

# Cracks in the Ivory Tower: How the Campus Sexual Violence Elimination Act Can Protect Students from Sexual Assault

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*Sexual assault is a pervasive problem on college campuses, yet colleges and universities are frequently criticized for their failure to address it. As a result, Congress passed the Campus Sexual Violence Elimination Act (“Campus SaVE Act”) in 2013. The Campus SaVE Act aims to address the unique needs of victims of sexual assault on college campuses by adding much needed protections for students, such as mandating increased reporting of crime statistics. Moreover, the Act helps students by requiring schools to create plans to prevent this violence, to educate victims on their rights and resources, and to detail processes that are taken after a report of sexual assault is made. This Comment analyzes the Campus SaVE Act and makes suggestions for improving its effectiveness in reducing sexual violence on college campuses.*

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## INTRODUCTION

Research indicates that 5% of college women are raped annually while at college,<sup>1</sup> yet few victims report these assaults to law

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1. BONNIE S. FISHER ET AL., U.S. DEP'T OF JUSTICE, THE SEXUAL VICTIMIZATION OF COLLEGE WOMEN 10 (2000), available at <https://www.ncjrs.gov/pdffiles1/nij/182369.pdf>; DEAN G. KILPATRICK ET AL., U.S. DEP'T OF JUSTICE, DRUG-FACILITATED, INCAPACITATED, AND FORCIBLE RAPE: A NATIONAL STUDY 24 ex.7 (2007), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/219181.pdf>. Additionally, in a study of 5446 women, researchers found that 28.5% reported experiencing attempted or completed sexual assault before or since entering college. CHRISTOPHER P. KREBS ET AL., U.S. DEP'T OF JUSTICE, THE CAMPUS SEXUAL ASSAULT (CSA) STUDY xii (2007), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>. There is some debate over how to accurately estimate the prevalence of rape on college campuses. See JODY RAPHAEL, RAPE IS RAPE: HOW DENIAL, DISTORTION, AND VICTIM BLAMING ARE FUELING A HIDDEN ACQUAINTANCE RAPE CRISIS 87 (2013) (cautioning readers on interpreting campus-rape research due to the different time frames used by researchers). The oft-cited 20% estimate, FISHER ET AL., *supra*, at 10 (finding that the percentage of completed or attempted rape victimization on college campuses might climb to between one-fifth and one-quarter); RANA SAMPSON, U.S. DEP'T OF JUSTICE, ACQUAINTANCE RAPE OF COLLEGE STUDENTS 8 (2011), available at [http://www.cops.usdoj.gov/Publications/POP\\_Acquaintance%20Rape033012b.pdf](http://www.cops.usdoj.gov/Publications/POP_Acquaintance%20Rape033012b.pdf) (measuring instances of sexual assault for college women since the age of fourteen (citing the Fisher study)), might not be reliable because it was obtained by multiplying the yearly rate by four or five for the college years. See RAPHAEL,

enforcement or school officials.<sup>2</sup> A study completed for the U.S. Department of Justice found that 95.2% of completed rapes and 95.8% of attempted rates are not reported to law enforcement officials.<sup>3</sup> Commonly cited reasons for not reporting include fear of retaliation by the assailant, mistrust of the campus judicial system, and fear of blame and disbelief by officials.<sup>4</sup> Although college men are raped significantly less than college women, data suggest that when they are raped, the perpetrator is another male.<sup>5</sup>

Congress has recently made efforts to address this problem by including a measure in the Violence Against Women Reauthorization Act of 2013 (“VAWA”) called the Campus Sexual Violence Elimination Act (the “Campus SaVE Act”).<sup>6</sup> VAWA was signed into law on March 7, 2013 and the Campus SaVE Act went into effect in March 2014.<sup>7</sup> The Campus SaVE Act specifically addresses the unique needs of victims on college campuses by adding much needed protections for students, such as mandating increased reporting of crime

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*supra*, at 87 (noting the 20% estimate was a “lifetime prevalence” and not specifically a “campus-rape rate”). Finally, capturing data on male rape victims is much more difficult, but what has been discovered suggests that when men are raped, the perpetrator is usually another male. SAMPSON, *supra*, at 8.

2. See FISHER ET AL., *supra* note 1, at 24 ex.12 (finding 95.2% of completed rapes and 95.8% of attempted rapes were not reported to law enforcement officials); see also SAMPSON, *supra* note 1, at 9 (stating that less than 5% of victims report the assault).

3. FISHER ET AL., *supra* note 1, at 24 ex.12; see also KILPATRICK ET AL., *supra* note 1, at 44 ex.36 (finding that only 7% of victims of a drug and alcohol facilitated rape reported the assault to police).

4. See FISHER ET AL., *supra* note 1, at 23–26 ex.12 (asking victims why they did not report the victimization); see also KILPATRICK ET AL., *supra* note 1, at 47–48 exs.41 & 42 (detailing the most common reasons for not reporting a sexual assault in a sample of college women); SAMPSON, *supra* note 1, at 9–10 (listing the most common reasons for not reporting a sexual assault). The Kilpatrick study also found that the most important concerns of college rape victims include being blamed by others and others knowing. See KILPATRICK ET AL., *supra* note 1, at 39–40 exs.31 & 32 (asking about the concerns of rape victims).

5. See SAMPSON, *supra* note 1, at 8 (recognizing the difficulty of capturing data about male rape victims). Though the Campus SaVE Act was signed into law as a part of the Violence Against Women Act Reauthorization Act of 2013, see *infra* text accompanying note 6, it amends the Clery Act, an Act designed to address campus crime, see *infra* Part I.C. Therefore, the gender of the victim is irrelevant to whether the Campus SaVE Act will apply. However, as stated, the majority of sexual assault victims on college campuses are women and therefore women are more likely to benefit from this legislation.

6. *VAWA Reauthorization*, CLERY CENTER FOR SECURITY ON CAMPUS, <http://clerycenter.org/article/vawa-reauthorization> (last visited Feb. 23, 2014).

7. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, §4, 127 Stat. 54, 64 (not taking effect until the beginning of the fiscal year following the date of enactment); *New Requirements Imposed by the Violence Against Women Reauthorization Act*, AM. COUNCIL ON EDUC. 1 (Apr. 1, 2013), <http://www.acenet.edu/news-room/Documents/VAWA-Summary.pdf> (noting the effective date of the Campus SaVE Act).

statistics. Moreover, the Act aims to protect students by requiring schools to create plans to prevent this violence, to educate victims on their rights and resources, and to detail processes that are taken after a report of sexual assault is made.<sup>8</sup>

The Campus SaVE Act, however, will only work if it is implemented correctly. This Comment analyzes the Campus SaVE Act and makes suggestions for improving its effectiveness in reducing sexual violence on college campuses.<sup>9</sup> Part I discusses the history of legislation protecting students from sexual assault and students' current rights and remedies when their schools fail to adequately respond to a report of sexual assault.<sup>10</sup> Part I also illustrates these remedies and discusses their deficiencies by using specific examples.<sup>11</sup> Part II provides a detailed discussion of the Campus SaVE Act.<sup>12</sup> Part III analyzes the Campus SaVE Act, examining both its strengths and weaknesses.<sup>13</sup> Finally, Part IV provides proposals for the federal government, as well as colleges and universities, regarding the implementation of the Campus SaVE Act in order to ensure its effectiveness in combating sexual violence on college campuses.<sup>14</sup>

## I. BACKGROUND

In order to thoroughly understand how to best address the issue of sexual assault on college campuses, it is necessary to understand the severity of the problem and what has previously been done to address it. This Part begins by analyzing the prevalence of campus peer sexual

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8. Rep. Gwyn Moore, *The Campus SaVE Act: A Critical Step to Ending Violence Against Women*, HUFFINGTON POST (Aug. 16, 2012, 3:08 PM), <http://www.huffingtonpost.com/rep-gwyn-moore/the-campus-save-act-a-critical-step-to-ending-violence-against-women>; *The Campus Sexual Violence Elimination (SaVE) Act*, CLERY CENTER FOR SECURITY ON CAMPUS, <http://clerycenter.org/campus-sexual-violence-elimination-save-act> (last visited Feb. 23, 2014); *Understanding the Campus SaVE Act*, KNOW YOUR IX, <http://knowyourix.org/understanding-the-campus-save-act/> (last visited Feb. 23, 2014).

9. This Comment uses the terms colleges, universities, and schools interchangeably to refer to the location of sexual violence the Campus SaVE Act seeks to address.

10. See *infra* Part I.A–C (examining the issue of sexual assault on college campuses and the various ways federal law has attempted to address it).

11. See *infra* Part I.D (examining cases at three universities to illustrate the problem of sexual assault on college campuses).

12. See *infra* Part II (discussing changes the Campus SaVE Act makes to how colleges respond to sexual assault).

13. See *infra* Part III (analyzing the positive and negative components of the Campus SaVE Act).

14. See *infra* Part V (proposing several ideas for implementation of the Campus SaVE Act by schools and by the government).

violence and its harmful effects on college students.<sup>15</sup> Next, this Part provides an overview of the two legislative responses that attempt to combat the problem, Title IX of the Education Amendments of 1972 (“Title IX”)<sup>16</sup> and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“The Clery Act”).<sup>17</sup> Finally, this Part examines school responses and highlights three examples of how the current legislation fails to adequately protect students.<sup>18</sup>

#### *A. The Current State of Sexual Assault on College Campuses*

Rape is a serious human rights abuse<sup>19</sup> and being a victim can cause immediate, as well as long-term, physical and mental health problems.<sup>20</sup> The fact that women in college are at a higher risk for rape than women of a comparable age group in the general population<sup>21</sup> highlights the high rate of sexual violence on college campuses. Studies have discovered multiple risk factors that put women in college in danger of sexual assault.<sup>22</sup> For example, large concentrations of young women come into contact with young men in a variety of public and private

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15. See *infra* Part I.A (discussing the current state of sexual assault on college campuses).

16. See *infra* Part I.B (describing Title IX as a mechanism for protecting students from campus peer sexual violence).

17. See *infra* Part I.C (describing how the Clery Act protects students from sexual violence).

18. See *infra* Part I.D (exploring various campus responses and highlighting cases from three specific schools).

19. See United Nations Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993) (affirming that violence against women, which includes rape, constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms).

20. See, e.g., KILPATRICK ET AL., *supra* note 1, at 4 (finding that 34% of college victims suffered from post-traumatic stress disorder, 33% of college victims suffered from depression, and 40% suffered from alcohol and drug abuse); KREBS ET AL., *supra* note 1, at viii (citing that 25 to 45% of rape victims suffer from nongenital trauma, that 19 to 22% of rape victims suffer from genital trauma, and that four out of five victims suffer from chronic physical or psychological conditions); SAMPSON, *supra* note 1, at 13 (finding that acquaintance rape victims suffer from shock, humiliation, anxiety, depression, distrust of others, guilt, and sexual dysfunction). Additionally, Krebs et al. found that rape is believed to have the highest annual victim cost of any crime at \$127 billion. KREBS ET AL., *supra* note 1, at viii. Kilpatrick et al. also noted that victims of drug and alcohol facilitated rape, as opposed to victims of forcible rape, were twice as likely to have had substance abuse problems in the past year. KILPATRICK ET AL., *supra* note 1, at 4.

21. FISHER ET AL., *supra* note 1, at 1; SAMPSON, *supra* note 1, at 8.

22. See, e.g., FISHER ET AL., *supra* note 1, at 1 (noting that college campuses have become “hotspots for criminal activity” and that women are at a greater risk for rape on college campuses than in the general population); KREBS ET AL., *supra* note 1, at xix (advising that any prevention programs be tailored to include risk factors that college students encounter in common college situations); SAMPSON, *supra* note 1, at 8 (suggesting that features of the college environment, such as “frequent unsupervised parties, easy access to alcohol,” and “students living on their own” can contribute to the high prevalence of rape on college campuses).

places on college campuses.<sup>23</sup> Additionally, many social gatherings involve alcohol or other substances that can lead to incapacitation.<sup>24</sup> Furthermore, being a freshman or sophomore in college puts a woman at greater risk of sexual assault than older students.<sup>25</sup> Finally, there are a disproportionate number of rapes reported when the perpetrators are athletes<sup>26</sup> and a disproportionate number of gang rapes reported when the perpetrators are fraternity members.<sup>27</sup>

At universities and colleges, acquaintance rape accounts for 90% of victimizations.<sup>28</sup> Acquaintance rape, in which the victim knows the attacker, differs from stranger rape, in which the victim does not know the attacker.<sup>29</sup> However, society, as well as colleges and universities, treats acquaintance rape less seriously than stranger rape, in part because it is understood incorrectly.<sup>30</sup> For instance, acquaintance rape

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23. FISHER ET AL., *supra* note 1, at 1; *see* SAMPSON, *supra* note 1, at 8 (discussing aspects of college social interactions that can contribute to high rape rates).

24. FISHER ET AL., *supra* note 1, at 23; KREBS ET AL., *supra* note 1, at xviii; SAMPSON, *supra* note 1, at 14, 16 (discussing the role of alcohol in acquaintance rape); *see* KILPATRICK ET AL., *supra* note 1, at 28 (finding that in the general population, elements of force are involved in 90% of the victimizations and more than one in five involved alcohol or drug facilitation or incapacitation, but that in the college population, only 72% of cases involved elements of force and over half involved drug or alcohol facilitation or incapacitation).

25. KREBS ET AL., *supra* note 1, at xviii; SAMPSON, *supra* note 1, at 12.

26. *See* CAROL BOHMER & ALICE PARROT, SEXUAL ASSAULT ON CAMPUS: THE PROBLEM AND THE SOLUTION 21 (1993) (stating an FBI survey found that basketball and football players from NCAA colleges “were reported to police for sexual assault thirty-eight percent more often than the average for males on college campuses”); SAMPSON, *supra* note 1, at 17 (recognizing this could be because athletes feel privileged or immune to campus rules or because victims are “angered by athletes’ esteemed and privileged status”). Bohmer and Parrot also theorize that athletes in aggressive sports are more likely to rape due in part to the culture surrounding college athletics, such as drinking alcohol to celebrate after wins or drown sorrows after losses. BOHMER & PARROT, *supra*, at 22.

27. *See* SAMPSON, *supra* note 1, at 17 (theorizing fraternities’ unique place on campus, in private residences which are often the location of unsupervised parties, as well as their group mentality and emphasis on loyalty could lead to a greater risk of rape); *see also* BOHMER & PARROT, *supra* note 26, at 21–23 (finding that the process of joining a fraternity often desensitizes men to behaviors that objectify women).

28. *See, e.g.*, FISHER ET AL., *supra* note 1, at 17 (reporting that most people know the person who sexually victimizes them); SAMPSON, *supra* note 1, at 9 (finding the most common offenders are “classmate[s], friend[s], boyfriend[s], ex-boyfriend[s], or other acquaintance[s] (in that order)”).

29. *See* SAMPSON, *supra* note 1, at 13 (laying out characteristics of both stranger rape and acquaintance rape); *see also* Nancy Chi Cantalupo, *Burying Our Heads in the Sand: Lack of Knowledge, Knowledge Avoidance, and the Persistent Problem of Campus Peer Sexual Violence*, 43 LOY. U. CHI. L.J. 205, 220 (2011) (describing public perceptions that rapists must be strangers to the victim and cannot be someone the victim knows, such as an acquaintance).

30. *See* SAMPSON, *supra* note 1, at 13 (discussing the myth that stranger rape is “real rape” and acquaintance rape is less serious and less harmful); *see also* Cantalupo, *supra* note 29, at 220

is often wrongly understood to be merely a “he said, she said” issue, consensual sex gone wrong, or an acceptable risk of drinking alcohol.<sup>31</sup>

Given these facts, Congress has attempted to protect students from sexual violence and ensure that colleges and universities take appropriate action when such violence occurs.<sup>32</sup> Two pieces of federal legislation, discussed below, impose obligations on higher education institutions with regard to preventing sexual violence, and provide students with options for recourse when schools fail to meet those responsibilities.<sup>33</sup>

### B. Title IX

Some experts argue that Title IX is the most important federal statute that applies to campus sexual violence.<sup>34</sup> This Section begins by

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(describing a stranger rapist as someone who jumps out and attacks a woman walking through a dark alley, and recognizing that this may evoke very different responses from a victim than are often seen after acquaintance rape).

31. See Emily Yoffe, *College Women: Stop Getting Drunk*, SLATE (Oct. 15, 2013, 11:55 PM), [http://www.slate.com/articles/double\\_x/doublex/2013/10/sexual\\_assault\\_and\\_drinking\\_teach\\_women\\_the\\_connection.html](http://www.slate.com/articles/double_x/doublex/2013/10/sexual_assault_and_drinking_teach_women_the_connection.html) (arguing that the connection between alcohol consumption and the higher risk of sexual assault means the onus should be on women to stop drinking). See generally RAPHAEL, *supra* note 1 (discussing reasons for society’s failure to address acquaintance rape).

32. See U.S. DEP’T OF EDUC., “DEAR COLLEAGUE” LETTER 1 (Apr. 4, 2011) [hereinafter DEAR COLLEAGUE LETTER], available at <http://www2.ed.gov/about/offices/list/oct/letters/colleague-201104.pdf> (“Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX.”); see also RAPHAEL, *supra* note 1, at 182 (“[C]olleges have an obligation under federal law to maintain safe and equal learning environments for everyone.”); *Basics*, KNOW YOUR IX, <http://knowyourix.org/basics> (last visited Feb. 25, 2014) (“Under United States federal law, most notably Title IX and the Clery Act, students are guaranteed a right to education free from sexual violence and harassment.”); *Summary of the Jeanne Clery Act*, CLERY CENTER FOR SECURITY ON CAMPUS, <http://clerycenter.org/summary-jeanne-clery-act> (last visited Feb. 25, 2014) (describing amendments to the Clery Act that require schools to protect sexual assault victims).

33. See, e.g., DEAR COLLEAGUE LETTER, *supra* note 32, at 1 (stating that the letter explains the federal requirements under Title IX pertaining to sexual violence); *Basics*, *supra* note 32 (highlighting Title IX and the Clery Act as the laws requiring schools to guarantee an education free from sexual harassment and discrimination and requiring that schools respond to the needs of survivors when violence does occur); *Summary of the Jeanne Clery Act*, *supra* note 32 (“[S]chools [are required to] afford the victims of campus sexual assault certain basic rights . . .”).

