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(Original Signature of Member)

114TH CONGRESS
1ST SESSION

H. R. _____

To amend the Higher Education Act of 1965 to protect victims of sexual violence, to improve the adjudication of allegations related to sexual violence, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. SALMON (for himself, Mr. SESSIONS, and Ms. GRANGER) introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Higher Education Act of 1965 to protect victims of sexual violence, to improve the adjudication of allegations related to 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 "Safe Campus Act of 2015".

SEC. 2. INSTITUTION OF HIGHER EDUCATION REQUIREMENTS FOR PROTECTING VICTIMS OF SEXUAL VIOLENCE AND INVESTIGATING AND ADJUDICATING ALLEGATIONS OF SEXUAL VIOLENCE.

(a) 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:

"PART F—TREATMENT OF ALLEGATIONS OF SEXUAL VIOLENCE

"SEC. 161. APPLICATION; DEFINITION.

''(a) APPLICATION.—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) COVERED ALLEGATION.—The term 'covered allegation' means, with respect to an institution of higher education, an allegation that a student of the institution committed an act of sexual violence, or that members of a student organization of the institution or the organization itself committed or were involved in creating a hostile environment resulting in an act of sexual violence.

"(2) INSTITUTIONAL DISCIPLINARY PROCEEDING.—The term 'institutional disciplinary proceeding' means the process by which an institution of higher education investigates and adjudicates a covered allegation and imposes a sanction with respect to the allegation, in accordance with the institution's own code of conduct or similar internal rules.

"(3) SEXUAL VIOLENCE.—The term 'sexual violence' means, with respect to an institution of higher education—

"(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.

"SEC. 162. EDUCATION, REPORTING, AND STUDENT CARE STRATEGIES FOR PREVENTING SEXUAL VIOLENCE.

"(a) EDUCATION PROGRAMS.—

"(1) IN GENERAL.—Each institution of higher education which is subject to this part is encouraged to provide education programs designed to address sexual violence that, at a minimum, provide training for reporting covered allegations, intervening as a bystander, and fostering development of healthy relationships.

"(2) ACCESS TO PROGRAMS.—The institution is encouraged—

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

"(B) to 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) SUPPORT SERVICES.—Each institution of higher education which is subject to this part shall devote appro-

priate resources for the care, support, and guidance for students affected by sexual violence.

"(c) ROLE OF VOLUNTEER ADVISORS TO STUDENT ORGANIZATIONS.—An institution of higher education which is subject to this part—

"(1) may not designate an adult volunteer advisor to a student organization, or any employee of a student organization who is not also an employee of the institution, as a campus security authority under section 485 or regulations implementing that section; and

"(2) may not deny recognition to a student organization because an advisor or employee described in paragraph (1) does not register or serve as a campus security authority under section 485 or regulations implementing that section.

"(d) TRAINING.—Each institution of higher education which is subject to this part shall provide appropriate annual training to campus security personnel, campus disciplinary committee members, and other relevant institutional personnel 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 and demonstrate knowledge of the require-

ments of this section regarding the reporting of allegations to law enforcement agencies and the effects of the confidentiality exception under section 163(a)(2).

"SEC. 163. ROLE OF LAW ENFORCEMENT AGENCIES IN INVESTIGATION OF ALLEGATIONS OF SEXUAL VIOLENCE.

"(a) REFERRAL OF ALLEGATIONS.—

"(1) REFERRAL.—Except as provided in paragraph (2), if an institution of higher education which is subject to this part receives a covered allegation, along with written consent to proceed from the alleged victim, the institution shall report and refer the allegation to the law enforcement agency of the unit of local government with jurisdiction to respond to such allegations in the location of the institution immediately, but not later than 48 hours after receiving written consent from the alleged victim.

"(2) CONFIDENTIALITY EXCEPTION.—

"(A) IN GENERAL.—Paragraph (1) does not apply if the individual who is the alleged victim of an act of sexual violence included in the covered allegation provides a written notification to the institution that the individual does not want the allegation to be investigated by a law enforcement agency.

