roles if any individual carries out more than one of the following roles with respect to the proceeding:

“(A) Victim counselor and victim advocate.

“(B) Investigator.

“(C) Prosecutor.

“(D) Adjudicator.

“(E) Appellate adjudicator.

“(b) STANDARD OF PROOF.—An institution of higher education may establish and apply such standard of proof as it considers appropriate for purposes of any adjudication carried out as part of an institutional disciplinary proceeding under this section.

“(c) JUDICIAL REVIEW.—
“(1) Private right of action.—Any individual who is aggrieved by a decision to impose a sanction under an institutional disciplinary proceeding under this section may bring a civil action in an appropriate district court of the United States, but only if the action is brought not later than 1 year after the date on which the individual received final notice of the sanction imposed on the individual under the proceeding.

“(2) Standard for review.—In any action brought under this subsection, the court may find for the plaintiff only if the court finds that the imposition of the sanction was arbitrary, capricious, or contrary to law.

“(3) Records.—As soon as practicable after a civil action is filed under this subsection, the institution of higher education involved shall forward the administrative record of the institutional disciplinary proceeding to the court.

“(4) Damages and prevailing party fees.—In any civil action under this subsection, the court may award the prevailing party (other than the institution of higher education) compensatory damages, reasonable court costs, attorney fees, in-
including expert fees, and any other relief in equity or law that the court deems appropriate.

“(d) Publication in Student Handbook.—Each institution of higher education which is subject to this part shall publish annually in the institution’s Student Handbook (or equivalent publication) a statement of the procedures applicable to institutional disciplinary proceedings under this section, and shall publish such statement in the form of a contract between the institution and its students and student organizations.

“(e) No Right to Paid Advocate.—Nothing in this section shall be construed to create a right for any individual to be represented by an attorney or other advocate at an institution of higher education’s expense.

“SEC. 164. SPECIAL RULES FOR IMPOSITION OF INTERIM SANCTIONS.

“(a) Permitted Institution To Impose Interim Sanctions.—

“(1) In General.—Notwithstanding section 163, an institution may impose interim sanctions against the subject of the allegation with respect to the allegation (including temporary suspensions, no contact orders, adjustments of class schedules, or changes in housing assignments) and carry out investigations and adjudications with respect to the
imposition of such sanctions, but only if the institution determines that the imposition of such a sanction is a reasonable measure to promote campus safety and student well-being.

“(2) Special rules for duration of periods of temporary suspensions.—

“(A) Students.—Subject to paragraph (3), if the subject of an allegation is a student, an institution may impose a temporary suspension for a period of not more than 15 days as an interim sanction under this subsection, and may extend the suspension for additional periods of not more than 30 days per period if, pursuant to a hearing held in accordance with the requirements of section 163 for each such additional period, the institution finds that extension is necessary because the student poses an immediate threat to campus safety and student well-being.

“(B) Student organizations.—If the subject of an allegation is a student organization, an institution may impose a temporary suspension for a period of not more than 10 days on the operations of the organization as an interim sanction under this subsection, but
only if the institution determines that the organization has engaged in activity that presents a significant risk to the health and physical safety of campus community members, and that the imposition of the suspension is not done merely for punitive purposes.

“(3) Period in which interim sanction is in effect.—An interim sanction imposed under this subsection with respect to an allegation shall terminate no later than the conclusion of the proceedings carried out in accordance with section 163.

“(4) Prohibiting imposition of interim sanctions upon joint request of alleged victim and law enforcement.—An institution may not impose an interim sanction under this subsection with respect to a covered allegation during any period for which the alleged victim and the law enforcement agency which is investigating the allegation submit a joint request to the institution to not impose such an interim sanction.

“(b) Safe Harbors.—

“(1) Institutions.—No institution of higher education which is subject to this part shall be considered to have violated any provision of title IX of the Education Amendments of 1972 (20 U.S.C.
1681 et seq.) or any policy or regulation implement-
ing any such provision on the grounds that the
institution deferred to a law enforcement investi-
gation at the request of law enforcement personnel, to
the extent that the institution was prohibited under
this section from initiating or carrying out any insti-
tutional disciplinary proceeding with respect to the
allegation.

