



March 23, 2011

To: ASCA Board of Directors

From: Legislative Advisory Committee

Re: H.R. 6461 & S. 4093, Campus SaVE Act (111<sup>th</sup> Congress)

**Charge of the ASCA Board of Directors:**

During the annual ASCA conference, President Daniel Swinton asked the Legislative Advisory Committee to draft a document which outlined the pros and cons of the Campus SaVE Act and present it to the ASCA Board of Directors for their consideration. In this way, the ASCA Board of Directors could discuss the legislation and form an opinion on behalf of the ASCA membership, should this or similar legislation be drafted during the 112<sup>th</sup> Congress.

**Method of Comment Collection:**

The Chairman of the Legislative Advisory Committee sought comments from all members of ASCA regarding the proposed legislation from the 111<sup>th</sup> Congress. Links to the full text of the legislation were placed on the Legislative Advisory Committee webpage, and multiple e-mails were sent to the membership at large requesting any comments on the proposed legislation. These comments were collected by the Chairman of the Legislative Advisory Committee and included verbatim in this document. A draft document was sent to all members of the Legislative Advisory Committee for their review; and the final document was sent to the ASCA Board of Directors for their consideration.

**Brief History of the Campus SaVE Act:**

The Campus Sexual Assault and Violence Elimination Act, H.R. 6461 was introduced in the House of Representatives in the 111<sup>th</sup> Congress, by Representative Thomas Perriello (VA-5). H.R. 6461 was introduced on November 30, 2010, with six (6) co-sponsors, and referred to the House Committee on Education and Labor on November 30, 2010.

There was a related bill, S. 4039, introduced in the U.S. Senate by Senator Robert Casey Jr. of Pennsylvania with one (1) co-sponsor. The related Senate bill was introduced on December 16, 2010 and referred to the Senate Committee on Health, Education, Labor, and Pensions.

The research of the ASCA Legislative Advisory Committee indicates that neither of these bills received a committee hearing before the congressional session ended. Both of these bills effectively "died in committee" with the transition from the 111<sup>th</sup> Congress to the 112<sup>th</sup> Congress in January, 2011, and as such, neither bill is currently under consideration by either chamber of the current Congress. However, the information that the ASCA Legislative received indicates that it is highly likely that a similar or exact copy of the bill(s) introduced in the 111<sup>th</sup> Congress will be introduced during the 112<sup>th</sup> Congress as well as, by the same or closely aligned Representatives or Senators.

**Pros and Cons:**

The following table provides a snapshot of the comments submitted by the members.

Pros	Cons
provides good standard practice	Section 2, B, (i) talks about this idea of ‘risk reduction’ as a part of University programming
Some of the definitions may prove helpful to institutions who seek to define some of these offenses for their policies (At least they may act as a starting point)	one-day notification requirement to both parties
	unfunded mandate in a time of decreasing resources for higher education
	Requires employee training and participation, in addition to students
	challenge to track the requested data
	Programming requirements (unrealistic)
	discipline section (Worst Part)
	Rationale section will be problematic, as to how can administrators explain rationale of conduct board and what specific factors caused them to make the decision they did
	Notification requirement too broad
	"Prompt" not defined
	Concerned about the standard of proof to be used
	The possibility of more attorneys/advisors being required in the process
	Creation of another document for dissemination
	Singling out higher education to be held to a higher standard than other entities

**Overall Recommendations:**

- The ASCA Legislative Advisory Committee Opposes this legislation. In a "vote to support or oppose the legislation, the members of the committee voted 2 to 5 in Opposition of the legislation as it was drafted in the 111<sup>th</sup> Congress.
- It is likely that either the exact or similar language will be used when this legislation is most likely reintroduced sometime during the 112<sup>th</sup> Congress.
- The key to getting language into the bill is getting time with Congressional Staff. It is not necessarily the Representatives or Senators themselves which draft this legislation, it is their staff. If Carol Holladay will continue to represent ASCA's interests either as a standalone entity or as part of the Consortium for Governmental Relations in Student Affairs, it is imperative that she secure this time with Congressional Staff, or ASCA can approach staff or congressional representatives or senators ourself.

- ASCA was given a great honor just over a year ago when staff at the U.S. Department of Education asked the Consortium for Governmental Relations in Student Affairs, through Carol Holladay, to submit draft language for possible inclusion into the negotiated rulemaking for the Missing Child provisions of the Higher Education Reauthorization Act. If given the opportunity again, either at the legislation drafting stage or the negotiated rulemaking stage, the Legislative Advisory Committee has members equal to the task.
- If an invitation is extended to our Association to testify before Congress in hearings on this proposed legislation, that may provide benefit as well. It is the committee's understanding that traditionally, NASPA or ACPA would represent student affairs groups in this presentation of testimony, but in this case, it might be in ASCA's best interest to provide this testimony.

