

**DEPARTMENT OF JUSTICE****Office of Justice Programs****28 CFR Part 90****[OJP (OJP)-1206]****RIN 1121-AA49****Grants To Combat Violent Crimes Against Women on Campuses**

**AGENCY:** Violence Against Women Office, Office of Justice Programs, Justice.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Violence Against Women Office, Office of Justice Programs, U.S. Department of Justice, is publishing proposed regulations governing the implementation of Grants to Combat Violent Crimes Against Women on Campuses authorized by Title VIII, Part E, section 826 of the Higher Education Amendments of 1998. This authorization provides funds to institutions of higher education for two broad purposes: To develop and strengthen effective security and investigation strategies to combat violent crimes against women on campuses, particularly domestic violence, sexual assault, and stalking and to develop, enlarge, and strengthen victim services in cases involving violent crimes against women on campuses.

As microcosms of the larger society, institutions of higher education harbor many of the same social conditions and forces that permit violence against women to occur outside the campus community. Sexism, male student support systems that validate and perpetuate violence against women, and institutional minimization of, or indifference to, violence against women can create a climate that is inhospitable to women. Therefore, the higher education community must address not only the actual incidents and consequences, but also the underlying causes of violence against women.

**DATES:** Comments will be received no later than 5:00 p.m. on May 24, 1999.

**ADDRESSES:** Comments may be sent to Preet Kang, Senior Associate, Violence Against Women Office, Office of Justice Programs, 810 Seventh Street, N.W., Washington, D.C. 20531.

**FOR FURTHER INFORMATION CONTACT:** Preet Kang, Senior Associate, Violence Against Women Office, Office of Justice Programs, 810 Seventh Street, N.W., Washington, D.C. 20531. Telephone: (202) 307-6026.

**SUPPLEMENTARY INFORMATION:** The Violence Against Women Office

(VAWO) of the Office of Justice Programs (OJP) proposes to amend the regulations governing the STOP Violence Against Women Formula and Discretionary Grants Program, found at 28 CFR Part 90, to comply with the amendments to the authorizing statutes, 42 U.S.C. 3796gg through 3796gg-5, enacted by the Violence Against Women Act, Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, and Title VIII, Part E, section 826 of the Higher Education Amendments of 1998, Public Law 105-244, 112 Stat. 1815 (1998).

The Higher Education Amendments of 1998 authorize Federal financial assistance to institutions of higher education to work individually or in consortia consisting of campus personnel, student organizations, campus administrators, security personnel, and regional crisis centers affiliated with the institution. Grant funds may be used to develop, implement, and strengthen effective security and investigation strategies to combat violent crimes against women on campuses, including sexual assault, stalking, and domestic violence; and to develop and strengthen victim services and prevention efforts.

**Statement of the Problem**

Violence against women on college and university campuses is a serious, widespread problem. More than half of all stalking victims are between 18-29 years old, according to the National Violence Against Women Survey sponsored by the National Institute of Justice (NIJ) and the Centers for Disease Control and Prevention.<sup>1</sup> Similarly, National Crime Victimization Survey (NCVS) data indicate that more than 52 percent of all rape/sexual assault victims are females younger than age 25.<sup>2</sup> Although these figures are for the population as a whole, they are especially significant for the campus community in its efforts to recognize and address violent crimes against women, given the typical age of the campus populace. Further, results of several studies indicate that among college students, the average prevalence rate for nonsexual dating violence is 32 percent.<sup>3</sup>

<sup>1</sup> "Stalking and Domestic Violence," Attorney General's Third Annual Report to Congress under the Violence Against Women Act, Office of Justice Programs, Violence Against Women Grants Office, (Washington, DC: U.S. Department of Justice, July 1998), p. 10.

<sup>2</sup> U.S. Department of Justice, Bureau of Justice Statistics, "Age Patterns of Victims of Serious Violent Crime," September 1997, NCJ-162031.

<sup>3</sup> "Fact Sheet on Dating Violence," Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, January 1998, p. 1.

Sexual assault is the second most common violent crime committed on college campuses, according to a national survey of 3,472 students at 12 randomly selected sites around the country.<sup>4</sup> This 1995 study also revealed that:

- Most of the perpetrators of sexual victimization are fellow students known to the victims;
- More sexual victimizations occur on-campus than off-campus;
- Half of the off-campus sexual victimizations occur in the victims' residence and an additional one-third occur in off-campus student housing, such as fraternities;
- Most of the victims of sexual assaults are full-time students, with about one-third of them being freshmen between 17-19 years old; and
- Almost 81 percent of the on-campus and 84 percent of the off-campus sexual assaults are not reported to police.

Consistent with the findings of this survey, numerous other studies have also revealed that sexual assaults, as well as other forms of violence against women, are seriously underreported generally and on campuses, indicating that the problem is even more acute than the available data suggest. Victims cite a number of reasons for not reporting the violence, including considering the matter to be private, being unaware or unclear that the violent behavior was in fact criminal, being embarrassed, fearing reprisals, and in some instances relenting to peer pressure, especially when the perpetrator is a prominent member of the campus community, such as an athlete.

One of the most frequent factors cited for violence against women on campus is substance abuse, particularly alcohol abuse, which is disproportionately high among college students. A survey of 89,874 students at 171 institutions of higher education revealed that alcohol was involved in 74 percent of the sexual assaults.<sup>5</sup> Another study conducted by the Harvard School of Public Health indicates that "non-binge drinking women living on campuses with high levels of binge drinking had almost twice the risk of experiencing unwanted

<sup>4</sup> Bonnie Fisher, John J. Sloan, III, and Francis T. Cullen, "Final Report: Understanding Crime Victimization Among College Students: Implications for Crime Prevention," Funded through National Institute of Justice Grant No. 93-II-CX-0049, 1995, p. 65.

<sup>5</sup> Presley, C.A., Meilman, P.W., Cashin, J.R., Leichter, J.S., "Alcohol and Drugs on American College Campuses: Issues of Violence, A Report to College Presidents," Core Institute Monograph, Southern Illinois University, Carbondale, IL, p. 4.

sexual advances as their counterparts at lower drinking-level schools.”<sup>6</sup>

While alcohol may be an important, and all too frequent, exacerbating factor in violence against women in the campus community, alcohol consumption cannot be viewed as a causative factor of these crimes. Ultimately, the responsibility for the criminal actions rests with perpetrators, who must be held accountable. Unfortunately, many male students continue to hold beliefs and attitudes, about gender roles, often supported by their male peers, that result in the physical and sexual abuse of women, whether or not alcohol is involved.

