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COMMENT

WHO IS BEST SUITED TO COMBAT SEXUAL VIOLENCE ON
COLLEGE CAMPUSES?: AN ANALYSIS OF H.B. 1785

By Susana Bass

I. INTRODUCTION

In 2014, the topic of sexual assault of college students on college campuses made its way to the forefront of national news. As cases of sexual assault were examined in more detail, allegations of inadequate investigations and a general lack of justice for victims stemming from those investigations began to circulate.¹ Public outcry called for a change in the way college campus authorities—including both campus police and school administrators—address allegations of sexual assault.²

Notable cases of alleged sexual assault in 2014 include the abduction and murder of University of Virginia (UVA) student Hannah Graham, the sexual assault of James Madison University student Sarah Butters, and the sexual assault of UVA student “Jackie.” On September 13, 2014, UVA sophomore Hannah Graham went missing after getting lost on her way to a UVA fraternity party.³ Hannah was last seen on a surveillance camera with a man later identified by police as Jesse Matthew.⁴ On October 18, 2014, remains were found which were later determined to be those of Hannah Graham.⁵ Although the Graham case did not involve an investigation of sexual assault, the suspect, Matthew, was investigated for sexual assault in 2002 at another Virginia university, and many critics believe if that case had been investigated correctly, Hannah Graham would not be dead.⁶

Another case of sexual assault which made headlines in 2014 involved the sexual assault of Sarah Butters at James Madison University, which was caught on video.⁷ The University determined that three fraternity members were guilty of sexual assault, yet the men were only punished by “expulsion

¹ Sarah Gregory, *Colleges Handle Sexual Assaults Inadequately, Senators Told*, SOUTHERN POVERTY LAW CENTER (Dec. 10, 2014), <http://www.splc.org/article/2014/12/colleges-handle-sexual-assaults-inadequately-senators-told>.

² *Id.*

³ T. Rees Shapiro, *Authorities Confirm Body is U-Va. Student Hannah Graham*, WASH. POST (Oct. 24, 2014), http://www.washingtonpost.com/local/education/authorities-confirm-body-is-u-va-student-hannah-graham/2014/10/24/6b71988c-5ac7-11e4-b812-38518ae74c67_story.html.

⁴ *Id.*

⁵ *Id.*

⁶ Mila Mimica, *Jesse Matthew, Suspect in Hannah Graham's Abduction, Investigated for Campus Sex Assault in 2003*, NBC WASHINGTON (Oct. 2, 2014), <http://www.nbcwashington.com/news/local/Jesse-Matthew-Hannah-Graham-CNU-Morgan-Harrington-Sex-Assault-277821701.html> (explaining that Matthew attended Christopher Newport University in 2003 and was investigated in connection to an assault that occurred during that time).

⁷ Tyler Kingkade, *James Madison University Punished Sexual Assault With 'Expulsion After Graduation'*, HUFFINGTON POST (June 18, 2014), http://www.huffingtonpost.com/2014/06/18/james-madison-university-sexual-assault_n_5509163.html.

after graduation.”⁸ Similarly, in November of 2014, *Rolling Stone* published a lengthy article describing the alleged sexual assault of UVA student, “Jackie.”⁹ Although the story was ultimately discredited, it led many other victims of sexual assault to come forward and share their stories of assault and injustice on college campuses.¹⁰

In response to public outcry, some colleges and universities reevaluated their existing policies while others defended them.¹¹ Many public officials agreed change was necessary, but while criticism was easily handed-out, consensus on the “right” solution was not.¹² During the 2015 session of the Virginia General Assembly, Delegate Eileen Filler-Corn (D-Fairfax County) and Delegate James “Jimmie” Massie (R-Henrico) proposed one comprehensive solution to the sexual assault problem.¹³ Filler-Corn and Massie’s solution, set out initially in House Bill 1343 and later in House Bill 1785, required reporting of victim-initiated campus sexual assault investigations to the local Commonwealth’s Attorney.¹⁴ As parents of college-aged students, Filler-Corn and Massie both stated recent reports of sexual assault on Virginia college campuses prompted them to act on this problem.¹⁵ Other Virginia legislators, Commonwealth’s Attorneys, advocacy groups, sheriffs, and universities endorsed the proposed legislation.¹⁶ Additionally, a recent poll conducted by the Commonwealth Educational Policy Institute found that 92% of Virginians polled believe universities should be

⁸ *Id.*

⁹ Sabrina Rubin Erdely, *A Rape on Campus: A Brutal Assault and Struggle for Justice at UVA*, ROLLING STONE (Nov. 19, 2014), <http://web.archive.org/web/20141120205928/http://www.rollingstone.com/culture/features/a-rape-on-campus-20141119>.