### **Comments from the Membership:**

"I have reviewed the SaVE Act, and there are only two real concerns I have. Section 2, B, (i) talks about this idea of 'risk reduction' as a part of University programming. In looking at how risk reduction is defined towards the end of the Bill, it sounds an awful lot like personality profiling. In some ways, it reminds me of some of the proposals I have seen around mental illness after the Tuscan shooting. Second, there is a one-day notification requirement to both parties which is a little concerning. I don't have a problem with notification, or notification to both parties, but I would prefer to see that window of notification doubled to 48 hours. Those were the two that struck me."

"I have a pro to add to the list. I believe this ACT provides good standard practice that is probably happening at most schools anyway. Therefore I look at this ACT as a way to help the victim through the process."

"Providing feedback as requested. Yet another unfunded mandate in a time of decreasing resources for higher education. As I read the bill, it has issues beyond students in that it is also addressing institutional employees. Providing the required programming will be a real challenge. At my former institution, it was a real challenge to get employees to meaningfully participate in sexual harassment education programs."

"I think it will be a real challenge to track the requested data, as much of the reporting occurs when students seek counseling and never leaves the confines of that confidential relationship. I am concerned about the additional education and programming requirements. My prior institution was staff challenged (many smaller institutions are). The programming that was done usually was done by our overwhelmed counseling staff or peer educators."

"With regard to the reporting final outcomes, it is unclear to me in the language used if it is only when an individual is found responsible for a violation or regardless of outcome. It should follow the current FERPA guidance for disclosure. The one day time limit seems a bit unreasonable. I would think with five working days would be more reasonable. In my prior

**Comments, cont'd:**

institution, this type of case often was handled by hearing board. It is sometimes impossible with how a case is scheduled to get a letter drafted, reviewed, and signed the next day by the conduct officer and/or hearing chair. I preferred to have thoughtful consideration of the wording of sanctions and to make sure that both the complainant and accused received communication about the decision at approximately the same time."

"Here are some comments on the Campus SaVE Act:

Page 3 of the GAO PDF

- Limit the explanation requirement (aa-cc) to those who the institution indicates that sexual offenses or other intimate partner violence should be reported to or (less appealing) "campus security authorities" right now the idea is unworkable.

Page 4 of the GAO PDF

- The orientation programming requirements seem unrealistic for non-residential campuses that don't have a formal orientation (for example community colleges).
- Sanctions--I would make clear that sex offenses should have a range of sanctions and another range of sanctions for other intimate partner violence

Page 5 of the GAO PDF

- Prompt is not defined and some campus utilize methods that allow students to delay campus proceedings while criminal charges are pending (in some cases the accused withdraw from the university for that period of time) is that something that they want to prevent.\
- Leave the issue of standard of proof to the U.S. Department of Education if they are going to address that in the new peer-to-peer sexual harassment regs.
- I would add to "conducted by officials" the phrase "boards" since they include non-officials.
- The advisor requirement on some campuses will lead to the involvement of a lot more attorneys in the process by requiring not only that both parties have the same rights, but that must include an advisor.

Page 6 of the GAO PDF

- Notice of Final Results--This doesn't seem to reflect any understanding of our work. I would drop the one day requirement. Keep that it be writing and require that be provided to both parties at the same time.

Page 8 of the GAO PDF

- I see no value in including "statistics on the outcomes of disciplinary proceedings for such cases at such institution" in awareness programs."

**Comments, cont'd:**

"Some of the definitions may prove helpful to institutions who seek to define some of these offenses for their policies (At least they may act as a starting point)"

"This does not appear to be going into Clery. This appears to be another document that institutions have to create and disseminate."

"Yet once again, this legislation would be holding higher education entities to a higher standard than those communities in which we reside and to a higher standard than, likely, any other employers of like size."

"Regarding (8)(A)(I)(bb) I have some concern about making staff (who are not police or legal experts) responsible for either explaining legal rights or even knowing when such legal rights apply so that they might provide some explanation of such rights in writing. (aa) is different in that staff can be instructed to always inform students that they can pursue the matter through local authorities, which is always an option. Similarly, (cc) could also be considered an option regardless of the circumstances. However, as (bb) reads, it may be interpreted that staff should know when an order of protection, or similar lawful order is "relevant." For instance, should we assume that whenever there is any claim of stalking, that suggesting such an order is appropriate? Perhaps this issue is open to interpretation, but then I guess that's the reason for my comment."

"At this time, it appears unlikely that legislation will pass on its own and instead Security on Campus is attempting to lay the groundwork for including these provisions in the next reauthorization of the Higher Education Act in 2013 or beyond."