Recently, cases have been reported in which perpetrators have used drugs to subdue their victims prior to the sexual assault. These drugs, such as Rohypnol and GHB, can be easily slipped into drinks and consumed by unsuspecting victims. Within 15 to 30 minutes of ingestion, the drugs may produce effects ranging from drowsiness, impaired memory or judgement, loss of motor skills, and dizziness to loss of consciousness. These effects are further magnified when the drugs are mixed with alcohol and can be potentially lethal. Victims often do not remember the attack itself but wake up knowing that something is wrong. They may have hazy memories of waking up for a few seconds during the assault and then losing consciousness again. For these reasons, an assault may not be reported to the police for several days, if at all, and victims may have difficulty testifying in court about the assault.

Unlike their counterparts in the larger community, female students victimized by fellow students often face additional challenges in a “closed” campus environment. For instance, stalking victims may find it difficult to escape their tormentors because the stalker may have a seemingly “legitimate” reason for remaining in contact with or proximity to the victim (e.g., attending class or studying in the library). Similarly, the fear and anguish suffered by rape victims may continue because they attend the same classes or live in the same dormitory as their rapists. Even changing class schedules or living arrangements may not eliminate the threat of encountering the perpetrator on campus, assuming such options are available without the victim incurring any academic disadvantage or further financial penalties and emotional hardship.

Historically, institutions of higher education generally have handled crimes of violence against women through closed administrative procedures or processes rather than initiating criminal proceedings through the local law enforcement agency. However, this approach, where it is used in lieu of a report to local law enforcement, sends a message to victims, perpetrators, and the entire campus community that violence against women is not criminal behavior. Quite simply, an administrative response trivializes the seriousness of these crimes. When campus administrators fail to respond adequately, they perpetuate the acceptance and continuation of violence against women and may also encourage the escalation of such behaviors.

Institutions of higher education are in a unique position to educate young men and women about violence against women, and to help shape attitudes that students will carry with them long after they leave. The campus community can create large-scale social change by adopting policies and protocols that treat violence against women as a serious offense and by developing victim services and programs that make victim safety, offender accountability and prevention of such crimes a high priority. Through their policies, protocols, and actions, colleges and universities can demonstrate to every student that violence against women in any shape or form will not be tolerated and that sexual assault, stalking, and domestic violence are serious crimes, requiring legal action. Should such violence and abuse occur, appropriate steps should be taken to ensure victim safety and offender accountability both through internal administrative disciplinary processes and through the criminal justice system. Violence against women should be treated with the same gravity as any other criminal justice matter, whether it occurs on a campus, on the streets, or in private homes.

#### Effective Responses to Combat Violence Against Women on Campuses

The cornerstone of any effective strategy for addressing violence against women must include the development of a coordinated, multidisciplinary response involving the entire campus community, including victim service providers, campus security, faculty, staff, administrators, offices of the dean of students, women's centers, the athletic department, student groups, fraternity and sorority life coordinators, health care professionals, and campus clergy. In addition, this comprehensive

effort must involve the larger community in which the institution is located by developing partnerships with community-based victim service providers, victim advocates, local law enforcement and prosecution agencies and other criminal justice officials. A comprehensive, coordinated approach not only provides enhanced victim safety and offender accountability, but also includes prevention efforts to address the underlying causes of violence against women.

Implementation of such coordinated strategies sends a strong message that acts of violence against women are serious criminal offenses and that ending violence against women requires the involvement of the entire campus and broader community.

Elements of a coordinated, multidisciplinary response include:

- Enlisting the full support and commitment of the entire campus leadership of the higher education institution, including the president or chancellor. This commitment can be demonstrated by establishing and strengthening campus policies and protocols; consistently implementing these policies; vigorously responding to victimization; publicly condemning all forms of violence against women; and actively communicating expectations about appropriate conduct. For instance, the president of the University of Virginia wrote a letter condemning acquaintance rape, along with a discussion of what constitutes acquaintance rape.<sup>7</sup> Both the letter and the discussion were published in the college newspaper.

- Emphasizing that sexual assault, stalking, and domestic violence are serious crimes and encouraging victims to report these crimes to criminal justice authorities. Higher education institutions, as a matter of policy, should routinely provide information about the criminal and civil justice options available to victims, with guidance on how to access these systems (e.g., providing information cards that list addresses and telephone numbers of sexual assault and domestic violence units in the local police department and the prosecutor's office). Victims should be provided assistance with obtaining services from criminal justice agencies (for example, transportation to the police department or the court.)

- Developing formal written policies and protocols specifically for

<sup>6</sup>Henry Wechsler, Bryn Austin, and William DeJong, “Secondary Effects of Binge Drinking on College Campuses,” *The Higher Education Center for Alcohol and Other Drug Prevention Bulletin*, February 1996, p. 4.

<sup>7</sup>“Preventing Alcohol-Related Problems on Campus: Acquaintance Rape, A Guide for Program Coordinators,” *The Higher Education Center for Alcohol and Other Drug Prevention*, (Newton, MA, 1997), p. 5-7.

responding to sexual assault, stalking, and domestic violence, emphasizing victim safety and confidentiality, as well as meaningful offender accountability. These policies and protocols must be formulated in collaboration with community and campus experts on violence against women to ensure that the needs of victims are met and that perpetrators are held accountable.

These protocols should provide clear guidance to campus officials on specific procedures for handling incidents of sexual assault, stalking and domestic violence, including who victims should notify on campus, how victims should make a report, the specific procedures to be followed once a report is made, and how officials should work with victims on the issue of notifying local law enforcement agencies to report the crime. The protocols must make clear that sexual assault, stalking, and domestic violence are crimes, that victims must be provided full information on how to report these crimes to local law enforcement, and that officials must not dissuade victims from reporting these crimes to local law enforcement. Training should be provided to all relevant persons in positions likely to respond to, or have authority over those responding to, violent crimes against women.

These policies and protocols must be widely disseminated to the campus community. Written materials should be developed for dissemination by the office of the dean of students, explaining the protocols and procedures as well as how victims can contact local law enforcement. These materials should also explain when a report will be filed with an internal disciplinary board, how the board operates, how long it will take to review and take action on such a report, the victim's and perpetrator's rights before the board, the range of sanctions or disciplinary actions possible, and any other relevant information.

- Developing comprehensive, appropriate victim services for all students<sup>8</sup> and campus employees<sup>9</sup>, including underserved campus populations. To accomplish this goal, institutions of higher education must forge strong, meaningful partnerships

with community-based victim service providers, victim advocates, and local law enforcement authorities to enhance collaboration and coordination of resources so that victims receive services tailored to their specific safety needs and perpetrators are held accountable through the criminal and civil justice system. These partnerships have the added benefit of ensuring that the higher education institution's decisionmaking is informed by the realities and experiences of the larger community.

- Reviewing and revising, if necessary, the student and employee codes of conduct and policies to ensure that incidents involving violence against women are treated as serious offenses, with strong consequences. These codes of conduct should be distributed to every new student and employee entering the institution. Institutions should explore other means of disseminating this information as widely as possible, including posting the code on an institution's website, sending it through e-mail, and posting excerpts on student and employee bulletin boards throughout the campus.

