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## SEXUAL ASSAULT INFORMATION ACT

**House Bill 4542 (Substitute H-3)**  
**House Bill 4543 as introduced**  
**Sponsor: Rep. Laura Baird**

**House Bill 4544 as introduced**  
**Sponsor: Rep. Deborah Cherry**

**House Bill 4545 as introduced**  
**Sponsor: Rep. Jim McBryde**

**House Bill 4546 as introduced**  
**Sponsor: Rep. Pat Gagliardi**

**House Bill 4547 as introduced**  
**Sponsor: Rep. Edward LaForge**

**House Bill 4548 as introduced**  
**Sponsor: Rep. Michael Hanley**

**House Bill 4549 as introduced**  
**Sponsor: Rep. Mary Schroer**

**House Bill 4550 as introduced**  
**Sponsor: Rep. Lynne Martinez**

**House Bill 4551 as introduced**  
**Sponsor: Rep. Raymond Murphy**

**House Bill 4552 as introduced**  
**Sponsor: Rep. Lingg Brewer**

**House Bill 4553 as introduced**  
**Sponsor: Rep. Shirley Johnson**

**First Analysis (5-27-97)**  
**Committee: Colleges and Universities**

**House Bills 4542-4553 (5-27-97)**

### ***THE APPARENT PROBLEM:***

Reportedly, the victims of campus sexual assault often find themselves victimized twice, first by their assailant, and then by the campus institutions that they turn to for help after their ordeal. Those victims who file

complaints against their assailants report harrowing tales of insensitive and indifferent bureaucracies instead of supportive advocates. Instead of receiving medical and legal help, some are coerced into dropping their

charges; others are persuaded that it is best to let the institution handle the situation, only to find that their assailants receive little or no punishment. Frequently, confessed rapists remain on campus, free to further harass their victims. Not surprisingly, the combination of lack of support and intimidation often results in falling grades and depression for the victim. Many leave school for a period of time or drop out altogether.

year to amend the Higher Education Act of 1965 to require more complete, timely,

Despite the changing climate regarding more sensitive treatment of sexual assault victims and tougher criminal penalties for sex offenders, sexual assaults continue to account for a significant percentage of the violent crimes committed on college campuses. According to the Michigan Conference of the National Organization for Women, one in six women will be sexually assaulted before receiving their degrees. The U.S. Department of Education reports that the 1994 national crime rate on college campuses for violent crime was .65 per 1,000 students, with forcible sex offenses accounting for .09 per 1,000 students (as compared to .001 for murder, .21 for robbery, and .35 for aggravated assault). However, unlike other violent crimes, sexual assaults remain vastly under-reported. Further, an increasing number of reported campus sexual assaults involve males as victims.

To address the problem of campus safety, the federal Student Right-to-Know and Campus Security Act (Public Law 101-542) was signed into law in November, 1990. Title II of the act is known as the Crime Awareness and Campus Security Act of 1991 and referred to as the Campus Security Act. According to a statistical analysis report provided by the National Center for Education Statistics, U.S. Department of Education, entitled "Campus Crime and Security at Postsecondary Education Institutions", the Campus Security Act requires postsecondary "institutions that participate in the student financial aid programs under Title IV of the Higher Education Act of 1965 to disclose information about campus safety policies and procedures and to provide statistics concerning whether certain crimes took place on campus." Under the act, institutions must report statistics for specified crimes committed on campus that had been reported to local law enforcement agencies or to an official of the institution that had a "significant responsibility for student and campus activities." The purpose of the Campus Security Act was to encourage "postsecondary institutions to put more emphasis on campus safety and crime prevention services and programs." In addition, the Campus Security Act requires institutions to publish and distribute annual security reports regarding security policies and certain crime statistics to students and employees (copies are available to prospective students and employees upon request). Federal legislation in the form of H.R. 715 was introduced in February of this

and accurate disclosures of crime reports and statistics, and to require specific methods of enforcement, such as terminating participation in federal financial aid programs.

However, even though the statistical analysis issued by the U.S. Department of Education reported that 98 percent of college students attended colleges, universities, and various training programs that were in compliance with the Campus Security Act, it is reported that victims of campus sexual assaults in Michigan still encounter problems such as attempted cover-ups by institutions. It is believed that adopting a similar state law to tie compliance with participation in state financial aid programs would go a long way in underscoring the importance of institutions developing procedures and policies that would more effectively deal with the problem of campus sexual assaults.

### ***THE CONTENT OF THE BILL:***

The bills would require Michigan colleges and universities to establish written campus sexual assault policies, and would amend various other statutes to require that the colleges and universities comply with the provisions of the bills. ("Sexual assault" is defined under House Bill 4542 to mean the various degrees of criminal sexual conduct as defined under the Michigan Penal Code; "campus sexual assault" is defined to mean a sexual assault that occurred on campus; "student" is defined to mean one who is enrolled on a full-time or part-time basis, and "campus" is defined as any building or property owned or controlled by an institution (within a contiguous geographic area) and used for educational purposes; a building or property owned or controlled by a recognized student organization including, but not limited to, a fraternity, sorority, and cooperative house; and a building or property controlled by the institution but owned by a third party.)