"(B) EFFECT OF NOTIFICATION OF CONFIDENTIALITY.—If an individual provides a notification to the institution under this paragraph with respect to an allegation, the institution may not initiate or otherwise carry out any institutional disciplinary proceeding with respect to the allegation, including imposing interim measures described in subsection (c), but only if the individual includes in the notification a statement that the individual understands the effect under this subparagraph of providing the notification.

"(b) RESTRICTIONS ON INSTITUTIONAL DISCIPLINARY PROCEEDINGS DURING PERIOD OF LAW ENFORCEMENT INVESTIGATION.—

"(1) IN GENERAL.—During the period in which a law enforcement agency is investigating a covered allegation reported by an institution under subsection (a), the institution may not initiate or otherwise carry out any institutional disciplinary proceeding with respect to the allegation, except to the extent that the institution may impose interim sanctions under subsection (c).

"(2) PERIOD OF LAW ENFORCEMENT INVESTIGATION DESCRIBED.—For purposes of this sub-

section and subsection (c), the period in which a law enforcement agency is investigating an allegation reported under subsection (a) shall be considered—

"(A) the 30-day period beginning on the date on which the institution reported the allegation to the agency, together with

"(B) any subsequent 30-day period for which the agency notifies the institution that it is continuing to investigate the allegation and that the public interest is best served by preventing the institution from beginning its own investigation and disciplinary proceeding.

"(3) TOLLING.—For purposes of satisfying any Federally-prescribed time period for an institution to complete an adjudication of an allegation to which this subsection applies, the time period shall be deemed to begin upon the expiration of the period in which the law enforcement agency is investigating the allegation, in accordance with this subsection.

"(4) PERMITTING INVOLVEMENT OF ACCREDITED CAMPUS PUBLIC SAFETY DEPARTMENTS.—Notwithstanding paragraph (1), if an institution of higher education operates an accredited public safety department that employs sworn officers, such department may carry out investigative functions with

respect to an allegation provided to a law enforcement agency under subsection (a) if authorized to do so by the law enforcement agency.

"(c) PERMITTING INSTITUTION TO IMPOSE INTERIM SANCTIONS.—

"(1) IN GENERAL.—During the period in which a law enforcement agency is investigating a covered allegation reported by an institution under subsection (a), the institution may impose interim sanctions against the subject of the allegation with respect to the allegation (including temporary suspensions, no contact orders, adjustments of class schedules, or changes in housing assignments) and carry out investigations and adjudications with respect to the imposition of such sanctions, but only if the institution determines that the imposition of such a sanction is a reasonable measure to promote campus safety and student well-being.

"(2) SPECIAL RULES FOR DURATION OF PERIODS OF TEMPORARY SUSPENSIONS.—

"(A) STUDENTS.—Subject to paragraph (3), if the subject of an allegation is a student, an institution may impose a temporary suspension for a period of not more than 15 days as an interim sanction under this subsection, and

may extend the suspension for additional periods of not more than 30 days per period if, pursuant to a hearing held in accordance with the requirements of section 164 for each such additional period, the institution finds that extension is necessary because the student poses an immediate threat to campus safety and student well-being.

"(B) STUDENT ORGANIZATIONS.—If the subject of an allegation is a student organization, an institution may impose a temporary suspension for a period of not more than 10 days on the operations of the organization as an interim sanction under this subsection, but only if the institution determines that the organization has engaged in activity that presents a significant risk to the health and physical safety of campus community members, and that the imposition of the suspension is not done merely for punitive purposes.

"(3) PERIOD IN WHICH INTERIM SANCTION IS IN EFFECT.—An interim sanction imposed under this subsection with respect to an allegation shall terminate upon the expiration of the period in which a law enforcement agency is investigating the allega-

tion (as described in subsection (b)), except that if an indictment has been issued with respect to the allegation and the subject of the allegation is a student, the institution may continue the sanction, including a temporary suspension the duration of which would otherwise be limited under paragraph (2)(A), until the completion of the case or the completion of any sentence imposed.