- Working in collaboration with campus and community-based victim advocates and victim service providers to develop training programs and materials (e.g., brochures and stickers with campus and local hotline numbers) for students and campus employees that explain the causes and consequences of violence against women. This training should include basic information and precise definitions of sexual assault, domestic violence, and stalking so that everyone understands what actions constitute each of these crimes, that these crimes are serious, and that offenders will face severe criminal sanctions. Information must be provided about both the internal institutional and external legal sanctions against perpetrators; common myths surrounding violence against women; why different victims may have very different responses to the same crime; the importance of gathering evidence promptly after a crime has been committed; the role of drugs and alcohol as contributory factors, including Rohypnol, GHB, and other drugs used by rapists; maintenance of victim confidentiality; available campus and community resources and how to access them; safety planning; how peers can support victims and hold offenders accountable; campus policies and protocols addressing violence against women; and any mandatory reporting policies and laws. The training should also include a discussion of the underlying causes, such as social

attitudes, beliefs, and conditions that allow violence against women to exist in our society. These education programs should be made an integral component of orientation sessions for all first year students and other new students on campus and be mandatory for all campus employees.

- Formulating audience-specific training and awareness campaigns and developing resources to reach out effectively to student groups, such as athletes, fraternities, sororities, student groups representing diverse communities, first year students, and other new students. Materials should be tailored to the specific audiences being addressed. Members of these student groups should be recruited as trainers and spokespersons on issues related to violence against women. These individuals should receive rigorous training on the underlying causes of such violence.

- Developing ongoing, innovative public outreach campaigns to raise awareness and reinforce continually the information provided during the training. Possible opportunities for this ongoing training could include the periodic meetings convened by resident assistants for dormitory residents, and special events in conjunction with sexual assault and domestic violence awareness months. As part of this outreach campaign, the campus and local community media, such as the campus radio and television stations, could be used to disseminate information about violence against women, including how to identify signs of abuse, the legal rights of victims, availability of resources for victims, and sanctions for perpetrators.

- Developing strategies for preventing violence against women on campuses through education programs and media campaigns. These efforts should be designed to change the social norms, and attitudes that support and perpetuate violence against women.

- Evaluating the campus infrastructure for safety and security and the quality and availability of resources such as escort services after dark, shuttles, and extra lighting. This undertaking, however, should be only one element of a larger effort to address the problem comprehensively. As studies indicate, most women are victimized in private spaces, such as houses or apartments, by people they know. Therefore, by themselves, physical security measures have only a limited impact.

Campus sexual assault, stalking, and domestic violence are serious crimes requiring swift, forceful and coordinated responses from the higher education

<sup>8</sup>For the purposes of this Grant Program, students include both full- and part-time students enrolled at an institution of higher education.

<sup>9</sup>For the purposes of this Grant Program, employees include full- and part-time permanent faculty, staff, and administrators, as well as temporary and contract employees (e.g., visiting professors who are on sabbatical from other institutions for an extended time), and contractors whose primary work duties are on campus or at a location that is affiliated with the institution.

community. These responses must be sensitive to victims' needs and safety and must hold offenders accountable for their criminal actions through the criminal justice system and, as a supplement but not a substitute, through internal administrative disciplinary processes. Pursuing criminal charges enables victims of violence against women to use the criminal justice system to enhance their safety and potentially deter future abuse. These intervention efforts, however, must be combined with prevention strategies that seek to change the underlying campus culture and social norms that explicitly or implicitly support violent and abusive behavior against women.

#### **Fiscal Year 1999 Grants To Combat Violent Crimes Against Women on Campuses**

Consistent with the vision guiding all of the efforts supported through the Violence Against Women Act (VAWA), the Grants to Combat Violent Crimes Against Women on Campuses are designed to encourage the higher education community to adopt comprehensive, multidisciplinary strategies for preventing, detecting, and stopping violence against women, particularly sexual assault, stalking, and domestic violence. Addressing and ending violence against women is the entire community's responsibility. Institutions of higher education, working in partnership with the communities in which they are located, must adopt coordinated, campus-wide and community-wide efforts for responding to sexual assault, stalking, and domestic violence. Accordingly, all applicants for these grants are strongly encouraged to form consortia consisting of campus personnel, such as the athletic department and the women's center; student organizations, such as fraternities and sororities; groups working with diverse communities; campus housing officials, including student residence hall assistants; campus administrators, such as the institution's president and the dean of students; campus disciplinary boards; security personnel such as campus police and local law enforcement; and on-campus and community-based victim service providers; prosecutors; and judicial personnel to shape and guide grant-funded efforts. This multidisciplinary approach is intended to create strategies that are responsive to victims, bring perpetrators to justice and change the underlying campus climate to make it inhospitable to violence and abuse against women in all shapes and forms.

For Fiscal Year 1999, Congress appropriated \$10 million to the Department of Justice to fight violent crimes against women on campuses across the country. These funds will be awarded competitively for the following broad purposes:

1. To provide personnel, training, technical assistance, data collection, and other equipment to increase arrests, investigations, and adjudication of persons committing violent crimes against women on campus;
2. To train campus administrators, campus security personnel, and campus disciplinary or judicial boards to identify and respond more effectively to violent crimes against women on campus, including sexual assault, stalking, and domestic violence;
3. To implement and operate education programs for prevention of violent crimes against women;
4. To develop, expand, or strengthen support services programs, including medical or psychological counseling, for victims of sexual offense crimes;
5. To create, disseminate, or otherwise provide assistance and information about victims' options on and off campus to bring disciplinary or other legal action;
6. To develop and implement more effective campus policies, protocols, orders, and services to prevent, identify, and respond to violent crimes against women on campus, including the crimes of sexual assault, stalking, and domestic violence;
7. To develop, install, and expand data collection and communication systems, including computerized systems, linking campus security to the local law enforcement for the purposes of identifying and tracking arrests, protection orders, violations of protection orders, prosecutions, and convictions with respect to violent crimes against women on campus, including sexual assault, stalking, and domestic violence;
8. To develop, enlarge, or strengthen victim service programs for the campus and to improve delivery of victim services on campus;
9. To provide capital improvements (including improved lighting and communications facilities but excluding the construction of buildings) on campuses to address violent crimes against women on campus, including the crimes of sexual assault, stalking, and domestic violence; and
10. To support improved coordination among campus administrators, campus security personnel, and local law enforcement to reduce violent crimes against women on campus.

#### **Distribution of Grant Funds**

The Higher Education Amendments of 1998 call on the Attorney General to award the Grants to Combat Violent Crimes Against Women on Campuses on a competitive basis. Every effort will be made to ensure the equitable participation of private and public institutions of higher education in activities supported through this Grant Program and the equitable geographic distribution of grants under this section among the various regions of the country.