*The following is a summarized account of a telephone conversation between Dr. Raymond Goldstone and Brian Glick, in which Dr. Goldstone provided comments on the bills. As a follow up to this draft memo, Dr. Goldstone and Brian Glick had another conversation in which some background and context were added to these comments, so that others might better understand them.*

Dreadful bill- Based on an article that appeared on InsideHigherEd.com:

<http://www.insidehighered.com/news/2010/11/30/crime> (Full text of article appears at the end of this memo)

"The problem is bigger than the bill"

"Goldstone has been fighting the problem since 1998 since before Clery- the fight has not been a solo effort. When that which is now called the Clery Act was introduced more than a decade ago, it contained provisions that several members of then ASJA found odious. Indeed, many of us thought that the proposed legislation was a classic example of unnecessary, unduly burdensome, unfunded federal mandates and regulations written by those either unfamiliar with higher education or those with particular "axes" to grind. As I recall, Tom Baker, John Lowery, Don Gehring, Dennis Gregory, Karen Boyd, Nona Wood, Richard Justice and several others discussed the pending legislation and wrote a number of analyses."

"Claims Congress is picking on an entity that cannot/ will not defend itself- relates to higher education's priorities. Bills like those that were the subject of our conversation are unable to

**Comments, cont'd:**

compete, for example, with funding for student financial aid and funding for research. Indeed, the additional unnecessary, unduly burdensome, unfunded mandates and regulations which appear in the most recent Higher Education Reauthorization (e.g., Disclosure of Fire Safety Standards and Measures; Annual Fire Safety Reports; Missing Student Notifications; the addition of intimidation, vandalism and simple assault to Clery's reportable offenses; additions to the Biennial Review mandated by 20 USC 1011i) were not discussed at length in hearings or in negotiated-rulemaking. Do I argue with higher education's priorities? No. I simply note the consequences, intended and unintended, of those priorities, and the important role that can be played by ASCA and the consortium to assure that issues of importance to us are fully aired and that we, too have a place at the hearing table."

"The discipline section highlights only the worst part of the bill"

"The rationale section specifically is a huge concern; in terms of how can we document the rationale of the important facts to support the findings when the board doesn't do that?"

"This is a "dangerous thing" which places unnecessary, burdensome and additional requirements on institutions"

"Dennis Gregory and Steve Janosik have done research as to does it make a difference to notify the victim"

"Congress is terrified to oppose the legislation"

"Telling SOC what is wrong with the bill is like telling John Dillinger when the bank has the fewest guards"

"Concerned about ASCA relationship with SOC- [In] an attempt to clarify my remarks about Security On Campus, Inc. and the cottage industry (i.e., "risk management in campus security") which the legislation it has and continues to write and to support has spawned. You captured much of my concern when you wrote, "telling SOC what is wrong with the bill is like telling John Dillinger when the Bank has the fewest guards." Between Security On Campus, Inc., and some victim's rights groups, administrators at institutions of higher education have been victimized. I haven't the temerity to suggest that ASCA fight with Security On Campus, Inc. Rather I suggest that we be careful lest we be taken in by the same rhetoric used by Security On Campus, Inc. to persuade members of Congress that WE are mean-spirited, unethical people against whom they attempt to protect "victims."

"There is another alternative Congress can specify a trial period to determine effectiveness"

**Text of the Bills:**

**H.R.6461 -- Campus SaVE Act (Introduced in House - IH)**

HR 6461 IH

111th CONGRESS  
2d Session  
**H. R. 6461**

To amend the Higher Education Act of 1965 to improve education and prevention related to campus sexual violence, intimate partner violence, and stalking.

**IN THE HOUSE OF REPRESENTATIVES**

**November 30, 2010**

Mr. PERRIELLO (for himself, Mr. COSTA, Mr. DUNCAN, Mr. GRIJALVA, Mr. KRATOVIL, and Mr. MCGOVERN) introduced the following bill; which was referred to the Committee on Education and Labor

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**A BILL**

To amend the Higher Education Act of 1965 to improve education and prevention related to campus sexual violence, intimate partner violence, and stalking.

*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 Sexual Violence Elimination Act' or the 'Campus SaVE Act'.

**SEC. 2. CAMPUS SEXUAL VIOLENCE, INTIMATE PARTNER VIOLENCE, AND STALKING EDUCATION AND PREVENTION.**

Section 485(f) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)) is amended--  
(1) by amending paragraph (8) to read as follows:

`(8)(A) Each institution of higher education participating in any program under this title, other than a foreign institution of higher education, shall develop and distribute as part of the report described in paragraph (1) a statement of policy regarding--

`(i) such institution's sexual assault and other intimate partner violence programs, which shall be aimed at prevention of sex offenses and other intimate partner violence, including stalking, dating violence, sexual violence, and domestic violence offenses;

`(ii) the procedures followed once a sex offense or other intimate partner violence, including stalking, dating violence, sexual violence, or domestic violence offenses has occurred, which shall include--

`(I) providing, in writing, to each student or employee who reports to the institution that he or she has been a victim of a sex offense or other intimate partner violence--

`(aa) an explanation of the right of victims of such offenses to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student or employee so chooses;

`(bb) an explanation of the right of victims of such offenses, when relevant, to obtain an order of protection, no contact order, restraining order, or similar lawful order issued by a criminal or civil court or enforce an order already in existence; and

`(cc) contact information for advocacy, counseling, health, mental health, legal assistance and other services available to victims both on-campus and in the local community; and

`(II) the institution honoring any order of protection, no contact order, restraining order, or similar lawful order issued by any criminal or civil court.