34. See Cantalupo, *supra* note 29, at 224–25 (arguing that Title IX is the most important tool in protecting students from campus peer sexual violence); see also *About KYIX*, KNOW YOUR IX, <http://knowyourix.org/about-ky9/> (last visited Feb. 25, 2014) (discussing the importance of students understanding rights under Title IX when advocating for change within their schools). Though the Campus SaVE Act amends the Clery Act, I will later argue that certain provisions of the Campus SaVE Act can be used to tie Title IX and the Clery Act together for comprehensive federal review of cases in which it is alleged a school has failed in its duty to protect a student victim of sexual violence. See *infra* Part IV (proposing a joint task force for complaints under Title IX and the Clery Act). Therefore, a discussion of Title IX is necessary to understand the

discussing the history and requirements of Title IX as they pertain to campus sexual assault.<sup>35</sup> Then, it addresses students' remedies through administrative enforcement under Title IX<sup>36</sup> and through a private right of action.<sup>37</sup>

### 1. History and Requirements of Title IX

Title IX—a clear statement by the federal government—prohibits discrimination on the basis of sex in education programs or activities.<sup>38</sup> Sex discrimination has been defined broadly to include sexual harassment and sexual violence because of the hostile educational environment they create.<sup>39</sup> Title IX requires schools to respond to and remedy hostile educational environments or risk losing their federal funding.<sup>40</sup> Because Title IX is such a short statute with little direction,<sup>41</sup> schools look to specific guidance materials provided by the Department of Education to determine the specific requirements of Title IX.<sup>42</sup> The most recent guide is the 2011 “Dear Colleague” Letter, which suggests procedural requirements for responding to a report of sexual assault, as well as proactive, educational measures schools

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issue.

35. See *infra* Part I.B.1 (discussing the history and requirements of Title IX).

36. See *infra* Part I.B.2 (explaining the Title IX complaint process and its issues).

37. See *infra* Part I.B.3 (explaining Title IX lawsuits and their issues).

38. Title IX reads: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681 (2012); see also 34 C.F.R. §106.1 (2013) (“[T]itle IX . . . is designed to eliminate . . . discrimination on the basis of sex in any education program or activity receiving Federal financial assistance . . .”).

39. See, e.g., DEAR COLLEAGUE LETTER, *supra* note 32, at 1 (“Sexual harassment of students, which includes sexual violence, is a form of sex discrimination prohibited by Title IX.”); U.S. DEP’T OF EDUC., REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES 2 (2001) [hereinafter 2001 GUIDANCE], available at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf> (“Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.”); *Title IX in Detail*, KNOW YOUR IX, <http://knowyourix.org/title-ix/title-ix-in-detail/> (last visited Feb. 25, 2014) (explaining that Supreme Court decisions and guidance from the U.S. Department of Education have established that sex discrimination includes sexual harassment and sexual violence).

40. See 2001 GUIDANCE, *supra* note 39, at 3 (complying with Title IX and the U.S. Department of Education’s regulations is a condition of receiving funding); see also *Title IX in Detail*, *supra* note 39 (explaining how a school risks losing federal funds if it does not respond to and remedy hostile environments as required by Title IX).

41. 20 U.S.C. § 1681.

42. See DEAR COLLEAGUE LETTER, *supra* note 32, at 2 (explaining that the letter will discuss Title IX’s requirements related to peer sexual violence); see also *Title IX in Detail*, *supra* note 39 (stating that to understand the requirements of Title IX, schools must look to guidance materials from the U.S. Department of Education).



should take to prevent sexual assaults.<sup>43</sup>

Once a school “knows or reasonably should know” of possible sexual violence, it must take immediate and appropriate action to investigate or otherwise determine what occurred, regardless of whether or not the incident occurred on school grounds.<sup>44</sup> This response must be “prompt, thorough, and impartial,” and the school must respect the desire of the complainant to remain anonymous.<sup>45</sup> Furthermore, Title IX requires that schools take steps to protect the individual reporting rape from any retaliation by the accused or associates of the accused.<sup>46</sup>

The “Dear Colleague” Letter recommends several proactive measures schools can take to help prevent campus sexual violence, such as publishing a notice of nondiscrimination, designating an employee to coordinate Title IX compliance, and adopting and publishing a list of grievance procedures for students.<sup>47</sup> Under Title IX, schools should implement orientation programs and school assemblies for new students, staff, and faculty that address sexual assault, and implement training for residence hall assistants, student athletes, coaches, and student law enforcement, all of whom have a higher likelihood of coming into contact with sexual assault victims and perpetrators.<sup>48</sup>

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43. See DEAR COLLEAGUE LETTER, *supra* note 32, at 2 (“This letter . . . explains schools’ responsibility to take immediate and effective steps to end sexual harassment and sexual violence . . . [and] discuss[es] the proactive efforts schools can take to prevent sexual harassment and violence.”); *Title IX in Detail*, *supra* note 39 (highlighting that guidance materials, such as the “Dear Colleague” Letter, are not law but tell schools how the Department of Education will review and enforce Title IX complaints).

44. See DEAR COLLEAGUE LETTER, *supra* note 32, at 4 (“Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.”); 2001 GUIDANCE, *supra* note 39, at 9 (“A school has a responsibility to respond promptly and effectively to sexual harassment.”).

45. DEAR COLLEAGUE LETTER, *supra* note 32, at 5; see also *Title IX in Detail*, *supra* note 39 (highlighting that sexual harassment complaints may be resolved through informal means, such as mediation, but that mediation cannot be required because it is not appropriate for sexual violence complaints).

46. See DEAR COLLEAGUE LETTER, *supra* note 32, at 4 (“The school also should take steps to protect a student who was assaulted off campus from further sexual harassment or retaliation from the perpetrator and his or her associates.”); see also 2001 GUIDANCE, *supra* note 39, at 17 (stating that at a minimum a school must make sure the victim knows how to report any subsequent retaliation); *Title IX in Detail*, *supra* note 39 (defining retaliation as an “adverse consequence, harassment, intimidation, or discrimination that is causally related to reporting sexual discrimination”).

47. DEAR COLLEAGUE LETTER, *supra* note 32, at 5; see also *Title IX in Detail*, *supra* note 39 (listing notices of nondiscrimination, Title IX coordinators, and clear grievance procedures as required for schools to be Title IX compliant).

48. DEAR COLLEAGUE LETTER, *supra* note 32, at 14–15; see also *Title IX in Detail*, *supra* note 39 (listing professors, campus police, administrators, counselors, health center staff, coaches, resident advisors, and others likely to receive reports of sexual assault as employees the

These programs should define sexual assault, encourage reporting among students, and explain school policies and the consequences of sexual assault.<sup>49</sup>

Additionally, the “Dear Colleague” Letter states that Title IX requires schools to follow certain procedures when investigating and adjudicating sexual offenses.<sup>50</sup> While schools must “adopt and publish grievance procedures providing for prompt and equitable resolution of . . . sex discrimination complaints,” federal guidance does not require that these procedures be separate from other disciplinary proceedings.<sup>51</sup> The 2011 “Dear Colleague” Letter does specify that mediation is not appropriate for sexual assault complaints, and gives guidance as to what “prompt and equitable” procedures require.<sup>52</sup> Schools must give notice of the procedures to students and employees, disclose where complaints may be filed, and apply the procedures to complaints of sexual assault.<sup>53</sup> The investigation must be “adequate, reliable, and impartial,” and schools must give both parties the right to present witnesses and evidence.<sup>54</sup> Furthermore, the procedure must designate a reasonably prompt time frame for the major stages of the process, notify parties of the outcome, and assure the victim and other students that the school will take steps to prevent a reoccurrence.<sup>55</sup> Finally, schools should use

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Department of Education recommends be trained).

49. DEAR COLLEAGUE LETTER, *supra* note 32, at 14–15; *see* SAMPSON, *supra* note 1, at 30 (highlighting the need for key campus personnel, such as resident assistants, Greek advisors, and athletic coaches to be educated about sexual violence and how to identify and report sexual assault).

50. DEAR COLLEAGUE LETTER, *supra* note 32, at 6 (requiring schools to establish a procedure involving disseminating a notice of nondiscrimination, designating at least one employee to carry out the school’s efforts under Title IX, and adopting and publishing grievance procedures that are prompt and equitable); *see also* Title IX in Detail, *supra* note 39 (specifying that this procedure should outline the complaint, investigation, and disciplinary process).

51. DEAR COLLEAGUE LETTER, *supra* note 32, at 6, 8; *see also* 2001 GUIDANCE, *supra* note 39, at 21 (“Title IX also permits the use of a student disciplinary procedure not designed specifically for Title IX grievances to resolve sex discrimination complaints, *as long as the* procedure meets the requirement of affording complainant a ‘*prompt and equitable*’ resolution of the complaint.” (emphasis added)).

52. DEAR COLLEAGUE LETTER, *supra* note 32, at 8 (“[I]n cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis.”); *see also* 2001 GUIDANCE, *supra* note 39, at 21 (stating that mediation is not appropriate in cases of alleged sexual assaults); Title IX in Detail, *supra* note 39 (“A school that requires mediation or offers it as a mechanism to resolve a sexual violence complaint are [sic] in violation of Title IX.”).

53. DEAR COLLEAGUE LETTER, *supra* note 32, at 9; 2001 GUIDANCE, *supra* note 39, at 20.

54. DEAR COLLEAGUE LETTER, *supra* note 32, at 9; 2001 GUIDANCE, *supra* note 39, at 20; *see also* Title IX in Detail, *supra* note 39 (stressing that the disciplinary process cannot have one-sided due process).

55. DEAR COLLEAGUE LETTER, *supra* note 32, at 9; 2001 GUIDANCE, *supra* note 39, at 20.

a preponderance of the evidence standard when evaluating complaints,<sup>56</sup> and all persons implementing the procedure must have training in handling complaints of sexual violence.<sup>57</sup>

Although schools are required to notify individuals reporting rape of their options to notify law enforcement, Title IX does not require that schools notify local law enforcement about sexual assaults on campus.<sup>58</sup> However, if a regular law enforcement investigation occurs, schools are not absolved of their duties under Title IX to investigate and do not have to wait for the conclusion of a criminal investigation to begin their process.<sup>59</sup>

Furthermore, Title IX requires that—in order to protect the student reporting rape and address any retaliation that occurs as a result of the student’s allegations—remedies be immediate and include interim steps before the final outcome of the investigation.<sup>60</sup> However, there is evidence to suggest that schools do not appropriately remedy situations in which a student faces potential retaliation for reporting a rape. In a case at the University of Notre Dame, for example, the University did nothing after a student reported that she had received threatening text messages from a friend of the football player she accused of sexual assault.<sup>61</sup>

Finally, if it is determined that sexual assault has occurred, a school must “take immediate action to eliminate the hostile environment,

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56. DEAR COLLEAGUE LETTER, *supra* note 32, at 10–11; *see also Title IX in Detail, supra* note 39 (defining the standard as requiring the hearing to determine whether the assault is more likely than not, or 51% likely to have occurred).

57. DEAR COLLEAGUE LETTER, *supra* note 32, at 12; *see also Title IX in Detail, supra* note 39 (recognizing that the “Dear Colleague Letter” requires all employees that address sexual violence complaints have appropriate training).

58. *See, e.g.,* DEAR COLLEAGUE LETTER, *supra* note 32, at 5 (stating school personnel must determine whether law enforcement should be notified); 2001 GUIDANCE, *supra* note 39, at 16 (stating law enforcement can be notified in cases involving criminal conduct, but not that they must be notified).

59. DEAR COLLEAGUE LETTER, *supra* note 32, at 10; 2001 GUIDANCE, *supra* note 39, at 21. Additionally, the “Dear Colleague” Letter clarified that the standard to be used when adjudicating sexual assault cases on college campuses is the preponderance of the evidence standard. *See supra* note 56. This is a different legal standard than that used in criminal investigations. *See* 2001 GUIDANCE, *supra* note 39, at 21. Therefore, the results of an investigation by law enforcement are not determinative of whether sexual assault occurred under Title IX. *Id.*

60. DEAR COLLEAGUE LETTER, *supra* note 32, at 15–16 (describing interim measures such as separating the victim and the accused and ensuring that victims are aware of their rights and any relevant resources, such as counseling); *see also Title IX in Detail, supra* note 39 (maintaining that protection from retaliation for reporting sexual violence is a federal civil right).

61. *See infra* notes 160–66 and accompanying text.

prevent its recurrence, and address its effects.”<sup>62</sup> Evidence indicates that this is often not adequately accomplished. In 2012, Yale University entered into a settlement agreement with the Department of Education after several students alleged that the University was violating their Title IX rights.<sup>63</sup> As a result of the settlement, Yale now publishes a twice-yearly report documenting all complaints of sexual misconduct on campus.<sup>64</sup> In the most recent report, which covers the first half of 2013, Yale found sufficient evidence to support six complaints of nonconsensual sex.<sup>65</sup> In all six instances, Yale failed to expel the offenders, allowing rapists to remain on campus and potentially harm other students.<sup>66</sup>

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62. DEAR COLLEAGUE LETTER, *supra* note 32, at 15; *see also Title IX in Detail*, *supra* note 39 (discussing what constitutes addressing a hostile environment).

63. Tyler Kingkade, *Yale Fails to Expel Students Guilty of Sexual Assault*, HUFFINGTON POST (Aug. 1, 2013), [http://www.huffingtonpost.com/2013/08/01/yale-sexual-assault-punishment\\_n\\_3690100.html](http://www.huffingtonpost.com/2013/08/01/yale-sexual-assault-punishment_n_3690100.html) [hereinafter Kingkade, *Yale*]; *see* John Christoffersen, *Yale Under Federal Investigation for “Sexually Hostile Environment,”* HUFFINGTON POST (Apr. 1, 2011), [http://www.huffingtonpost.com/2011/04/01/yale-title-ix\\_n\\_843570.html](http://www.huffingtonpost.com/2011/04/01/yale-title-ix_n_843570.html) (describing the sexually hostile environment).

64. *See* DEP’T OF EDUC., VOLUNTARY RESOLUTION AGREEMENT, YALE UNIVERSITY 5–6 (2012) [hereinafter YALE AGREEMENT], available at <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/01112027-b.pdf> (mandating that Yale report on the review of all informal and formal complaints of sexual misconduct); *see also* Caroline Kelley, *As Students Prepare to Return, Yale Faces New Scrutiny for Rape Policy*, TIME, Aug. 5, 2013, <http://swampland.time.com/2013/08/05/as-students-prepare-to-return-yale-faces-new-scrutiny-for-rape-policy> (stating that Yale’s semi-annual report logging sexual misconduct was mandated by the resolution agreement).

65. *See* YALE UNIV., REPORT OF COMPLAINTS OF SEXUAL MISCONDUCT BROUGHT FORWARD FROM JANUARY 1, 2013 THROUGH JUNE 30, 2013, at 3–5 (2013) [hereinafter 2013 YALE REPORT], available at [http://provost.yale.edu/sites/default/files/files/FINAL\\_Jul2013\\_Report\\_Sexual\\_Misconduct\\_Complaints\\_7-31-13.pdf](http://provost.yale.edu/sites/default/files/files/FINAL_Jul2013_Report_Sexual_Misconduct_Complaints_7-31-13.pdf) (describing each report of sexual misconduct, the findings of the University-wide Committee on Sexual Misconduct, and the actions taken as a result); *see also* Kingkade, *Yale*, *supra* note 63 (stating only one of the six students the University committee found guilty of nonconsensual sex was suspended).

66. 2013 YALE REPORT, *supra* note 65, at 3–4; *see also* Tara Culp-Ressler, *Yale University Works to Strengthen Its Sexual Assault Policy by Clarifying ‘Consent,’* THINKPROGRESS.ORG (Sept. 13, 2013), <http://thinkprogress.org/health/2013/09/13/2616531/yale-university-consent/> (“Yale’s most recent sexual misconduct report revealed that none of the six students found guilty of ‘nonconsensual sex’ in the first half of 2013 were actually kicked out of school.”). Some advocates have questioned whether or not expulsion is actually the best punishment for sexually offending students. *See* Caroline Kitchener, *How to Encourage More College Sexual Assault Victims to Speak Up*, THE ATLANTIC, Aug. 23, 2012, <http://m.theatlantic.com/national/archive/2013/08/how-to-encourage-more-college-sexual-assault-victims-to-speak-up/278972/> (quoting advocates and victims who stated severe punishment of offenders would have negative ramifications on their own personal lives due to the close connections between perpetrators and victims on college campuses). However, advocates argued that this does not mean expulsion should not occur, just that the victim’s wishes should be taken into account. *See id.* (quoting Alexandra Brodsky).

Additionally, the University of Colorado Boulder, which had to pay a \$2.85 million settlement for Title IX violations in 2007,<sup>67</sup> is again under investigation by the Department of Education because of questionable sanctions it placed on a student found responsible for the rape of another student.<sup>68</sup> The school's only response was to suspend the perpetrator for eight months, require him to write a paper reflecting on his experience, and fine him \$75.<sup>69</sup> Furthermore, it took the school four weeks to remove the offender from campus, during which he approached the victim several times despite a no-contact order from the school.<sup>70</sup>

## 2. Title IX Complaints

Anyone who believes there has been a Title IX violation can file a Title IX complaint with the Office of Civil Rights ("OCR") at the Department of Education within 180 days of the alleged discrimination.<sup>71</sup> The usual outcome of the OCR's investigation is a voluntary resolution between the OCR and the school if there has been a violation of Title IX.<sup>72</sup> This makes the OCR process injunctive and results in schools being forced to change their response systems.<sup>73</sup>

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67. Howard Pankratz, *\$2.8 Million Deal in CU Rape Case*, DENV. POST, Dec. 5, 2007, [http://www.denverpost.com/snowsports/ci\\_7640880](http://www.denverpost.com/snowsports/ci_7640880); Allison Sherry, *CU Settles Case Stemming from Recruit Scandal*, DENV. POST, Dec. 6, 2007, [http://www.denverpost.com/snowsports/ci\\_7645722](http://www.denverpost.com/snowsports/ci_7645722).

68. See Tyler Kingkade, *CU Boulder Faces Federal Investigation for Suspending Campus Sexual Assault Offender*, HUFFINGTON POST (July 18, 2013), [http://www.huffingtonpost.com/2013/07/18/cu-boulder-sexual-assault-investigation\\_n\\_3614277.html](http://www.huffingtonpost.com/2013/07/18/cu-boulder-sexual-assault-investigation_n_3614277.html) [hereinafter Kingkade, *CU*] (describing the complaint alleging the school was slow to punish the rapist and that the eventual sanctions were too light); see also Adrian D. Garcia, *Feds Target University of Colorado for Handling of Sexual Assault Case*, DENV. POST, July 24, 2013, [http://www.denverpost.com/ci\\_23726450/feds-target-university-colorado-handling-sexual-assault-case](http://www.denverpost.com/ci_23726450/feds-target-university-colorado-handling-sexual-assault-case) (describing the actions taken by the University of Colorado Boulder in response to the rape).