#### **Eligibility Requirements**

To be eligible to receive grant funds under this Program, all grant applicants must be in compliance with the campus crime reporting requirements set forth in 20 U.S.C. 1092 (f) as amended by Public Law 105-244, 112 Stat. 1581, section 486(e) (1998).

This section requires in part that all institutions of higher education collect crime statistics and information about any campus security policies for their respective campuses. The information must be compiled in an annual security report and disseminated to all current students and employees, and, upon request, to any applicant for enrollment or employment. The annual security report must contain information regarding campus security policies and campus crime statistics. (See Exhibit A at the end of this document for relevant provisions of the Campus Security Act of 1990, as amended by Public Law 105-244, 112 Stat. 1741, section 486 (e) of the Higher Education Amendments of 1998.)

#### **FERPA Requirements**

To be eligible for this Grant Program, institutions of higher education must certify that they have developed policies consistent with the requirements of the Amendment to the Family Educational Rights and Privacy Act (FERPA) of 1974, as amended by Public Law 105-244, 112 Stat. 1835, section 951 of the Higher Education Amendments of 1998. (See Exhibit B at the end of this document for an excerpt of this section.) Under FERPA and if permissible under State law, an institution of higher education may disclose to law enforcement agencies the name of the student who is an alleged perpetrator of any crime of violence or a nonforcible sex offense, as well as his or her offense and any sanctions imposed upon him or her as a result of campus disciplinary proceedings conducted by the institution. FERPA permits such disclosure only after a student has been found to have been in violation of the

institution's rules or policies. Moreover, FERPA, as amended by Section 951 of the Higher Education Amendments of 1998, prohibits such disclosures by institutions of higher education unless the victim(s) and/or witness(es) provide their written consent.

To be eligible for this Grant Program, grantees are required to disclose to law enforcement information permitted under FERPA provided that it is consistent with State law, but only if the victim requests or agrees to the disclosure. Victims' consent to disclosure is necessary because their safety, confidentiality, and privacy could be compromised.

In addition, the Violence Against Women Office of the Office of Justice Programs will require all institutions of higher education applying for grant funds to certify that they have, or plan to develop within 60 days of receipt of grant funds, written policies prohibiting the disclosure of a victim's or a witness' name, address, telephone number, or any other identifying information without the prior voluntary written consent of the victim or witness. All applicants will be required to forward copies of these policies to the Violence Against Women Office of the Office of Justice Programs with their grant application, or if no such policies have been developed, institutions must include written assurances in their grant application that within 60 days of receipt of a grant award, they will develop written policies and forward copies of these policies to the Violence Against Women Office of the Office of Justice Programs. Institutions must also certify that these policies were developed in close collaboration with campus-based or community-based victim service programs.

#### Application Requirements

In their applications, all grant applicants must:

- describe the need for grant funds and a plan for implementation of any of the 10 purposes areas. Higher Education Amendments of 1998, section 826 (b), 20 U.S.C. 1152;

- describe how campus authorities shall consult and coordinate with nonprofit and other victim service programs both on campus and in the local community, including sexual assault and domestic violence victim service programs;

- describe the characteristics of the population being served, including type of campus, demographics of the population, and the number of students;

- provide measurable goals and expected results from the use of grant funds; and

- provide assurances that Federal funds made available under this section shall be used to supplement and, to the extent practical, increase the level of funds that would, in the absence of Federal funds, be made available by the institution for the 10 purpose areas set forth in section 826 (b) of the Higher Education Amendments of 1998. 20 U.S.C. 1152.

#### Other Requirements

OJP will require all applicants seeking funds for capital improvements to combine these efforts with a broader approach to addressing violence against women, consisting of some combination of the following: victim service provision or formation of a task force whose members include representatives of the institution's administration, the athletic department, student organizations such as the fraternities and sororities, the women's center, the health center, faculty and staff. While security strategies such as increased lighting and alarms are important, to be fully effective they must be part of a broader coordinated community response that addresses the underlying causes of violence against women. All applicants also will be required to enter into partnerships with nonprofit, nongovernmental victim service providers through formal memoranda of understanding (MOU) clearly describing the responsibilities of each partner.

#### Reporting Requirements

In addition to semi-annual progress reports, all institutions of higher education receiving a grant through this Program are required to submit annual performance reports to the Violence Against Women Office in the Office of Justice Programs. Funding shall be suspended if an institution fails to submit an annual performance report.

Upon completion of the grant period, the institution shall be required to file a performance report with the Violence Against Women Office of the Office of Justice Programs, Violence Against Women Office, and the U.S. Department of Education's Safe and Drug-Free Schools Program, explaining the activities carried out and assessing the effectiveness of those activities in achieving the purposes of the Program.

#### Request for Comments

In an effort to fulfill the letter, as well as the spirit of Title VIII, Part E, Section 826 of the Higher Education Amendments of 1998, the Violence Against Women Office of the Office of Justice Programs seeks comments on all aspects of this Program, consistent with the statutory limitations. Comments are

being sought on a broad range of issues, including but not limited to the topics below.

- The Violence Against Women Office of the Office of Justice Programs is seeking comments on any other priority areas that should be considered in addition to the statutory purpose areas identified in § 90.102 of Subpart E of the regulation set out in the following pages.

- For the purposes of this Program, the Violence Against Women Office of the Office of Justice Programs is seeking comments on whether there are any special needs of diverse campuses with underserved populations that should be considered.

- For the purposes of this Program, victims are eligible for assistance provided through grant-funded programs if they qualify for the types of services provided through rape crisis centers, campus women's centers, battered women's shelters, sexual assault and domestic violence programs, including campus counseling support and victim advocate organizations, campus health centers, and other campus victim service providers, consistent with section 826(b)(4), (5) and (8) of the Higher Education Amendments of 1998. The Violence Against Women Office of the Office of Justice Programs is seeking comments on whether this scope of eligibility adequately covers the types of services needed by victims.

- For the purposes of this Program, section 826(f) of the Higher Education Amendments of 1998 defines the term "victim services" to mean a nonprofit, nongovernmental organization that assists domestic violence or sexual assault victims, including campus women's centers, rape crisis centers, battered women's shelters, and other sexual assault or domestic violence programs, including campus counseling support and victim advocate organizations with domestic violence, stalking, and sexual assault programs, whether or not organized and staffed by students. This statutory definition excludes victim service providers, including women's centers, rape crisis centers and other sexual assault and domestic violence programs that are established and operated by public institutions of higher education. The Violence Against Women Office of the Office of Justice Programs is seeking comments on whether and/or how the exclusion of programs established and operated by public institutions will affect the effectiveness of this Program.

- For the purposes of this Grant Program, the Violence Against Women Office of the Office of Justice Programs

is defining "students" to include both full- and part-time students enrolled at an institution of higher education; and "employees" of the institution to include full- and part-time faculty, staff, and administrators, as well as temporary and contract employees such as visiting professors, and contractors whose primary work duties are on campus or at a location that is affiliated with the institution. The Violence Against Women Office of the Office of Justice Programs is seeking comments on whether or not these definitions adequately cover all persons on campuses.