`(B) The policy described in subparagraph (A) shall address the following areas:

`(i) Education programs to promote the awareness of sex offenses and other intimate partner violence, including stalking, dating violence, sexual violence, and domestic violence offenses, which shall include--

`(I) primary prevention and awareness programming for all incoming students and new employees, including information about--

`(aa) the definition of consent in sexual relationships;

`(bb) reporting such sex offenses, including those offenses occurring on and off campus;

`(cc) bystander intervention; and

`(dd) risk reduction; and

`(II) ongoing prevention and awareness campaigns to students and faculty, including information described in items (aa) through (dd) of subclause (I).

`(ii) Possible sanctions to be imposed following the final determination of an institutional disciplinary procedure regarding sex offenses or other intimate partner violence.

`(iii) Procedures victims should follow if a sex offense described in clause (ii) occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported.

`(iv) Procedures for on-campus disciplinary action in cases of an alleged sexual offense or other intimate partner violence, including stalking, dating violence, sexual violence, or domestic violence offenses, which shall include a clear statement that--

`(I) any accuser shall have the opportunity to request that prompt disciplinary proceedings be initiated against the accused;

`(II) such proceedings shall--



`(III) risk factors associated with such cases, including physically, sexually, and psychologically controlling behavior.

`(viii) The term `bystander intervention' means safe and positive options that may be carried out by an individual to prevent or intervene when there is a risk of sexual violence against a person other than such individual.

`(ix) The term `risk reduction' means options for recognizing warning signs of abusive personalities and how to fight back against potential attackers.

`(x) The term `final results' means a decision or determination, made by an honor court or council, committee, commission, or other entity authorized to resolve disciplinary matters within the institution. The disclosure of final results shall include only the name of the accused, the violation alleged (including any institutional rules or code sections that were allegedly violated), essential findings supporting such final result, and any sanction imposed by the institution against the accused (including a description of any disciplinary action taken by the institution, the date of the imposition of such action, and the duration of such action).'; and

(3) by adding at the end of paragraph (16) the following new sentence: `The Secretary shall seek the advice and counsel of the Attorney General concerning the development, and dissemination to institutions of higher education, of best practices information about preventing and responding to incidents of sex offenses, forcible and nonforcible, and other intimate partner violence including stalking, dating violence, sexual violence, and domestic violence offenses.'

### **SEC. 3. EFFECTIVE DATE.**

The amendments made by this Act shall take effect with respect to any annual security report under section 485(f)(1) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)(1)) prepared by an institution of higher education in calendar year 2012 and any subsequent calendar year.

**S.4039 -- Campus SaVE Act (Introduced in Senate - IS)**

S 4039 IS

111th CONGRESS  
2d Session  
**S. 4039**

To amend the Higher Education Act of 1965 to improve education and prevention related to campus sexual violence, intimate partner violence, and stalking.

**IN THE SENATE OF THE UNITED STATES**

**December 16, 2010**

Mr. CASEY (for himself and Mr. SPECTER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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**A BILL**

To amend the Higher Education Act of 1965 to improve education and prevention related to campus sexual violence, intimate partner violence, and stalking.

*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 Sexual Violence Elimination Act' or the `Campus SaVE Act'.

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`(ii) the procedures followed once a sex offense or other intimate partner violence, including stalking, dating violence, sexual violence, or domestic violence offenses has occurred, which shall include--

`(I) providing, in writing, to each student or employee who reports to the institution that he or she has been a victim of a sex offense or other intimate partner violence--

`(aa) an explanation of the right of victims of such offenses to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student or employee so chooses;

`(bb) an explanation of the right of victims of such offenses, when relevant, to obtain an order of protection, no contact order, restraining order, or similar lawful order issued by a criminal or civil court or enforce an order already in existence; and

`(cc) contact information for advocacy, counseling, health, mental health, legal assistance and other services available to victims both on-campus and in the local community; and

`(II) the institution honoring any order of protection, no contact order, restraining order, or similar lawful order issued by any criminal or civil court.

`(B) The policy described in subparagraph (A) shall address the following areas:

`(i) Education programs to promote the awareness of sex offenses and other intimate partner violence, including stalking, dating violence, sexual violence, and domestic violence offenses, which shall include--

`(I) primary prevention and awareness programming for all incoming students and new employees, including information about--

`(aa) the definition of consent in sexual relationships;

`(bb) reporting such sex offenses, including those offenses occurring on and off campus;

`(cc) bystander intervention; and

`(dd) risk reduction; and

`(II) ongoing prevention and awareness campaigns to students and faculty, including information described in items (aa) through (dd) of subclause (I).