69. Garcia, *supra* note 68; Kingkade, *CU*, *supra* note 68.

70. Garcia, *supra* note 68; Kingkade, *CU*, *supra* note 68.

71. *Questions and Answers on OCR's Complaint Process*, DEP'T EDUC., <http://www2.ed.gov/about/offices/list/ocr/qa-complaints.html> (last visited Feb. 23, 2014); see also Annie E. Clark & Miriam Hauser, *How to File a Title IX Complaint*, KNOW YOUR IX, <http://knowyourix.org/title-ix/how-to-file-a-title-ix-complaint> (last visited Feb. 23, 2014).

72. See DEAR COLLEAGUE LETTER, *supra* note 32, at 16 (describing how OCR prefers to enforce remedies through voluntary compliance, but can also withdraw Federal funding by the Department, or refer the case to the Department of Justice for litigation); see also Cantalupo, *supra* note 29, at 226 (stating that schools might have to change their policies, procedures, and resource allocations); Joseph Shapiro, *Campus Rape Victims: A Struggle For Justice*, NPR (Feb. 24, 2013), <http://www.npr.org/templates/story/story.php?storyId=124001493> (illustrating that the Department of Education gave guidance rather than punishment to all five of the universities that the Department ruled against in the ten-year period between 1998 and 2008).

73. Cantalupo, *supra* note 29, at 226; see also *Frequently Asked Questions About Sexual*

The OCR requires schools to take steps to protect individuals reporting rape upon any notice of sexual harassment.<sup>74</sup> When a complaint asserts that these steps have not occurred, the OCR undertakes a fairly comprehensive investigation that can result in forward-thinking remedies by directly changing schools' behavior.<sup>75</sup> Challenges arise because very few people know how to initiate an OCR complaint.<sup>76</sup> Additionally, another issue with Title IX complaints is that results are not publicized; in order to find out about specific violations, a person has to file a Freedom of Information Act ("FOIA") request.<sup>77</sup>

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*Harassment*, DEP'T EDUC., <http://www2.ed.gov/about/offices/list/ocr/qa-sexharass.html> (last visited Feb. 23, 2014) (discussing the agreements that are used to resolve complaints). However, the recent reports from Yale University and the University of Colorado Boulder raise questions as to how successful such overhauls are. *See supra* notes 63–70 and accompanying text.

74. *See, e.g.*, DEAR COLLEAGUE LETTER, *supra* note 32, at 15–16 (stating that not taking prompt and effective steps when schools become aware of sexual harassment or violence is grounds for OCR remedies); Cantalupo, *supra* note 29, at 233 (stating that OCR uses a constructive knowledge standard when determining whether schools knew of sexual harassment). The constructive knowledge standard is a lower standard than that used by courts when deciding Title IX lawsuits. *See* Cantalupo, *supra* note 29, at 227–28 (discussing the actual knowledge test used by courts in Title IX enforcement cases); *see also infra* Part II.B (discussing issues with Title IX lawsuits).

75. *See* Cantalupo, *supra* note 29, at 235 (arguing that the comprehensiveness and strictness of OCR's approach means it could be a useful tool to get schools to address campus sexual violence); *see also* *OCR Complaint Processing Procedures*, DEP'T EDUC., <http://www2.ed.gov/about/offices/list/ocr/complaints-how.html> (last updated Dec. 2012) (declaring that OCR's process for evaluating complaints includes evaluating each allegation through a variety of fact-finding techniques and that any finding of failure to comply with Title IX results in a resolution agreement or loss of federal financial assistance).

76. *See* Cantalupo, *supra* note 29, at 236 (discussing the difficulty of finding how to file an OCR complaint, and recognizing that the information posted on the OCR's website would not help those who do not know their rights); *see also* Kristin Jones, *Lax Enforcement of Title IX in Campus Sexual Assault Cases*, CENTER FOR PUB. INTEGRITY (Feb. 25, 2010), <http://www.publicintegrity.org/2010/02/25/4374/lax-enforcement-title-ix-campus-sexual-assault-cases-0> (detailing the story of an individual who reported rape but only knew about the ability to file a Title IX complaint after she told the story of her school's inaction to a local newspaper and subsequently was contacted by an advocate about her rights). However, the number of individuals filing OCR complaints has been growing. *See, e.g.*, David Ariosto & Leigh Remizowski, *Yale Settles Sexual Harassment Complaint*, CNN (June 19, 2012), <http://www.cnn.com/2012/06/15/justice/connecticut-yale-settlement/> (stating that the OCR reported a 78% increase in sexual harassment complaints between 2008 and 2011); *see also* Kitchener, *supra* note 66 (reporting that an "unprecedented number" of victims from twenty-nine schools filed Title IX complaints in 2012). This indicates a trend toward greater knowledge among students about their rights under Title IX.

77. *See, e.g.*, Cantalupo, *supra* note 29, at 236–39 (discussing the challenges in obtaining past resolutions but recognizing that the Department of Education has taken positive steps by posting some recent cases in the public reading room on the OCR website); Jones, *supra* note 76 (describing how the Center for Public Integrity received the results of 210 Title IX investigations needed for their inquiry through a FOIA request). The OCR has begun posting results of recent

Finally, although it is difficult to evaluate OCR investigations, evidence shows that OCR's ultimate decisions are not adequately enforced.<sup>78</sup> For instance, through a FOIA request for all complaints between 1998 and 2008, the Center for Public Integrity ("CPI") found at least twenty-four fully resolved investigations related to allegations that colleges and universities failed student-victims in sexual assault cases; and yet violations of Title IX were found in only five.<sup>79</sup> Two specific examples highlight the issues found with OCR's process.

First, in the aforementioned 2011 Yale University case, sixteen current and former students at Yale University filed a complaint with the OCR describing personal incidents of sexual violence and an overwhelmingly sexually hostile environment on campus.<sup>80</sup> After entering a resolution agreement with Yale University, the Department of Education's OCR closed the investigation without any finding of non-compliance.<sup>81</sup> Not only is it questionable that a settlement was reached without any finding of fault for Yale, but merely two years later, the bi-yearly reports mandated by the resolution disclosed that Yale had failed to expel at least six students it found to be sexual offenders.<sup>82</sup>

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investigations in their online reading room. *Recent Resolutions*, DEP'T EDUC., <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/index.html> (last updated Feb. 4, 2014). As Cantalupo notes, this is a promising sign indicating the Department of Education's willingness to address the issue of campus sexual violence, but it does not provide enough information given the scope of the issue. See Cantalupo, *supra* note 29, at 237 n.125.

78. See *id.* at 239 (noting that "a general lack of accountability for OCR" leads to an inability to adequately evaluate their investigations); Kristen Lombardi, *Sexual Assault on Campus: A Lack of Consequences for Sexual Assault*, CENTER FOR PUB. INTEGRITY (Feb. 4, 2010, 12:00 PM), <http://www.publicintegrity.org/2010/02/24/4360/lack-consequences-sexual-assault> (revealing that "students deemed 'responsible' for alleged sexual assault on college campuses can face little or no consequence for their acts").

79. Jones, *supra* note 76.

80. Christina Huffington, *Yale Students File Title IX Complaint Against University*, YALE HERALD, Mar. 31, 2011, <http://yaleherald.com/news-and-features/cover-stories/breaking-news-yale-students-file-title-ix-suit-against-school/>. This sexually hostile environment is apparent through review of documented incidents. In one incident, members of the Delta Kappa Epsilon fraternity marched around the Yale campus chanting, "No means yes! Yes means anal!" repeatedly. *Id.* In another incident, members of the Zeta Psi fraternity held up a sign in front of the Yale Women's Center that read, "We Love Yale Sluts." *Id.*; see also Diane Orson, *Feds Launch Inquiry Into Sexual Harassment At Yale*, NPR (Apr. 6, 2011), <http://www.npr.org/2011/04/06/135181366/feds-launch-inquiry-into-sexual-harassment-at-yale> (discussing incidents that lead to the filing of the complaint).

81. See YALE AGREEMENT, *supra* note 64, at 1 (stating that OCR did not make a finding of noncompliance); see also Kingkade, *Yale*, *supra* note 63 (explaining the voluntary agreement entered into by Yale and the Department of Education).

82. 2013 YALE REPORT, *supra* note 65 (disclosing the recent outcomes and sanctions given in cases of sexual harassment at Yale); see also Kingkade, *Yale*, *supra* note 63 (discussing the

In another case at the University of Wisconsin in Madison, a female student accused two students of rape.<sup>83</sup> It took nine months between 2005 and 2006 for the school to consider and reject filing disciplinary charges against the accused.<sup>84</sup> The University claimed nine months was a reasonable length of time for investigation and stated that it took interim steps by issuing a no-contact order to protect the woman reporting rape.<sup>85</sup> However, during those nine months, she was threatened by one of the accused and felt she had to quit the crew team while he finished college as a member.<sup>86</sup> The woman reporting rape filed an OCR complaint, but the OCR said there was “insufficient evidence” that the school had been less than prompt.<sup>87</sup>

### 3. Title IX Lawsuits

In addition to filing Title IX complaints, students can also file individual private actions in federal courts against universities and colleges for violating Title IX.<sup>88</sup> The relief from these lawsuits is usually significant monetary compensation, but such lawsuits can also result in receipt of attorneys’ fees or injunctive relief.<sup>89</sup> For example, in the 2007 case mentioned previously, the University of Colorado

disclosures in the 2013 Yale Report). It is questionable that all Yale needs to do to be compliant with the voluntary resolution is indicate the results of cases and state the sanctions given, even when the sanctions are as minor as a written reprimand. *See* 2013 YALE REPORT, *supra* note 65, at 3 (discussing a particular case) (“The [University-wide Committee on Sexual Misconduct] found sufficient evidence to support the allegation [of nonconsensual sex]. The respondent was given a written reprimand . . .”).

83. Jones, *supra* note 76 (interviewing Laura Dunn); Shapiro, *supra* note 72 (same). Laura Dunn has since become an advocate for sexual assault victims and was one of primary advocates who worked on the passage of the Campus SaVE Act in Washington, D.C. Taylor Harvey, *Victim Into Advocate: One Sexual Assault Survivor’s Fight For Justice*, DAILY CARDINAL, Apr. 11, 2013, [http://host.madison.com/daily-cardinal/news/campus/victim-into-advocate-one-sexual-assault-survivor-s-fight-for/article\\_fddc55ea-a277-11e2-8f72-001a4bcf887a.html](http://host.madison.com/daily-cardinal/news/campus/victim-into-advocate-one-sexual-assault-survivor-s-fight-for/article_fddc55ea-a277-11e2-8f72-001a4bcf887a.html).

84. Jones, *supra* note 76; Shapiro, *supra* note 72.

85. Jones, *supra* note 76; *see also* Shapiro, *supra* note 72 (“The University of Wisconsin took nine months to investigate, then decided against punishment.”).

86. Jones, *supra* note 76.

87. *See id.* (“[T]he OCR letter finds that the nine-month process was justified.”); *see also* Shapiro, *supra* note 72 (“[The finding by the Department of Education] said the University of Wisconsin—despite taking nine months on her case—had acted properly.”).

88. *See* Cantalupo, *supra* note 29, at 225 (stating that Title IX is enforced in two ways: the OCR complaint and survivors’ private right of action against their schools); *How to Pursue a Title IX Lawsuit*, KNOW YOUR IX, <http://knowyourix.org/title-ix/how-to-pursue-a-title-ix-lawsuit/> (last visited Feb. 26, 2014) (explaining that victims can file a private lawsuit in federal court if his or her college is not Title IX compliant).

89. *See* Cantalupo, *supra* note 29, at 225–26 (noting that if successful, the damages received from the school can be significant); *How to Pursue a Title IX Lawsuit*, *supra* note 88 (delineating the available remedies for a Title IX lawsuit).



Boulder settled a Title IX lawsuit for \$2.85 million.<sup>90</sup>

Unfortunately, successful Title IX lawsuits are difficult to achieve. Two Supreme Court decisions determined that a school must have actual knowledge of the harassment and be deliberately indifferent to it in order to find a school in violation of its Title IX obligations.<sup>91</sup> This high standard is especially problematic<sup>92</sup> because it encourages schools to insulate themselves from knowledge rather than set up procedures by which students can report.<sup>93</sup>

### C. The Clery Act

The Clery Act, formerly the Crime Awareness and Campus Security Act, is the other important federal law that helps protect students from campus peer sexual violence.<sup>94</sup> This Section will first discuss the history of the Clery Act and how it came to be in its current form.<sup>95</sup> Next, it will discuss the requirements of the Clery Act prior to the

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90. Pankratz, *supra* note 67; Sherry, *supra* note 67.

91. *See, e.g.,* Davis v. Monroe Cnty. Bd. of Educ., 526 U.S. 629, 650 (1999) (holding that schools are liable for Title IX violations only when they were “deliberately indifferent” to a case of student-on-student sexual harassment); Gesber v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 285 (1998) (holding that a school district cannot be held liable for a teacher’s sexual harassment of a student unless they had “actual notice” of the harassment). *Gesber* involved a Title IX lawsuit brought by a high school student and her parents against the school district after a teacher sexually harassed her. *Gesber*, 524 U.S. at 277–78. The Court determined that the school could not be held responsible under Title IX because they had no “actual notice” of a sexual relationship between the teacher and the student. *Id.* at 291–92. *Davis* involved a Title IX lawsuit brought by the parents of a fifth-grade student against the school board for failure to remedy a classmate’s sexual harassment of their child. *Davis*, 526 U.S. at 632–33. The Court held that such a lawsuit could only be successful if the school acted with “deliberate indifference” and that harassment was so severe that it deprived the victim of access to the educational opportunities provided by the school. *Id.* at 650.

92. *See* Cantalupo, *supra* note 29, at 227 (“A look at the full corpus of cases shows that many cases never make it to [determining whether there was deliberate indifference] . . . because many are thrown out as a result of . . . requir[ing] a plaintiff to show that the school had actual knowledge or notice of the harassment”); *see also* *Pros and Cons of Filing a Title IX Lawsuit*, KNOW YOUR IX, <http://knowyourix.org/title-ix/pros-and-cons-of-filing-a-title-ix-lawsuit/> (last visited Feb. 26, 2014) (“What a victim has to prove during a lawsuit can be harder than what a victim has to prove in an Office of Civil Rights complaint.”).

93. *Gesber*, 524 U.S. at 300–01 (Stevens, J., dissenting). Though many more issues exist surrounding the standards used in Title IX lawsuits, discussion of them is beyond the scope of this Comment. For a more in-depth discussion, see generally Cantalupo, *supra* note 29, at 227–33 (discussing the limitations the actual knowledge test places on courts’ enforcement of Title IX).

94. *See id.* at 224 (stating that the Clery Act was designed to help parents and students know about the level of crime on campus); *see also* *About KYIX*, *supra* note 34 (providing information about the Clery Act as well as Title IX).

95. *See infra* Part I.C.1 (providing an overview of the history of the Clery Act).

amendments by the Campus SaVE Act.<sup>96</sup> Finally, it will provide an overview of complaints under the Clery Act and problems that have been encountered.<sup>97</sup>

### 1. History

In 1990, following the rape and murder of a nineteen-year-old Lehigh University student Jeanne Clery in her dorm room, Congress passed the Crime Awareness and Campus Security Act, which requires colleges and universities to disclose information about crime on and around their campuses.<sup>98</sup> Because the law is tied to federal student financial aid programs, it applies to most institutions of higher education, both public and private.<sup>99</sup>

Congress amended the law in 1992 to include the Campus Sexual Assault Victims' Bill of Rights, which requires schools to afford certain rights to sexual assault victims.<sup>100</sup> Namely, schools must inform individuals reporting rape of their options to notify law enforcement, grant both the accuser and accused the same opportunity to have others present at any proceedings, inform both parties of the outcome of any disciplinary proceeding, and notify the individual reporting rape of available counseling services and options to change academic and living situations.<sup>101</sup> Failure to comply with the Bill of Rights can lead to fines and loss of eligibility to participate in federal student aid programs.<sup>102</sup> In 1998, Congress amended the law again to expand the reporting

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96. See *infra* Part I.C.2 (discussing the requirements of the Clery Act).

97. See *infra* Part I.C.3 (explaining complaints to the Department of Education under the Clery Act).

98. Student Right-to-Know and Campus Security Act of 1990, Pub. L. No. 101-542, 104 Stat. 2381 (codified as amended at 20 U.S.C. § 1092(f) (2012)); see Shapiro, *supra* note 72 (describing the murder of Jeanne Clery and her parents' subsequent activism); *Our History*, CLERY CENTER FOR SECURITY ON CAMPUS, <http://clerycenter.org/our-history> (last visited Feb. 26, 2014) (discussing the Clerys' activism and initial passage of the Clery Act).

99. See 20 U.S.C. § 1092(f)(8) (explaining that schools receiving federal funding are required to comply with the Clery Act); see also *Summary of the Jeanne Clery Act*, *supra* note 32 (describing how the Clery Act is enforced).

100. Higher Education Amendments of 1992, Pub. L. No. 102-325, § 486(c)(2), 106 Stat. 448, 621-23; see also *Summary of the Jeanne Clery Act*, *supra* note 32; *The Clery Act in Detail*, KNOW YOUR IX, <http://knowyourix.org/clery-act/the-clery-act-in-detail/> (last visited Feb. 26, 2014) (briefly explaining the basic rights and reporting requirements included in the Act after the 1992 amendments).

101. 20 U.S.C. § 1092(f)(8); see also *The Federal Campus Sexual Assault Victims' Bill of Rights*, CLERY CENTER FOR SECURITY ON CAMPUS, <http://clerycenter.org/federal-campus-sexual-assault-victims%E2%80%99-bill-rights> (last visited Feb. 26, 2014) (listing the rights granted to sexual assault victims by the statute).