"(4) PROHIBITING IMPOSITION OF INTERIM SANCTIONS UPON JOINT REQUEST OF ALLEGED VICTIM AND LAW ENFORCEMENT.—In addition to the period described in subsection (b)(2), an institution may not impose an interim sanction under this subsection with respect to a covered allegation during any period for which the alleged victim and the law enforcement agency which is investigating the allegation submit a joint request to the institution to not impose such an interim sanction.

"(d) SAFE HARBORS.—

"(1) INSTITUTIONS.—No institution of higher education which is subject to this part shall be considered to have violated any provision of title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et. seq.) or any policy or regulation implementing any such provision on the grounds that the

institution did not investigate or adjudicate a covered allegation, or did not impose any sanction with respect to a covered allegation, to the extent that the institution was prohibited under this section from initiating or carrying out any institutional disciplinary proceeding with respect to the allegation.

''(2) STUDENTS.—An institution of higher education which is subject to this part may not impose a sanction on a student who is a victim of, or a bystander witness to, an act of sexual violence on the grounds that the student engaged in conduct prohibited under the institution's code of conduct (other than violent conduct) if the institution learned that the student engaged in such conduct as part of a report of a covered allegation which was made in good faith by the student to an agent of the institution.

''(e) PRIVACY.—It shall not be a violation of section 444 of the General Education Provisions Act (commonly known as the 'Family Educational Rights and Privacy Act of 1974') (20 U.S.C. 1232g) for an institution of higher education to report an allegation to a law enforcement agency under subsection (a).

''(f) NO EFFECT ON CIVIL REMEDIES.—Nothing in this section may be construed to limit the authority of any

person to seek a civil remedy in a court of competent jurisdiction with respect to any covered allegation.

"SEC. 164. DUE PROCESS REQUIREMENTS FOR INSTITUTIONAL DISCIPLINARY PROCEEDINGS.

"(a) DUE PROCESS RIGHTS.—Each institution of higher education which is subject to this part may not impose any sanction on any person, including a student organization, in response to a covered allegation unless the sanction is imposed under a formal hearing or similar adjudicatory proceeding, in accordance with institutional disciplinary proceedings that meet each of the following requirements:

"(1) The institution shall provide all parties to the proceeding with adequate written notice of the allegation not later than 2 weeks prior to the start of any formal hearing or similar adjudicatory proceeding, and shall include in such notice a description of all rights and responsibilities under the proceeding, a statement of all relevant details of the allegation, and a specific statement of the sanctions which may be imposed.

"(2) The institution shall provide each person against whom the allegation is made with a meaningful opportunity to admit or contest the allegation.

"(3) The institution shall ensure that all parties to the proceeding have access to all material evidence, including both inculpatory and exculpatory evidence, not later than one week 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.

"(4) The institution shall permit each party to the proceeding to be represented, at the sole expense of the party, by an attorney or other advocate for the duration of the proceeding, including during the investigation of the allegation and other preliminary stages prior to a formal hearing or similar adjudicatory proceeding, and 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)).

"(5) The institution shall permit each party to the proceeding to safely confront witnesses, including the complainant, in an appropriate manner, including by submitting written questions to be asked by the person serving as the adjudicator in any for-

mal hearing or similar adjudicatory proceeding, except that it shall presumptively improper for any person to make any inquiry about the sexual history of the individual reporting the covered allegation (other than an inquiry made by the individual against whom the allegation is made, or such individual's counsel or advocate, about the sexual history between such individual and the individual reporting the covered allegation).

"(6) 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) Investigator.

"(C) Prosecutor.

"(D) Adjudicator.

"(E) Appellate adjudicator.