`(ii) Possible sanctions to be imposed following the final determination of an institutional disciplinary procedure regarding sex offenses or other intimate partner violence.

`(iii) Procedures victims should follow if a sex offense described in clause (ii) occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported.

`(iv) Procedures for on-campus disciplinary action in cases of an alleged sexual offense or other intimate partner violence, including stalking, dating violence, sexual violence, or domestic violence offenses, which shall include a clear statement that--

`(I) any accuser shall have the opportunity to request that prompt disciplinary proceedings be initiated against the accused;

`(II) such proceedings shall--

`(aa) be conducted by officials trained to understand the issues of sex offenses and other intimate partner violence; and

`(bb) use the preponderance of the evidence standard;

`(III) the accuser and the accused are entitled to the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice; and

`(IV) both the accuser and the accused shall be informed, in writing, of the final results of any institutional disciplinary proceeding brought alleging a sex offense or other intimate partner violence within one business day of such outcome being reached.

`(v) A student or employee who reports to the institution that he or she have been the victim of a sex offense or intimate partner violence shall receive notification of options for, and available assistance in, changing academic, living, transportation, and working situations, if such assistance is requested by the student or employee and if such accommodations are reasonably available.

`(C) Nothing in this paragraph shall be construed to confer a private right of action upon any person to enforce the provisions of this paragraph.';

(2) in paragraph (6), by adding at the end of subparagraph (A) the following new clauses:

`(iv) The term `intimate partner violence'--

`(I) means any physical, sexual, or psychological harm against an individual by a current or former partner or spouse of the individual;

`(II) includes stalking, dating violence, sexual violence, or domestic violence offense;

`(III) includes such harm against individuals in heterosexual and same-sex relationships; and

`(IV) does not require sexual intimacy between the individual and such partner or spouse.

`(v) The term `stalking' means an individual willfully and repeatedly engaging in a knowing course of harassing conduct directed at another individual that reasonably and seriously alarms, torments, or terrorizes such individual.

`(vi) The term `primary prevention' means programming and strategies intended to stop sexual and intimate partner violence before it occurs through the changing of social norms and other approaches.

`(vii) The term `awareness programming' means any program designed to alert students to the prevalence of intimate partner violence, sexual violence, and stalking, including--

`(I) discussions of the nature and number of cases of intimate partner violence, sexual violence, forcible sex offenses, and stalking reported at an institution of higher education in the 3 preceding calendar years;

`(II) statistics on the outcomes of disciplinary proceedings for such cases at such institution; and

`(III) risk factors associated with such cases, including physically, sexually, and psychologically controlling behavior.

`(viii) The term `bystander intervention' means safe and positive options that may be carried out by an individual to prevent or

intervene when there is a risk of sexual violence against a person other than such individual.

`(ix) The term `risk reduction' means options for recognizing warning signs of abusive personalities and how to fight back against potential attackers.

`(x) The term `final results' means a decision or determination, made by an honor court or council, committee, commission, or other entity authorized to resolve disciplinary matters within the institution. The disclosure of final results shall include only the name of the accused, the violation alleged (including any institutional rules or code sections that were allegedly violated), essential findings supporting such final result, and any sanction imposed by the institution against the accused (including a description of any disciplinary action taken by the institution, the date of the imposition of such action, and the duration of such action).'; and

(3) by adding at the end of paragraph (16) the following new sentence: `The Secretary shall seek the advice and counsel of the Attorney General concerning the development, and dissemination to institutions of higher education, of best practices information about preventing and responding to incidents of sex offenses, forcible and nonforcible, and other intimate partner violence including stalking, dating violence, sexual violence, and domestic violence offenses.'.

### **SEC. 3. EFFECTIVE DATE.**

The amendments made by this Act shall take effect with respect to any annual security report under section 485(f)(1) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)(1)) prepared by an institution of higher education in calendar year 2012 and any subsequent calendar year.

From InsideHigherEd.com

## 'The Dark Side of the Ivory Tower'

November 30, 2010

A new book on campus crime -- [\*The Dark Side of the Ivory Tower: Campus Crime as a Social Problem\*](#) (Cambridge University Press) -- looks at why campus crime has been viewed differently at different times in American history, and how various groups have defined the dangers facing American college students. The book also examines how different kinds of activists, such as feminists and family members of crime victims, have framed campus crime issues in different ways.

The authors of the book are John J. Sloan III, chair of justice sciences and associate professor of criminal justice and sociology at the University of Alabama at Birmingham, and Bonnie S. Fisher, professor of criminal justice at the University of Cincinnati. They responded via e-mail to questions about their book.

