A BILL

To amend the Higher Education Act of 1965 and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act to combat campus 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 “Campus Equality, Fairness, and Transparency Act”.

SECTION 2. PURPOSE.

Sexual violence can have a devastating impact on victims. Institutions of higher education need to take into account the legitimate interests and rights of complainants and accused students to assure a fair and transparent adjudication process and to achieve reliable outcomes. All parties should seek to ensure the campus adjudicatory system follows due process procedures in order to protect the innocent and accurately identify the guilty.

SECTION 3. Institution of higher education requirements for preventing, investigating, and adjudicating allegations of sexual conduct violations.

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:

Sec. 161. Applicability and Definitions

(a) Applicability.

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) Sexual violence.

The term *sexual violence* means—

- (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.

(2) Sexual harassment.

The term *sexual harassment* means conduct of a sexual nature that is severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.

(3) Sexual infraction.

The term *sexual infraction* means conduct of a sexual nature that is not sexual violence or sexual harassment, and is a less severe form of a sexual conduct violation.

(4) Sexual conduct violation.

The term *sexual conduct violation* refers collectively to sexual violence, sexual harassment or sexual infraction that is prohibited by the student code of conduct or handbook.

(5) Institutional disciplinary proceeding.

The term *institutional disciplinary proceeding* means the process by which an institution of higher education investigates and adjudicates a sexual conduct violation and imposes a sanction with respect to the violation, in accordance with the institution’s student code of conduct or handbook and the provisions of this Act.

(6) Higher education responsible employee.

The term *higher education responsible employee* means an employee of the institution of higher education who—
(A) has the duty to report an alleged student sexual conduct violation to appropriate school officials; and

(B) shall be responsible for providing a student who is the accuser or accused in an alleged sexual conduct violation, with a written explanation of the student’s rights and options, as described in clauses (ii) through (vii) of section 485(f)(8)(B).

Sec. 162. Reducing Sexual Violence Associated with Alcohol and Drug Abuse.

(a) Institutions shall develop policies designed to reduce the incidence of sexual conduct violations associated with alcohol and drug abuse.

(b) Consistent with the requirements of the Drug Free Schools and Communities Act Amendments of 1989, the policy shall address:

1. standards of conduct that are applicable to students at the institution,
2. penalties for violating local, state, and federal laws and the student code of conduct,
3. health and safety risks associated with the abuse of alcohol and illegal drugs,
4. effects of alcohol and illegal drugs on judgment and risk-taking, and
5. any counseling, treatment, or rehabilitation programs that are available to students.

(c) As appropriate, the policy shall also address the institution’s specific rules such as prohibition of sponsorship of campus events by alcohol retailers, restrictions on advertising, prohibitions or restrictions on alcohol consumption in residence halls, limitations on student- or campus-sponsored events that involve alcohol, designation of areas where alcohol can be consumed, elimination of alcohol self-service, and not serving alcohol at campus functions that underage individuals may attend.

(d) The statement of policy shall be:

1. in writing using simple and understandable language and clear formatting; and
2. made available and posted on the institution’s public website, and at other appropriate locations on campus.
3. provided, on an annual basis, to each student group, student team, or student organization which is part of such institution, is recognized by the institution, or permitted by the institution to use its name or facilities.
4. Incorporated into any education or training program described in Section 163, paragraphs (a) and (b) below.
163. **Education, training, and support services.**

(a) **Education.**

(1) **In general.**

Each institution of higher education which is subject to this part is encouraged to provide to all students education programs designed to address potential sexual conduct violations that, at a minimum, address the development of healthy relationships, bystander intervention, and training for reporting sexual conduct code violations.

(2) **Access to programs.**

The institution is encouraged to—

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

(B) 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) **Training.**

Each institution of higher education which is subject to this part shall provide appropriate annual training to campus security personnel, campus investigators, campus disciplinary committee members, and other institutional personnel involved in the disciplinary process, 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.

(c) **Support Services.**

Each institution of higher education which is subject to this part shall devote appropriate resources for the care, support, and guidance for all students affected by or accused of sexual violence, sexual harassment, or sexual infraction.

**Sec. 164. Confidential Advisors**

(a) **Policy.**

Each institution of higher education that receives funds under this Act, shall designate one or more confidential advisors for complainants and one or more confidential advisors for accused students.

(1) The advisors shall not be an undergraduate student, a full-time graduate student, an employee designated as a higher education responsible employee, or
the Title IX coordinator as defined in section 106.8(a) of Title 34, Code of Federal Regulations.

(2) The Secretary shall designate categories of employees that may serve as confidential advisors. Institutions may partner with other institutions of higher education in their region or State to provide the services described in this paragraph, provided those services are made available on the campus on which the alleged violation may be adjudicated.

(3) The confidential advisors shall be individuals who are independent of the institutional disciplinary proceedings.

