



National Alliance to
End Sexual Violence

September 5, 2014

To: Sponsors of the Campus Accountability and Safety Act

From: The National Alliance to End Sexual Violence

Regarding: comments on the legislation

[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. Every day, rape crisis centers see the devastating impact of sexual assault. NAESV is encouraged by the commitment of the Administration and Congress to address the problem of sexual violence on college campuses. We see the bipartisan Campus Accountability and Safety Act as an important component of the effort to hold institutions and offenders accountable, provide victims with access to confidential support, and encourage partnerships with local rape crisis centers and state sexual assault coalitions. We appreciate the opportunity to provide comments on a number of specific aspects of the legislation below.

Section 2: Amendments to the Clery Act

With regard to educational programs, the required consultation with national, state and local victim services providers is a priority for NAESV, and we are delighted that it is included. NAESV also supports requiring publication of information on the institution's website, expanded reporting requirements, especially the new requirement related to types of sanctions; standardized climate surveys using trauma-informed language; and the required guidance from DOE about the interactions between the Clery Act and Title IX.

Section 3: Coordination with Local Law Enforcement

Any requirement that institutions have an MOU with local law enforcement must follow the OCR Title IX guidance and be clear that while the legislative intent is that specific cases may only be discussed with the expressed consent and knowledge of the victim when he/she has decided to report, the legislation must also acknowledge that there may be campus safety exceptions of imminent danger to other individuals or to the campus community that require a report. Campuses must create or update protocols to evaluate risk and make a determination based on the information that is available. We are pleased to see that confidentiality is specifically addressed in the legislation, and that if/when a report must be made to protect individual and/or community safety without the survivor's consent, that best practices be followed to ensure the survivor is informed that a report needed to be made and to

transparently communicate to the survivor if/when/how this notification will occur and the next steps in the process of ensuring survivor and community safety.

In keeping with the recommendations of the White House Task Force to Protect Students from Sexual Assault, NAESV further recommends requiring institutions to develop MOUs with local rape crisis centers and/or state sexual assault coalitions. Rape crisis centers and state sexual assault coalitions have essential expertise in addressing both sexual assault intervention and prevention, a thorough knowledge of criminal justice systems and responses to sexual assault, and the strongest standards of victim-centered, confidential advocacy.

A new section should be added to the legislation saying: *“Each institution of higher education that receives funds or any other form of financial assistance under any federal program, including participation in any federally funded or guaranteed student loan program, shall enter into, and update every 2 years, a memorandum of understanding with a local rape crisis center and/or the state sexual assault coalition. The memorandum of understanding may include, but is not limited to: An agreement, including fee structure, for the rape crisis center to provide confidential victim services; an agreement and fee structure for the rape crisis center or state sexual assault coalition to provide case consultation and training to confidential advisors; consultation and provision of prevention education programs; consultation and provision of staff training; development of training and/or prevention curricula; office space for a rape crisis center advocate to meet with victims; review of policies and procedures related to sexual assault; and/or other consultation services.”*

Section 4: University Support for Survivors of Sexual Violence

NAESV cannot support language conflating the confidential advisor role with that of forensic interviewer. While we strongly support training in trauma-informed, forensic investigation for law enforcement and the Title IX coordinator, the confidential advisor should not be tasked with any investigative and/or interviewing duties. Moreover, the confidential advisor should report to someone who is also not a responsible employee so that the advisor is able to adequately advocate for the victim’s needs and seek appropriate guidance. We recommend adding a new sentence to (1)(B), *“The confidential advisor must have a supervisor that is not a responsible employee, and is able to provide objective supervision to support the survivor’s best interests. The institution is required to develop an MOU with a rape crisis center, where available, to provide case consultation for the confidential advisor.”* Survivors must be able to access confidential support that does not relate to their decision whether or not to report and the process of reporting.

For the first sentence of (1)(C), we recommend adding *“support during”* after *“trained to provide”* so that the confidential advisor could provide support to the survivor during the interview but would not be the interviewer. We also strongly recommend striking the second sentence of (1)(C) deleting the role of the confidential advisor in conducting the forensic interview. In (1)(D), we recommend after *“option to conduct a forensic interview”* that the phrase *“with law enforcement”* be added to clarify that this would not be done by the confidential advisor. Finally, we recommend striking from the last sentence of (1)(D) the phrase, *“The confidential advisor shall assist in conducting the forensic interview.”*

In (1)(E), NAESV asks that the confidential advisor also be required to liaise with community-based rape crisis centers and/or the state sexual assault coalition. Specifically, after the phrase “shall liaise with,” we recommend adding, “*a local rape crisis center and/or state sexual assault coalition*” before “campus or local law enforcement.” It is imperative that confidential advisors, if they are not employed by community-based organizations, have the support and expertise of community-based advocates to assist them in their duties. Additionally, NAESV strongly supports the amnesty clause.

In (1)(F), after “The confidential advisor” we recommend adding “*shall be authorized by the institution to be present with the victim, if the victim so desires, during interviews and proceedings and.*” Additionally, here we believe the legislation should be explicit that any accommodations arranged by the confidential advisor don’t limit the institution’s duty to investigate/address sexual harassment. If the victim makes a report to a responsible employee later to pursue administrative action, the school needs to start from square one in considering the victim's needs holistically, irrespective of any previous accommodations.

NAESV is especially supportive of language in (1)(J) noting non-profit victim service providers can fulfill the role of confidential advisor and additionally the clarification that the confidential advisor is not a responsible employee. We further recommend adding the phrase “, *a community-based rape crisis center where available,*” after “provider.”

We agree with (K) allowing smaller institutions to partner with other institutions in the region or state to provide confidential advocacy services. We recommend also encouraging smaller institutions to partner with a rape crisis center or state sexual assault coalition by adding after “with:” “*a rape crisis center, state sexual assault coalition, or.*”

Finally, similar to the special victims counsel programs in the various branches of the United States armed forces, NAESV recommends adding as (6) to this section a requirement that institutions provide victims the ability to seek the advice and support of an attorney in upholding their rights.

Section 6: Enforcement and Training; Subpoena Authority

As an overall comment, NAESV believes it is critically important not to add any language that may undermine existing law and put the judicially-recognized private right of action for Title IX violations or OCR’s existing enforcement authority at risk. Title IX is critically important to combating campus sexual harassment and assault as well as other issues related to sex discrimination, and we strongly recommend working with experts in this area of the law to ensure that nothing in the legislation affects any rights currently available under Title IX.

NAESV believes training for responsible employees is vital, and we especially support the inclusion of language directing institutions to coordinate with local, state and/or national victim service organizations. We additionally support publishing contact information for the Title IX coordinator and information about complaints on the institution’s website and ensuring uniform campus-wide processes for disciplinary proceedings.

In the case that the civil penalty becomes law and OCR has adequate funds to meet their enforcement goals, NAESV recommends language directing funds to be used to support community-based victim

services, prevention and training initiatives at rape crisis centers and/or state sexual assault coalitions. Specifically, in (f)(3) of this section, NAESV recommends adding at the end of the sentence, *“and to support victim services, prevention, and training initiatives.”*

We welcome the opportunity to continue working with you as you refine this legislation and in all your efforts to address campus sexual assault. For further information, please contact Monika Johnson Hostler, NAESV President, at monika@nccasa.org or Terri Poore, NAESV Policy Consultant at (850) 228-3428 or terri@endsexualviolence.org