102. 20 U.S.C. § 1092(f)(8); see *The Federal Campus Sexual Assault Victims' Bill of Rights*, *supra* note 101 (explaining the consequences of not affording sexual assault victims these rights).

requirements and formally rename the law the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.<sup>103</sup>

## 2. Basic Requirements of the Clery Act

While this Comment primarily addresses changes to the Clery Act made by the Campus SaVE Act, this subsection will provide an overview of the Clery Act's requirements prior to the passage of the Campus SaVE Act. The Clery Act requires schools to publish and make available an Annual Security Report every October 1 that documents the previous three years of campus crime statistics and includes information on security policies, procedures, and the rights guaranteed to sexual assault victims.<sup>104</sup> The Annual Security Report must contain information about the school's policies and procedures for criminal incidents, especially ones of sexual violence, by telling students how to report crimes and detailing the school's response.<sup>105</sup>

Additionally, schools must keep a public crime log documenting the nature, date, time, and general location of each crime within two business days of the incident, and make the log available to the public with each incident recorded for at least sixty days.<sup>106</sup> Colleges and universities must also disclose crime statistics, including both forcible and non-forcible sex offenses for incidents that occur on campus, on public areas adjacent to or running through campus, and at certain non-campus facilities such as Greek housing.<sup>107</sup> Finally, schools must issue timely warnings about crimes that pose a serious or ongoing threat to students and employees and devise an emergency response, notification, and testing policy when incidents occur on campus.<sup>108</sup>

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103. The Higher Education Amendments Act of 1998, Pub. L. No. 105-244, § 486(a), 112 Stat. 1581, 1745; *see also Summary of the Jeanne Clery Act, supra* note 32 (describing the history of the Clery Act).

104. 20 U.S.C. § 1092(f)(1); *Summary of the Jeanne Clery Act, supra* note 32 (describing the content of an Annual Security Report).

105. *See, e.g.*, 20 U.S.C. § 1092(f)(1)(A) (describing the policy disclosure requirement); *id.* § 1092(f)(8) (highlighting the specific requirements for cases of sexual violence); *see also The Clery Act in Detail, supra* note 100 (describing how the Clery Act can help students locate statistics on their schools' on-campus crimes through the Annual Security Reports).

106. 20 U.S.C. § 1092(f)(4); *see Summary of the Jeanne Clery Act, supra* note 32 (describing the requirements of a public crime log).

107. 20 U.S.C. § 1092(f)(1)(F); *see Summary of the Jeanne Clery Act, supra* note 32 (stating that data on criminal homicide, sex offenses, robbery, aggravated assault, burglary motor vehicle theft, and arson is required, as well as liquor law violations, drug law violations, and illegal weapons possession).

108. 34 C.F.R. § 668.46(e) (2013); *see Summary of the Jeanne Clery Act, supra* note 32 (providing information about the timely warning and emergency response policy requirements).

### 3. Complaints Under the Clery Act

When a student feels his or her school has not acted in accordance with its responsibilities under the Clery Act, the student may file a complaint with the United States Department of Education, which has the capacity to fine schools up to \$35,000 per violation.<sup>109</sup> The largest fine to date has been \$350,000<sup>110</sup> against Eastern Michigan University for failing to comply with the Clery Act following the rape and murder of a student in her dorm room.<sup>111</sup>

The Department of Education publishes final reports of investigations under the Clery Act online,<sup>112</sup> which can be beneficial to victims and the public when determining what is acceptable university action. Its website shows that the number of decisions finding Clery Act violations has increased substantially in recent years.<sup>113</sup> In 2011, there were sixteen determinations that schools had violated the Clery Act compared to six in 2010, seven in 2009, and approximately two a year prior to 2009.<sup>114</sup> This pattern could indicate that more students are aware of this remedy and are filing complaints. Additionally, it could indicate that the Department of Education is undergoing more thorough

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109. *The Clery Act in Detail*, *supra* note 100 (stating that schools can face up to \$35,000 per violation in fines); see *Background Information: Clery Act Review*, FED. STUDENT AID, <http://studentaid.ed.gov/es/sites/default/files/fsawg/datacenter/cleryact/CleryDataCenterv3.pdf> (last visited Feb. 26, 2014) (stating that reviews can be initiated when a complaint is received, but also when “a media event raises certain concerns, the school’s independent audit identifies non compliance, or through a review selection that can coincide with the FBI’s Criminal Justice Information Service (CJIS) Audit Unit.”).

110. SETTLEMENT AGREEMENT BETWEEN EASTERN MICHIGAN UNIVERSITY AND THE U.S. DEPARTMENT OF EDUCATION, FEDERAL STUDENT AID 2 (June 5, 2008), *available at* <http://studentaid.ed.gov/sites/default/files/fsawg/datacenter/cleryact/easternmichiganuniversity/SettlementAgreement06042008.pdf> (agreeing that that the school would pay the Department of Education \$350,000); see also Shapiro, *supra* note 72 (noting that the largest fine under the Clery Act has been the \$350,000 fine against Eastern Michigan University).

111. U.S. DEP’T OF EDUC., FINAL PROGRAM REVIEW DETERMINATION 3 (2007), *available at* [http://studentaid.ed.gov/sites/default/files/fsawg/datacenter/cleryact/easternmichiganuniversity/E\\_MUFPRD11142007.pdf](http://studentaid.ed.gov/sites/default/files/fsawg/datacenter/cleryact/easternmichiganuniversity/E_MUFPRD11142007.pdf) (stating that Eastern Michigan University informed the community that there was no reason to suspect foul play in a student’s death, yet in the weeks after her death it engaged in a homicide investigation with local law enforcement, never notified the campus community that there was any security threat, and eventually arrested a suspect for her rape and murder); see also Shapiro, *supra* note 72 (stating that administrators covered up the student’s death and let her parents think she died of natural causes).

112. See *Clery Act Reports*, U.S. FED. STUDENT AID, <http://studentaid.ed.gov/about/data-center/school/clery-act> (last visited Feb. 26, 2013) (allowing users to search by year and school for all relevant documents to each case).

113. *Id.* (counting the number of findings of violation per year).

114. *Id.* However, in 2012, there were only five determinations that schools had violated the Clery Act. *Id.*

investigations.

Unfortunately, two primary issues impede the Clery Act's effectiveness at decreasing sexual assault. First, the Clery Act perpetuates the notion that stranger rape is the most common form of sexual assault, despite the fact that the statistics indicate that individuals known to the victim perpetrate 90% of sexual victimizations on campus.<sup>115</sup> The Clery Act requires disclosure of crimes on campus, which emphasizes the location of the crime, not those involved.<sup>116</sup> Students, however, are in much graver danger of sexual assault in social situations, many of which happen off campus, than walking alone on campus.<sup>117</sup>

Second, the Clery Act depends heavily on rape reporting to determine the prevalence of crime on campus.<sup>118</sup> However, when less than 5% of students report a sexual victimization,<sup>119</sup> there is no way for a school to

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115. See, e.g., FISHER ET AL., *supra* note 1, at 17 (finding that in nine out of ten cases, the victim knows her attacker); SAMPSON, *supra* note 1, at 9 (stating that the most common offender is a "classmate, friend, boyfriend, ex-boyfriend, or other acquaintance (in that order)").

116. See Cantalupo, *supra* note 29, at 248 (arguing that requiring schools to only report crimes that occur on their campuses assumes schools can protect students on their territory); see also SAMPSON, *supra* note 1, at 25 (arguing that focusing on rape prevention aimed at making the campus territory safer will not be effective in preventing rape). Additionally, the emphasis of the Clery Act on emergency notification does not apply to most rape cases involving peers because acquaintance rape does not necessarily present an immediate threat to the rest of the campus community. See Cantalupo, *supra* note 29, at 248–49 (explaining that warnings about an acquaintance rape would require identifying the "survivor and/or suspect both exactly and unnecessarily for purposes of capture"); see also Jeremy D. Heacox, *S-A<sup>2</sup>: Clery Act Responsibilities For Reporting Allegations of Peer-on-Peer Sexual Assaults Committed By Student-Athletes*, 10 WILLAMETTE SPORTS L.J. 48, 59 (2012) (describing how two acquaintance rapes at Marquette University could not be prevented by an emergency notification). Furthermore, though the Clery Act does include "noncampus buildings or property" and "public property" as locations for which crimes must be disclosed, 20 U.S.C. § 1092(f)(1)(F) (2012), it defines "noncampus building or property" as that owned by a student organization or used by the institution, *id.* §§ 1092(f)(6)(A)(ii)(I)–(II), and defines "public property" as land adjacent to the school, *id.* § 1092(f)(6)(A)(viii). These definitions exclude any campus crime that occurs off-campus between students in locations not associated with the school.

117. See, e.g., FISHER ET AL., *supra* note 1, at 19 (finding that college women are victimized off-campus more often than on-campus, but highlighting that these victimizations, while off-campus, often occur during an activity that is connected to her life at the college); SAMPSON, *supra* note 1, at 9 (stating that the most common offenders are classmates, friends, boyfriends, ex-boyfriends, or other acquaintances, not strangers).

118. See 20 U.S.C. §§ 1092(f)(1)(F)(i)–(ii) (requiring schools to include various crimes "reported to campus security authorities or local police agencies" in their Annual Security Report (emphasis added)); *id.* § 1092(f)(4)(A) (stating that the crime log to be maintained by the school should include all crimes reported to police or the security department); see also Cantalupo, *supra* note 29, at 259 (suggesting that the Clery Act's reliance on victim reporting allows schools to pretend a lack of student reports indicates the lack of a problem).

119. See *supra* notes 2–3 and accompanying text.

accurately report the true level of sexual violence on their campus. In fact, the lack of any other required method of collecting data about sexual assaults on campus allows schools to pretend that the lack of victim reporting means there is no sexual violence problem at the school.<sup>120</sup> This discourages schools from encouraging victims to report instances of sexual assault, and therefore, rather than address the problem, schools are able to actively avoid knowledge about campus sexual violence.<sup>121</sup>

#### *D. Campus Responses to Sexual Assault Reports*

In order to understand why the Campus SaVE Act was necessary, it is important to understand the issues with the current responses to campus sexual violence from colleges and universities. This Section will discuss the various campus responses to campus peer sexual violence and why they have raised questions among students and victim advocates.<sup>122</sup> Then, it will use cases from three schools to illustrate these problematic responses.<sup>123</sup>

##### 1. General Findings

Despite Title IX and the Clery Act, campus responses to sexual assault reports are very often inadequate. A year-long investigation by the CPI determined that students deemed responsible for alleged sexual assaults on college campuses face few consequences, despite the fact that victims' lives are forever changed.<sup>124</sup> A 2002 study found that only 60% of schools had written sexual assault policies and only 70% had

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120. See SAMPSON, *supra* note 1, at 7 (hypothesizing that campus police are influenced by campus administrators who fear that placing too strong an emphasis on campus sexual violence will lead parents and students to believe their campus is less safe than others). Sampson also hypothesizes that the lack of reporting leaves colleges and universities in the dark about the true extent of the problem. *Id.* at 9. However, given the extensive research on the subject, this is an unacceptable excuse for not addressing the issue. FISHER ET AL., *supra* note 1, at 1; KILPATRICK ET AL., *supra* note 1, at 3; KREBS ET AL., *supra* note 1, at vii; see also Cantalupo, *supra* note 29, at 259 (“[The Clery Act] needs to stop depending on victim reporting.”).

121. See Cantalupo, *supra* note 29, at 219–20 (discussing the information problem that creates incentives to avoid knowledge of campus sexual violence); see also Tyler Kingkade, *USC Mislabels Sexual Assault to Keep Crime Numbers Low, Clery Complaint Says*, HUFFINGTON POST (Aug. 12, 2013), [http://www.huffingtonpost.com/2013/08/12/usc-sexual-assault\\_n\\_3741267.html](http://www.huffingtonpost.com/2013/08/12/usc-sexual-assault_n_3741267.html) (discussing recent allegations by students at the University of Southern California that the school failed to both respond to and disclose reports of sexual assault).

122. See *infra* Part II.D.1 (discussing general issues with campus responses to sexual assault).

123. See *infra* Part II.D.2–4 (describing cases at Marquette University, University of Colorado Boulder, and the University of Notre Dame).

124. See Lombardi, *supra* note 78 (finding colleges permanently expelled only 10 to 25% of men found responsible for sexual assault).

some adjudicative process.<sup>125</sup> For those that had a procedure, the adjudication and hearing committees were questionable. For instance, less than half of the policies mentioned how many members would comprise a hearing committee. Over 80% of schools had other students on these committees; in contrast, only 19.6% had actual judicial or disciplinary officers.<sup>126</sup> Furthermore, schools often move so slowly that the individual reporting rape loses hope of receiving any redress.<sup>127</sup> Also, colleges fail to protect the student from retaliation by other students for reporting the assault.<sup>128</sup> Finally, colleges use the mission of higher education as an excuse for not expelling those found responsible for sexual violence.<sup>129</sup> This last excuse made by colleges and universities is questionable as there is no evidence that educational institutions can rehabilitate a sex offender.<sup>130</sup>

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125. KARIJANE ET AL., *CAMPUS SEXUAL ASSAULT: HOW AMERICA'S INSTITUTIONS OF HIGHER EDUCATION RESPOND* 54, 105 (2002), available at <http://www.rainn.org/pdf-files-and-other-documents/Public-Policy/Legislative-Agenda/mso44.pdf>. The study also found that, of the 70% of institutions that had some sort of adjudication process, only 60% had an appeals process. *Id.* at 105; see also Bonnie S. Fisher et al., *Crime and Sexual Victimization on College and University Campuses: Ivory Towers or Dangerous Places?*, in *RESTORATIVE JUSTICE ON THE COLLEGE CAMPUS: PROMOTING STUDENT GROWTH AND RESPONSIBILITY, AND REAWAKENING THE SPIRIT OF CAMPUS COMMUNITY* 217, 233–34 (David R. Karp & Thom Allena eds., 2004) (suggesting that issues with campus responses to reports contribute to why students do not report in the first place).

126. KARIJANE ET AL., *supra* note 125, at 116–17. Allowing other students to be on the hearing committee for sexual assault cases at colleges and universities increases the risk of retaliation against the individual reporting rape for making a complaint. Additionally, some students have discovered that the same people who hear sexual assault cases are also those who hear completely unrelated student disciplinary cases, such as plagiarism cases and underage drinking cases. See Alyssa Colby et al., *Guest Post: How Does Your Private College Respond to Rape and Sexual Assault?*, FEMINISTING.ORG (May 12, 2010), <http://feministing.com/2010/05/12/guest-post-how-does-your-private-college-respond-to-rape-and-sexual-assault/> (“We feel that having a board that decides on cases of plagiarism and underage drinking, also make decisions on rape allegations belittles the incident itself and is insulting to the victim.”).

127. See *infra* Part II.D.4 (discussing two Notre Dame University cases in which campus investigators waited several days to interview the accused).

128. See *infra* notes 160–162 and accompanying text (discussing a threatening text message sent to a victim after she reported a sexual assault); see also RAPHAEL, *supra* note 1, at 156 (describing a victim's reports of taunts from fellow students, threats to her and her friends, and loss of friends as a result of reporting a rape).

129. See Lombardi, *supra* note 78 (stating that college administrators often argue that punishment is in conflict with the school's purpose of teaching students); Shapiro, *supra* note 72 (stating that schools see their role as one of teaching students rather than providing justice).

130. See Lombardi, *supra* note 78 (quoting Brett Sokolow of the National Center on Higher Education Risk Management); see also John Lauerman, *College Serial Rapists Evade Antiquated Campus Responses*, BLOOMBERG (June 12, 2013 11:01 PM), <http://www.bloomberg.com/news/2013-06-13/college-serial-rapists-evade-antiquated-campus-responses.html> (“College presidents don't like to hear this, but these are sex offenders . . . . Every report should be viewed and treated as an opportunity to identify a serial rapist.” (quoting David Lisak)).

The above response issues are often reasons students do not report a sexual victimization.<sup>131</sup> Below are three cases that highlight these problems; they are examples of how colleges are failing their duty to protect students.<sup>132</sup>

## 2. Marquette University

In October 2010, a female student at Marquette University in Milwaukee, Wisconsin told Milwaukee police that four athletes had sexually assaulted her in a dorm room.<sup>133</sup> She had previously spoken to campus security officers; they informed the athletic department about the accusation, but did not tell local law enforcement.<sup>134</sup> This was a direct violation of Wisconsin law, under which campus security officers are legally bound to report such incidents to the police.<sup>135</sup>

Four months later, in February 2011, a nineteen-year-old Marquette student reported to campus security that an athlete had raped her earlier that morning, but again the school did not notify local law enforcement.<sup>136</sup> The next day, campus security contacted the student

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131. See, e.g., Cantalupo, *supra* note 29, at 223 (arguing that students' fears of hostile treatment from schools are a reason for not reporting); Kitchener, *supra* note 66 ("If a victim reports and the perpetrator ends up expelled—or even just suspended—the victim risks facing social stigma from a community that doesn't want to believe her.").

132. Though this Comment only highlights three cases in Part II, many more occur on campuses every year. This Comment will reference some of these schools as examples, but the cases mentioned here are in no way the entirety of the problem.

133. This student reported that she was forced to perform a sex act on an athlete, and was then locked in a bedroom with three other athletes. She reported that she was passed around the room, and forced to touch the athletes sexually. See Ryan Haggerty, Todd Lighty & Stacy St. Clair, *One Woman's Stand Against College Athletes*, CHI. TRIB., Oct. 28, 2011, <http://www.chicagotribune.com/news/local/ct-met-marquette-sex-cases-20111028,0,4057558.story?page=1&track=rss> (citing an interview with the victim describing the attack); Walker, *infra* note 136 (describing the victim's story after she opened up about the attack).

134. See Haggerty, Lighty & St. Clair, *supra* note 133 ("My only regret is that I didn't go [to the police] sooner . . . . If I had gone sooner, the outcome may have been totally different." (quoting the victim)); see also Walker, *infra* note 136 (reporting that Milwaukee County District Attorney, John Chisholm, was critical of Marquette's actions because Milwaukee police did not quickly acquire the information).

135. See WIS. STAT. § 940.34(2)(b) (2012) ("Any person . . . granted a private security permit . . . who has reasonable grounds to believe that a crime is being committed or has been committed shall notify promptly an appropriate law enforcement agency of the facts which form the basis for this belief."); Haggerty & St. Clair, *infra* note 136 (stating that not notifying Milwaukee police of the report was a violation of state law).

