

# Summary and Analysis of the Campus Accountability and Safety Act<sup>1</sup>

Stop Abusive and Violent Environments

August 1, 2014

## OVERVIEW:

The stated objectives of the proposed Campus Accountability and Safety Act (CASA) are to:<sup>2</sup>

- Establish new campus resources and support services for students alleging sexual assault
- Ensure minimum training for on-campus personnel
- Create new reporting requirements
- Increase coordination with law enforcement
- Establish enforceable Title IX penalties and stiffer penalties for Clery Act violations

The CASA bill has a number of commendable provisions:

1. Expand reporting requirements
2. Establish a memorandum of understanding with local law enforcement to clarify responsibilities
3. Improve the training of persons involved in implementing the institution's grievance procedures
4. Employ a uniform campus-wide process for disciplinary proceedings

But the CASA bill fails to address the most glaring problem with the existing system: *An over-reliance on ill-equipped campus disciplinary committees that lack the legal authority to properly investigate, adjudicate, and impose sanctions for sexual assault cases.* As a result, victims, the accused, and universities end up being shortchanged. And the number of lawsuits and complaints will likely continue to increase.<sup>3</sup>

The CASA bill is flawed for other reasons:

1. Introduces a new figure into the resolution process called a "confidential advisor." The "confidential advisor" would serve as an investigator, advisor, and advocate for the accuser. The advisor could require the university to make a broad range of

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<sup>1</sup> [http://media.wix.com/ugd/81633a\\_90ee12e2661947c982f378b2130cf28c.pdf](http://media.wix.com/ugd/81633a_90ee12e2661947c982f378b2130cf28c.pdf)

<sup>2</sup> <http://www.scribd.com/doc/235449362/CASA-One-Pager>

<sup>3</sup> <http://www.saveservices.org/wp-content/uploads/Campus-Sexual-Assault-Lawsuits.pdf>

accommodations, even without verification of the accuser's claims. Designating the same person to fulfill both investigative and advocacy responsibilities is worrisome.

2. Accords the accuser veto power in determining whether to report, and what to report, to campus groups or criminal justice authorities.<sup>4</sup> This would have the effect of reducing the role of criminal justice system, thus weakening the overall societal mandate to combat crime.
3. Introduces a new procedure into the legal lexicon: the "victim-centered, trauma-informed (forensic) interview." This process is clumsily defined as an:  
"evidence-based interview focused on the experience of the victim, conducted by a trained forensic interviewer, in which the goal of the interview is to elicit information about the traumatic event in question for use in future investigation." (Sec. 7)  
The fact that the interview would only address "the experience of the victim" and not search for, or likely even consider, evidence that contradicts the accuser's claims, reveals the overt bias embedded in this concept.
4. Gives short-shrift to the numerous due process violations under the current regulatory regime<sup>5</sup> and undermines the presumption of innocence by conflating the words "accuser" and "victim."
5. Does not provide definitions for key terms such as "sexual assault," "harassment," "sexual violence," and others.
6. Flatly ignores the need of the accused student to receive advice or assistance to investigate the case.

#### Recommendation:

As currently drafted, CASA fails to properly engage the criminal justice system to support victims, removes the presumption of innocence from the accused, and leaves universities in the untenable situation of being required to adjudicate felony crimes.

For these reasons, Stop Abusive and Violent Environments opposes passage of the Campus Accountability and Safety Act. Instead, SAVE recommends passage of the Safety of Our Students Act.<sup>6</sup> See full analysis beginning on the next page.

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<sup>4</sup> <http://www.mindingthecampus.com/2014/07/campus-due-process-has-no-lobby-tribunals/>

<sup>5</sup> <http://legalinsurrection.com/2014/08/due-process-for-accused-not-a-priority-in-campus-sexual-assault-reform/>

<sup>6</sup> <http://www.saveservices.org/camp/campus-rape-courts/>

## ANALYSIS:

Section/ Sub-section	Provision	Analysis
Sec. 1	<b>Title: Campus Accountability and Safety Act</b>	
Sec. 2	<b>Amendments to the Clery Act</b>	
(1)	Requirement to annually report the number of: cases investigated, referred for a disciplinary proceeding, referred to local law enforcement, persons found responsible, and persons sanctioned.	Helpful.
(2)	Requirement to classify reported incidents according to the FBI National Incident-Based Reporting System or the Uniform Crime Reporting Program	Helpful.
(3)	Requirement for educational programs to consult with local, state, and national sexual assault, domestic violence, and law enforcement programs.	Problematic, given the well-documented ideological biases of many sexual assault and domestic violence programs. <sup>7</sup>
(5)	(A) – (D) Requirement for universities to implement an annual “standardized, online survey of students regarding their experiences with sexual violence and harassment.”	Potentially helpful, but will be costly to administer and analyze the data in a scientifically valid manner.  Survey is biased -- also needs to assess the prevalence of false allegations, since previous surveys have found one in 10 persons report they have been falsely accused. <sup>8</sup>
(5)	(E)(20) Clarification of the intersection between the CASA law and Title IX requirements	Very important.
(5)	(E)(21) Imposition of civil fines of up to \$150,000 for each incident of non-compliance.	Adjusting the level of the fines according to the severity of the infraction is appropriate.
Sec. 3	<b>Coordination with Local Law Enforcement</b>	
124	Requirement to establish a memorandum of understanding with local law enforcement agencies “to clearly	Useful provision, but doesn’t go far enough in mandating the referral of criminal cases to local law

