



## **Details of Concerns and Opposition to the Safe Campus Act, H.R. 3403**

*The Association of Public and Land-grant Universities (APLU) is a research, policy, and advocacy organization dedicated to strengthening and advancing the work of public universities. With a membership of 237 public research universities, land-grant institutions, state university systems, and affiliated organizations, APLU members are in all 50 states, the District of Columbia, and four U.S. territories. APLU's agenda is built on the three pillars of increasing degree completion and academic success, advancing scientific research, and expanding engagement. Annually, APLU member campuses enroll 4.7 million undergraduates and 1.2 million graduate students, award 1.2 million degrees, employ 1.4 million faculty and staff, and conduct \$42.7 billion in university-based research.*

The analysis below details some of the most significant concerns and reasons for the Association of Public and Land-grant Universities' opposition to the Safe Campus Act, H.R. 3403. While APLU also opposes and has strong concerns with the Fair Campus Act, H.R. 3408, and some of the concerns expressed in the analysis relate to both bills, the document most directly addresses the Safe Campus Act.

APLU shares the interest in ensuring campus student disciplinary processes are fair to both the complainant and respondent; however, the Safe Campus Act would substantially undermine the ability of institutions of higher education to prevent and respond to campus sexual assaults and would have a dangerous chilling effect on the willingness of survivors/victims to report sexual assaults.

APLU is deeply troubled that the bill would prohibit a college or university from initiating a student disciplinary proceeding or taking disciplinary action against a student accused of sexual violence unless the survivor/victim has reported to law enforcement. There are many reasons why survivors/victims choose not to report incidences of sexual assault to law enforcement. According to the U.S. Department of Justice Bureau of Justice Statistics, 80 percent of rapes and sexual assaults against female students between the ages of 18 and 24 are unreported to police for a variety of reasons, including fear of reprisal (20 percent), the incident is considered a personal matter (26

percent), or the student believes the police would not or could not do anything to help (nine percent)<sup>1</sup>. Among college women, only 12 percent of rapes are reported to law enforcement<sup>2</sup>.

The Safe Campus Act would compound the serious problem of law enforcement underreporting by making it more likely that cases also go unreported to campus authorities. By weakening the ability of institutions to respond to campus sexual assaults in a timely and decisive manner and mandating law enforcement referral in certain circumstances, the legislation would make many survivors/victims reluctant to report incidents to campus authorities. Campus authorities provide critical support services to victims. They inform victims of options (including how to report to law enforcement), and they keep statistics on campus safety as required under the Clery Act. The Safe Campus Act would communicate to survivors/victims that if they do not report to law enforcement then they cannot expect protection from their colleges other than for possible temporary and limited interim sanctions.

APLU is concerned about the negative impact of the legislation on the ability of colleges and universities to prevent future assaults. Under the legislation, if numerous survivors/victims accuse one alleged serial perpetrator of sexual assault, the college or university would remain unable to investigate and protect its community in the absence of the victims reporting to law enforcement.

We agree that universities should ensure students are fully informed as to their rights and options. Ultimately though, the decision of whether to report to law enforcement must be made by survivors/victims without fear that failing to report will preclude critical campus security measures.

The law enforcement option should not be viewed as a replacement for campus action - just as the campus process is not a substitute for a criminal proceeding. Each process should be thorough, professional, and evidence-based. However, each may also utilize different tools, standards, and procedures as the potential outcomes of the law enforcement process and campus disciplinary process vary drastically in their long-term impact and severity. The most severe outcome of a student disciplinary process is expulsion. While expelling a student from campus is a very serious penalty that also may result in reputational harm, it does not compare to a felony conviction or incarceration.

Additionally, we cannot presume that reporting to law enforcement will address every case. The reality is far different: out of every 100 alleged rapes reported to law enforcement, seven lead to an arrest, three are referred to prosecutors, and two lead to a felony conviction<sup>3</sup>. According to the National Crime Victimization Survey, only 12 percent of the 283,200 rape and sexual assault

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<sup>1</sup> Sinozich, Sofi and Langton, Lynn, Ph.D., (2014) *Rape and Sexual Assault Victimization Among College-Age Females, 1995-2013*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics

<sup>2</sup> Kilpatrick, D.G., Resnick, H.S., Ruggiero, K.J., Conoscenti, L. M., & McCauley, J. (2007) *Drug facilitated, incapacitated, and forcible rape: A national study* (NCJ 219181). Charleston, SC: Medical University of South Carolina, National Crime Victims Research & Treatment Center.

<sup>3</sup> Federal Bureau of Investigation, Uniform Crime Reports, Arrest Data and Offenses Cleared Data: 2006-2010

victimizations that occurred every year from 2005-2010 resulted in an arrest<sup>4</sup>. According to the White House Council on Women and Girls report on rape and sexual assault, many offenders are neither arrested nor prosecuted because of factors such as police biases (e.g. assumptions of lying if there is no physical injury) and lack of trauma-sensitive interviewing techniques<sup>5</sup>. Furthermore, according to the report, prosecutors are often reluctant to take on cases and the backlog of untested rape kits in some jurisdictions can be a factor in low prosecution rates.

It should also not be presumed that law enforcement will act expediently. Often for good reason, law enforcement and prosecutorial action are slow, deliberative processes. The legislation could prohibit institutions from taking disciplinary action for months or years, other than on an interim basis, leading to a dangerous situation for both the victim/survivor and campus community. If institutions cannot begin an investigation until the criminal process has concluded, there is a serious threat that the offender may perpetrate additional sexual assaults during the waiting period.

The bill favors local law enforcement over campus police. Assumptions should not be made about the capabilities of one entity over the other. Particularly at public colleges and universities, accredited campus public safety departments employ sworn officers that have specific knowledge of and training in responding to sexual violence with full arrest powers and primary jurisdiction for first-response to the campus community. University police can often have more extensive training, experience, and credentials than local law enforcement. For example, some campus police departments require officers to have a college degree or military service. Furthermore, students may have a closer relationship to campus police and feel more comfortable reaching out to them due to community policing efforts and relationship building done by campus law enforcement.

Finally, APLU observes that the legislation would only cover allegations of sexual violence. It is highly unusual to create a set of rules that would limit how institutions can respond to threats to campus safety from one specific type of violence. Institutions have a responsibility to protect their students, faculty, and staff from all forms of violence. We do not understand the public policy rationale for requiring a different disciplinary system and process in cases of sexual violence as compared to other cases of violence, for instance violent hate crimes. In both cases, the campus disciplinary process is a critical tool to protect the campus community - and as mentioned earlier, not a substitute for law enforcement.

We reiterate our concern for the rights of all parties at our universities, including respondents. The student disciplinary process must be fair to all sides. However, we do not believe the Safe Campus Act is an appropriate means of achieving the proper balance between protecting campuses, serving the needs of victims/survivors, and ensuring respondents are provided a fair opportunity to defend themselves.

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<sup>4</sup> Sinozich, Sofi and Langton, Lynn, Ph.D., (2014) *Rape and Sexual Assault Victimization Among College-Age Females, 1995-2013*

<sup>5</sup> *Rape and Sexual Assault: A Renewed Call to Action* (2014), The White House Council on Women and Girls