Victims Rights. House Bill 4542 would create the Michigan Campus Sexual Assault Information Act. Within 120 days after the effective date of the bill, each college and university in the state would be required to establish, implement, and make available to students, faculty, and staff a written campus sexual assault policy regarding 1) the institution's campus sexual assault programs, which would have to be aimed at prevention and awareness of sexual assaults; and 2) the procedures followed by the institution once a sexual assault has occurred and been reported. The policy would have to address, at a minimum, the following:

--Education programs to promote the prevention and awareness of sexual assault.

--Possible sanctions to be imposed following the final determination of an institutional disciplinary procedure regarding a sexual assault.

--Procedures that students should follow if a sexual assault occurred, including the persons who should be contacted, the importance of preserving evidence as may be necessary to prove criminal sexual assault, and the authorities to whom the alleged offense should be reported.

--Procedures for institutional disciplinary action in cases of alleged sexual assault, which shall include a clear statement of both of the following:

\* That the accuser and the accused are entitled to the same opportunities to have support persons or legal counsel (if the institution's policy allows the presence of outside legal counsel) present during an institutional disciplinary proceeding.

\* That both the accuser and accused would have to be informed of the outcome of any institutional disciplinary proceeding brought alleging a sexual assault.

--Notification to the victim about options for, and available assistance in, changing academic and living situations after an alleged campus sexual assault, if requested, and when reasonably available.

--Notification to students of their rights to notify the proper law enforcement authorities, including institutional and local police, and that students may be assisted by the institution in notifying law enforcement authorities if requested.

--Notification of existing medical, advocacy, counseling, mental health, and student services for victims of sexual assault, both on campus and in the community.

Further, the bill would specify that it would not expand or reduce a private right of action of any person to enforce the bill's provisions.

Legislative Findings. The bill would say that the legislature encouraged institutions of higher education to develop -- with input from students, faculty, and staff -- a comprehensive sexual assault policy to address prevention and awareness of sexual assault and to establish procedures addressing campus sexual assaults. The bill would further say that the legislature encouraged institutions of higher education to make all reasonable efforts to encourage a student who was a victim of a sexual assault to report the sexual assault to the appropriate law enforcement authorities, and to make

reasonable efforts to provide assistance and cooperation with the student as the report were investigated and resolved.

Institutional Policies. In addition to the rights accorded to victims of institution-related sexual assaults, House Bill 4542 would require that each institution distribute its written policy to students, faculty, and staff by printing its campus sexual assault information policy in the institution's catalog, student and staff handbooks, or in other publications. Applications for admission and for employment would have to contain a notation that a copy of the institution's campus sexual assault policy were available upon request. The institution's law enforcement personnel, security personnel, and counseling center would also be required to make the policy available to victims. In addition, each institution would be required to make a description of the jurisdiction, procedures, and time deadlines of institutional student disciplinary proceedings available to all students.

House Bills 4543-4553 are tie-barred to House Bill 4542, and would amend the following acts to require that colleges and universities comply with the requirements of House Bill 4542, the proposed Campus Sexual Assault Information Act.

House Bill 4543 would amend the Higher Education Loan Authority Act (MCL 390.1152 and 390.1154a), which authorizes the Michigan Higher Education Student Loan Authority to act as a "lender of last resort" to students who are unable to obtain loans through private lenders, to require that an institution comply with the provisions of House Bill 4542 if its students are to be considered eligible for student loans.

House Bill 4544 would amend Public Act 208 of 1964 (MCL 390.977), which provides for state competitive scholarships to Michigan residents, to prohibit a scholarship from being awarded to a student who attended an institution that did not comply with House Bill 4542.

House Bills 4545 and 4549 would amend Public 288 of 1986 (MCL 390.1373), and Public Act 303 of 1986 (MCL 390.1323) which regulate work-study programs for resident graduate and undergraduate students, to require that participating institutions comply with House Bill 4542.

House Bill 4546 would amend Public Act 77 of 1960 (MCL 390.957), under which the Michigan Higher Education Assistance Authority is authorized to act as a guarantor of loans for undergraduate students, to require that eligible postsecondary educational institutions comply with House Bill 4542.

House Bill 4547 would amend Public Act 105 of 1978 (MCL 390.1272), which provides for differential grants to students enrolled in "independent," or private, nonprofit colleges and universities (differential grants guarantee financial credit against tuition charges for all full-time and part-time students enrolled in independent colleges, in order to offset the difference in tuition charged between these institutions and state-supported colleges and universities.) Under the bill, eligible institutions in this program would have to comply with the provisions of House Bill 4542.

