

## **Campus Accountability and Safety Act – AACC Positions**

Community college leaders strongly support efforts to improve the prevention of, and response to, incidents of sexual harassment and violence that are connected to their institutions. In light of this, AACC supports the overarching goals of the Campus Accountability and Safety Act (CASA), and welcomes the opportunity to work with Congress on its particular provisions.

Community colleges believe that a “one size fits all” approach to addressing this issue is unwarranted, given the significant differences between higher education institutions. There are several salient characteristics of community colleges that inform AACC’s approach to these issues, and should help shape any legislation that addresses them. These include:

- Community college students average 28 years of age, and so are significantly older than traditional college students. Most community college students are financially independent, more than two-thirds of them work (about one third full-time), and many have their own families.
- Community colleges are overwhelmingly commuter institutions. Only 1.2% of the more than 13 million students live in campus housing. (According to the Department of Education, approximately 230 2-year public institutions offer some on-campus housing.) Generally, community colleges are not structured to be and do not serve as a primary locus of students’ social lives. This influences both the nature and prevalence of sexual assault at the institutions.
- According to the data reported under the Clery Act, 70% of forcible sexual offenses committed on college campuses occur in residence halls (28% in the case of community colleges). The offenses occurring in residence halls account for 58% of all such reported offenses (20% in the case of community colleges). As a result, about 12% of all reported criminal offenses occurred at community colleges, including instances of sexual assault (about 7% of all forcible sexual offenses occurred on community college campuses). In contrast, colleges enroll 45% of undergraduates.

### **Top Issues (in general order they appear in legislation):**

- **Notification Requirements:**
  - **Issue:** S. 590 requires institutions to notify both parties to a disciplinary proceeding for sexual assault and other offenses about the outcomes of various stages of a proceeding, including final outcome, within 24 hours. Such a strict time requirement is untenable, as this notification is often made through a legal document that takes more time to prepare correctly.

- **Recommendation:** At least 72 hours, and ideally 120 hours, should be the timeframe for these notifications.
- **Campus Surveys:**
  - **Issue:** CASA requires colleges and ED to administer a campus survey developed by ED about sexual and related crimes. The institution must ensure that it is completed by a random and representative sample of students. The legislation is silent on how this is to be achieved while ensuring confidentiality, which is also required. It also directs ED to administer the survey, causing confusion as to ED's and institutions' respective roles. The law envisions one survey for all types of institutions (though institutions may add questions). This may result in survey questions that are ill-suited to a particular institution type and the students attending them. ED should be directed to use skip logic and similar techniques to ensure that students are asked to answer survey questions that apply to them.
  - **Recommendation:** Charge ED with using skip logic and other customization techniques to ensure that the core survey it develops is adaptable to different institution types and student situations. Surveys should be required to be administered every four years at community colleges and similar institutions, rather than two. Resolve the conflict between anonymity and sample size and representation by requiring institutions to make a good faith effort to maximize response rates.
- **MOUs With Local Police:**
  - **Issue:** Institutions are required to have MOUs in place with local law enforcement agencies to delineate how they will coordinate their responses to sexual violence crimes. CASA attempts to limit the number of agencies with which an institution must have an MOU, but may still require institutions to have MOUs with multiple law enforcement agencies. Waiver authority given to the Secretary of Education (ED) lacks clarity.
  - **Recommendation:** Require that institutions have an MOU with the law enforcement agency that is the primary first responder (where appropriate, for each campus of the institution). Clarify that MOUs are required only for campuses as defined in the Clery Act (Sec. 485(f)(5)(C)(ii)). Explicitly "grandfather" existing MOUs that substantially meet the requirements of the Act.
- **Confidential Advisors:**
  - **Issue:** Colleges would be required to have a certain number of confidential advisors (CAs), as determined by ED, solely on the basis of the institution's

size, and no other factors. This is problematic for large commuter schools that may have low incidence of these crimes because they are non-residential. The law clarifies that CAs would not be required to conduct “forensic” interviews, but it is unclear whether they still have a role in the investigative process. It is also unclear to what extent CAs need to be available in cases that involve a student, but have no other connection to the college (e.g., a domestic incident between a student and non-student that takes place off campus).

- **Recommendation:** The number of CAs required must be based on a number of factors, including institution size, whether it is residential or non-residential, and frequency of past incidents of sexual violence and related crimes. Clarify that CAs are responsible for serving students reporting incidents that either occur on campus or with another student (as at present, institutions may choose to extend CA services to others). The CA’s role should be limited to serving as confidant and advisor to students, and not include the investigative process nor as someone responsible for reporting crimes for Clery Act purposes.
- **Fines:**
  - **Issue:** CASA authorizes fines of up to \$150,000 for each Clery Act violation and up to 1% of an institution’s operating budget for infractions of other provisions in the bill. ED is authorized to take the nature of the infraction into account when setting the fine, but nothing in the legislation would prevent very large fines for minor infractions. Fines would be paid ED, not the treasury, and be used for a competitive grant program to develop and implement best practices for preventing and responding to these crimes.
  - **Recommendation:** The Higher Education Act already gives the Secretary of Education the authority to impose civil penalties for failures to carry out provisions of Title IV, which would include the provisions in this bill. The current Clery Act specifically references this fine-setting authority. Furthermore, eligibility to participate in the financial aid programs is conditioned upon meeting the requirements laid out in the program participation agreement. The fines authorized under current law are applicable to violations up to and including substantial misrepresentation of an institution’s educational program, its financial charges, and the employability of its graduates. Given the seriousness of violations to which the current civil penalty authority attaches, as well as the threat of ineligibility for the student aid programs, additional penalties for the violation of CASA’s provisions are not warranted or necessary to ensure

compliance. Such violations should be subject to the penalties currently authorized by the HEA.