¹⁰ T. Rees Shapiro, *Key Elements of Rolling Stone’s U-Va. Gang Rape Allegations in Doubt*, WASH. POST (Dec. 5, 2014), http://www.washingtonpost.com/local/education/u-va-fraternity-to-rebut-claims-of-gang-rape-in-rolling-stone/2014/12/05/5fa5f7d2-7c91-11e4-84d4-7c896b90abc_story.html.

¹¹ Rosemary Kelley & Shaina Mishkin, *College Sexual Assault Policies Come under Scrutiny as Students File Complaints*, HUFFINGTON POST (May 31, 2013), http://www.huffingtonpost.com/2013/05/31/college-sexual-assault-policies_n_3362515.html.

¹² Sarah Gregory, *Colleges Handle Sexual Assaults Inadequately, Senators Told*, SOUTHERN POVERTY LAW CENTER (Dec. 10, 2014), <http://www.splc.org/article/2014/12/colleges-handle-sexual-assaults-inadequately-senators-told>.

¹³ Michael Melkonian & Noura Bayoumi, *Majority of polled Virginians want colleges to report sexual assaults to police*, CAPITAL NEWS SERV. (Jan. 15, 2015), <http://wvtv.com/2015/01/15/majority-of-poll-ed-virginians-want-colleges-to-report-sexual-assaults-to-police/>.

¹⁴ *Id.*

¹⁵ *Filler-Corn Introduces Legislation to Combat Campus Sexual Assaults*, DELEGATE EILEEN FILLER-CORN (Dec. 1, 2014), <http://www.eileenfillercorn.com/hb1343>; *Meet Jimmie*, JIMMIE MASSIE REPUBLICAN FOR DELEGATE (July 19, 2015), <http://www.jimmie-massie.com/meet-jimmie>.

¹⁶ *Filler-Corn Introduces Legislation to Combat Campus Sexual Assaults* (Dec. 1, 2014), <http://www.eileenfillercorn.com/hb1343>.

required to report sexual assault to the police.¹⁷

Virginia House Bill 1785, requiring campus police to notify the Commonwealth's Attorney of any victim-initiated sexual assault investigations, is a positive step forward in helping to combat sexual assault on Virginia college campuses.¹⁸ Under this legislation, victims of sexual assault are much more likely to receive the protection and justice they deserve.

Part II of this comment outlines current federal law that intends to address sexual assault on college campus and whether these laws have been effective in preventing sexual assault. Part III details Virginia House Bill 1785 introduced in the 2015 Virginia General Assembly Session to address sexual assault on Virginia college campuses. Part IV examines criticisms of the proposed solutions as well as the possible relief the new law can provide for victims of sexual assault. Part V concludes this comment.

II. FEDERAL LAW ADDRESSING SEXUAL ASSAULT ON COLLEGE CAMPUSES

Although sexual assault on college campuses was only more recently brought to the forefront of national news, it is hardly a new problem.¹⁹ The exact number of college students who experience sexual violence in college is hard to calculate. However, studies suggest that somewhere between 1 in 4 to 1 in 6 college women will fall victim to sexual violence by the time they graduate.²⁰ These numbers certainly call for some concern. The federal government recognized that sexual assault was an national issue and passed Title IX of the Clery Act in order to address states' and institutions' mishandling of sexual assault cases on college campuses.²¹

¹⁷ *Commonwealth Education Poll 2014-2015*, THE COMMONWEALTH EDUCATIONAL POLICY INSTITUTE, available at <http://cepi.vcu.edu/media/university-relations/cepi/pdfs/CommonwealthEducationPoll2014-15-FinalReport.pdf>.

¹⁸ H.B. 1785, 2015 Gen. Assemb., Reg. Sess. (Va. 2015), available at <https://leg1.state.va.us/cgi-bin/legp504.exe?151+sum+HB1785>.

¹⁹ Anya Kamenetz, *The History of Campus Sexual Assault*, NPR (Nov. 30, 2014 8:03 AM), <http://www.npr.org/blogs/ed/2014/11/30/366348383/the-history-of-campus-sexual-assault>.

²⁰ Tyler Kingkade, *Sexual Assault Statistics Can be Confusing, But They're Not the Point*, HUFFINGTON POST (Dec. 15, 2014 4:59 PM), http://www.huffingtonpost.com/2014/12/15/sexual-assault-statistics_n_6316802.html (citing the National Crime Victimization Survey published by the U.S. Department of Justice, the National Partner and Sexual Violence Survey published by the Centers for Disease Control, and the Campus Sexual Assault Study funded by the U.S. Department of Justice).