- For the purposes of this Grant Program, "campus-community members" is defined as including all campus students and employees as defined above. The Violence Against Women Office of the Office of Justice Programs is seeking comments on whether or not the scope of the definition of campus-community members adequately encompasses the types of victimizations against women likely to occur in a campus environment.

- For the purposes of this Grant Program, victims are eligible for services provided through grant funds if they are students or employees (as defined above) at the institution. Victims are also eligible for services provided through grant funds if the victimization took place within the campus community as defined above. In addition, victims are eligible for grant-funded services if they are victimized by perpetrators who are students, faculty, staff, administrators or affiliated in some manner with an entity that is officially recognized by the institution of higher education, such as fraternities and sororities. Victims are also eligible for grant-funded services if the victimization occurred at events associated with campus life, such as educational activities, meetings, and social gatherings sponsored by an institution of higher education or a group affiliated with an institution of higher education. The Violence Against Women Office of the Office of Justice Programs is seeking comments on whether or not the eligibility criteria for grant-funded services adequately covers all types of victims affiliated with institutions of higher education.

- For the purposes of this Grant Program, victim services include, but are not limited to, 24-hour hotlines; development of safety plans with the victim; transportation to hospitals, medical appointments, police stations, prosecutor's offices, court hearings, and on- and off-campus service agencies; intervention with professors, employers,

creditors, and landlords; relocation to another on-campus housing facility; provision of new locks and other security devices; provision of a new, unlisted telephone number and e-mail address; provision of services to victims with disabilities; provision of language interpretation services; orientation to the criminal justice and the institution's administrative disciplinary systems; written information about the institution's administrative disciplinary systems and criminal justice systems and options; escort to court, the administrative disciplinary hearings, and medical appointments; victim notification regarding offender release, case status and outcome; assistance with preparation of victim impact statements and restitution claims; assistance with insurance and other compensation claims; referrals to off-campus counseling; arrangements for and referrals to on-campus counseling; and assistance with a transfer to another institution of higher education if the victim chooses. For the purposes of this Grant Program, "victim services" excludes mediation between the victim and the offender, and any counseling or other support services for the perpetrator. The Violence Against Women Office of the Office of Justice Programs is seeking comments on whether or not the scope of the proposed grant-funded services adequately covers the needs of victims of sexual assault, stalking, and domestic violence.

- For the purposes of this Grant Program, institutions of higher education would be required to provide equal information about both the administrative disciplinary process and the criminal and civil justice process to victims, if available. In no case should less information be provided about the criminal and civil justice process than about the internal institutional administrative disciplinary process in an effort to influence the victim to pursue university adjudication of violent crimes against women. If applicable, victims should be provided with information about pursuing the matter through both the criminal and civil justice systems and the institution's administrative disciplinary process simultaneously. The Violence Against Women Office of the Office of Justice Programs is seeking comments on whether or not this requirement adequately ensures that victims receive information about options to seek redress and hold the perpetrator accountable through not only internal administrative disciplinary processes,

but also through the criminal and civil justice systems.

- For the purposes of this Grant Program, institutions of higher education would be required to establish specific penalties for specific crimes, if not already in place (for example, mandatory permanent expulsion for criminal justice system convictions or a finding of guilt by the campus administrative disciplinary board for crimes of domestic violence, stalking, and sexual assault). Institutions of higher education also would have to develop means for entering permanent notations on the permanent student records or employee records of offenders. The Violence Against Women Office of the Office of Justice Programs is seeking comments on whether or not these requirements will assist in holding offenders accountable adequately.

- For the purposes of this Grant Program, institutions of higher education would be required to encourage victims to report sexual assault, domestic violence, and stalking to local law enforcement authorities and hold offenders accountable through the criminal and civil justice systems. Institutions must make every effort to facilitate victims' access to the criminal justice system by providing information about options; an explanation of how the criminal justice system operates; telephone numbers of appropriate law enforcement and legal agencies; and transportation to police stations, prosecutor's offices, and the courts. The Violence Against Women Office of the Office of Justice Programs is seeking comments on whether or not these requirements would provide adequate information to victims to enable them to make informed decisions about their options to use the criminal and civil justice systems.

- For the purposes of this Grant Program, Congress appropriated \$10 million. To maximize the impact of these limited funds, the Violence Against Women Office of the Office of Justice Programs is seeking comments on whether the most effective use of these funds would be to support a limited number (e.g., 10 to 15) of carefully selected demonstration projects, or more numerous, smaller grants to a larger number of institutions of higher education.

#### **Administrative Requirements**

##### *Executive Order 12866*

This proposed regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The

Office of Justice Programs has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

#### *Executive Order 12612*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

#### *Regulatory Flexibility Act*

The Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: The Grants to Combat Violence Against Women on Campuses will be administered by the Office of Justice Programs, and any funds distributed under it shall be distributed to institutions of higher education, not small entities, and the economic impact is limited to the Office of Justice Programs' appropriated funds.

#### *Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### *Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete in domestic and export markets.

#### *Paperwork Reduction Act*

The collection of information requirements contained in the proposed regulation has been submitted to and approved by the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3504(h)).

#### **List of Subjects in 28 CFR Part 90**

Colleges and universities, Crime, Grant programs—Indians, Grant programs—law, Grant programs—women, Reporting and recordkeeping requirements, Women.

For the reasons set forth in the preamble, 28 CFR Chapter I is proposed to be amended as follows:

#### **PART 90—VIOLENCE AGAINST WOMEN**

1. The authority for part 90 is revised to read as follows:

**Authority:** 42 U.S.C. 3711 *et seq.*; Sec. 826, part E, title VIII, Pub. L. 105–244, 112 Stat. 1815.

2. Part 90 is amended by adding a new Subpart E to read as follows:

##### **Subpart E—Grants to Combat Violent Crimes Against Women on Campuses**

Sec.

- 90.100 What is the scope of the grant program?
- 90.101 What definitions apply for the grant program?
- 90.102 What are the purposes of the grant program?
- 90.103 What are the eligibility requirements for the grant program?
- 90.104 What must the grant program application contain?
- 90.105 What are the review criteria for grant program applications?
- 90.106 What are the grantee reporting requirements for the grant program?

##### **Subpart E—Grants To Combat Violent Crimes Against Women on Campuses**

##### **§ 90.100 What is the scope of the grant program?**

This subpart implements the Higher Education Amendments of 1998, Part E, Section 826 (Pub. L. 105–244, 112 Stat. 1815), which authorizes Federal financial assistance to institutions of higher education to work individually or in consortia consisting of campus personnel, student organizations, campus administrators, security personnel, and regional crisis centers affiliated with the institution for two broad purposes: to develop, implement, and strengthen effective security and investigation strategies to combat violent crimes against women on campuses, including sexual assault, stalking, and domestic violence and to develop, enlarge, and strengthen

support services for victims of sexual assault, stalking, and domestic violence.