136. Ryan Haggerty & Stacy St. Clair, *Cases Shed Light on Lapses in Sexual Assault Reporting at Marquette*, CHI TRIB., June 21, 2011, [http://articles.chicagotribune.com/2011-06-21/sports/ct-met-marquette-sex-assaults-20110621\\_1\\_sexual-assault-sexual-attack-allegation-crimes](http://articles.chicagotribune.com/2011-06-21/sports/ct-met-marquette-sex-assaults-20110621_1_sexual-assault-sexual-attack-allegation-crimes); Don Walker, *U.S. Reviewing Marquette Response to Sex Assault Reports*, MILWAUKEE WIS. J. SENTINEL, Nov. 10, 2011, <http://www.jsonline.com/news/milwaukee/us-reviewing->



and told her that the police would not likely investigate the incident, and that the University's internal discipline process would do more harm than good.<sup>137</sup> The school has since admitted to this error, but attempted to excuse it by stating that it only involves police at a student's request, a dubious policy given that campus security discouraged her from reporting to police.<sup>138</sup> It was in late March, when the news media began covering the October 2010 incident, that the individual reporting rape in February's attack heard from the school.<sup>139</sup> She was told to stay focused on her schoolwork and mental health rather than press charges.<sup>140</sup>

When asked, University officials stated that all athletes had been disciplined under the student code of conduct as well as athletic department rules; officials would not, however, disclose what the punishment had been.<sup>141</sup> Shortly before the disciplinary proceeding, the accuser from the February 2011 attack withdrew from classes and made plans to transfer schools in the fall.<sup>142</sup> The Department of Education began investigating these incidents as possible violations of the Clery Act in November of 2011, but no findings against Marquette have been made.<sup>143</sup>

### 3. University of Colorado Boulder

Another case highlights colleges' and universities' disregard for

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marquette-response-to-sex-assault-reports-4e30gub-133656848.html.

137. Haggerty & St. Clair, *supra* note 136; *see* Walker, *supra* note 136 (stating that Public Safety did not tell the Milwaukee police about the reported assault, but the female student did herself later that day). Campus safety had questioned her original report, stating that because the encounter began as consensual sex and ended as rape, they were unsure of whether it was a crime. Haggerty & St. Clair, *supra* note 136.

138. *Id.*; *see also* Heacox, *supra* note 116, at 49 (acknowledging that the school publicly acknowledged its failure to report the alleged assault to Milwaukee police, but citing the number of remaining questions about the cases).

139. *See* Haggerty & St. Clair, *supra* note 136 (discussing a meeting between the victim and the University's dean of students).

140. *See id.* (citing the victim's statements that they told her to "focus on her schoolwork and mental health rather than pursuing charges . . . [and] asked if she had thought about praying about the situation").

141. *See* Haggerty, Lighty & St. Clair, *supra* note 133 (citing University officials' refusal to mention specific outcomes, but mentioning that a source close to one of the accused said that the athlete was required to write a paper); Walker, *supra* note 136 (reporting that the interim athletic director only stated that all athletes involved had been reprimanded).

142. Sharif Durhams & Gitte Laasby, *Marquette Revises Sex Assault Policies*, MILWAUKEE WIS. J. SENTENTIAL, June 22, 2011, <http://www.jsonline.com/news/education/124379168.html>; Haggerty & St. Clair, *supra* note 136.

143. Walker, *supra* note 136. For a more detailed overview and analysis of Marquette's possible violations of the Clery Act, *see* generally Heacox, *supra* note 116.

protecting students from sexual violence. In 2001, two University of Colorado Boulder (“CU”) students, Lisa Simpson and Anne Gilmore, reported that they had been raped by several football players and high school recruits whom they had agreed to host at Ms. Simpson’s apartment.<sup>144</sup> The night prior, some of the recruits had sex with female students at a local hotel; the other recruits were assured similar treatment the next night.<sup>145</sup> On the night in question, Ms. Simpson eventually went to sleep, but reported that she awoke to find naked players and recruits removing her clothes.<sup>146</sup> She reported that they then raped her orally and vaginally.<sup>147</sup> Ms. Gilmore, who was too intoxicated to consent, reported that, in the same room, three men also raped her.<sup>148</sup> Following the attack, Ms. Simpson withdrew from CU and Ms. Gilmore took a year off.<sup>149</sup>

Ms. Simpson and Ms. Gilmore filed suit under Title IX stating that CU knew of the risk of sexual harassment of female students in connection with the football-recruiting program and that it failed to take any action before their assaults.<sup>150</sup> The district court granted CU’s subsequent motion for summary judgment, but in *Simpson v. University of Colorado Boulder*, the Tenth Circuit reversed and reinstated the victims’ claim.<sup>151</sup> The Tenth Circuit found past incidents of sexual assault indicative of the school’s knowledge,<sup>152</sup> such as the reported sexual assault of a high school girl who attended a CU football player’s party in 1997, the sexual harassment of a female football team member, and the rape of a female student employed by the athletic department.<sup>153</sup>

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144. *Simpson v. Univ. of Colo. Boulder*, 500 F.3d 1170, 1180 (10th Cir. 2007); *see also* Sherry, *supra* note 67 (describing the *Simpson* lawsuit).

145. *Simpson*, 500 F.3d at 1180.

146. *Id.*; *see also* Sherry, *supra* note 67 (describing the attack leading to the lawsuit).

147. *Simpson*, 500 F.3d at 1180.

148. *Id.*

149. *Id.*

150. *Id.* at 1174.

151. *Id.* at 1173–74; *see also* Pankratz, *supra* note 67 (reporting that the complaint alleged that CU sanctioned, supported, and funded a recruiting program that inevitably led to recruits and athletes committing sexual offenses); Sherry, *supra* note 67 (stating that the lawsuit has brought the “tawdry, sex-charge culture of sports recruiting at the school” to light).

152. *Simpson*, 500 F.3d at 1183–84.

153. The court’s opinion references cases of sexual assault by CU football players dating back to 1989. *Id.* at 1181. Following the reported 1997 assault of the high school girl, the local district attorney’s office spoke with University and athletic officials about their concern that women were being made available to recruits for sex. *Id.* at 1182. In response, CU made minor changes to their school-wide sexual harassment policy, but did not address the issue specific to athletes, or with athletes. *Id.* Additionally, after the female football player’s father reported sexual harassment of his daughter, the school prevented her from playing on the team in retaliation. *Id.*

Following Ms. Simpson's and Ms. Gilmore's complaints, the school merely revoked the scholarships of four football players implicated in the attack, but did not prohibit them from playing in the school's January 2002 bowl game.<sup>154</sup> The Tenth Circuit also noted evidence of obstruction in the school's investigation of the complaints.<sup>155</sup> Following the Tenth Circuit's reinstatement of the claim, CU reached a \$2.85 million settlement with the victims, of which Ms. Simpson received \$2.5 million and Ms. Gilmore received \$350,000.<sup>156</sup>

#### 4. The University of Notre Dame

A third, and final, example further highlights the disturbing way universities handle cases of sexual assault on campus. In 2011, the Department of Education began investigating Notre Dame when the school's handling of sexual assault cases made national news.<sup>157</sup> In 2010, Elizabeth (Lizzy) Seeberg, a student at the neighboring St. Mary's College, committed suicide nine days after reporting in a handwritten statement to campus police that a Notre Dame football player had sexually assaulted her in his dorm room.<sup>158</sup> Following the reported

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at 1183; *see also* Sherry, *supra* note 67 (describing the recruiting culture at CU as one in which strippers were hired to entertain and women were paid to have sex with football players and recruits).

154. *Simpson*, 500 F.3d at 1184.

155. *See id.* (noting that a University police officer who served as a personal escort for the team's coach obstructed the investigation by meeting with football players prior to the investigating officers, and that a witness student-athlete had her scholarship terminated and was excluded from the athletic facilities and benefits after telling police what she saw at Ms. Simpson's apartment).

156. Pankratz, *supra* note 67; Sherry, *supra* note 67.

157. *See generally* Melinda Henneberger, *Reported Sexual Assault at Notre Dame Campus Leaves More Questions Than Answers*, NAT'L CATH. REP., Mar. 26, 2012, <http://ncronline.org/news/accountability/reported-sexual-assault-notre-dame-campus-leaves-more-questions-answers> (providing a detailed overview of the Lizzy Seeberg case); Stacy St. Clair & Todd Lighty, *Family Criticizes Notre Dame in 2nd Sex Attack Case*, CHI TRIB., Feb. 17, 2011, [http://articles.chicagotribune.com/2011-02-17/news/ct-met-notre-dame-20110217\\_1\\_ack-allegation-campus-police-attack-case/2](http://articles.chicagotribune.com/2011-02-17/news/ct-met-notre-dame-20110217_1_ack-allegation-campus-police-attack-case/2) [hereinafter St. Clair & Lighty, *Family Criticizes Notre Dame in 2nd Sex Attack Case*] (stating that the Department of Education was spurred to look into Notre Dame's handling of sexual assault cases by the *Chicago Tribune's* reporting); Stacy St. Clair & Todd Lighty, *'It Feels Like a Betrayal,'* CHI TRIB, Dec. 16, 2010, [http://articles.chicagotribune.com/2010-12-16/news/ct-met-notre-dame-seeberg-20101216\\_1\\_campus-police-notre-dame-handling](http://articles.chicagotribune.com/2010-12-16/news/ct-met-notre-dame-seeberg-20101216_1_campus-police-notre-dame-handling) [hereinafter St. Clair & Lighty, *It Feels Like a Betrayal*] (discussing Notre Dame's treatment of sexual assault); Dom Cosentino, *This Is What Happens When You Accuse a Notre Dame Football Player of Sexually Assaulting You*, DEADSPIN (Apr. 6, 2012), <http://deadspin.com/5897809/this-is-what-happens-when-you-accuse-a-notre-dame-football-player-of-sexually-assaulting-you> (increasing the coverage of Notre Dame's inadequate response to Lizzy Seeberg's allegations).

158. *See* Henneberger, *supra* note 157 (recounting Ms. Seeberg's report to police following

assault, Ms. Seeberg immediately wrote the statement upon returning to her campus, sought assistance the next day from the St. Mary's victim-assistance program, went to a hospital and consented to a DNA evidence kit, and reported the attack to authorities.<sup>159</sup> Two days after the reported attack, Ms. Seeberg received a threatening text message from the player's friend warning her, "Don't do anything you would regret. Messing with notre dame [sic] football is a bad idea."<sup>160</sup>

Throughout the next several days, Ms. Seeberg continued to send campus police information, including details about the text message and a link to the player's online football profile.<sup>161</sup> It took more than a week after Ms. Seeberg filed the complaint for the Notre Dame detective to attempt to contact the player.<sup>162</sup> Another unsuccessful attempt to contact the player was made by police four days later.<sup>163</sup> It was not until two weeks after the alleged attack—and four days after Ms. Seeberg's death—that police interviewed the player.<sup>164</sup> Ms. Seeberg's parents continuously followed up with the school, but according to media accounts, the school shut them out of the investigation completely.<sup>165</sup> It was not until the Seebergs hired a high-profile attorney that they were even able to see a timeline of the

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the attack); St. Clair & Lighty, *It Feels Like a Betrayal*, *supra* note 157 (reporting that Ms. Seeberg stated that she went to the player's room with a friend of the player's and the friend's girlfriend, both of whom she knew. She stated that the other couple abruptly left after what seemed to be a text messaging conversation between the player and his friend. She reported that the player began attacking her once they left, and stopped when his cell phone distracted him).

159. St. Clair & Lighty, *It Feels Like a Betrayal*, *supra* note 157; *see also* Henneberger, *supra* note 157 (discussing Ms. Seeberg's actions following the attack).

160. St. Clair & Lighty, *It Feels Like a Betrayal*, *supra* note 157; *see also* Henneberger, *supra* note 157 (citing statements by Ms. Seeberg's friend that when they went to the police station the next day, the player's friend was texting and calling her. Ms. Seeberg's friend described it as "threatening").

161. Henneberger, *supra* note 157; *see also* St. Clair & Lighty, *It Feels Like a Betrayal*, *supra* note 157 (describing Ms. Seeberg's actions after the assault).

162. Henneberger, *supra* note 157; *see also* St. Clair & Lighty, *It Feels Like a Betrayal*, *supra* note 157 (detailing the lack of University action on her complaint).

163. Henneberger, *supra* note 157; *see also* St. Clair & Lighty, *It Feels Like a Betrayal*, *supra* note 157 (discussing the University's light investigation).

164. Henneberger, *supra* note 157; St. Clair & Lighty, *It Feels Like a Betrayal*, *supra* note 157. Legal experts, victim advocates, and defense lawyers have all stated that such delays in investigation compromise evidence. *See* St. Clair & Lighty, *Family Criticizes Notre Dame in 2nd Sex Attack Case*, *supra* note 157 (quoting a victim advocate and a Chicago defense attorney).

165. *See* St. Clair & Lighty, *It Feels Like a Betrayal*, *supra* note 157 (stating that the Seebergs' questions went unanswered by the University); *see also* Henneberger, *supra* note 157 (describing how Ms. Seeberg's parents were told by Notre Dame police that they might not have time to follow up on the case because "it's football season and there is a lot of underage drinking").

investigation.<sup>166</sup> That same school year, another female student from St. Mary's reported being sexually attacked by a Notre Dame athlete and experienced similar struggles in getting the school to take her allegations seriously.<sup>167</sup>

The Department of Education began investigating the school in late 2010.<sup>168</sup> After a seven-month investigation, the school reached an agreement with the Department of Education in which it was required to complete administrative reviews within sixty days and develop a written policy stating that sexual misconduct allegations are evaluated by a "preponderance of the evidence" standard, meaning the alleged attack more likely than not occurred.<sup>169</sup> In both of the above cases, the school avoided any transparency with the victims and their families about the investigation.<sup>170</sup> In Ms. Seeberg's case, the school attempted to damage

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166. See St. Clair & Lighty, *It Feels Like a Betrayal*, *supra* note 157 (describing how the Seebergs' questions went unanswered until they hired a powerful attorney). Their attorney was Zachary Fardon, a former federal prosecutor who tried ex-Illinois Governor George Ryan, and current nominee to be the next U.S. Attorney in Chicago. Jason Meisner, *Senate Committee Clears Nominee for U.S. Attorney*, CHI. TRIB., Sept. 26, 2013, <http://www.chicagotribune.com/news/local/ct-met-fardon-nomination-approved-20130927,0,7918526.story>. However, Mr. Fardon was only able to obtain a timeline of the investigation, which indicated that the school did not seek the player's phone records, despite Ms. Seeberg's report that he had been communicating with his friend in the same room via text message prior to the attack, or speak to Ms. Seeberg's friend who co-signed her statement until after Mr. Seeberg called the Department. St. Clair & Lighty, *It Feels Like a Betrayal*, *supra* note 157.

167. As with Ms. Seeberg's case, the University delayed fully investigating her allegations. Like Ms. Seeberg, the individual reporting rape was a nineteen-year-old student at St. Mary's, had filed a police report within twenty-four hours of the attack, and had gone to the hospital. In this case, the woman reported the attack on September 5, and the University did not speak with the accused until eleven days later. St. Clair & Lighty, *Family Criticizes Notre Dame in 2nd Sex Attack Case*, *supra* note 157 (discussing the case of a second victim from Notre Dame); see Henneberger, *supra* note 157 (describing another victim's story).

168. See Henneberger, *supra* note 157 (explaining that the Seeberg case led to the Department of Education launching an investigation into Notre Dame's handling of sexual assault cases); St. Clair & Lighty, *Family Criticizes Notre Dame in 2nd Sex Attack Case*, *supra* note 157 (asserting that the *Tribune's* first story on Ms. Seeberg's case led to the Department of Education beginning an investigation).

169. RESOLUTION AGREEMENT: UNIVERSITY OF NOTRE DAME 5, 8 (2011), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/05072011-b.pdf>.

170. In contrast to the low priority Notre Dame put on investigating sexual assault, the school put a high priority on investigating an internet hoax played on their star football player in 2012. Although it took the school almost two weeks to interview the accused students after allegations of sexual assault, the school immediately hired a private investigator when it became apparent a public prank was played on their star athlete. See Irin Carmon, *Notre Dame's Real Dead Girl*, SALON (Jan. 17, 2013, 9:53 AM), [http://www.salon.com/2013/01/17/notre\\_dames\\_double\\_standard/](http://www.salon.com/2013/01/17/notre_dames_double_standard/) (comparing Notre Dame's response to the Manti Te'o incident to its response to Ms. Seeberg's sexual assault and suicide); see also Tyler Kingkade, *Notre Dame Responds to Lizzy Seeberg Suicide Contrasts With Manti Te'o Girlfriend Hoax*, HUFFINGTON POST (Jan. 17, 2013, 10:48 PM), <http://www.huffingtonpost.com/2013/01/17/notre-dame-lizzy-seeberg->

Ms. Seeberg's reputation after her death to reporters,<sup>171</sup> and in the other student's case, the school stated she had delayed the investigation because she was uncertain about pressing charges.<sup>172</sup>

Issues such as those presented in the above examples highlight the need for further government intervention, as Title IX and the Clery Act are not adequately protecting students.

## II. DISCUSSION

This Part will discuss the attributes of the Campus SaVE Act, an Act designed to address the failures of Title IX and the Clery Act to protect students from sexual assault. It will first discuss the legislative history of the Campus SaVE Act. Next, this Part will provide an overview of the Act's provisions, focusing specifically on new reporting requirements, educational programming requirements, and procedural requirements.

### *A. Legislative History of the Campus SaVE Act*

On March 7, 2013, the Campus SaVE Act was signed into law as part of the VAWA Reauthorization.<sup>173</sup> The Act became effective on March 7, 2014,<sup>174</sup> and the Department of Education underwent a negotiated rulemaking process for its implementation.<sup>175</sup> The goal of the Campus

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suicide\_n\_2499256.html (noting how Notre Dame showed greater concern over the Manti Te'o hoax than it did over Ms. Seeberg's sexual assault and suicide).

171. See Hennenberger, *supra* note 157 (recounting how the player's lawyer, who answered questions sent to the University spokesman, falsely painted Ms. Seeberg as an unstable young woman who should never have been away from home due to the medication she was on and spread rumors about past accusations Ms. Seeberg had made, none of which could be found); Melinda Henneberger, *Why I Won't Be Cheering for Old Notre Dame*, WASH. POST (Dec. 4, 2012, 11:02 PM), <http://www.washingtonpost.com/blogs/she-the-people/wp/2012/12/04/why-i-wont-be-cheering-for-old-notre-dame/> (stating that school officials spread rumors to the author and others about Ms. Seeberg's mental stability).

172. St. Clair & Lighty, *Family Criticizes Notre Dame in 2nd Sex Attack Case*, *supra* note 157. The family and individual reporting rape in this second case vehemently deny any uncertainty about pressing charges. Regardless, the International Association of Chiefs of Police and numerous law enforcement experts and victim advocates state that after making the initial report, the individual should not be expected to make decisions regarding the investigation or be responsible for activating it. *Id.*

173. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54; see *VAWA Amendments to Clery/Campus SaVE*, CLERY CENTER FOR SECURITY ON CAMPUS, <http://clerycenter.org/article/vawa-amendments-clerycampus-save> (last visited Mar. 27, 2014) (discussing the passage of the Campus SaVE Act within the reauthorization of VAWA).