²¹ *See About The Jeanne Clery Act*, JEANNE CLERY ACT INFO., <http://www.cleryact.info/clery-act.html> (last visited April 16, 2015); U.S. DEP'T OF EDUC. OFFICE FOR CIVIL RIGHTS, QUESTIONS AND ANSWERS ON TITLE IX AND SEXUAL VIOLENCE, available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

A. Title IX

Title IX, a section of the Education Amendments of 1972, protects against discrimination on the basis of sex in all educational programs receiving federal funding.²² Title IX prohibits sex discrimination, which has been interpreted to include sexual violence.²³ The law directs academic institutions on how to respond to sexual violence. Universities are required to (1) respond promptly to sexual violence, (2) provide interim measures to victims, (3) identify where victims can find confidential support services, (4) conduct an “adequate, reliable, and impartial investigation,” and (5) provide remedies to victims.²⁴ Title IX does not prohibit criminal investigations of sexual assaults on college campuses, it simply provides students with additional rights and requires universities to uphold those rights.

Although Title IX is a significant piece of legislation, statistics suggest it has not been as effective in combating sexual assault as it has in other areas.²⁵ As of April 1, 2015, 106 institutions of higher education are under investigation by the Department of Education’s Office for Civil Rights for failure to comply with Title IX.²⁶ With such a high number of institutions seemingly violating Title IX requirements, it is arguable that sexual assault victims on these campuses are not receiving the care and remedies they deserve.

B. The Clery Act

Similarly, the 1990 Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”), requires universities participating in federal student aid programs to disclose information about crimes occurring on their campus.²⁷ The Clery Act was amended in 1992 to

²² 20 U.S.C. § 1681(a); *History of Title IX*, TITLE IX, <http://www.titleix.info/History/History-Overview.aspx> (last visited Apr. 16, 2015).

²³ U.S. DEP’T OF EDUC. OFFICE FOR CIVIL RIGHTS, KNOW YOUR RIGHTS: TITLE IX REQUIRES YOUR SCHOOL TO ADDRESS SEXUAL VIOLENCE, *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/know-rights-201404-title-ix.pdf>.

²⁴ *Id.*

²⁵ See Edwin Rios, *The Feds Are Investigating 106 Colleges for Mishandling Sexual Assault, Is yours One of Them?*, MOTHER JONES (Apr. 8, 2015 3:04 PM), <http://www.motherjones.com/politics/2015/04/department-of-education-investigation-colleges-sexual-assault> (stating over 100 colleges and universities are currently under investigation for violating Title IX and while many will not be found in violation of Title IX provisions, sexual assaults are still occurring on their campuses and victims are not satisfied with the investigations. Students usually initiate Investigations conducted by the Office for Civil Rights).

²⁶ *Id.*

²⁷ Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092(f) (1990).

impose basic requirements on academic institutions for handling incidents of sexual violence.²⁸ The 1992 amendment require universities to create and disclose a summary of their sexual assault policies.²⁹ University policies must address the broad areas of “victim’s rights, disciplinary procedures, and educational programming.”³⁰ The Department of Education is responsible for ensuring that universities comply with the provisions of the Act.³¹ While the Clery Act has been successful at promoting transparency, statistics showing continuing assaults prove it has not been as successful in combating sexual violence.³² Both Title IX and the Clery Act seem to fall short on preventing sexual assault on college campuses.

C. Virginia’s Response to Sexual Assault on College Campuses

The Virginia General Assembly’s response to the outrage over recent sexual assault cases is not limited to House Bill 1785.³³ In the 2015 Session alone, 20 bills aimed at fighting campus sexual assault were proposed in both the House and the Senate.³⁴ It is clear by the number of proposals that Virginia legislators are divided about how to address campus sexual violence. Some legislators believe universities can and should handle cases of sexual assault alone, while others believe universities are ill equipped and need assistance from the criminal justice systems.³⁵ Even those who push for outside participation disagree on whether reporting should be optional or mandatory.³⁶

III. HOUSE BILL 1785

Virginia’s previous policy for addressing sexual assaults on college cam-

²⁸ *Summary of the Jeanne Clery Act*, CLERY CENTER, <http://clerycenter.org/summary-jeanne-clery-act> (last visited July 19, 2015).

²⁹ *Campus Sexual Assault Victims’ Bill of Rights*, JEANNE CLERY ACT INFO., <http://www.cleryact.info/campus-sexual-assault-victims--bill-of-rights.html> (last visited Apr. 16, 2015).

³⁰ *Id.*

³¹ *See supra* note 28.