“(2) STUDENTS.—An institution of higher edu-
cation which is subject to this part may not impose
a sanction on a student who is a victim of, or a by-
stander witness to, an act of sexual violence on the
grounds that the student engaged in conduct prohib-
ited under the institution’s code of conduct (other
than violent conduct) if the institution learned that
the student engaged in such conduct as part of a re-
port of a covered allegation which was made in good
faith by the student to an agent of the institution.

“(c) NO EFFECT ON CIVIL REMEDIES.—Nothing in
this section or section 163 may be construed to limit the
authority of any person to seek a civil remedy in a court
of competent jurisdiction with respect to any covered alle-
gation.
"SEC. 165. PRESERVATION OF SINGLE-SEX EXEMPTION FOR
STUDENT ORGANIZATIONS.

“(a) Restatement of Congressional Position

on Title IX and Single-Sex Organizations.—Con-
gress finds as follows:

“(1) The enactment of title IX of the Education

Amendments of 1972 (commonly known as ‘title
IX’) continues to be a vital element of ensuring all
Americans have equal access to higher education.

“(2) The exemption under title IX that allows

single-sex organizations to continue to flourish at in-
stitutions of higher education is still essential to de-
veloping a wide range of enrichment opportunities
for students to learn and grow.

“(3) While title IX has done much to provide

opportunities for women and men alike, the single-
sex exemption is a part of that tapestry of opportu-
nities, and institutions of higher education may not
take actions that undermine this single-sex exemp-
tion.

“(b) Prohibiting Institutions From Requiring
Single-Sex Student Organizations To Waive Title
IX Protections.—An institution of higher education
which is subject to this part may not—

“(1) require a student organization which is au-
thorized under section 901(a)(6)(A) of the Edu-
cation Amendments of 1972 (20 U.S.C. 1681(a)(6)(A)) to limit its membership to individuals of one sex to admit individuals as members who do not meet the organization’s membership requirements;

“(2) compel a student organization or the governing body of a student organization that is itself comprised of single-sex organizations to accept organizations or individuals that do not meet the organization’s or governing body’s membership qualifications; or

“(3) require an organization which is covered by section 901(a)(6)(A) of the Education Amendments of 1972 (20 U.S.C. 1681(a)(6)(A)) to waive its coverage under such section as a disciplinary or punitive measure.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to allegations made on or after the expiration of the 1-year period that begins on the date of the enactment of this Act.
INDIANAPOLIS – As a premier advocacy organization for women and the sorority experience, the National Panhellenic Conference (NPC) announces its full support of the Safe Campus Act of 2015 sponsored by U.S. Rep. Matt Salmon (R-Ariz.) and co-sponsored by U.S. Reps. Kay Granger (R-Texas) and Pete Sessions (R-Texas), and the Fair Campus Act of 2015 sponsored by U.S. Rep. Pete Sessions (R-Texas) and co-sponsored by U.S. Rep. Susan Brooks (R-Ind.). Sexual violence is a crime and NPC is committed to playing a part in this important dialogue.

Sexual violence on campus has reached new levels of national attention and dialogue requiring thoughtful solutions to address concerns. Student leaders, campus officials and other important stakeholders in the higher education community are actively debating policy solutions to handle sexual violence occurrences, ensuring that victims have appropriate resources to cope with the traumatic impact of sexual violence, and to ensure that institution and law enforcement roles are clearly delineated.

As a caring community representing tens of thousands of women who are confronted with this crime – or have sisters and friends who may have been assaulted – NPC endorses the legislation and applauds Congress and all those taking the lead to create positive change and treat sexual violence as a crime.