**Q: Your book notes that campus crime isn't new, but that public attention has been focused on campus crime only in recent decades. Why was there little attention previously and more attention recently?**

**A:** The reason there was little attention previously and more attention recently was because, during the late 1980s and through the 1990s, four groups of advocates, whose messages were increasingly broadcast via a mass media driven by a 24-7 news cycle, came forward and identified campus crime as a "new" social problem. These groups independently made claims about some aspect of campus crime they viewed as especially problematic, but collectively their claims contributed to public acceptance of campus crime as a new social problem. First was a claim that college campuses had become violent and dangerous places which threatened the safety of millions of young adults who are pursuing college degrees. Second was a claim that colleges and universities, as a result of lax physical security, had violated their legal duty to protect students from criminal victimization. Third was a claim that campus officials were re-victimizing female students who came forward to report being raped or sexually assaulted while on campus. Finally was a claim that a "party culture" had become dominant on campus which encouraged students to abuse alcohol and as a result, they were dying. An overarching theme across the claims was that campus administrators – presidents, provosts, and deans in particular – were the new villains responsible for the terrible things happening to students. Thus, each group took ownership of one aspect of the campus crime problem and through their claims constructed violence, vice and victimization as the norm on college campuses – a norm that was threatening college students' safety and well-being.

For example, Security On Campus, Inc. focused on lax security and the lack of transparency in campus crime statistics. Campus feminists focused on the plight of female students who had experienced sexual violence while on campus and then re-victimized by campus authorities when they reported their victimization. Victims and their families filed civil lawsuit seeking to persuade the courts that colleges and universities should be held legally liable for on-campus victimizations, while public health researchers focused on deaths and injuries arising from college students' drinking behaviors. These advocates' concerns were legitimized via continued

mass media exposure and through professional publications and presentations. Advocates were then able to institutionalize the problem by convincing federal and state policy makers, in particular Congress, to pass legislation, such as the Jeanne Clery Campus Crime Disclosure Act, to address campus crime. They also identified new "villains" associated with the problem, in this case postsecondary administrators who failed to take appropriate steps to ensure their campuses were safe from violence, vice, and victimization.

**Q: For much of the history of American higher education, the concept of *in loco parentis* was a key part of understanding the student experience. How has the end of that idea changed the way campus crime is understood? Is the recent attention an attempt to return to *in loco parentis*?**

**A:** The end of *in loco parentis* on college campuses during the 1960s resulted in new freedoms for students, including the freedom to access on-campus contexts that have been shown to enhance the chances of experiencing criminal victimization (e.g., parties, drinking, relaxed sexual norms, etc.).

Over the past 20 years, as a result of the above-mentioned groups naming, taking ownership, legitimizing, and institutionalizing campus crime as a new social problem, colleges and universities, we argue, are readopting *in loco parentis* to protect students from harmful, if not life-threatening, contexts of victimization, and to protect their institutions from civil lawsuits. In addition, because competition for students has become so much keener, "safety" has become a buzzword and marketing tool used by postsecondary institutions via "annual security reports" and Clery Act statistics to attract students to their campuses. Emphasizing the safety of their particular campus allows schools to distinguish themselves as places that are "safe" from the violence, vice, and victimization (to wit, campus crime) advocates claim is rampant.

**Q: How is social constructionism a useful tool for analyzing campus crime?**

**A:** Social constructionism allows researchers to first identify, label, and describe the processes and strategies used by various groups to convince the public and policy makers alike a particular issue constitutes a new and serious threat to the health and welfare of the public and that something must be done to address it. In our case, the perspective helped us identify specific themes that we found ran through the claims made about campus crime by the four groups – Security on Campus, Inc., campus feminists, student crime victims or their families, and public health researchers – that successfully convinced first the media, then the public, and finally policymakers that campus crime was a new and dangerous problem that had to be addressed.

**Q: How does the campaign for the Clery Act illustrate the themes of your book?**

**A:** Howard and Connie Clery (co-founders of Campus Security, Inc. and the parents of Jeanne Clery who was murdered in her dormitory room in 1986 and for whom the federal Clery Act was named) wanted to establish that college campuses were not safe because of lax security and failing to "come clean" with their crime statistics. Their grassroots efforts – which began in Pennsylvania and resulted in that state passing the first pieces of campus crime legislation – eventually catapulted them into the halls of Congress and the public spotlight. Their notoriety enabled them to testify repeatedly before Congress about their concerns over lax campus security and the heinous victimizations of students (like their daughter) they claimed were routinely occurring on the nation's college campuses. Combined with media coverage of their efforts and

coverage of stories of on-campus victimizations that were coming from other people, the Clerys' claims became credible and they became experts on campus crime.