"(b) STANDARD OF PROOF.—An institution of higher education may establish and apply such standard of proof as it considers appropriate for purposes of any adjudica-

1 tion carried out as part of an institutional disciplinary pro-
2 ceeding under this section.

3 ''(c) JUDICIAL REVIEW.—

4 ''(1) PRIVATE RIGHT OF ACTION.—Any indi-
5 vidual who is aggrieved by a decision to impose a
6 sanction under an institutional disciplinary pro-
7 ceeding under this section may bring a civil action
8 in an appropriate district court of the United States,
9 but only if the action is brought not later than 1
10 year after the date on which the individual received
11 final notice of the sanction imposed on the individual
12 under the proceeding.

13 ''(2) STANDARD FOR REVIEW.—In any action
14 brought under this subsection, the court may find
15 for the plaintiff only if the court finds that the im-
16 position of the sanction was arbitrary, capricious, or
17 contrary to law.

18 ''(3) RECORDS.—As soon as practicable after a
19 civil action is filed under this subsection, the institu-
20 tion of higher education involved shall forward the
21 administrative record of the institutional disciplinary
22 proceeding to the court.

23 ''(4) DAMAGES AND PREVAILING PARTY
24 FEES.—In any civil action under this subsection, the
25 court may award the prevailing party (other than

the institution of higher education) compensatory damages, reasonable court costs, attorney fees, including expert fees, and any other relief in equity or law that the court deems appropriate.

''(d) PUBLICATION IN STUDENT HANDBOOK.—Each institution of higher education which is subject to this part shall publish annually in the institution's Student Handbook (or equivalent publication) a statement of the procedures applicable to institutional disciplinary proceedings under this section, and shall publish such statement in the form of a contract between the institution and its students and student organizations.

''(e) NO RIGHT TO PAID ADVOCATE.—Nothing in this section shall be construed to create a right for any individual to be represented by an attorney or other advocate at an institution of higher education's expense.

"SEC. 165. PRESERVATION OF SINGLE-SEX EXEMPTION FOR STUDENT ORGANIZATIONS.

''(a) RESTATEMENT OF CONGRESSIONAL POSITION ON TITLE IX AND SINGLE-SEX ORGANIZATIONS.—Congress finds as follows:

''(1) The enactment of title IX of the Education Amendments of 1972 (commonly known as 'title IX') continues to be a vital element of ensuring all Americans have equal access to higher education.

"(2) The exemption under title IX that allows single-sex organizations to continue to flourish at institutions of higher education is still essential to developing a wide range of enrichment opportunities for students to learn and grow.

"(3) While title IX has done much to provide opportunities for women and men alike, the single-sex exemption is a part of that tapestry of opportunities, and institutions of higher education may not take actions that undermine this single-sex exemption.

"(b) PROHIBITING INSTITUTIONS FROM REQUIRING SINGLE-SEX STUDENT ORGANIZATIONS TO WAIVE TITLE IX PROTECTIONS.—An institution of higher education which is subject to this part may not—

"(1) require a student organization which is authorized under section 901(a)(6)(A) of the Education Amendments of 1972 (20 U.S.C. 1681(a)(6)(A)) to limit its membership to individuals of one sex to admit individuals as members who do not meet the organization's membership requirements;

"(2) compel a student organization or the governing body of a student organization that is itself comprised of single-sex organizations to accept orga-

1 nizations or individuals that do not meet the organi-
2 zation's or governing body's membership qualifica-
3 tions; or

4 ''(3) require an organization which is covered
5 by section 901(a)(6)(A) of the Education Amend-
6 ments of 1972 (20 U.S.C. 1681(a)(6)(A)) to waive
7 its coverage under such section as a disciplinary or
8 punitive measure.''.

9 (b) EFFECTIVE DATE.—The amendments made by
10 this Act shall apply with respect to allegations made on
11 or after the expiration of the 1-year period that begins
12 on the date of the enactment of this Act.