174. Violence Against Women Reauthorization Act of 2013 § 4; *New Requirements Imposed by the Violence Against Women Reauthorization Act*, *supra* note 7, at 1.

175. See Regulatory Issues, 78 Fed. Reg. 22467-68 (Apr. 16, 2013) (announcing rulemakings pertaining to changes made to the campus safety and security requirements by the reauthorization

SaVE Act is to close the gap in current laws by requiring colleges and universities to clearly explain their policies on sexual assault, stalking, dating violence, and domestic violence, so that all young people can focus on their intellectual passions during college, rather than having to deal with the mental and physical exhaustion of abuse.<sup>176</sup>

### *B. Provisions of the Campus SaVE Act*

The provisions of the Campus SaVE Act impose new requirements on colleges and universities. First, the Campus SaVE Act contains new reporting requirements for schools. Universities must now report statistics on incidents of domestic violence, dating violence, and stalking.<sup>177</sup> As with other crimes, the Act still requires campuses to provide these statistics based on reports to campus authorities or local police.<sup>178</sup> Furthermore, the Act specifies that schools cannot reveal the victims' names in the required "timely reports" made to the student body when crimes are considered a threat to other students.<sup>179</sup>

Second, the Campus SaVE Act expands educational programming requirements to promote awareness about violence to students.<sup>180</sup>

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of VAWA); *see also VAWA Amendments to Clery/Campus SaVE, supra* note 173 (explaining that specific guidelines will be released by the Department of Education after the negotiated rulemaking process).

176. 159 CONG. REC. E179 (2013) (statement of Rep. Carolyn Maloney).

177. 20 U.S.C.A. § 1092(f)(1)(F)(iii) (West 2013); *see also New Requirements Imposed by the Violence Against Women Reauthorization Act, supra* note 7, at 1–2 (describing the new reporting requirements). "Domestic violence" is defined as "asserted misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law." "Dating violence" has been defined as "violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship [sic] will be gauged by its length, type, and frequency of interaction." "Stalking" is defined as "a course of conduct directed at a specific person that would cause a reasonable person to fear for her, his, or others' safety, or to suffer substantial emotional distress." *New Requirements Imposed by the Violence Against Women Reauthorization Act, supra* note 7, at 1–2.

178. 20 U.S.C.A. § 1092(f)(1)(F)(iii); *see also Understanding the Campus SaVE Act, KNOW YOUR IX, <http://knowyourix.org/understanding-the-campus-save-act/>* (last visited Nov. 5, 2013) (noting that the requirement to report statistics has stayed the same, but the types of crimes that must be reported have been expanded).

179. 20 U.S.C.A. § 1092(f)(3); *see also New Requirements Imposed by the Violence Against Women Reauthorization Act, supra* note 7, at 2 (explaining changes to the timely reports schools must make after a crime to prevent similar occurrences). As noted in Part I.C.3, this aspect of the Clery Act is not likely to help prevent acquaintance rape on college campuses. *See supra* note 116 (arguing that emergency notification does not apply to cases of acquaintance rape).

180. *See New Requirements Imposed by the Violence Against Women Reauthorization Act, supra* note 7, at 3 (stating that the Campus SaVE Act is more prescriptive in its requirements for educational programming on sexual violence than the "Dear Colleague" letter); *Understanding the Campus SaVE Act, supra* note 178 (explaining that, although the "Dear Colleague" letter

Formerly, the Clery Act only required that the schools' policy include "education programs to promote the awareness of rape, acquaintance rape, and other sex offenses."<sup>181</sup> Now, the Campus SaVE Act requires that the programs be of primary prevention and awareness for all incoming students and new employees.<sup>182</sup> The program must incorporate definitions for the offenses in the applicable jurisdictions,<sup>183</sup> as well as the definition of consent in reference to sexual activity.<sup>184</sup> Programs must teach participants safe and positive options for bystander intervention that an individual can use to prevent harm or intervene if there is a risk of sexual assault.<sup>185</sup> They must also give information on risk reduction so students may better recognize warning signs of abusive behavior and potential attacks.<sup>186</sup> Finally, education about sexual violence must continue for all students and faculty in the form of ongoing prevention and awareness campaigns by the school.<sup>187</sup>

Third, the Campus SaVE Act clarifies minimum standards for institutional discipline proceedings and improves transparency so individuals reporting rape better know their rights.<sup>188</sup> Before the Campus SaVE Act, institutions were required to (1) inform students of the procedures they should follow; (2) give them information regarding the importance of evidence—as may be necessary to prove the assault<sup>189</sup> or obtain a protective order; (3) tell students to whom the offense should be reported; and (4) disclose the procedures for

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suggested educational programming on sexual violence, the Campus SaVE Act now mandates it).

181. See 20 U.S.C. § 1092(f)(8)(B)(i) (2012).

182. 20 U.S.C.A. § 1092(f)(8)(B)(i)(I); see also *New Requirements Imposed by the Violence Against Women Reauthorization Act*, *supra* note 7, at 3.

183. 20 U.S.C.A. § 1092(f)(8)(B)(i)(I)(bb); see also *VAWA Amendments to Clery/Campus SaVE*, *supra* note 173.

184. 20 U.S.C.A. § 1092(f)(8)(B)(i)(I)(cc); see also *VAWA Amendments to Clery/Campus SaVE*, *supra* note 173.

185. 20 U.S.C.A. § 1092(f)(8)(B)(i)(I)(dd); see also *New Requirements Imposed by the Violence Against Women Reauthorization Act*, *supra* note 7, at 3.

186. 20 U.S.C.A. § 1092(f)(8)(B)(i)(I)(ee); see also *New Requirements Imposed by the Violence Against Women Reauthorization Act*, *supra* note 7, at 3.

187. 20 U.S.C.A. § 1092(f)(8)(B)(i)(II); see *VAWA Amendments to Clery/Campus SaVE*, *supra* note 173.

188. See *The Campus Sexual Violence Elimination (SaVE) Act*, CLERY CENTER FOR SECURITY ON CAMPUS, <http://clerycenter.org/campus-sexual-violence-elimination-save-act> (last visited Nov. 5, 2013) (discussing how the Campus SaVE Act creates better transparency and accountability for students); *Understanding the Campus SaVE Act*, *supra* note 178 (summarizing what the Campus SaVE Act actually does).

189. The provisions apply to domestic violence, dating violence, and stalking, as well as sexual assault. However, for the purposes of this Comment, only instances of sexual assault are discussed.



institutional disciplinary action.<sup>190</sup> Additionally, the only procedural aspects about which schools were required to inform students prior to the Campus SaVE Act were that the individual reporting rape and the accused are entitled to the same opportunities to have others present during an institutional disciplinary proceeding, and that both parties should be informed about the outcome of such a proceeding.<sup>191</sup> The school was also required to give written notification to individuals reporting rape about options on campus or in the community for counseling, physical health, mental health, and student services for victims of sexual assault,<sup>192</sup> as well as written notification to these individuals about options for and assistance in changing academic, living, transportation, and working situations if requested by the accuser and reasonably available.<sup>193</sup>

The Campus SaVE Act now requires schools to inform students about their options regarding law enforcement and campus authorities such as the accuser's option to notify proper law enforcement authorities, her right to be assisted by campus authorities in notifying law enforcement, and her option not to notify authorities.<sup>194</sup> However, as seen in cases such as the one at Marquette University, schools often discourage students from actually notifying law enforcement of assault,<sup>195</sup> and it remains to be seen whether these practices will continue after the Campus SaVE Act goes into effect. Schools must also notify students of their rights and the institution's responsibilities regarding orders of protection, no-contact orders, or other lawful orders issued by a court.<sup>196</sup>

Finally, the school must inform students about the institution's procedures for institutional disciplinary action.<sup>197</sup> These procedures

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190. 20 U.S.C. §§ 1092(f)(8)(B)(iii)–(iv) (2012); *see also New Requirements Imposed by the Violence Against Women Reauthorization Act*, *supra* note 7, at 2.

191. 20 U.S.C. §§ 1092(f)(8)(B)(iv)(I)–(II); *see also New Requirements Imposed by the Violence Against Women Reauthorization Act*, *supra* note 7, at 2.

192. 20 U.S.C. § 1092(f)(8)(B)(vi); *see also New Requirements Imposed by the Violence Against Women Reauthorization Act*, *supra* note 7, at 2.

193. 20 U.S.C. § 1092(f)(8)(B)(vii); *see also New Requirements Imposed by the Violence Against Women Reauthorization Act*, *supra* note 7, at 2.

194. 20 U.S.C.A. §§ 1092(f)(8)(B)(iii)(III)(aa)–(cc) (West 2013); *see also New Requirements Imposed by the Violence Against Women Reauthorization Act*, *supra* note 7, at 2–3.

195. *See supra* Part I.D.2 (discussing the manner in which Marquette University handled a student's report of sexual assault).

196. 20 U.S.C.A. § 1092(f)(8)(B)(iii)(IV); *see also New Requirements Imposed by the Violence Against Women Reauthorization Act*, *supra* note 7, at 2.

197. *See The Campus Sexual Violence Elimination (SaVE) Act*, *supra* note 188 (stating that the Campus SaVE Act clarifies minimum standards for disciplinary procedures covering sexual

must provide “prompt, fair, and impartial” investigation and resolution.<sup>198</sup> Additionally, the individuals who handle the proceedings must receive annual training on sexual violence issues and on conducting investigations and hearings.<sup>199</sup> The proceedings must also detail the standard of evidence that will be used during any adjudication.<sup>200</sup> Furthermore, the individual reporting rape and the accused must be simultaneously informed in writing about the institution’s procedures for the parties to appeal the results, any change to the results before they become final, and when the results become final.<sup>201</sup> Also, the school must notify students about how the institution will protect the confidentiality of the individual reporting rape, including information about how publicly available recordkeeping will be accomplished without violating that privacy.<sup>202</sup>

### III. ANALYSIS

This Part will analyze the Campus SaVE Act by thoroughly discussing its attributes. First, it will address the potentially positive components of the Campus SaVE Act.<sup>203</sup> Then, it will highlight the weaknesses of the Act, focusing on areas that need to be clarified during the implementation of the law, or addressed by future legislation.<sup>204</sup>

#### *A. Strengths of the Campus SaVE Act*

The Campus SaVE Act has many positive components that might

violence); *Understanding the Campus SaVE Act*, *supra* note 178 (describing the requirement for an equitable disciplinary proceeding similar to that recommended by the “Dear Colleague” letter).

198. 20 U.S.C.A. § 1092(f)(8)(B)(iv)(I)(aa); *see also The Campus Sexual Violence Elimination (SaVE) Act*, *supra* note 188 (“SaVE clarifies minimum standards for institutional disciplinary procedures . . . to ensure that . . . proceedings shall be prompt, fair, and impartial . . . .”)

199. 20 U.S.C.A. § 1092(f)(8)(B)(iv)(I)(bb); *see also Understanding the Campus SaVE Act*, *supra* note 178 (discussing how colleges must handle disciplinary proceedings under the Campus SaVE Act).

200. 20 U.S.C.A. § 1092(f)(8)(A)(ii); *see also New Requirements Imposed by the Violence Against Women Reauthorization Act*, *supra* note 7, at 2. The Campus SaVE Act does not specifically state the evidentiary standard to be used in these proceedings, but the “Dear Colleague” Letter suggests this standard should be a “preponderance of the evidence.” *See DEAR COLLEAGUE LETTER*, *supra* note 32, at 10–11; *see also New Requirements Imposed by the Violence Against Women Reauthorization Act*, *supra* note 7, at 2.

201. 20 U.S.C.A. §§ 1092(f)(8)(B)(iv)(III)(aa)–(dd); *see also New Requirements Imposed by the Violence Against Women Reauthorization Act*, *supra* note 7, at 3.

202. 20 U.S.C.A. § 1092(f)(8)(B)(v); *see also New Requirements Imposed by the Violence Against Women Reauthorization Act*, *supra* note 7, at 3.

203. *See infra* Part III.A (analyzing the strengths of the Campus SaVE Act).

204. *See infra* Part III.B (analyzing the weaknesses of the Campus SaVE Act).

help address the issue of campus sexual violence if the law is implemented correctly. First, the Act broadens the types of crimes colleges and universities are required to address, stepping away from the stranger rape focus, and recognizing the danger of sexual violence among acquaintances and intimate partners.<sup>205</sup>

Additionally, the Campus SaVE Act requires schools to educate students on sexual violence, including acquaintance rape.<sup>206</sup> The 2011 “Dear Colleague” Letter previously recommended that schools create similar preventative education programs to eliminate sexual violence, but the Campus SaVE Act mandates that these programs occur.<sup>207</sup> The expansion and delineation of more prescriptive requirements for educational programs is necessary because in order to combat sexual violence on college campuses programs must focus on changing behavior, not just attitudes.<sup>208</sup> Focusing more on education involves moving away from previous forms of sexual assault prevention on campuses, such as self-defense training, blue lights, cameras, and other forms of protection that apply only to stranger rape.<sup>209</sup> Furthermore, because the risk of rape is highest during the freshman year,<sup>210</sup> it is encouraging that these programs are explicitly required for all new students.<sup>211</sup>

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205. See 20 U.S.C.A. § 1092(f)(1)(F)(iii) (explaining that data should be compiled not only on sexual assault, but also domestic violence, dating violence, and stalking); see also *New Requirements Imposed by the Violence Against Women Reauthorization Act*, *supra* note 7, at 1–2 (describing the new reporting requirements).

206. See 59 CONG. REC. E179 (2013) (statement of Rep. Carolyn Maloney) (stating that the Campus SaVE Act promotes prevention and bystander intervention by requiring schools to develop clear statements of their policy regarding prevention programs); see also *The Campus Sexual Violence Elimination (SaVE) Act*, *supra* note 188.

207. See DEAR COLLEAGUE LETTER, *supra* note 32, at 14–15 (discussing the types of education programs schools should implement); see also *New Requirements Imposed by the Violence Against Women Reauthorization Act*, *supra* note 7, at 3 (stating that the Campus SaVE Act is more prescriptive in its requirements for education programs than the “Dear Colleague” Letter).

208. SAMPSON, *supra* note 1, at 25; see also KREBS ET AL., *supra* note 1, at xvii (arguing that programs should focus on primary prevention for women who have not experienced sexual assault).

209. See SAMPSON, *supra* note 1, at 25, 31 (arguing that these forms of prevention are limited in their effectiveness); see also Cantalupo, *supra* note 29, at 221 (“[T]he vast majority of campus sexual violence cannot be addressed through better lighting, blue light phones, and police escort services.”).

210. KREBS ET AL., *supra* note 1, at xviii; SAMPSON, *supra* note 1, at 12.

211. SAMPSON, *supra* note 1, at 26 (suggesting that programs occur at orientation and possibly through mailed letters prior to the start of classes); see Fisher & Blevins et al., *supra* note 125, at 3 (noting that less than one-third of schools had special orientation programs for new students).

Finally, it is important that these educational programs must involve multiple intervention efforts, such as bystander intervention, with repeated and reinforced exposure to the issue.<sup>212</sup> Bystander intervention programs are necessary as other students are often the first responders when a sexual assault occurs.<sup>213</sup> Because research suggests that education is not effective in teaching aggressors not to rape,<sup>214</sup> bystander intervention programs can be successful at educating students to recognize the warning signs of a predatory rapist so students can help each other.<sup>215</sup> However, educating both men and women on the definition of consent could still be beneficial, especially in increasing rape reporting. The Campus Sexual Assault Study found that only

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212. See SAMPSON, *supra* note 1, at 25 (stating that educating students about sexual assault should be done with repeated and reinforced exposure to the subject); see also KREBS ET AL., *supra* note 1, at xix (recommending that education prevention programs be designed as continuing education, rather than one-time occurrences).

213. See Abigail Boyer, Dir. of Commc'ns & Outreach, Clery Ctr. for Sec. on Campus, Statement at the Hearing Before the U.S. Department of Education Office of Postsecondary Education (May 21, 2013) [hereinafter Boyer Testimony], available at <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/transcript-dc052113.pdf>; see also Victoria L. Banyard et al., *Bystander Education: Bringing a Broader Community Perspective to Sexual Violence Prevention*, 35 J. COMMUNITY PSYCHOL. 463, 477–79 (2007) (suggesting that bystander intervention programs might create wider community change by increasing community support for intervening against violence, and therefore reduce societal tolerance for sexual violence as a whole). The authors of the *Bystander Education* study did not limit their research to sexual assault on college campuses, but the type of broad changes to community norms they found are needed on college campuses. See Banyard et al., *supra*, at 464 (discussing the problem of sexual violence in entire communities).

214. See David Lisak, Understanding the Predatory Nature of Sexual Violence 8 (Jan. 1, 2008) (unpublished manuscript), available at <http://www.innovations.harvard.edu/showdoc.html?id=134841> (citing his research on undetected college rapists). Lisak interviewed college men and identified 120 rapists. *Id.* at 7. His research has indicated that on college campuses, repeat predators account for approximately 90% of the rapes. *Id.*; see also Joseph Shapiro, *Myths That Make It Hard To Stop Campus Rape*, NPR (Mar. 4, 2010), <http://www.npr.org/templates/story/story.php?storyId=124272157> [hereinafter Shapiro, *Rape Myths*] (“These are clearly not individuals who are simply in need of a little extra education about proper communication with the opposite sex. . . . These are predators.” (quoting David Lisak)). It should be noted that this view is not held by all experts. Shapiro, *Rape Myths, supra* (comparing Lisak’s view to the view of Peter Lake, a Stetson University law professor and consultant to universities on discipline procedures, who believes that “people have made terrible mistakes and can actually learn to be better people from that . . . . [T]here is still a chance for teachable moments”).

215. See Fisher & Blevins et al., *supra* note 125 (suggesting that because other students are most likely to learn of victimizations they must receive better training and education regarding how to respond to assaults); Lisak, *supra* note 214 (“Rather than focusing prevention efforts on the rapists, it would seem far more effective to focus those efforts on the far more numerous bystanders—men and women who are part of the social and cultural milieu in which rapes are spawned and who can be mobilized to identify perpetrators and intervene in high-risk situations.”).