##### **§ 90.101 What definitions apply for the grant program?**

For the purposes of this subpart, the following definitions apply:

(a) *Domestic violence* includes acts or threats of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction, or by any other person against a victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

(b) *Institution of higher education* is defined to include an educational institution in any State that admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate; is legally authorized within such State to provide a program of education beyond secondary education; provides an educational program for which the institution has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time. Section 101, Public Law 105–244, 20 U.S.C. 1001.

(c) *Sexual assault* means any conduct proscribed by chapter 109A of Title 18, United States Code, whether or not the conduct occurs in the special maritime and territorial jurisdiction of the United States or in a Federal prison, including both assaults committed by offenders who are strangers to the victim and assaults committed by offenders who are known or related by blood or marriage to the victim.

(d) *Victim services* means a nonprofit, nongovernmental organization that assists domestic violence or sexual assault victims, including campus women's centers, rape crisis centers, battered women's shelters, and other sexual assault or domestic violence programs, including campus counseling support and victim advocate organizations with domestic violence, stalking, and sexual assault programs, whether or not organized and staffed by students.



**§ 90.102 What are the purposes of the grant program?**

The purposes of the grant program in this subpart are:

- (a) To provide personnel, training, technical assistance, data collection, and other equipment to increase arrests, investigations, and adjudication of persons committing violent crimes against women on campus;
- (b) To train campus administrators, campus security personnel, and campus disciplinary or judicial boards to more effectively identify and respond to violent crimes against women on campus, including sexual assault, stalking, and domestic violence;
- (c) To implement and operate education programs for prevention of violent crimes against women;
- (d) To develop, expand, or strengthen support services programs, including medical or psychological counseling, for victims of sexual offense crimes;
- (e) To create, disseminate, or otherwise provide assistance and information about victims' options on and off campus to bring disciplinary or other legal action;
- (f) To develop and implement more effective campus policies, protocols, orders, and services to prevent, identify, and respond to violent crimes against women on campus, including the crimes of sexual assault, stalking, and domestic violence;
- (g) To develop, install, and expand data collection and communication systems, including computerized systems, linking campus security to the local law enforcement for the purposes of identifying and tracking arrests, protection orders, violations of protection orders, prosecutions, and convictions with respect to violent crimes against women on campus, including sexual assault, stalking, and domestic violence;
- (h) To develop, enlarge, or strengthen victim service programs for the campus and to improve delivery of victim services on campus;
- (i) To provide capital improvements (including improved lighting and communications facilities but excluding the construction of buildings) on campuses to address violent crimes against women on campus, including the crimes of sexual assault, stalking, and domestic violence; and
- (j) To support improved coordination among campus administrators, campus security personnel, and local law enforcement to reduce violent crimes against women on campus.

**§ 90.103 What are the eligibility requirements for the grant program?**

- (a) Eligible grantees are institutions of higher education that are in compliance

with the campus crime reporting requirements as set forth in section 486(e) of the Higher Education Amendments of 1998, as amended, Public Law 105-244, 112 Stat. 1741, 20 U.S.C. 1092(f).

(b) To be eligible for this Grant Program, such institutions of higher education referred to in paragraph (a) of this section must:

- (1) Collect crime statistics and information about any campus security policies for their respective campuses, and compile such data in an annual security report and disseminate it to all current students and employees, and, upon request, to any applicant for enrollment or employment;
- (2) Include in all annual security reports referred to in paragraph (b)(1) of this section information regarding campus security policies and campus crime statistics;
- (3) Certify that they have developed and carry out policies consistent with the requirements of the Amendment to the Family Educational Rights and Privacy Act (FERPA) of 1974, as amended by Section 951 of the Higher Education Amendments of 1998 (under FERPA and if permissible under State law, an institution of higher education may disclose to law enforcement agencies the name of the student who is an alleged perpetrator of any crime of violence or a nonforcible sex offense, as well as his or her offense and any sanctions imposed upon him or her as a result of campus disciplinary proceedings conducted by the institution. FERPA permits such disclosure only after a student has been found to have been in violation of the institution's rules or policies. Moreover, FERPA, as amended by Section 951 of the Higher Education Amendments of 1998, prohibits such disclosures by institutions of higher education unless the victim(s) and/or witness(es) provide their written consent.);
- (4) Disclose to law enforcement information permitted under FERPA provided that it is consistent with State law, but only if the victim requests or agrees to the disclosure;
- (5) Certify that they have, or plan to develop within 60 days of receipt of grant funds, written policies prohibiting the disclosure of a victim's or a witness' name, address, telephone number, or any other identifying information without the prior voluntary written consent of the victim or witness;
- (6) Forward copies of policies referred to in paragraph (b)(4) of this section to the Violence Against Women Office of the Office of Justice Programs with their grant applications, or if no such policies have been developed, must include

written assurances in their grant application that within 60 days of receipt of a grant award, they will develop written policies and forward copies of these policies to the Violence Against Women Office of the Office of Justice Programs;

(7) Certify that policies referred to in paragraph (b)(4) of this section have been developed in close collaboration with campus-based or community-based victim service programs; and

(8) Enter into partnerships with nonprofit, nongovernmental victim service providers through formal memoranda of understanding (MOU) clearly describing the responsibilities of each partner.

**§ 90.104 What must the grant program application contain?**

(a) *Format.* Applications from institutions of higher education must be submitted on Standard Form 424, Application for Federal Assistance, at a time designated by the Violence Against Women Office of the Office of Justice Programs. The Violence Against Women Office of the Office of Justice Programs will develop and disseminate to institutions of higher education and other interested parties a complete Application Kit, which will include a Standard Form 424, a list of assurances to which applicants must agree, and additional guidance on how to prepare and submit an application for grants under this Subpart. Complete application kits will be available from: The Violence Against Women Office, Office of Justice Programs, 810 Seventh Street, N.W., Washington, D.C. 20531. Telephone: (202) 307-6026.

(b) *Programs.* Applications must set forth programs and projects that meet the purposes and criteria of the Grants to Combat Violent Crimes Against Women on Campuses set out in §§ 90.102 and 90.103.