House Bill 4548 would amend Public Act 273 of 1986 (MCL 390.1403), which governs Michigan's Educational Opportunity Grant Program (MEOG), to require that participating institutions comply with House Bill 4542.

House Bill 4550 would amend Public Act 75 of 1974 (MCL 390.1022), which provides for reimbursement to an institution that confers earned degrees upon Michigan residents, to require that independent nonprofit institutions of higher education comply with the provisions of House Bill 4542 in order to be eligible for state payments.

House Bill 4551 would amend Public Act 102 of 1986 (MCL 390.1283), which regulates student grant programs for financially independent adult students, to restrict eligibility in the program to institutions that complied with House Bill 4542.

House Bill 4552 would amend Public Act 313 of 1966 (MCL 390.991), which provides for tuition grants based on need to Michigan resident students enrolled in independent, or private, nonprofit colleges and universities, to require that these colleges and universities comply with House Bill 4542.

House Bill 4553 would amend the Legislative Merit Award Program Act (MCL 390.1304), which provides for Legislative Merit Award Program scholarships to be awarded to high school graduates of the state, without regard to the financial circumstances of the recipients or their families. The bill would require that recipients of the award enroll at institutions that complied with House Bill 4542.

### ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, the package of bills would not result in a direct fiscal impact to the state of Michigan. However, costs would be incurred by state universities, independent colleges and universities, and community colleges for staff training and the printing and distribution of required materials. The additional costs would be indeterminate because some colleges and universities already have similar policies

and procedures in place and will only incur minor costs for publications, and others may elect differing strategies to implement the requirements of the bill. (4-18-97)

## **ARGUMENTS:**

### **For:**

Though the enactment of federal legislation such as the Campus Security Act has focused attention on the necessity of colleges and universities to develop policies and procedures dealing with the serious problem of campus sexual assaults, stories still circulate that victims of such crimes are continuing to experience a myriad of obstacles in obtaining justice or protection from their assailants. Reportedly, attempts at cover-ups, especially when prominent student athletes have been implicated, have still occurred at Michigan colleges in recent years. Other students have been given limited or confusing information as to who or which law enforcement agency should be contacted, available support resources, and information as to how the institution's disciplinary system works.

Rape and other sexual assaults are serious crimes that need to be addressed through strong measures. Sexual assaults affect victims physically, mentally, and socially. Victims may sustain injuries necessitating medical treatment, and face exposure to sexually transmitted diseases such as hepatitis and the human immunodeficiency virus (HIV). Social stigmas are still attached to victims who report assaults. Fear and shame often haunt victims. It is a well-accepted statistic that approximately one-fourth of all women will be sexually assaulted in their life-time. The Michigan Conference of the National Organization for Women reports that one in six women will be sexually assaulted before they obtain their degrees, but that 64 percent of victims do not report the attack. A representative of the Michigan State University Sexual Assault Crisis Program reported that more men are sexually assaulted on college campuses than people realize. In short, the seriousness of being sexually assaulted and the impact an assault has on its victim dictates that strong measures be adopted to educate students through awareness and prevention programs and to provide clear information about and access to institutional disciplinary proceedings.

House Bill 4542 is very similar to requirements in the federal Campus Security Act and federal regulations pertaining to institutions participating in federal financial aid programs. However, it is reported that the federal legislation is difficult to enforce. Some believe that tying compliance with the bill to the ability to participate in state-supported financial aid programs would encourage students to attend those colleges and universities with appropriate sexual assault policies and

procedures. In turn, colleges and universities would feel more pressure to develop and implement the required policies, or face decreased enrollment, public scrutiny, and adverse media attention.

Further, House Bill 4542 contains several important additions to the Campus Security Act, such as encouraging colleges and universities to make "all reasonable efforts" to assist and cooperate with a student who was a victim of sexual assault while the report is being investigated and resolved. The bill also specifies that an institution's campus sexual assault policy should be aimed at both prevention and awareness of sexual assaults, and that education programs should promote both prevention and awareness. The bill is clearer than the federal law as to both the accuser and accused being entitled to have legal counsel present during an institutional disciplinary proceeding if so allowed by the institution. Additionally, the bill would require that sexual assault policies contain information about existing medical and advocacy services available to student victims in addition to counseling, mental health, and student services. Of great help to students is the bill's requirement that institutions make available a description of the jurisdiction, procedures, and time deadlines of institutional disciplinary proceedings. The bill, along with House Bills 4543-4553, would serve to strengthen existing federal laws by granting enforcement on the state level and underscoring the importance of developing policies and disseminating information that should serve to reduce campus sexual assaults and provide greater assistance to victims.

