



Policy Update: Senator McCaskill Holds First Congressional Forum on Campus Sexual Assault

Lewis-Burke Associates LLC – May 20, 2014

On May 19, Senator Claire McCaskill (D-MO) hosted the first of three planned Congressional forums focused on issues related to sexual assault on colleges campuses. The May 19 forum was focused on the *Clery Act* and the *Campus Sexual Violence Elimination (SaVE) Act*. The additional forums will be held on June 2 (to address Title IX requirements) and June 16 (to address administrative processes and the criminal justice system). Through these forums, Senator McCaskill wants to clarify and simplify current federal and campus-based regulations and policies and gain information and advice to inform the development of draft legislation that she is preparing with Senator Kirsten Gillibrand (D-NY) and Senator Richard Blumenthal (D-CT). The three senators plan to introduce a draft bill following the third and final forum.

Senator McCaskill opened the event by stating her goals, which are to raise the visibility of current laws that are not being enforced and to pass new legislation to clarify and simplify confusing regulations. Senator Tammy Baldwin (D-WI) also attended part of the forum and expressed her support for the work of Senator McCaskill and the Obama Administration, such as the establishment of the White House Task Force to Protect Students from Sexual Assault. In addition, Senator McCaskill noted that reporting changes from the *Campus SaVE Act* are due out in draft form for comments in mid-June with the final regulations to be released in November. Senator Baldwin spoke during her opening remarks about the *Tyler Clementi Higher Education Anti-Harassment Act of 2014* that she recently introduced as well as the need to focus more on military sexual assault and sexual assault within the Reserve Officers' Training Corps (ROTC) program on campuses.

The May 19 forum featured survivors of sexual assault, representatives from university programs, representatives from law enforcement, among other stakeholders. Participating were:

- Laura Dunn, a survivor and Executive Director & Founder of SurvJustice;
- Holly Rider-Milkovich, Director of the Sexual Assault Prevention and Awareness Center at the University of Michigan;
- Alison Kiss, Executive Director, Clery Center for Security on Campus;
- Lynn Mahaffie, Director of Policy for the Office of Postsecondary Education at the U.S. Department of Education's Office of Federal Student Aid;
- Tracey Vitchers, Communications Coordinator, Students Active for Ending Rape (SAFER);
- Caroline Fultz-Carver, Associate Compliance Officer, University of South Florida System; and
- Eric Heath, Chief of Police, George Mason University Police Department.

The discussion centered on the *Clery Act* and the *Campus SaVE Act*. The *Clery Act* was passed in 1990 and requires schools that receive federal student financial aid to track campus crime statistics, such as the number of homicides, sexual offences, robbery, motor vehicle theft, and others, and release them in an annual report. The *Campus SaVE Act*, included in the 2013 renewal of the *Violence Against Women Act (VAWA)*, expands Clery to include data on domestic violence, dating violence, and stalking when these acts are reported to either campus or local police.

Themes discussed during the forum include frustrations and challenges with implementing the *Clery Act*, challenges relating to accountability and enforcement, and issues with mandatory reporting.

From their unique perspectives, panel members summarized concerns they saw with the implementation of the *Clery Act*. Issues ranged from the unreliability of data collected to the challenge of not having standardized definitions. Panelists discussed the intent of the law: to produce consumable data to forewarn current and prospective students and employees of the climate on campus. Panelists agreed that there are hurdles to achieving accurate reporting. One panelist stated that she would be more concerned with a school that reports zero incidents than a school that reports 50, reasoning that along with the reporting comes mechanisms to address issues. Another concern stated was the issue of reporting in raw numbers rather than percentages. These scenarios make it impossible to do an accurate comparison of schools. In addition, one panelist stated her concern with the way that the Office of Postsecondary Education (OPE) publishes information collected from *Clery*, often including irregular spacing and typographical errors which also undermines the validity and usability of the data. With regard to definitions, several anecdotes were presented where a single incident was captured as multiple incidents or multiple incidents were captured as a single incident due to varying definitions at the state or local level. Lastly, participants noted that more work needs to be done to make sure that potential consumers of *Clery* data know that it exists as a resource.