(c) *Requirements.* Applicants in their applications must, at a minimum:

- (1) Describe the need for grant funds and a plan for implementation of any of the 10 purpose areas set forth in section 826 (b) of the Higher Education Amendments of 1998, Public Law 105-244, 112 Stat. 1816 (20 U.S.C. 1152);
- (2) Describe how campus authorities shall consult and coordinate with nonprofit and other victim service programs, including sexual assault and domestic violence victim service programs;
- (3) Describe the characteristics of the population being served, including type of campus, demographics of the population, and the number of students;



(4) Provide measurable goals and expected results from the use of grant funds;

(5) Provide assurances that Federal funds made available under this section shall be used to supplement and, to the extent practical, increase the level of funds that would, in the absence of Federal funds, be made available by the institution for the 10 purposes as set forth in section 826 (b) of the Higher Education Amendments of 1998, Pub. L. 105-244, 112 Stat. 1816 (20 U.S.C. 1152);

(6) Identify the agency or office or groups of agencies or offices responsible for carrying out the Program; and

(7) Include documentation from nonprofit, nongovernmental sexual assault and domestic violence victims' programs demonstrating their participation in developing the application, and explain how these groups will be involved in the development and implementation of the project.

(d) *Certifications.* (1) Each institution of higher education applying for grant funds must be in compliance with the eligibility requirements set out in § 90.103.

(2) Each institution of higher education applying for grant funds must certify that it has developed policies consistent with the requirements of the Amendment to the Family Educational Rights and Privacy Act (FERPA) of 1974, at Section 951 of the Higher Education Amendments of 1998, Public Law 105-244, 112 Stat. 1835.

(3) Each institution of higher education applying for grant funds must certify that it has, or plans to develop within 60 days of receipt of grant funds, written policies prohibiting the disclosure of a victim's or a witness' name, address, telephone number, or any other identifying information without the prior voluntary written consent of the victim or witness.

(4) Each institution of higher education applying for grant funds is required to forward copies of these policies to the Violence Against Women Office of the Office of Justice Programs with their grant application, or if no such policies have been developed, institutions must include written assurances in their grant application that within 60 days of receipt of a grant award, they will develop written policies and forward copies of these policies to the Violence Against Women Office of the Office of Justice Programs.

(5) Each institution of higher education applying for grant funds must certify that policies referred to in paragraph (d)(4) of this section have been developed in close collaboration

with campus-based or community-based victim service programs.

(6) Each institution of higher education applying for grant funds must certify that all the information contained in the application is correct. All submissions will be treated as a material representation of fact upon which reliance will be placed, and any false or incomplete representation may result in suspension or termination of funding, recovery of funds provided, and civil and/or criminal sanctions.

#### **§ 90.105 What are the review criteria for grant program applications?**

(a) *Equitable participation and geographic distribution.* In accordance with Section 826(a)(3) of the Higher Education Amendments of 1998, Public Law 105-244, 112 Stat. 1816, every effort shall be made to ensure:

(1) The equitable participation of private and public institutions of higher education in the activities assisted under this subpart; and

(2) The equitable geographic distribution of grants funded through this subpart among the various regions of the United States.

(b) *Additional review criteria.* Priority shall be given to applicants that demonstrate a commitment to developing strong collaborative models for developing services that are victim-centered; policies, protocols and penalties that hold offenders accountable; and programs that educate the entire campus community about how to end and prevent violence against women through systemic change. Commitment may be demonstrated in a number of ways including: clear communication from the institution's top leadership that strong responses to and prevention of violence against women is a priority; development and vigorous enforcement of campus policies and adherence to local laws addressing violence against women; creation of coordinated, multidisciplinary task forces that include at a minimum both campus and community-based victim service providers and campus security personnel and local law enforcement; innovative approaches to educating the entire campus community, including faculty, staff, administration, and students; provision of training and education programs to campus security personnel, others in positions of authority, and campus victim service providers; development of resource materials and information on violence against women; and innovative dissemination strategies for communicating information about the identification of violence against

women, its underlying causes, and the consequences of committing violent crimes against women.

(c) *Intergovernmental review.* This grant program is covered by Executive Order 12372, Intergovernmental Review of Federal Programs (3 CFR, 1982 Comp., p. 197), and implementing regulations at 28 CFR Part 30. A copy of the application submitted to the Violence Against Women Office of the Office of Justice Programs should also be submitted at the same time to the State's Single Point of Contact, if there is a Single Point of Contact.

#### **§ 90.106 What are the grantee reporting requirements for the grant program?**

(a) *Semi-annual progress reports and annual performance reports.* Each grantee receiving funds under this subpart shall submit semi-annual progress reports and an annual performance report to the Attorney General (Office of Justice Programs, Violence Against Women Office). Funding shall be suspended if a grantee fails to submit an annual performance report.

(b) *Final performance report.* Upon completion of the grant period, the institution shall be required to file a final performance report to the Attorney General (Office of Justice Programs, Violence Against Women Office) and the Secretary of Education (U.S. Department of Education's Safe and Drug Free Schools Program) explaining the activities carried out under this Subpart along with an assessment of the effectiveness of those activities in achieving the purposes set forth previously.

**Note:** The following exhibits will not appear in the Code of Federal Regulations.

#### **Exhibit A to Preamble—Excerpts From Section 204 of the Student Right-to-Know and Campus Security Act, as Amended by Section 486(f) of the Higher Education Amendments of 1998**

Relevant sections of the campus crime reporting requirements set forth in the Student Right-To-Know and Campus Security Act, as amended by the section 486(e) of the Higher Education Amendments of 1998, 20 U.S.C. 1092(f),<sup>1</sup> mandate the following:

(f) Disclosure of campus security policy and campus crime statistics

(1) Each eligible institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 shall on August 1, 1991, begin to collect the following information with respect to campus crime statistics and campus security policies of that institution, and beginning September 1, 1992, and each year thereafter,

<sup>1</sup> Note: The official version of section 486(e) of Public Law 105-244 appears at 112 Stat. 1742.

prepare, publish, and distribute, through appropriate publications or mailings, to all current students and employees, and to any applicant for enrollment or employment upon request, an annual security report containing at least the following information with respect to the campus security policies and campus crime statistics of that institution:

(A) A statement of current campus policies regarding procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution's response to such reports.

(B) A statement of current policies concerning security and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(C) A statement of current policies concerning campus law enforcement, including—

(i) the enforcement authority of security personnel, including their working relationship with State and local police agencies; and

(ii) policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies.

(D) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(E) A description of programs designed to inform students and employees about the prevention of crimes.

(F) Statistics concerning the occurrence on campus, in or on noncampus buildings or property, and on public property during the most recent calendar year, and during the 2 preceding calendar years for which data are available—

(i) Of the following criminal offenses reported to campus security authorities or local police agencies:

- (I) murder;
- (II) sex offenses, forcible or nonforcible;
- (III) robbery;
- (IV) aggravated assault;
- (V) burglary;
- (VI) motor vehicle theft;
- (VII) manslaughter;
- (VIII) arson; and
- (IX) arrests or persons referred for campus disciplinary action for liquor law violations, drug-related violations, and weapons possession; and

(ii) Of the crimes described in subclauses (I) through (VIII) of clause (i), and other crimes involving bodily injury to any person in which the victim is intentionally selected because of the actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability of the victim that are reported to campus security authorities or local police agencies, which data shall be collected and reported according to category of prejudice.