46.5% of women who were victims of rape actually considered it to be a rape.<sup>216</sup> Furthermore, one of the largest studies to date found that 22.8% of college rape victims were repeat victims.<sup>217</sup> Additionally, research shows that alcohol is frequently associated with sexual assaults on college campuses and research indicates that college rapists use their own intoxicated condition as an excuse for their crimes.<sup>218</sup> Further, experts suggest that rape is a product of mainstream beliefs about women's role in sexual situations.<sup>219</sup> Therefore, by educating students and engaging in discussion about the risks and signs of abusive behavior, high-risk situations such as those involving alcohol, and the true definitions of consent and rape, schools can help students recognize and avoid dangerous situations.<sup>220</sup> Unfortunately, schools do not currently address sexual assault in this upfront manner.<sup>221</sup> For example, despite previous dealings with the Department of Education about their policies, Yale University still refuses to use the term "rape" in its official reports and instead describes it as "nonconsensual sex."<sup>222</sup>

Another positive aspect of the Campus SaVE Act is that colleges are now required to have formal adjudicative procedures like those merely suggested in the 2011 "Dear Colleague" Letter, therefore bridging a gap between Title IX and the Clery Act.<sup>223</sup> Not complying with these

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216. KREBS ET AL., *supra* note 1, at 15.

217. FISHER ET AL., *supra* note 1, at 10; *see also* SAMPSON, *supra* note 1, at 14 (citing the Fisher et al. study as one of the largest to date).

218. *See, e.g.*, SAMPSON, *supra* note 1, at 16 (stating that alcohol increases misperceptions between victim and perpetrator because it reduces a person's capacity to analyze complex stimuli); Antonia Abbey, *Alcohol-Related Sexual Assault*, in VICTIMOLOGY: A TEXT/READER 217, 224 (Leah E. Daigle ed., 2012) (citing research finding that 62% of college date rapists felt they committed rape because of their alcohol consumption); *see also* Shapiro, *Rape Myths*, *supra* note 214 (citing Peter Lake's argument that the culture of college campuses—a lot of sexual activity, alcohol, and a population at an at-risk age—is a "perfect storm for sex assault issues").

219. SAMPSON, *supra* note 1, at 15; *see also* Mychal Denzel Smith, *Don't Shift the Focus From Men, Room for Debate: Young Women Drinking and Rape*, N.Y. TIMES, Oct. 23, 2013, <http://www.nytimes.com/roomfordebate/2013/10/23/young-women-drinking-and-rape/in-discussing-rape-prevention-dont-shift-the-focus-from-men> (arguing that eliminating rape would involve addressing the issues of masculinity, sex, and power that are ingrained in our current social order).

220. *See* KILPATRICK ET AL., *supra* note 1, at 62 (hypothesizing that part of the low-reporting problem stems from women's failure to define certain types of events as rapes); SAMPSON, *supra* note 1, at 27–29 (discussing what acquaintance rape risk-reduction programs for college students should entail).

221. *See supra* Part I.D (discussing schools' responses to sexual assault problems).

222. Kelley, *supra* note 64 (citing activists' criticism of the school for using the term "nonconsensual sex" rather than "rape"); *see* 2013 YALE REPORT, *supra* note 65, at 4–6 (finding students guilty of having "nonconsensual sex").

223. *See supra* notes 188–202 and accompanying text (discussing new procedural

procedures can now be sanctioned through the imposition of fines under the Clery Act, which gives the Department of Education a powerful tool against offending universities if properly implemented.<sup>224</sup> Despite Title IX, current disciplinary processes are unclear as to how an investigation is conducted, who will comprise the hearing committee, and what due process rights the accused will be given.<sup>225</sup> Therefore, the requirements in the Campus SaVE Act that colleges clearly state their procedures and that those procedures meet specific standards will better protect students.<sup>226</sup> Finally, it is beneficial that the Campus SaVE Act mandates specialized training for those who conduct the adjudicative procedures because previously, members of these hearing committees have had inadequate preparation.<sup>227</sup> If those who adjudicate the case do

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requirements of the Campus SaVE Act); *see also* *New Requirements Imposed by the Violence Against Women Reauthorization Act*, *supra* note 7, at 2–3 (comparing the new student discipline requirements of the Campus SaVE Act to those recommended by the 2011 “Dear Colleague” Letter).

224. *See* Laura Dunn, SurvJustice, Statement at the Hearing Before the U.S. Department of Education Office of Postsecondary Education (May 21, 2013) [hereinafter Dunn Testimony], available at <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/transcript-dc052113.pdf> (arguing that intermediate sanctions under the Clery Act are a powerful tool for the Department of Education to use against schools who do not comply with these procedural requirements); *see also* Dana Bolger & Alexandra Brodsky, Title IX Action N.Y. & Know Your IX, Statement at the Hearing Before the U.S. Department of Education Office of Postsecondary Education (May 21, 2013) [hereinafter Bolger & Brodsky Testimony], available at <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/transcript-dc052113.pdf> (noting that although fines under the Clery Act are small given the wealth of many universities, they hopefully signal a desire by the Department of Education to enforce federal laws protecting students from sexual assault).

225. *See* Fisher & Blevins et al., *supra* note 125, at 234 (discussing how difficult it can be to determine colleges’ actual disciplinary processes); Lauerman, *supra* note 130 (stating that colleges have been under fire recently for using antiquated and amateurish procedures to prevent and investigate rape).

226. Some experts argue that colleges are not appropriate places to hold investigations and punish sexual offenders. *See* Nancy Chi Cantalupo, “Decriminalizing” *Campus Institutional Responses to Peer Sexual Violence*, 38 J.C. & U.L. 481, 523 (2012) (arguing that the institutional responses are too similar to law enforcement responses); *cf.* Lisak, *supra* note 214, at 9 (questioning the efficacy of judicial boards, but recommending universities commit themselves to restructuring their processes to be successful). However, other experts recognize that schools do have a duty to protect their students and therefore, must address sexual assault seriously, especially since the criminal justice system does not. *See, e.g.*, Lauerman, *supra* note 130 (“I’m not sure I fully understand why it isn’t being handled by the judicial system, but it’s not, so it needs to be addressed by us. If we take our students’ well-being seriously we need to address it” (quoting Jonathon Veitech, President of Occidental College)); Lombardi, *supra* note 78 (stating that prosecutors often shy away from campus rape allegations because they often result in “he said, she said” disputes); *see also* RAPHAEL, *supra* note 1, at 182 (stating that colleges have a legal obligation to maintain a safe and equal learning environment for everyone and therefore, must have adequate judicial processes).

227. *See* KARJANE ET AL., *supra* note 125, at 116 (finding that 75.8% of schools have faculty

not have specialized training in the complexities of sexual assault cases, the proceedings are far from fair or impartial as required by law.<sup>228</sup>

### *B. Weaknesses of the Campus SaVE Act*

Despite its strengths, the Campus SaVE Act has several weaknesses. First, it does not explicitly require enough administrators, faculty, and staff to have the training required to adequately address sexual assault on college campuses. The vast majority of professionals working on the front lines of residential life, student conduct, public safety, and other departments where survivors might report are not prepared for handling cases of sexual assault,<sup>229</sup> yet the Campus SaVE Act only specifically mandates such training for individuals who conduct disciplinary proceedings.<sup>230</sup> It is beneficial that the Campus SaVE Act mandates specialized training for those individuals hearing sexual assault cases,<sup>231</sup> but there is no mandate that other school officials and employees have training. It is also essential that universities ensure campus healthcare staff, residence directors and assistance, Greek advisors, and coaches are properly trained and educated due to their proximity to high-risk victims and offenders.<sup>232</sup>

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members on their hearing boards, 20.6% have generic administration, and 19.9% have an actual judicial or disciplinary officer); *see also* Lauerma, *supra* note 130 (reporting that until 2012, students at the University of North Carolina took sexual assault complaints to a student-run conduct committee).

228. *See* 20 U.S.C.A. § 1092(f)(8)(B)(iv)(I)(aa) (West 2013) (stating that universities and colleges must disclose their disciplinary procedures with a clear statement that the proceedings shall “provide a prompt, fair, and impartial investigation and resolution” and be conducted by “officials who receive annual training” in the issue).

229. *See* Cantalupo, *supra* note 29, at 221–22 (discussing lack of information about sexual assault as an information problem); *see also* SAMPSON, *supra* note 1, at 30 (suggesting that key campus personnel be educated about sexual assault).

230. *See* 20 U.S.C.A. § 1092(f)(8)(B)(iv)(I)(bb) (stating that all proceedings must be conducted by individuals who receive annual training on issues of sexual violence and how to conduct investigations and hearings); *see also* *New Requirements Imposed by the Violence Against Women Reauthorization Act*, *supra* note 7, at 2 (stating the Campus SaVE Act requires that institutional officers who conduct the proceedings have training). Although the Campus SaVE Act does mandate education programs for new employees, 20 U.S.C.A. § 1092(f)(8)(B)(i)(I), and ongoing prevention and awareness campaigns for students and faculty, *id.* § 1092(f)(8)(B)(i)(II), no faculty members that have a high chance of coming into contact with victims or perpetrators of sexual assault, with the exception of those conducting hearings, are specifically referenced for training.

231. *See supra* notes 227–28 and accompanying text (describing the specialized training requirement for those conducting adjudicatory proceedings as a positive aspect of the Campus SaVE Act).

232. SAMPSON, *supra* note 1, at 30; *see* KILPATRICK ET AL., *supra* note 1, at 62–63 (suggesting that law enforcement culture be more supportive of victims and more understanding of their special concerns by ensuring law enforcement officers have accurate information about

Additionally, although it is positive that the Campus SaVE Act now gives the Department of Education the ability to levy fines against schools that have violated students' rights,<sup>233</sup> it is essential to ensure that real sanctions are continuously developed because colleges and universities rarely face real penalties for not meeting their responsibilities.<sup>234</sup> For example, in 2012, the OCR admitted that Yale University had been violating Title IX for years, but it refused to risk controversy by making an official federal finding of non-compliance, denying federal funding, or referring the case to the Department of Justice.<sup>235</sup> Instead, the school reached the previously discussed settlement and continues to face criticism from students.<sup>236</sup>

Moreover, the Campus SaVE Act does not adequately address the relationship between schools and law enforcement agencies. Collaboration between law enforcement agencies and colleges can better serve victims, but less than 25% of schools actually have written

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all forms of sexual assault—in addition, this education should be provided to a variety of target audiences in order to reduce stigma and increase support for victims). Furthermore, it is essential that those on the hearing committees have training in hearing rape cases. Students have expressed their view that it is insulting for assault victims to have the same individuals who make decisions on cases of plagiarism or underage drinking make decisions about rape. See RAPHAEL, *supra* note 1, at 182 (citing Alyssa Colby et al., *supra* note 126) (asking Wheaton College to change its existing sexual assault policies and procedures).

233. Dunn Testimony, *supra* note 224 (discussing the intermediate sanctions available in the Clery Act); see also *supra* note 224 and accompanying text (discussing the option to fine schools under the Clery Act).

234. See, e.g., Bolger & Brodsky Testimony, *supra* note 224 (stating that the National Institute of Justice estimates that while 63% of colleges do not meet their legal duties, none have ever faced serious repercussions); Amelia Thompson-Deveaux, *Promises Aren't Enough to Deter Campus Sexual Assault*, AM. PROSPECT (Aug. 12, 2013), <http://prospect.org/article/promises-arent-enough-end-campus-sexual-assault> (questioning whether amicable agreements between the Department of Education and schools are actually effective in getting schools to change their policies); see also Shapiro, *supra* note 72 (stating that the Department of Education ruled against five universities out of twenty-four complaints between 1998 and 2008, but did not mete out any punishments, and instead merely gave guidance on how to improve campus procedures).

235. Bolger & Brodsky Testimony, *supra* note 224 (discussing the OCR complaint filed against Yale University); see also Thompson-Deveaux, *supra* note 234 (criticizing the agreement between Yale and the Department of Education); *supra* notes 80–82 and accompanying text.

236. See *supra* note 82 and accompanying text (questioning the efficacy of Yale's voluntary resolution); see also Culp-Ressler, *supra* note 66 (discussing the criticism Yale has received for its response to sexual assault following its voluntary resolution with the Department of Education). It should be noted that in 2011, Yale did face a \$155,000 fine for violations of the Clery Act dating back to 2001. Letter from Mary E. Gust, U.S. Dep't of Educ., to Dorothy Robinson, Yale Univ. (July 9, 2013), available at [http://studentaid.ed.gov/sites/default/files/fsawg/datacenter/cleryact/yale/1481\\_001.pdf](http://studentaid.ed.gov/sites/default/files/fsawg/datacenter/cleryact/yale/1481_001.pdf). However, many critics note that this fine is quite small in comparison to the financial status of the University. See Bolger & Brodsky Testimony, *supra* note 224 (noting the fine is less than one student's tuition); Thompson-Deveaux, *supra* note 234 (comparing the \$155,000 fine to Yale's endowment of \$19 billion).



protocols for such cooperation.<sup>237</sup> In the case at Marquette University, campus officials actually actively discouraged the student from reporting the rape to law enforcement.<sup>238</sup> The Campus SaVE Act begins to address this by requiring students to be more informed about their option to notify law enforcement of a sexual assault,<sup>239</sup> but it is important to ensure that schools do not discourage students from doing so while informing them of this option.<sup>240</sup>

Finally, one of the problematic deficiencies of the Campus SaVE Act is that it fails to change the outcome of the risk-balance test colleges inevitably undertake when they avoid adequately addressing sexual assault reports. While the preventative program policy requirements can help reduce the occurrence of sexual assault on college campuses if implemented correctly, education cannot stop a predatory rapist.<sup>241</sup> Colleges and universities must create procedures that treat sexual assault as the serious crime it is rather than discourage reporting to schools and law enforcement.<sup>242</sup> It is easy for colleges to ignore the problem if students do not report instances of assault.<sup>243</sup> Currently,

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237. KARJANE ET AL., *supra* note 125, at 113–14; *see also* Sampson, *supra* note 1, at 29 (recommending that college prevention programs involve training for police as involvement of law enforcement can help assure students that colleges take acquaintance rape seriously).

238. *See supra* Part I.D.2 (discussing how Marquette campus security told victims that law enforcement would not investigate these assaults).

239. 20 U.S.C.A. § 1092(f)(8)(B)(iii)(III) (West 2013); *see also New Requirements Imposed by the Violence Against Women Reauthorization Act, supra* note 87, at 2–3.

240. *See supra* Part I.D.2 (discussing how campus security discouraged victims from reporting sexual assaults to local law enforcement despite a Wisconsin state law mandating they do so); *see also* Lauerman, *supra* note 130 (reporting that in a case at Occidental College, school officials told the victim that the assailant would not be expelled if found responsible by the school and that she should not go to the police).

241. *See, e.g.,* Fisher et al., *supra* note 125 (stating that restorative justice is especially not a cure for serious victimizations such as rape); Lombardi, *supra* note 78 (questioning college officials' assertions that schools should not punish students, but teach them when they find a student guilty of sexual assault). Research has found that college rapists are often repeat offenders. *See* Lisak, *supra* note 214, at 7 (finding that college rapists are “as likely to be serial and multi-faceted offenders as are incarcerated rapists”). Experts stress that colleges cannot teach these individuals not to rape. *See* RAPHAEL, *supra* note 1, at 182; Shapiro, *Rape Myths, supra* note 214 (quoting David Lisak's argument that these individuals are predators who need more than education).

242. *See* RAPHAEL, *supra* note 1, at 182 (arguing that if schools treat acquaintance rape as a serious crime rather than an alcohol-fueled miscommunication, they can help eliminate it); *see also* Jones, *supra* note 76 (“The message [schools] are sending to victims is that sexual assault is not something they take seriously.” (quoting survivor advocate Laura Dunn)); Kelley, *supra* note 64 (“In Sept [sic] I'm returning to a campus where, just like when I was a freshman, rape is addressed with ‘written reprimands.’” (quoting a tweet from survivor advocate Alexandra Brodsky)).

243. *See, e.g.,* FISHER ET AL., *supra* note 1, at 23 (detailing victims' reasons for not reporting,

colleges not only discourage reporting, but also avoid drawing attention to the problem by failing to adequately address sexual assault in educational programming.<sup>244</sup>

Hopefully, the recent increase in complaints<sup>245</sup> indicates a change in students' knowledge about their rights and remedies. However, it should not be up to students and student activists to ensure their schools are protecting them because schools are obligated under federal law to maintain safe and equal learning environments for everyone.<sup>246</sup> The Campus SaVE Act does not go far enough to ensure colleges take seriously the requirements for mandatory preventative services and prompt and equitable adjudication of complaints.

#### IV. PROPOSAL

This Part will make several proposals for how the Campus SaVE Act should be implemented in order to ensure that its positive attributes are successful and that any weaknesses are addressed. In doing so, this Part will make recommendations to the Department of Education as well as colleges and universities in implementing the Campus SaVE Act. This Part will also discuss any remaining issues involved in campus sexual violence that need to be addressed by schools or the federal government.

The Department of Education is still undergoing the rulemaking process for the implementation of the Campus SaVE Act.<sup>247</sup> The Act's positive factors discussed above will only be successful if implemented properly.<sup>248</sup> Following the guidelines below will ensure successful

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which included hostility by law enforcement and the victims' fear that police would not take the issue seriously); Fisher et al., *supra* note 125, at 233–35 (arguing that a potential barrier to reporting crimes on campus is the perceived ineffectiveness of campus judiciary systems); *see also* Kitchener, *supra* note 66 (“It’s easy for colleges to forget about these silent women because they’re not making any noise.”).

244. *See* Cantalupo, *supra* note 29, at 220 (arguing that colleges both passively and actively discourage victim reporting to avoid drawing attention to the issue); *see also* KILPATRICK ET AL., *supra* note 1, at 62 (arguing that public education efforts can help remedy the barrier to rape reporting).

245. *See supra* note 76 (referencing the increased number of complaints to the Department of Education about how colleges and universities are handling reports of sexual assault).

246. RAPHAEL, *supra* note 1, at 182; *see* Bolger & Brodsky Testimony, *supra* note 224 (noting that students should not have to be responsible for bringing schools' inadequate responses to the government's attention).

247. *See* Regulatory Issues, 78 Fed. Reg. 22467, 22467–68 (proposed Apr. 16, 2013) (announcing rulemakings pertaining to changes made to the campus safety and security requirements by the reauthorization of VAWA); *see also* VAWA Amendments to Clery/Campus SaVE, *supra* note 173.

248. *See* LYNN MAHAFFIE, FED. STUDENT AID, IMPLEMENTATION OF CHANGES MADE TO

implementation.