The Safe Campus Act and Fair Campus Act address vital issues in a balanced, just manner that respects the rights of alleged student victims and all those affected by acts of sexual violence. In addition to addressing the rights of victims, the legislation would ensure that:

- Institutions of higher education (IHEs) are empowered with the ability to select the standard of evidence to govern Title IX adjudications that is most appropriate for their campus – a right the Department of Education effectively withdrew from IHEs in 2011 without notice or comment.
- All parties involved in a campus sexual violence adjudication have a uniform set of due process protections so they may choose representation by counsel who can safely confront witnesses and parties in an appropriate manner and have timely access to charges and all evidence.
- Nearly every American college and university has a comprehensive framework to address complex issues related to sexual violence on campus and provides unprecedented protections to all students who are victims.
- Education is provided on sexual violence prevention, by ensuring that IHEs implement appropriate learning and reporting strategies.
- All relevant components of the campus sexual violence adjudicative process are separate and independent.

For Immediate Release
July 29, 2015

National Panhellenic Conference Endorses
Safe Campus Act and Fair Campus Act Legislation
Premier advocacy organization for women and the sorority experience continues fight against sexual violence by endorsing proposed legislation

- more -
In addition, the Safe Campus Act and Fair Campus Act are also the only pending legislative proposals that would help remove predators from campus, by authorizing IHEs to implement new comprehensive, safety and security measures for alleged sexual violence victims in between a report regarding sexual violence and a disciplinary hearing. They are the only proposed pieces of legislation that will prevent IHEs from punishing student organizations such as fraternities and sororities without a hearing and due process protections for allegations against one or more members. They also strengthen our historic exemption under Title IX of the Education Amendments of 1972 (Title IX).

“We believe sexual violence is one of the most pressing issues facing college and university campuses and students today,” said Jean M. Mrasek, NPC chairman. “As one of the leading organizations of collegiate and alumnae women, we want to contribute to efforts and work collaboratively with others to help identify solutions to this important and complex issue.”

NPC is in the business of empowering women and one of the organization’s goals is to help create safer campuses for all students. NPC also advocates for the larger group of collegiate women who may not have a unified voice.

For more about NPC and its efforts to prevent sexual violence occurrences, visit https://www.npcwomen.org/.

About the National Panhellenic Conference (NPC)
NPC, one of the largest organizations advocating for women, is the umbrella group for 26 national and international sororities. NPC sororities are located on more than 672 campuses with 353,345 undergraduate members in 3,184 chapters. Alumnae are represented in 3,773 associations throughout the world. For more information, including a complete list of NPC sororities, visit https://www.npcwomen.org/ or find NPC on Twitter and Facebook.

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August 12, 2015

The Honorable Matt Salmon
2349 Rayburn House Office Building
Washington, DC 20515

The Honorable Pete Sessions
2233 Rayburn House Office Building
Washington, DC 20515

The Honorable Kay Granger
1026 Longworth House Office Building
Washington, DC 20515

Dear Representatives Salmon, Sessions, and Granger:

The National Alliance to End Sexual Violence (NAESV) is the voice in Washington for the 56 state and territorial sexual assault coalitions and 1300 rape crisis centers working to end sexual violence and support survivors. The Arizona Coalition to End Sexual and Domestic Violence is the statewide coalition representing sexual and domestic violence programs across the state of Arizona. The Texas Association Against Sexual Assault represents 82 rape crisis programs at 116 locations across Texas, which served more than 20,000 Texas victims last year. The local rape crisis centers in our networks see every day the widespread and devastating impacts of campus sexual assault upon survivors. College sexual assault survivors suffer high rates of PTSD, depression, and drug or alcohol abuse, which can hamper both their ability to succeed in school and future employment. At the same time, only a small percentage of these cases are reported, sanctioned by campus judicial boards, or prosecuted, allowing offenders to go without punishment as well as creating an unsafe environment for students.

We write to express our grave concern about The Safe Campus Act of 2015, H.R. 3403, and to apprise you of our opposition to this legislation. H.R. 3403 threatens to undermine the protections of Title IX and the critical progress policy makers, universities, advocates, students and survivors are making to end the scourge of sexual assault on campus.

Public policy responses to campus sexual violence must keep sight of supporting survivors and improving institutional climates so students can grow, learn and thrive. Every student has a right to an education free from sexual violence. In order to encourage educational attainment, we must expand options for survivors, rather than limit them. Sadly, some responsible for creating safe environments for students and responding to sexual assault claim they struggle to distinguish between assault and drunken, regrettable sex. We ask you to see this claim for the distraction that it is. In truth, the vast majority of sexual violence incidents are never reported to anyone in authority, either through the university or criminal justice systems. Furthermore, false reporting rates for sexual assault are low and consistent with other crimes.