Panelists discussed possible ways to address these concerns, including to mandate a confidential victimization survey that students would take prior to graduation and publish that data as a way to highlight discrepancies between student reporting and institutional reporting. Panelists raised the issue of using a validated instrument for the survey and allowing universities to add questions to a standard format. One panelist suggested that a survey currently at the University of New Hampshire could be a good model. Another suggestion was to require universities to link to *Clery* crime logs from their university websites to better inform potential students and their parents. The issue of the Obama Administration push for a college rating system came up and some panelists contemplated whether *Clery* data could be incorporated into ratings. There was disagreement however, as some panelists said that identifying whether a campus has resources for students, such as a rape counseling center or coordination with local law enforcement, are better measures than pure data.

The conversation shifted to accountability and enforcement of current laws. Some panelists accused universities of not focusing on laws and regulations unless they are highlighted in the media. Many panelists agreed that in order for a university to take these issues seriously, there needs to be time and money directed from the top of a university administration. Senator McCaskill questioned the OPE representative about the number of federal staff engaged in compliance audits on the *Clery Act*. OPE responded that there are currently 13 auditors in the office and approximately 20 *Clery Act* audits performed each year. Senator McCaskill asked whether a financial fine could be used as a deterrent and whether the threat to revoke Title IV financial aid was really a true threat. She asked whether *Clery* data should be collected and included in the Uniform Crime Reporting (UCR) program run by the Federal Bureau of Investigation (FBI). Panelists agreed that until *Clery* data is valid and accurate it should not be included.

Panelists suggested that grant funding be made available to help universities adjust to new requirements and develop supports on campus. Panelists agreed that publicly available model policies and best practices would be helpful. Senator McCaskill recommended increasing ED staff conducting audits so more could be done. One panelist suggested shifting the fine from a flat rate per incident to a

proportion of gross income. Another suggested that no amount would make an impact, and instead said that the threat of media attention is the only way to get universities to pay attention. Panelists suggested that if funding were made available to support truly innovative policies, they believe that universities would shift from what they saw as current approach of “checking the box” to innovative practices resulting in solutions. Panelists agreed that some institutions, like the University of Michigan, have resources and are currently creating programs to address sexual assault on campus; but some smaller institutions do not have resources to develop or scale up innovative models.

The conversation then shifted to the issue of mandatory reporting requirements. There was a split in opinion on whether mandatory reporting to local law enforcement would encourage victims to come forward or discourage them from sharing their stories. A survivor on the panel was adamant that it has to be the individual’s choice whether to report or not. Senator McCaskill asked about anonymous reporting or Jane Doe reporting. Senator McCaskill noted that the university community will likely push back against mandatory reporting requirements, but she would be ready to fight.

While the White House has previously stated its support for mandatory campus sexual assault climate surveys, Senator McCaskill said she would also consider including a provision in her legislation mandating university compliance with these surveys. She supported the concept of anonymous reporting in mandated surveys. Other suggestions raised by the panel included requiring policies in writing to share with victims, building relationships between universities and local rape support centers, and additional training for local law enforcement officers. A panelist suggested that universities report and publicize sanctions taken against perpetrators, such as “x” number of expulsions and “x” number of suspensions.

Sources and Additional Information:

- An archived webcast of the roundtable can be found at <http://www.hsgac.senate.gov/subcommittees/fco/hearings/fco-roundtable-complying-with-and-enforcing-the-clery-act-and-the-campus-save-act>
- The full White House report *Not Alone: The First Report of the White House Task Force to Protect Students From Sexual Assault* can be found at http://www.whitehouse.gov/sites/default/files/docs/report_0.pdf.