(G) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity at off-campus student organizations which are recognized by the institution and that are engaged in by students attending the

institution, including those student organizations with off-campus housing facilities.

(H) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws and a statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws and a description of any drug or alcohol abuse education programs as required under Section 1011i of this title.

(2) Nothing in this subsection shall be construed to authorize the Secretary to require particular policies, procedures, or practices by institutions of higher education with respect to campus crimes or campus security.

(3) Each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 shall make timely reports to the campus community on crimes considered to be a threat to other students and employees described in paragraph (1)(F) that are reported to campus security or local law police agencies. Such reports shall be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences.

(4)(A) Each institution participating in any program under this subchapter [20 U.S.C.A. 1070 *et seq.*] and part C of subchapter I of chapter 34 of Title 42 [42 U.S.C.A. 2751 *et seq.*] that maintains a police or security department of any kind shall make, keep, and maintain a daily log, written in a form that can be easily understood, recording all crimes reported to such police or security department, including—

(i) The nature, date, time, and general location of each crime; and

(ii) The disposition of the complaint, if known.

(B)(i) All entries that are required pursuant to this paragraph shall, except where disclosure of such information is prohibited by law or such disclosure would jeopardize the confidentiality of the victim, be open to public inspection within two business days of the initial report being made to the department or a campus security authority.

(ii) If new information about an entry into a log becomes available to a police or security department, then the new information shall be recorded in the log not later than two business days after the information becomes available to the police or security department.

(iii) If there is clear and convincing evidence that the release of such information would jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until that damage is no longer likely to occur from the release of such information.

(5) On an annual basis, each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 [42 U.S.C.A. 2751 *et seq.*] shall submit to the Secretary a copy of the statistics required to be made available under paragraph (1)(F). The Secretary shall—

(A) Review such statistics and report to the Committee on Education and the Workforce

of the House of Representatives and the Committee on Labor and Human Resources of the Senate on campus crime statistics by September 1, 2000;

(B) Make copies of the statistics submitted to the Secretary available to the public; and

(C) In coordination with representatives of institutions of higher education, identify exemplary campus security policies, procedures, and practices and disseminate information concerning those policies, procedures, and practices that have proven effective in the reduction of campus crime.

(6)(A) In this subsection:

(i) The term "campus" means—

(I) Any building or property owned or controlled by an institution of higher education within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and

(II) Property within the same reasonably contiguous geographic area of the institution that is owned by the institution but controlled by another person, is used by students, and supports institutional purposes (such as a food or other retail vendor).

(ii) The term "noncampus building or property" means—

(I) Any building or property owned or controlled by a student organization recognized by the institution; and

(II) Any building or property (other than a branch campus) owned or controlled by an institution of higher education that is used in direct support of, or in relation to, the institution's educational purposes, is used by students, and is not within the same reasonably contiguous geographic area of the institution.

(iii) The term "public property" means all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution, if the facility is used by the institution in direct support of, or in a manner related to the institution's educational purposes.

(B) In cases where branch campuses of an institution of higher education, schools within an institution of higher education, or administrative divisions within an institution are not within a reasonably contiguous geographic area, such entities shall be considered separate campuses for purposes of the reporting requirements of this section.

(7) The statistics described in paragraph (1)(F) shall be compiled in accordance with the definitions used in the uniform crime reporting system of the Department of Justice, Federal Bureau of Investigation, and the modifications in such definitions as implemented pursuant to the Hate Crime Statistics Act. Such statistics shall not identify victims of crimes or persons accused of crimes.

(8)(A) Each institution of higher education participating in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 shall develop and distribute as part of the report described in paragraph (1) a statement of policy regarding—

(i) Such institution's campus sexual assault programs, which shall be aimed at prevention of sex offenses; and

(ii) The procedures followed once a sex offense has occurred.

(B) The policy described in subparagraph (A) shall address the following areas:

(i) Education programs to promote the awareness of rape, acquaintance rape, and other sex offenses.

(ii) Possible sanctions to be imposed following the final determination of an on-campus disciplinary procedure regarding rape, acquaintance rape, or other sex offenses, forcible or nonforcible.

(iii) Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported.

(iv) Procedures for on-campus disciplinary action in cases of alleged sexual assault, which shall include a clear statement that—

(I) The accuser and the accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding; and

(II) Both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault.

(v) Informing students of their options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses.

(vi) Notification of students of existing counseling, mental health or student services for victims of sexual assault, both on campus and in the community.

(vii) Notification of students of options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available.

(C) Nothing in this paragraph shall be construed to confer a private right of action

upon any person to enforce the provisions of this paragraph.

(9) The Secretary shall provide technical assistance in complying with the provisions of this section to an institution of higher education who requests such assistance.

(10) Nothing in this Section shall be construed to require the reporting or disclosure of privileged information.

(11) The Secretary shall report to the appropriate committees of Congress each institution of higher education that the Secretary determines is not in compliance with the reporting requirements of this subsection.

(12) For purposes of reporting the statistics with respect to crimes described in paragraph (1)(F), an institution of higher education shall distinguish, by means of separate categories, any criminal offenses that occur—

(A) on campus;

(B) in or on a noncampus building or property;

(C) on public property; and

(D) in dormitories or other residential facilities for students on campus.

(13) Upon a determination pursuant to section 1094(c)(3)(B) of this title that an institution of higher education has substantially misrepresented the number, location, or nature of the crimes required to be reported under this Subsection, the Secretary shall impose a civil penalty upon the institution in the same amount and pursuant to the same procedures as a civil penalty is imposed under section 1094(c)(3)(B) of this title.

(14) (A) Nothing in this Subsection may be construed to—

(i) Create a cause of action against any institution of higher education or any employee of such an institution for any civil liability; or

(ii) Establish any standard of care.

(B) Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with this subsection shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity,

except with respect to an action to enforce this subsection.

\* \* \* \* \*

**Exhibit B to Preamble—Excerpts From the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g(b), as Amended by Section 951 of the Higher Education Amendments of 1998**

Relevant sections of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g(b), as amended by Section 951 of the Higher Education Amendments of 1998, 112 Stat. 1835,<sup>1</sup> state the following:

\* \* \* \* \*

“(B) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence (as that term is defined in Section 16 of Title 18, United States Code), or a nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense.

“(C) For the purpose of this paragraph, the final results of any disciplinary proceeding—

“(i) Shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student; and

“(ii) May include the name of any other student, such as a victim or witness, only with the written consent of that other student.”.

\* \* \* \* \*

Dated: April 15, 1999.

**Laurie Robinson,**

*Assistant Attorney General, Office of Justice Programs.*

[FR Doc. 99-9949 Filed 4-22-99; 8:45 am]

BILLING CODE 4410-18-P

<sup>1</sup> **Note:** The official version of section 951 of Public Law 105-244 appears at 112 Stat. 1835.