Unfortunately, H.R. 3403 undermines the protections of Title IX and the Clery Act; puts students at risk of harm; and fails to hold institutions accountable for creating safe environments for young people. The Department of Education’s Title IX sexual assault guidance and the Clery Act with Campus SaVE amendments are critically important tools to support survivors, increase institutional transparency, hold individual offenders accountable...
and improve community safety. Recognizing that individual survivors find themselves in unique circumstances with varying and changing needs, Title IX requirements have developed to expand options and methods of support for survivors on campus. For many survivors, that includes a criminal justice response, and for many others it does not. In the same spirit of survivor trust and empowerment, the recent Campus SaVE amendments to the Clery Act require schools to inform survivors of their option to report to police, or not to report, and provide assistance and access to interim measures in either case. NAESV surveyed student survivors with Know Your IX in March 2015. Almost 90% of survivors responded “yes,” they should retain the choice whether and to whom to report. When asked their concerns if reporting to police were mandatory, 79% said, “this could have a chilling effect on reporting,” while 72% were concerned that “survivors would be forced to participate in the criminal justice system/go to trial.”

Recently, much has been made of schools’ authority to sanction students up to expulsion for sexual misconduct violations, based on a preponderance of the evidence presented in internal administrative hearings. We find this concern and conclusion unwarranted, question why the concern is raised specifically related to sexual assault determinations, and oppose provisions in H.R. 3403 to allow institutions to determine their own burden of proof and make the campus disciplinary process overly onerous. These are not criminal trials, and the preponderance standard is in keeping with other similar civil and administrative proceedings. Long before Title IX, colleges and universities exercised authority to sanction their students for policy violations, regardless of whether the conduct also constitutes a crime. Schools can suspend, expel, or impose a myriad of other sanctions for violations ranging from theft to drug use to physical assaults. But, unlike sexual misconduct, due process concerns are rarely raised in these cases. There is also ample legal precedent for administrative responses to sexual misconduct in non-educational settings. Under Title VII, employers—including colleges and universities—must conduct their own investigations of sexual harassment complaints and take remedial actions, often including terminating an employee found responsible for harassment.

Survivors must be informed of the avenues and procedures for reporting as well as advocacy assistance in making and following through with reports. Even so, some survivors will choose not to report to law enforcement, and we oppose provisions in your legislation that prevent institutions from responding appropriately when survivors choose not to engage the criminal justice process.

For those survivors who choose to report to law enforcement, we must acknowledge the fact that 5% or less of reported sexual assaults will be brought to trial. Yet your legislation suggests that this process be complete before institutions may act to protect students. Waiting for a case to go to trial will mean that perpetrators graduate without consequences, while survivors drop out of school to avoid contact with perpetrators. Again, criminal justice and campus proceedings are fundamentally different processes designed to address different problems and accomplish different goals. Campuses are obligated to determine whether or not a student violated school policy and to protect the civil rights of the victim. There is no reason to conflate the two responses or suggest that either fulfills the purpose of the other. It is dangerous to require that a trial occur before campuses contemplate disciplinary proceedings against those accused of sexual assault. Such a policy only places greater safety risks on the campus community, by failing to address harmful behaviors and policy violations perpetrated by fellow students.
Ultimately, we hope we all share the same goal: to make campuses safer and to support students on campus with a fair process that adequately addresses policy violations. It is essential for campuses to provide a safe environment for learning for all students by rigorously investigating reported sexual assaults and proactively looking for patterns of perpetration. Your legislation seeks to undo many of the tools developed to help institutions fulfill this responsibility. For these reasons, we must respectfully oppose H.R. 3403. We would be happy to discuss our concerns with you.

Sincerely,

Monika Johnson Hostler  
President  
National Alliance to End Sexual Violence

Annette Burrhus Clay  
Executive Director  
Texas Association Against Sexual Assault

Allie Bones  
Executive Director  
Arizona Coalition to End Sexual and Domestic Violence