³² Sara Jennings, *Clery Act FAQs*, Campus Answers (Mar. 6, 2015), <http://www.campusanswers.com/clery-act-faqs/>. *See* George Leef, *The Clery Act: Greater Campus Safety, Or Just Greater Cost?*, FORBES (Aug. 20, 2014), <http://www.forbes.com/sites/georgeleef/2014/08/20/the-clery-act-greater-campus-safety-or-just-greater-cost/>.

³³ *See* Grace Erard, *Virginia Legislature Passes Bills to Address Campus Sexual Assault*, THE CAVALIER DAILY (Mar. 3, 2015), <http://www.cavalierdaily.com/article/2015/03/virginia-legislature-passes-bills-affecting-victim-autonomy>.

³⁴ *Id.*

³⁵ *See id.*

³⁶ *Cf. id.* (noting HB 1930 takes account of the victim’s wishes when the decision whether or not to report is made).

puses did not involve the Commonwealth's Attorney office.³⁷ This policy could explain of formal criminal investigations, charges, and verdicts in campus sexual assault cases. On March 6, 2015, the HB 1785 was passed in both the Virginia House of Delegates and the Virginia Senate.³⁸ On March 27, 2015, Governor McAuliffe signed the bill into law.³⁹

The policy required by HB 1785 differs from the previous procedure for addressing sexual assault on college campuses only slightly, but the impact on the fight against sexual assault has the potential to be great. The legislation requires that campus authorities report investigations of alleged sexual assault to the Commonwealth attorney within 48 hours.⁴⁰ In part, the bill requires:

All public or private institutions of higher education that have campus police forces established in accordance with the provisions of this chapter shall enter into and become a party to mutual aid agreements with one or more of the following: (i) an adjacent local law-enforcement agency or (ii) the Department of State Police, for the use of their joint forces, both regular and auxiliary, equipment, and materials when needed in the investigation of any felony criminal sexual assault or medically unattended death occurring on property owned or controlled by the institution of higher education or any death resulting from an incident occurring on such property. Such mutual aid agreements shall include provisions requiring either the campus police force or the agency with which it has established a mutual aid agreement pursuant to this subsection, in the event that such police force or agency conducts an investigation that involves a felony criminal sexual assault as set forth in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 occurring on campus, in or on a noncampus building or property, or on public property, to notify the local attorney for the Commonwealth of such investigation within 48 hours of beginning such investigation. Such notification shall not require a campus police force or the agency with which it has established a mutual aid agreement to disclose identifying information about the victim. The provisions of this section shall not prohibit a campus police force from requesting assistance from any appropriate law-enforcement agency of the Commonwealth, even though a mutual aid agreement has not been executed with that agency.⁴¹

The previous policy already obligated institutions of higher education to form mutual aid agreements with law enforcement agencies.⁴² However, HB

³⁷ Compare VA. CODE ANN. § 23-234 (2011 & Supp. 2014), with H.B. 1785, 2015 Gen. Assemb., Reg. Sess. (Va. 2015), available at <https://leg1.state.va.us/cgi-bin/legp504.exe?151+ful+CHAP0707+pdf>.

³⁸ H.B. 1785, 2015 Gen. Assemb., Reg. Sess. (Va. 2015), available at <https://leg1.state.va.us/cgi-bin/legp504.exe?151+sum+HB1785>.

³⁹ 2015 Va. Acts 707.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² DEPARTMENT OF PLANNING AND BUDGET, 2015 *Fiscal Impact Statement*, <http://lis.virginia.gov/cgi-bin/legp604.exe?151+oth+HB1343F122+PDF>.

1785 simply requires a provision of the mutual aid agreement with the campus law enforcement agency to further report felony criminal sexual assault to the Commonwealth's Attorney.⁴³ According to the Department of Planning and Budget, the new law will not require a budget amendment and overall, there is no fiscal impact as the reporting requirement can be accomplished with no additional cost to the state.⁴⁴

IV. CRITICISMS OF HOUSE BILL 1785

Various groups criticized HB 1785 and the other bills that proposed reporting, including victims of sexual assaults that took place on college campuses.⁴⁵ Critics worried that police involvement will deter victims from coming forward at all, as many victims are weary of the criminal justice system and are not interested in pursuing legal action.⁴⁶ Another argument against the bill was the concern that criminal investigations will detract from the school's obligations under Title IX to provide services, such as extra time on exams.⁴⁷ Many of these concerns are understandable and may be justified.