In the book, we argue that in socially constructing a new social problem, advocates like the Clerys first *name the problem* – in this case, on-campus violent victimization. Advocates then *take ownership* of the problem. In the case of the Clerys, this was done via the brutal rape and murder of their daughter that occurred in her dorm room at Lehigh University in 1986. Advocates then *expand the domain* of the problem to include all campuses at all times and places. Combined with media coverage of such incidents, *legitimacy* is accorded the claims being made and thus to the notion that campus crime is a real problem that must be addressed. As advocates' messages continued to be broadcast by media, the messages are given greater credibility, and ultimately help to institutionalize the issue as a "new" social problem about which something needs to be done (for example, Congressional passage of the Clery Act to help fight campus crime)

**Q: Your book applies your framework to the debate over binge drinking. How does the recent debate over Four Loko fit into your theories?**

**A:** The Four Loko case in particular and the issue of college students abusing caffeinated alcoholic beverages more generally fit quite nicely into the social construction framework we used to highlight the elevation of campus crime to the level of a new social problem.

What's happened with the Four Loko case is similar to what we described as happening more generally in the social construction of campus crime as a new social problem. As with campus crime, you can identify new "villains" -- the manufacturer of Four Loko -- and advocates, including the federal government, taking steps to hold the manufacturers of Four Loko accountable for their actions. It is also similar in that concerns about these beverages were first raised after the deaths and injuries of several college students resulted from abuse of Four Loko. As these stories broke, advocates came forward and named the problem – the potentially lethal effects of consuming caffeinated alcoholic beverages. Advocates then took ownership of the problem and legitimized it in the public's mind via mass media messages and stories involving students who died or were injured after drinking the beverage. Advocates were ultimately able to convince a few colleges and universities (for example the University of Rhode Island) to ban the beverage altogether; convince legislatures in multiple states to ban sales of the beverage; and convince the Food and Drug Administration to consider a ban on the beverage as well. Same processes involved in both situations: name and take ownership of the problem, legitimize it, and institutionalize it, while also naming specific "villains" responsible for it.

— [Scott Jaschik](#)



April 1, 2011

Ms. Carol G. Holladay  
Consortium for Governmental Relations in Student Affairs  
Hurt, Norton & Associates  
503 Capitol Drive, NE, Suite 200  
Washington, DC 20002

Dear Ms. Holladay:

On behalf of the membership of the Association for Student Conduct Administration (ASCA), we wish to respond to the request for comment on the proposed legislation, The Campus Sexual Assault and Violence Elimination Act, S. 4039, originally introduced in the 111<sup>th</sup> Congress. The Association for Student Conduct Administration supports the basic tenor of the bill; however, in the current draft of the bill, there is language which presents some concerns. We raise these specific concerns as student conduct professionals who deal with these types of situations on a regular basis.

As student conduct professionals, we have a vested interest in and a strong desire to maintain a safe and secure campus community, free of all violence, not just interpersonal. There are measures included in the current language of the legislation which will help to further the efforts that our institutions take to maintain a safe and secure environment for our campus communities.

The membership of ASCA has read the current language of the legislation and offers our thoughts on the pros and concerns of the legislation below.

We feel the proposed legislation provides a good, standard practice for colleges and universities and some of the definitions may prove helpful for institutional policies.

We would welcome the opportunity to further discuss a number of points within the proposed legislation that give us some concern. For example:

- 1- Many of the items in the proposed legislation are already required by Title IX (e.g.: preponderance of the evidence standard)
- 2- Ultimately, college and university disciplinary processes are intended to be educational in nature, the proposed legislation seems to open the door for attorneys and additional advisor involvement, many of whom create adversarial proceedings and often slow down the process dramatically.
- 3- We feel the one-day notification of decision requirement is too narrow a time-frame
- 4- Similarly, there is no definition provided as to what how schools are to comply with a requirement to begin proceedings in a "prompt" fashion
- 5- Programming requirements are problematic, e.g.: Colleges and Universities vary greatly from small 2 year schools to doctoral-granting research institutions replete with hospitals and tens of thousands of employees. The bill seems geared towards 4-

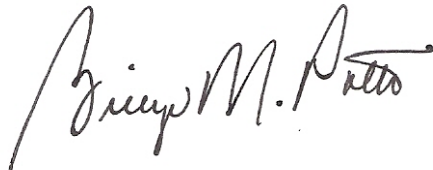
- year residential colleges with traditional orientation programs, while many schools do not have formal orientation programs,
- 6- Requiring administrators or panels to list the rationale for their decisions can prove problematic (e.g.: must the list be exhaustive? If so, does each member of the panel need to list every reason they used in rendering a decision? Etc.)
  - 7- On a general level, we are concerned with adding additional requirements and mandates in a time of decreasing resources for higher education.

The information contained in the above chart, is not our full comment. The list merely serves as a summary tool, highlighting our most pressing concerns. We welcome the opportunity for further discussion with you regarding this legislation. Please feel free to contact us at 979-845-5262.