<sup>7</sup> <http://www.saveservices.org/downloads/SAVE-DV-Educational-Programs>

<sup>8</sup> <http://www.saveservices.org/false-accused/survey/>

	<p>delineate responsibilities” regarding investigative, communication, training, and sharing of information.</p> <p>Imposition of civil fines of up to 1% of the institution’s operating budget.</p>	<p>enforcement.</p> <p>Also undermines the presumption of innocence by conflating “victim” with “accuser.”</p> <p>Gives the “victim” veto power to prevent the disclosure of crime information, which could undermine societal crime control mandates.</p>
Sec. 4	<b>University Support for Survivors of Sexual Violence</b>	
125	<p>(1) Requirement to designate “confidential advisors” “to whom victims of crime can report anonymously or directly.”</p> <p>Imposition of civil fines of up to 1% of an institution’s operating budget.</p>	<p>This section is extremely problematic because there is no accountability to the process and it violates fundamental principles of criminal investigation. Overall:</p> <ol style="list-style-type: none"> <li>1. No statement of the minimum training or qualifications of the confidential advisor.</li> <li>2. Undermines the presumption of innocence by conflating “accuser” with “victim” and “survivor.”</li> <li>3. Assigns investigative, advisory, and advocacy responsibilities to a single person, creating a conflict of interest.</li> <li>4. Ignores the potential problem of subornation of perjury – acting in an advocacy role, the advisor could begin to encourage the accuser to embellish or even fabricate statements, as has occurred in two instances.<sup>9,10</sup></li> </ol>

<sup>9</sup> At Brown University, a residential advisor took an initial claim of “stalking” and convinced the woman to file an allegation of “rape:” <http://www.browndailyherald.com/2011/04/27/emails-underline-rape-procedures-flaws/>

<sup>10</sup> Two Occidental College students had sex while drinking. Afterwards the woman spoke to a college faculty member who stated the man “fits the profile” of a campus rapist by having good grades in high school and coming from “a good family.” Based on this advice, the woman filed a complaint against the man alleging rape: <http://www.thecollegefix.com/post/18162/>

		5. Does not provide any advisory services to the person accused, which serves to alter the balance of evidence to be considered during campus disciplinary proceedings.
125	(C) The confidential advisory “shall be trained to perform a victim-centered, trauma-informed (forensic) interview, which shall focus on the experience of the victim.” The goal of the interview is to “elicit information about the traumatic event in question so that the interview can be used in either a campus or criminal investigation or disciplinary hearing.”	1. Does not require the confidential advisor to attempt to verify any of the accuser’s claims, and implies the accuser’s statements should be taken at face value: “shall focus on the experience of the victim.”  2. States the report of this advocate could be accepted as evidence in a criminal proceeding.
125	(D) The confidential advisor shall “inform the victim of the victim’s control over possible next steps regarding the victim’s reporting options and the consequences of those options.”  (H) “The confidential advisor shall not be obligated to report crimes to the institution or law enforcement, unless otherwise required to do so by State law.”	Undermines societal crime control mandates by giving complete control to the “victim.”
125	(E) The confidential advisor “shall be authorized by the institution to arrange reasonable accommodations through the institution to allow the victim to change living arrangements or class schedules, or obtain accessibility services, and make other changes.”	1. Assigns extremely broad powers to the confidential advisor to demand “reasonable accommodations” for the accuser.  2. Does not delineate how the confidential advisor would be held accountable to the university.
125	(B) The confidential advisor can be a university employee, or come from a “local, State, or national victim services” organization.  (J) “The institution may partner with an outside victim advocacy organization to provide the service described in this subparagraph.”	Involves “outside victim advocacy” groups which are known to often have an ideological or political agenda. <sup>11</sup>

<sup>11</sup> <http://www.saveservices.org/downloads/Abuse-Shelters-doc>

Sec. 5	<b>Program Participation Agreements</b>	
Sec. 6	<b>Enforcement and Training: Subpoena Authority</b>	
	(d) Establishment of a website by the Department of Education listing the Title IX coordinators and Department’s pending investigations	Helpful.
	(e) Training of the university’s “responsible employee” and other individuals involved in implementing an institution’s grievance procedures. The training shall include:  (A) “Information on working with and interviewing persons subjected to sexual violence”  (C) “Information on consent and the role drugs or alcohol can play in the ability to consent”	While training may be helpful, the designated content is biased because of:  1. The implicit assumption in (A) that all accusers have been “subjected to sexual violence”  2. No mention of the identification of false allegations.
	(4) Mandates a uniform campus-wide process for disciplinary proceedings  Imposition of civil fines for non-compliance.	Important.
Sec. 7	<b>Training for Campus Personnel on Victim-Centered Trauma-Informed (Forensic) Interviews</b>	
	Defines the term “victim-centered, trauma-informed (forensic) interview” as an “evidence-based interview focused on the experience of the victim, conducted by a trained forensic interviewer, in which the goal of the interview is to elicit information about the traumatic event in question for use in future investigation.”	The fact that the interview would only address “the experience of the victim,” and not search for or consider evidence that contradicts the accuser’s statements, reveals the biased intention behind this concept.