On the other hand, in order to prevent further sexual violence on college campuses, critics, universities, and legislators need to consider the likelihood that offenders may assault again. Although a criminal investigation may be painful for a victim, research shows that sexual offenders are rarely one-time offenders, and thus, pursuing a criminal investigation may be necessary for the safety of the community as a whole.⁴⁸ The killing of Hannah Graham is a prime example of how an offender repeated his violent tendencies, and the end result was a loss of a life of a young girl.⁴⁹

⁴³*Id.*

⁴⁴*Id.*

⁴⁵See *Why Schools Handle Sexual Violence Reports*, KNOW YOUR IX (last visited Apr. 17, 2015), <http://knowyourix.org/why-schools-handle-sexual-violence-reports/>; Dana Bolger & Alexandra Brodsky, *Victim's Choice, Not Police Involvement, Should be Lawmakers' Priority*, MSNBC (Feb. 12, 2015), <http://www.msnbc.com/msnbc/campus-rape-victims-choice-should-be-lawmakers-priority>; Alexandra Brodsky, *Don't Criminalize College Responses to Sexual Violence*, AL JAZEERA AM. (Feb. 13, 2014), <http://america.aljazeera.com/opinions/2014/2/title-ix-sexual-assaultcollegecampuscriminaljusticeगतo.html>; *An Open Letter to Elected Leaders of The 50 United States*, NASPA STUDENT AFFAIRS ADMINISTRATORS IN HIGHER EDUCATION (Feb. 19, 2015), http://www.naspa.org/images/uploads/main/Joint_omnibus_bill_statement_letterhead.pdf.

⁴⁶ Brodsky, *supra* note 45.

⁴⁷ See Brodsky, *supra* note 45; U.S. DEP'T OF EDUC. OFFICE FOR CIVIL RIGHTS, QUESTIONS AND ANSWERS ON TITLE IX AND SEXUAL VIOLENCE, available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

⁴⁸ See Brodsky, *supra* note 45.

⁴⁹ See *supra* note 6.

Delegates Massie and Filler-Corn considered both victims' concerns as well as the need for community safety when drafting HB 1785 and believe they "[struck] the right balance."⁵⁰ HB 1785 provides more confidentiality and choice to victims than other proposed mandatory reporting bills and thus, students are more likely to feel comfortable and unlikely to be discouraged from coming forward.⁵¹

Other opponents of the bill and mandatory reporting in general argue that the reporting requirements of Title IX would remedy the problem if implemented fully and correctly.⁵² Opponents cite the number of schools being investigated by the Department of Education's Office for Civil Rights for violating Title IX as proof that universities are not following the law.⁵³ However, it is unclear as to whether even fully implementing Title IX would be enough to curb the problem of sexual assault at these institutions.

For Virginia, it seems that the federal requirements of Title IX and the Clery Act are not enough to help decrease sexual violence on college campuses. Provisions of HB 1785 and other sexual assault bills introduced in the 2015 General Assembly session do not take away from the requirements of Title IX. The goal of the new law and other proposed legislation is to simply promote cooperation and communication between universities and outside authorities or Commonwealth's Attorneys. With the high stakes involved in sexual assault cases, there is no argument against cooperation between these entities if the result is preventing more victims of sexual violence.

V. CONCLUSION

The effectiveness of the new law is hard to predict as other states are just beginning to enact similar legislation in response to the national outcry. Although some critics believe the bill is too strong and will discourage victims from coming forward, and some believe it is too weak and will not adequately protect the community from offenders, the bill strikes the right balance. The language of the bill allows victim's to remain confidential and to retain some control while also involving the Commonwealth's Attorney for

⁵⁰ 2015 Va. Acts 707; *House Passes Campus Sexual Assault Reporting Bills*, ABC 13 NEWS NOW (Feb. 10, 2015), <http://www.13newsnow.com/story/news/politics/2015/02/05/va-campus-sexual-assault-reporting-bill-advances/22911529/> (quoting Massie).

⁵¹ See *id.*; Eliza Gray, *Why Victims of Rape in College Don't Report to the Police*, TIME (June 23, 2014), <http://time.com/2905637/campus-rape-assault-prosecution/>.

⁵² KNOW YOUR IX, *supra* note 45.

⁵³ See KNOW YOUR IX, *supra* note 45.

the good of the community.

On March 27, 2015, Governor McAuliffe approved HB 1785 in addition to two other bills aimed at combating sexual violence on college campuses.⁵⁴ The law became effective as of July 1, 2015 and will have a significant impact on sexual violence on Virginia college campuses.⁵⁵ Although it took horrendous acts of sexual violence to elicit change, Virginia's academic institutions and sexual assault victims now have more options to bring offenders to justice and prevent future assaults of innocent students.

⁵⁴ *See supra* note 50.

⁵⁵ *See supra* note 50.