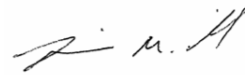
Sincerely,



Daniel C. Swinton  
President  
ASCA



Billye M. Potts  
Executive Director  
ASCA



Brian M. Glick  
Legislative Advisory Committee Chair  
ASCA

Sara Mabry  
Office of Senator Casey  
393 Russell Senate Office Building

On behalf of our the Association of College and University Housing Officers I would like to offer our comments and recommendations on the proposed Campus Sexual Violence Elimination Act (Campus SaVE Act) and its changes to the Higher Education Act and Jeanne Clery Act.

ACUHO-I is a member of the Consortium for Government Relations for Student Affairs which consists of five higher education associations: ACPA – College Student Educators International; the Association of College and University Housing Officers-International (ACUHO-I); the Association for Student Conduct Administration (ASCA); NASPA – Student Affairs Administrators in Higher Education; and the National Intramural-Recreational Sports Association (NIRSA). Together, our collective 25,000 members play a key role in educating and working directly with our nation’s students and the varied support networks of family members and other university colleagues.

Our goal, on a daily basis, is to enhance the safety and well-being of our students and the larger campus community. We share these comments on the proposed changes with the goal of clarification on specific details of the listed provisions. The following are general statements about how we would advise lawmakers related to this issue. Many of these protocols are currently in place at most institutions.

It is incredibly important to empower victim survivors after sexual assault and intimate partner violence incidents with information, resources and options. We support policies which encourage accurate and prompt reporting crimes (and violations of the campus codes of conduct) to the campus police and the appropriate law enforcement agencies. However, the victim must have control over the decision to report. In addition, the law enforcement agency should clearly articulate whether or not that “report” is confidential, private or public and therefore open to review by the media or others.

We recommend that further and sufficient inquiry into the current best practices of institutions related to intimate partner violence is completed to inform the proposed regulations. The statistics cited to define the problem do not always match our experience and we are interested in knowing more about the source and context of those reported in the proposed bill.

The terms related to definition of campus and of residential halls or facilities should be consistent with the definitions in the current Act. We recommend that requirements for reporting relate to residential facilities that are owned and operated by the institution. “Campus” terms may need further clarification when considering the addition of these types of crimes and violations. Oftentimes intimate partner violence occurs in “the home”. As our campus proper changes over time, clarification may be needed as the newer types of relationships institutions have developed in terms of public private partnerships and third party leases may not be either on the contiguous campus or university owned property. Family housing is also provided on some, but not all of our campuses.

Relationships are complex, especially intimate ones. Managing response to reported incidents of stalking, domestic arguments or other situations can be one of the more difficult situations to investigate and resolve on college campuses. Institutions manage response to behaviors and assess those behaviors

against current law or campus codes of conduct whenever possible. Reporting behaviors that could fit agreed upon definitions of intimate partner violence is important. Seeking help is critical and likely to occur on a campus full of resources. Stopping acts of violence is important to sustaining a healthy and safe community. However, we also must respect that students may seek guidance about the behaviors of concern and what to do from people they trust- faculty, staff, counselors and not opt to report through law enforcement. We hope that every effort is made to provide structures to make this possible and to encourage reporting instead of unintentionally creating a chilling effect or a second thought on the part of the student due to fear over mandatory reporting requirements to law enforcement.

We noticed that regulations mandate training of staff and others and we seek clarification on that to be clear on the expectations as it relates to our current practices in training residential assistant staff, security staff and university hearing officers.

The one business day response criteria after a ruling is tight and it seems that it does not allow for any exceptions. We recognize the importance of communicating the outcome to the accused and when required, to the accuser and appropriate others; however that timeframe should be amended. Our recommendation would be to strike the one day reference and provide “timely” notification according to outlined university procedures.

In reviewing the proposed changes we hope that this produces a clear and comprehensive regulatory framework to ensure compliance with the law, not to mention student safety. Terms may be different across federal and state agencies as well as between institutions. We trust that the final language of the legislation will support the spirit of the statute while allowing each campus room to tailor its response protocol so as to meet the needs of its unique community.

Institutions will not only need to institute additional policies and procedures and programs, but also implement new reporting mechanisms and assessment initiatives to track progress. Such changes to requirements in the Clery Act can pose a significant challenge on institutional resources when budgets are being restricted from every source. Education and notification of policies are well within the responsibilities of the institutions, continuing to expand costly and time consuming protocol to monitor takes valuable and shrinking resources directly from our students. We seek additional time to enact these changes. The year 2012 may be too soon for full implementation.

As you formulate the final language to these proposed revisions and new provisions, we ask you to consider the impact that the many added reporting requirements to an institutions’ responsibility detract from the hours we strive to spend valuable time with our students and create safe and secure learning environments. While most of these protocols are currently in place at most institutions – the added resources to amend reporting and educational processes detract from the resources used to develop creative and innovative methods of providing student persistence, affordability and access to our students.

Please feel free to contact us with any further questions on the above mentioned recommendations.