For instance, schools' policies must be easy to find and easy to understand. One study showed that students have difficulty accessing or understanding their campus policy because the language is confusing.<sup>249</sup> The basic requirement of the Campus SaVE Act is that schools disclose policies to students before and after sexual assaults are reported.<sup>250</sup> Schools should work with pre-existing groups of advocates and victim service providers in developing these policies and procedures as these types of coalitions have experience working with all relevant stakeholders and knowledge of various substantive models.<sup>251</sup>

If implementation is a collaborative relationship between institutions and programs in the surrounding areas, schools and students will be better informed—and the community as a whole will be better prepared—to address the issue of sexual violence.<sup>252</sup> Furthermore, although budget problems will be a consistent issue in implementing educational programs, training faculty and staff to properly address the

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THE CLERY ACT BY THE VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2013 (2013), available at <http://www.ifap.ed.gov/eannouncements/052913ImplementofChangesMade2CleryActViolenceAgainstWomenReauthorizationAct2013.html> (noting that interested parties can “comment on topics for negotiation suggested by the Department [of Education]”); see also Martha Kanter, Under Sec’y, U.S. Dep’t of Educ., Statement at the Hearing Before the U.S. Department of Education Office of Postsecondary Education (May 21, 2013), available at <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/transcript-dc052113.pdf> (stating that the U.S. Department of Education uses public hearings to begin conversations about higher education, and noting the Department’s intention to develop new regulations under VAWA).

249. EMILY GREYTAK, STUDENTS ACTIVE FOR ENDING RAPE, MOVING BEYOND BLUE LIGHTS AND BUDDY SYSTEMS: A NATIONAL STUDY OF STUDENT ANTI-RAPE ACTIVISTS 22 (2013), available at <http://safercampus.org/userfiles/file/NASummaryReport.pdf>.

250. See *The Campus Sexual Violence Elimination (SaVE) Act*, supra note 188 (discussing how the Campus SaVE Act improves transparency by requiring colleges to disperse information regarding victims’ rights to victims); *Understanding the Campus SaVE Act*, supra note 178 (stating how the Campus SaVE Act primarily improves transparency for victims by improving the complaint process).

251. See Kim Gandy, President & CEO, Nat’l Network to End Domestic Violence, Statement at the Hearing Before the U.S. Department of Education Office of Postsecondary Education (May 21, 2013) [hereinafter Gandy Testimony], available at <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/transcript-dc052113.pdf>. Outside organizations can help with policy development as several already have existing policy examples. See Anne Hedgepeth, Am. Assoc. of Univ. Women, Statement at the Hearing Before the U.S. Department of Education Office of Postsecondary Education (May 21, 2013) [hereinafter Hedgepeth Testimony], available at <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/transcript-dc052113.pdf> (citing the American Association of University Women (“AAUW”), Students Active for Ending Rape (“SAFER”), and the Department of Education’s own work for best practices in addressing sexual violence).

252. See *id.* (noting that the work and ideas of already existing organizations working to stop violence against women are essential to the success of the Campus SaVE Act).

problem, and implementing strong investigative and adjudicative procedures by working with established outside agencies and organizations, can help ease the financial burden on schools.<sup>253</sup>

Additionally, there are several ways to improve the Campus SaVE Act's preventative educational programming requirements to ensure success. First, program evaluations must be implemented in order to ensure that the programs are working.<sup>254</sup> A lack of follow-up assessment is one of the primary weaknesses of most college rape-prevention programs.<sup>255</sup> Accurate program evaluation can also help programs have community flexibility, which is necessary because the type of institution, audience, and community involved will have an effect on the success of a program.<sup>256</sup>

Furthermore, gender-specific programming can help proactive educational programming be successful, as mixed-gender programs have shown "uneven results in changing rape-supportive attitudes."<sup>257</sup> Allowing for gender-specific programs can remove the fear of

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253. Boyer Testimony, *supra* note 213 (discussing how guidance and collaboration with outside organizations can help ease the development of new policies and procedures in a manner consistent with the individual needs of the institution); Gandy Testimony, *supra* note 251 (discussing the benefits of colleges and universities working with coalitions to develop new policies and protocols).

254. See SAMPSON, *supra* note 1, at 26 (stating that a lack of follow-up assessment is one of the biggest weaknesses of current college rape prevention programs); *Responses to the Problem of Acquaintance Rape of College Students*, CENTER FOR PROBLEM-ORIENTED POLICING, <http://www.popcenter.org/problems/rape/4> (last visited Feb. 26, 2013) (recommending follow-up evaluations for all rape prevention programs).

255. See *supra* note 214 (comparing views of those who believe education programs cannot effectively teach students to not commit sexual assault with those who do believe such programs can make a difference).

256. See S. Daniel Carter, Dir. of 32 Nat'l Campus Initiative/VTV Family Outreach Found., Statement at the Hearing Before the U.S. Department of Education Office of Postsecondary Education (May 21, 2013) [hereinafter Carter Testimony], available at <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/transcript-dc052113.pdf> (stating that prevention initiatives should be geared toward type of institution, audience, and community); see also Boyer Testimony, *supra* note 213 (noting that institutions vary in size, geography, and demographics, all of which should be taken into consideration when determining policy changes).

257. SAMPSON, *supra* note 1, at 26; see also Elizabeth Armstrong et al., *Sexual Assault on Campus: A Multilevel, Integrative Approach to Party Rape*, 53 SOC. PROBS. 483, 496 (2006) (suggesting emphasis should move from educating women in prevention to educating both men and women about the "coercive behavior of men and the sources of victim-blaming"). When considering gender-specific programming, it is necessary to remember that not all victims of sexual assault are women and not all perpetrators are men. See SAMPSON, *supra* note 1, at 8 (noting that, although college women are raped at higher rates than men, men are more likely to report experiencing unwanted kissing or fondling). Sampson also notes that when college men are raped, it is usually by other men. *Id.* Therefore, any consideration of gender-specific programming should keep in mind that groups will have both victims and offenders and therefore, the programming should include materials for both.

discussing rape in front of peers of the opposite sex and can allow groups to address gender-specific issues.<sup>258</sup> Because one of the most-cited reasons for not reporting a sexual assault is that the victim did not think the assault was serious enough to report or that it was not clear if a crime had been committed,<sup>259</sup> educating women on the definitions of consent and rape can help them recognize when an assault is occurring or has occurred.<sup>260</sup> Furthermore, because college rapists often blame alcohol for their conduct,<sup>261</sup> educating men about the effect of alcohol on perception and denying them the ability to use intoxication as a justification upfront and in a strong, consistent manner might help hold them accountable.<sup>262</sup> Finally, because the Campus SaVE Act does not mandate enough training for specific faculty and staff at universities,<sup>263</sup> the rulemaking process and the development of policy by colleges and universities should emphasize that educational programming must address training of campus administrators, staff, and faculty—especially those who are likely to encounter victims and offenders.<sup>264</sup>

Educational programming will not be enough to stop sexual violence on college campuses. Currently, by not holding offenders accountable, colleges and universities are harboring predatory rapists.<sup>265</sup> Holding

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258. *Id.* at 26.

259. FISHER ET AL., *supra* note 1, at 23–26 ex.12 (discussing victims' stated reasons for not reporting their victimizations to law enforcement officials); *see also* KILPATRICK ET AL., *supra* note 1, at 47–48 exs.41 & 42 (discussing the major barriers to reporting identified by women).

260. *See* Lauerman, *supra* note 130 (discussing how survivor advocate Carly Mee felt guilty after she was raped and that she had received little education about sexual assault and did not understand what it meant to give consent).

261. *See, e.g.,* Abbey, *supra* note 218 (stating 62% of college date rapists felt they committed the rape because they were intoxicated); *see also* SAMPSON, *supra* note 1, at 16 (finding some men use alcohol as a justification or excuse for raping).

262. SAMPSON, *supra* note 1, at 27 (discussing what should be taught to men in rape prevention programs); Amanda Hess, *To Prevent Rape on College Campuses, Focus on the Rapists, Not the Victims*, SLATE (Oct. 16, 2013), [http://www.slate.com/blogs/xx\\_factor/2013/10/16/it\\_s\\_the\\_rapists\\_not\\_the\\_drinking\\_to\\_prevent\\_sexual\\_assault\\_on\\_college\\_campuses.html](http://www.slate.com/blogs/xx_factor/2013/10/16/it_s_the_rapists_not_the_drinking_to_prevent_sexual_assault_on_college_campuses.html) (arguing that colleges will likely be unsuccessful in getting students to drink less, but that they could deter male students from committing sexual assault by establishing increased consequences).

263. *See supra* text accompanying notes 228–240 (discussing how the Campus SaVE Act does not mandate enough training for faculty and staff at universities).

264. *See* SAMPSON, *supra* note 1, at 30 (discussing rape prevention programs for key campus personnel); Cantalupo, *supra* note 29, at 221–22 (stating that the majority of professionals on the front lines do not have adequate knowledge about campus peer sexual violence).

265. *See* Lisak, *supra* note 214, at 8 (arguing that prevention efforts persuading men not to rape are unlikely to be effective); *see also* Lombardi, *supra* note 78 (“Schools that overlook this paradigm [(that sexual offenders on college campuses are predators)] are failing their female students. . . . Giving someone a deferred suspension is like giving someone carte blanche to do it again.” (quoting Colby Bruno, managing attorney at the Victim Rights Law Center)).

individuals found responsible for rape accountable, preparing bystanders to intervene, and ensuring rapists are not able to harm other students is a form of rape prevention.<sup>266</sup> Investigative and adjudicative procedures post-violence must be “prompt, fair, and impartial” to ensure victims receive justice and other students are protected from sexual offenders. The regulations should specify that the burden of proof in these cases is a preponderance of the evidence, as required by the 2011 “Dear Colleague” letter.<sup>267</sup>

Furthermore, adequate consequences must be enforced after finding students responsible for sexual assault. While debate exists over whether or not colleges can actually rehabilitate sexually offending students,<sup>268</sup> light punishments such as written reprimands are not adequate.<sup>269</sup> Because of the risk of reoffending, expulsion should be the recommended sanction, but schools should always consult the victim first.<sup>270</sup> Implementing these procedures will be difficult given the desire schools have to avoid knowledge or need to report sexual victimization on their campuses.<sup>271</sup> Representatives from law enforcement, advocacy, prosecution, medical, and social services can

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266. In a recent case at Occidental College, three female students reported being assaulted by the same male peer. See Lauerman, *supra* note 130 (describing the cases leading to a formal complaint against the school with the Department of Education). Although the student was found responsible and initially expelled, he was allowed to return to the school after appealing the decision. *Id.* One victim stated that she can no longer go back to the school with the perpetrator there and highlighted the risk to others of permitting him back on campus. *Id.*

267. See DEAR COLLEAGUE LETTER, *supra* note 32, at 10–11 (stating that the OCR reviews a school’s procedures to determine whether the school is using a preponderance of the evidence standard in its adjudications); see also Carter Testimony, *supra* note 256 (recommending the regulations explain the burden of proof as the preponderance of the evidence standard, therefore avoiding an inconsistency with the OCR).

268. See *supra* note 214 (discussing different expert opinions on sexual offending college men).

269. See Kitchener, *supra* note 66 (referencing the recent punishments at Yale University); see also Kingkade, *Yale*, *supra* note 63 (referencing Yale, University of Colorado-Boulder, and Occidental College as schools where offenders were assigned writing-based punishments).

270. See Kitchener, *supra* note 66 (suggesting that victims should be consulted when determining the sanction because a severe sanction, such as expulsion, might also deter victims from coming forward due to fear of retaliation). However, research supports the assertion that some college rapists are serial rapists. *E.g.*, Lisak, *supra* note 214, at 4–5. Therefore allowing those students to remain on campus is dangerous to victims and all other students. See Lombardi, *supra* note 78 (explaining that many advocates believe that allowing a perpetrator to remain on campus is like giving him permission to rape again); see also Lauerman, *supra* note 130 (noting how victims fear for themselves and others when the offender remains on campus).

271. See Cantalupo, *supra* note 29, at 219–20 (discussing how colleges suddenly look like they have a serious crime problem if victims report, creating an incentive to avoid knowledge); see also *supra* text accompanying notes 241–244 (discussing the risk-balance test undertaken by colleges and universities in avoiding knowledge of sexual assaults).

train campus personnel responsible for developing these policies and carrying out campus adjudications.<sup>272</sup>

Additionally, there should be a joint task force in the Department of Education to review complaints under both Title IX and the Clery Act.<sup>273</sup> The complaint process for administrative enforcement of Title IX through the OCR is confusing, difficult to maneuver, and not well publicized.<sup>274</sup> Furthermore, activists criticize how much students have to do in order for the government to enforce their rights.<sup>275</sup> A joint process would ensure consistent and thorough reviews by the Department of Education and maximize the Department's resources<sup>276</sup>—a necessity given the increased number of complaints.<sup>277</sup> A joint task force can help ensure review is complete and thorough and that proper sanctions are implemented.

Finally, the law must find a way to encourage students to come forward so schools are forced to address this issue. The most challenging aspect of protecting college students from sexual assault is that schools are not sufficiently incentivized to address the problem.<sup>278</sup> Achieving accurate statistics about sexual assault at every individual school might empower students to come forward and report sexual assaults, allowing schools to address their complaints and catch offenders.<sup>279</sup> Therefore, schools must change their approach to

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272. See Caroline Palmer, Staff Attorney, Minn. Coal. Against Sexual Assault, Statement at the Hearing Before the U.S. Department of Education Office of Postsecondary Education (May 21, 2013), available at <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/transcript-mn052313.pdf> (discussing how multidisciplinary Sexual Assault Response Teams (“SARTs”) can help protect students by providing a nexus between the campus process and criminal justice response); see also Gandy Testimony, *supra* note 251 (discussing the need for interdisciplinary cooperation to provide services to students so all of their needs are met).

273. See Dunn Testimony, *supra* note 224 (suggesting a joint task force and describing how it would function).

274. See Cantalupo, *supra* note 29, at 236 (discussing issues with the complaint procedure for administrative enforcement of Title IX); see also *supra* Part I.B.2 (addressing issues with the OCR complaint process).

275. Bolger & Brodsky testimony, *supra* note 224 (criticizing governmental reliance on students to bring official federal complaints and asserting that the government should take the initiative); see RAPHAEL, *supra* note 1, at 182 (noting that federal law mandates that schools protect their students). If the Department of Education does not take the initiative to enforce these federal laws, it will be failing students.

276. Dunn Testimony, *supra* note 224 (explaining her idea for a joint task force).

277. See *supra* note 76 (describing how the number of Title IX complaints are on the rise).

278. See *supra* text accompanying notes 241–244 (discussing the risk-balance test undertaken by colleges and universities in avoiding knowledge of sexual assaults). See generally Cantalupo, *supra* note 29 (analyzing this risk-balance test and discussing possible solutions).

279. See Cantalupo, *supra* note 29, at 259–60 (arguing that if schools have accurate statistics about their sexual assault problems, they can no longer avoid knowledge of it and hide behind

collecting information about sexual assault, such as through standardized surveys.<sup>280</sup> However, the most successful way to improve reporting of sexual assault would be to change the conversation about rape in our society.<sup>281</sup> Honestly confronting why rape exists, and highlighting initiatives such as Know Your IX<sup>282</sup> are needed in order to empower students to come forward.

#### CONCLUSION

The high prevalence of rape on college campuses and the failure of colleges and universities to protect their students requires the involvement of the federal government to ensure all students have access to a safe education, free from any form of sexual violence. Although the Campus SaVE Act is a step forward, more can and must be done. Schools must take comprehensive, proactive approaches to stop sexual violence on their campuses, rather than fear what addressing the topic will do to their public image. Appropriate steps include recognizing that sexual violence is a pervasive problem on college

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low-reporting); *see also* Shapiro, *supra* note 72 (discussing how Security on Campus awarded a member of the campus police department at UCLA for creating a place where women felt comfortable reporting assaults despite UCLA having a high number of sexual assaults for a school its size).

280. *See* Cantalupo, *supra* note 29, at 259–61 (proposing ideas for such a survey). All of the prevalence research used in this Comment utilized similar surveys. *See generally* FISHER ET AL., *supra* note 1, at 4–14 (discussing how sexual victimization was measured).

281. *See* Hess, *supra* note 262 (arguing that blaming victims for their victimization by focusing on their condition at the time of the assault leaves them with feelings of shame and guilt, making them unlikely to report the rape). Although it is true that intoxication and sexual assault are linked, *e.g.*, FISHER ET AL., *supra* note 1, at 23; SAMPSON, *supra* note 1, at 14, it is historically entrenched power imbalances that are more to blame. *See* Alexandra Brodsky, *Blame Rape's Enablers Not the Victims, Room for Debate: Young Women Drinking and Rape*, N.Y. TIMES, Oct. 23, 2013, <http://www.nytimes.com/roomfordebate/2013/10/23/young-women-drinking-and-rape/blame-rapes-enablers-not-the-victims> (arguing that victim blaming only hides the real societal problem); *see also* Smith, *supra* note 219 (arguing that blaming victims occurs because it is easier than confronting society's issues). Additionally, President Obama has attempted to increase awareness about campus rape. Jackie Calmes, *Obama Seeks to Raise Awareness of Rape on Campus*, N.Y. TIMES, Jan. 22, 2014, [http://www.nytimes.com/2014/01/23/us/politics/obama-to-create-task-force-on-campus-sexual-assaults.html?\\_r=0](http://www.nytimes.com/2014/01/23/us/politics/obama-to-create-task-force-on-campus-sexual-assaults.html?_r=0). On January 22, 2014, President Obama created the White House Task Force to Protect Students from Sexual Assault, recognizing the need for improved interagency collaboration on this issue. THE WHITE HOUSE COUNCIL ON WOMEN & GIRLS, RAPE AND SEXUAL ASSAULT: A RENEWED CALL TO ACTION 26 (2014), available at [http://www.whitehouse.gov/sites/default/files/docs/sexual\\_assault\\_report\\_1-21-14.pdf](http://www.whitehouse.gov/sites/default/files/docs/sexual_assault_report_1-21-14.pdf).

282. KNOW YOUR IX, <http://www.knowyourix.org> (last visited Feb. 26, 2014). Know Your IX is a campaign built by a large collective of survivor advocates and aims to educate college students about their rights under Title IX. *About KYIX*, KNOW YOUR IX, <http://knowyourix.org/about-ky9/> (last visited Apr. 2, 2014).



campuses and addressing society's deeply imbedded power imbalances along the lines of gender. Furthermore, schools must take strong and decisive steps in addressing reports of sexual assault when they are made. Rather than harbor rapists, colleges and universities must thoroughly investigate reports and adequately discipline offenders. This form of rape prevention will protect other students from offenders. A failure to recognize rape as a problem and take steps to address it will deny students their right to a safe and equal education.