(b) Procedure.

(1) The institution of higher education shall provide to students information how to contact the confidential advisor for complainants and confidential advisor for the accused.

(2) Once a higher education responsible employee learns about an alleged sexual assault incident, the institution shall assign a complainant confidential advisor to the student within three days; or the alleged victim may seek out the assistance of the complainant confidential advisor.

(3) The complainant confidential advisor will explain the definitions of sexual violence, sexual harassment, and other sexual infraction, and assist the student to identify whether a given incident involved sexual violence, sexual harassment, and/or other sexual infraction. The complainant confidential advisor will explain the complainant’s reporting options, including the options to notify a higher education responsible employee, to notify local law enforcement, and any other reporting options.

(4) The complainant confidential advisor shall explain the student’s possible remediation and accommodation options, consistent with the nature of the alleged offense and institutional policies. Such options may include class schedule reassignments, dormitory reassignments, informal resolution process, counseling, institutional adjudicatory proceedings, and/or other measures. The confidential advisor should also explain options found outside of the institution, such as resource centers and/or local law enforcement.

(5) If an alleged incident of a sexual infraction potentially falls within the definition of sexual violence, the complainant confidential advisor will explain that the institutional disciplinary proceedings have limited jurisdiction, scope, and available sanctions, and should not be considered a substitute for the criminal justice process, and that the failure to allow the collection and preservation of evidence by law enforcement may limit the complainant’s future options.
(6) The institution shall afford the complainant the opportunity to participate actively in the decision of whether or not an alleged sexual conduct violation should be investigated, adjudicated, or maintained as confidential.

(7) If a student decides to file a complaint of a sexual conduct violation with the university or of sexual violence with criminal justice authorities, the accused student shall be assigned an accused student confidential advisor. This assignment shall occur within 48 hours of the filing of the complaint, and in either event, prior to any interview or questioning of the accused by any investigator or other individual involved in the disciplinary process.

(8) The accused student confidential advisor shall advise the accused student of the possible investigatory and adjudicative procedures, procedures for obtaining investigatory reports and evidence that may be used in the disciplinary proceeding, potential sanctions, possible interim measures, and options for obtaining counseling or academic assistance and legal advice.

(9) Confidential advisors may assist the students with understanding university procedure during the course of active proceedings, and are to be timely available to the students during the course of any institutional campus sexual assault proceedings.

(10) Confidential advisors may assist a complainant and/or accused student in contacting a higher education responsible employee, local law enforcement, or other resources.

(c) Confidentiality.

(1) Confidential advisors shall not be obligated to report alleged sexual conduct violations to the institution or law enforcement in a way that identifies a complainant, unless otherwise required to do so by State law.

(2) Confidential advisors shall maintain the private nature of communications with the complainant or accused student, and shall not disclose any such information without the consent of the complainant or accused student.

(3) Both the complainant and accused student shall be advised that any information disclosed to confidential advisors may not be protected by privilege, and may be admissible in a criminal or civil proceeding.

Sec. 165. Justice-Centered Investigations

Institutional officials who investigate alleged sexual conduct violations shall follow justice-centered investigative procedures—
(a) discharge their duties with objectivity and impartiality.

(b) make reasonable efforts to contact all potential witnesses, in addition to those recommended by the complainant or accused student.

(c) seek to gather and disclose both inculpatory and exculpatory evidence, and make all such evidence available to the complainant and the accused.

(d) thoroughly document and/or videotape all communications with the complainant and accused, as well as with potential witnesses, evidence collected, and interviews conducted, which shall be made available to the complainant and accused prior to any institutional disciplinary hearing.

(e) compile and evaluate evidence in an impartial manner before rendering an opinion.

(f) not serve as victim advocate, prosecutor, adjudicator, or appellate adjudicator for the same case.

Sec. 166. Requirements for Disciplinary Procedures

(a) Presumption of Innocence.

(1) Institutional investigative procedures and disciplinary proceedings shall afford the presumption of innocence to the accused.

(2) The institutional policy regarding the presumption of innocence will be stated in the student handbook.

(b) Protection from Abuse Order.

For all sexual conduct violations which include physical injury, attempted physical violence, or threats of physical violence, the complainant confidential advisor shall inform the complainant of the option to obtain a civil order through the local court system, which can restrict the contact between the complainant and the accused if there is an immediate and present danger to the complainant.

(c) Due Process Rights.

Each institution of higher education which is subject to this part may not impose any sanction on any student in response to a covered to a sexual conduct code violation which is reported to the institution unless the sanction is imposed under a formal adjudicatory proceeding, in accordance with institutional policies that meet each of the following requirements:
(1) The complainant and the accused shall have the right to be treated with dignity, respect, and sensitivity throughout the investigation and disciplinary hearing.

(2) Institutions shall give the accused student written notice of all alleged sexual conduct violations filed against the student within 48 hours of the decision to pursue disciplinary proceedings. Said notice shall delineate the nature of the alleged offense and factual information about the underlying incident.

(3) The institution shall provide all parties to the proceeding with adequate written notice of the alleged sexual conduct violation not later than 2 weeks prior to the start of any formal hearing or similar adjudicatory proceeding. The notice shall include a description of all rights and responsibilities under the proceeding, a statement of all relevant details of the allegation including the nature of the alleged offense and factual information underlying the incident, and a specific statement of the sanctions that may be imposed.

(4) The institution shall provide each person against whom the allegation is made with a meaningful opportunity to admit or contest the allegation at the proceeding or similar adjudicatory proceeding.

(5) The institution shall ensure that all parties to the proceeding have reasonable and complete access to all material evidence, including both inculpatory and exculpatory evidence, not later than two weeks 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.

(6) The institution shall permit each party to the proceeding to be represented, at the sole expense of the party, by an attorney or other non-attorney advocate for the duration of the proceeding, including during the investigation of the allegation, all interviews of the accused student, and other preliminary stages prior to a formal adjudicatory proceeding. The institution 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)).

(7) The accused shall be informed of the right to remain silent, and that any statements to investigators made prior to or during the course of the proceeding may be used against the accused in a court of law if criminal charges are filed.

(8) Subject to sub-section (7), the institution shall permit each party to the proceeding to safely confront witnesses, including the complainant and accused student, 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.
(9) 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) Confidential advisor.
(B) Investigator.
(C) Prosecutor.
(D) Adjudicator.
(E) Appellate adjudicator.

(d) 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, and which standard is consistent with the laws of the jurisdiction in which the institution is situated. Said standard of proof shall be commensurate with the severity of the alleged sexual conduct violation and the potential penalties.

(e) Potential Sanctions.

(1) An institution of higher education may establish and apply such sanctions as it considers appropriate for purposes of any adjudication carried out as part of an institutional disciplinary proceeding under this section, against any student found responsible for a sexual conduct code violation. Said sanctions shall be commensurate with the severity of the allegation.

(2) An institution of higher education may, but is not required to, make a notation on the transcript of any student found responsible for a sexual conduct code violation and the sanctions assessed, except that any such notation shall identify specifically whether the sexual conduct code violation for which the student was found responsible was:

(A) Sexual violence, as defined in Section 161, paragraph (b)(1) above;
(B) Sexual harassment, as defined in Section 161, paragraph (b)(2) above;
(C) Sexual infraction, as defined in Section 161, paragraph (b)(3) above;
or

(D) Any combination of (A), (B) and (C).

(f) The procedures provided for in this Section shall not be construed to be a substitute for adjudication by the criminal justice system.
Sec. 167. Memorandum of Understanding

(a) Memorandum of Understanding.

Each institution of higher education that receives funds under this Act, shall make a good faith attempt to enter into a memorandum of understanding with each law enforcement agency that has jurisdiction to report as a first responder to a campus of the institution (excluding a campus located outside the United States) to clearly delineate responsibilities and share information, in accordance with applicable Federal confidentiality laws, about criminal sexual violence occurring against students of the institution on the campus of the institution.

(b) Review.

Each institution of higher education shall make all reasonable efforts to review the memorandum of understanding under this section with each law enforcement agency every 2 years. As part of the review process, the institution shall contact each law enforcement agency to discuss how changes in policies or procedures at either the institution of higher education or the law enforcement agency may impact the provisions of the memorandum of understanding. If changes in policies or procedures are identified that impact the provisions of the memorandum of understanding, the institution of higher education and the law enforcement agency shall update the memorandum of understanding as necessary.

(c) Contents.

Each memorandum of understanding described under this section shall include—

(1) Delineation of the party’s respective investigative responsibilities;
(2) Protocols for investigations, including procedures for notification and communication and measures to promote evidence preservation;
(3) Method of sharing information about allegations of criminal sexual violence, when authorized or requested to do so by a complainant who has been informed about what procedures are likely to occur if the information is shared.

Sec. 168. Assurance of Transparency.

(a) Each institution of higher education shall establish written policies and procedures that address the provisions provided for in this Act.

(b) These policies and procedures shall be reviewed and updated, as appropriate, on an annual basis.

(c) Such policies and procedures shall be made publicly available in the student handbook and on the institution’s web site.
Sec. 169. Negotiated Rulemaking.

The Secretary of Education shall establish regulations to carry out the provisions of this section and the amendment made by this section in accordance with the requirements described under section 492 of the Higher Education Act of 1965 (20 U.S.C. 1098a).

Sec. 170. Effective Date.

This Act shall take effect twelve (12) months after enactment.

7/14/2016