### **Against:**

The legislation is simply not needed. The requirements under federal law in the Campus Security Act, the Higher Education Act, and proposed federal legislation sufficiently regulate policy development and distribution of college sexual assault policies. However, unlike House Bill 4542, the federal laws govern not only two- and four-year colleges and universities, but also training schools and programs such as electronics, cosmetology, and technical schools that participate in federal financial aid programs. The Campus Security Act also requires schools to compile campus crime statistics and to publish and distribute an annual security report to all current students and employees (and potential students and employees upon request) that contains much of the language that House Bill 4542 was modeled after, plus additional information pertaining to the reporting of crimes in general and policies and procedures pertaining to campus crime. In addition, the overall language of the Campus Security Act appears to be more inclusive of employees and others who are victims of campus crime than House Bill 4542 would appear to be. Most importantly, according to the statistical report issued by the U.S. Department of Education, 98 percent of

students in 1994 attended institutions that had compiled the required annual security reports -- of which information regarding sexual assault policies and procedures is a part. Colleges and universities have already demonstrated that they take the problem of sexual assault very seriously, and will continue to do so.

**Response:**

Though House Bill 4542 is modeled after existing federal law, it is reported that the U.S. Department of Education is lax in enforcing the various laws' requirements. The only remedy available is for a person to complain to the department. Federal legislation with a bit more teeth for enforcement has been proposed in H.R. 715 introduced in February of this year, but there is no guarantee that the legislation will become law. It falls, therefore, to the state to protect Michigan's college students, many of whom are teenagers away from home for the first time, by enacting laws that can be enforced at the state level.

**Rebuttal:**

Withdrawal of state-sponsored financial aid programs is a poor enforcement tool, as it would not directly affect an institution. The ones affected would be low-income students dependent upon financial aid. Far from encouraging parents and students to be good consumers (as some have opined) and shop wisely for schools, it would instead have the potential to end a student's college career. Going to college is not the same as choosing a store to shop in. Colleges have admission criteria and admission deadlines, and not all degree programs are offered at every college, nor are college courses necessarily transferrable between colleges. Therefore, a student who is dependent on state-financed financial aid already enrolled at a college may find it necessary to withdraw because of the inability to make up for the lost funds, inability to be admitted to another college offering the same degree program, or inability to transfer college credits already earned.

The same argument could be made for the U.S. Department of Education withdrawing an institution's eligibility to participate in federal financial aid programs for noncompliance with federal laws. In fact, more students receive federal financial aid than receive state financial aid, so more students would be adversely affected by federal sanctions. Rather than punishing the students receiving state or federal financial aid, penalties should be directed at the institutions. Some believe that allowing an individual to bring a private right of action for monetary compensation would be more effective in encouraging prompt and full compliance with the Campus Security Act and any state legislation. However, the Campus Security Act explicitly restricts an individual from bringing a civil suit to enforce the act's provisions. House Bill 4542, on the other hand, specifies only that the bill would not "expand or reduce a private right of action of any person to enforce the

provisions" of the bill. Public colleges and universities would have immunity under the Governmental Tort Liability Act (MCL 691.1407 et al.) and so would be protected from lawsuits. The bill could, however, be interpreted as allowing civil suits against private colleges and universities in Michigan for injuries sustained as a result of failure to comply with the bill's requirements to develop sexual assault policies and dissemination of information about those policies and institutional sexual assault disciplinary proceedings. This would be unfair both to private institutions and students attending public institutions. Though House Bill 4542 contains many worthy and admirable requirements, the penalties contained in House Bills 4543-4553 should be rethought so as to provide fairness in enforcement, and be more directed to an institution, and not the innocent students.

**Against:**

Though House Bill 4542 does not specifically exclude a non-student victim of a campus sexual assault, many of the notification and procedure requirements pertain only to students. Although institutions would be required to distribute copies of their sexual assault policies to students, faculty, and staff (and to potential students and employees upon request), only students are required to be given information describing the jurisdiction, procedures, and time deadlines of institutional disciplinary proceedings. This, along with the bill's definition of "campus sexual assault" being defined as an assault that occurred on campus, would raise a question as to whether the institutional policies developed would pertain only to sexual assaults committed on a campus to a student or to anyone sexually assaulted on a college campus, such as visitors, and additionally, if all victims of campus sexual assault would have equal access to information regarding a college's policies. Also, the federal Campus Security Act requires colleges to address notifying students of options in changing living situations after an alleged sexual assault, where House Bill 4542 restricts this requirement to sexual assaults that occurred on campus.

Further, the bill appears to be silent as to a sexual assault committed by a student off campus with the exception that a student victim assaulted by another student would have to have a copy of the policy made available by the college's law enforcement personnel, security personnel, and counseling center even if the assault occurred off campus. A potential exists then for some victims of sexual assault to not receive information about institutional disciplinary procedures or not to be informed of the final outcome of an institutional disciplinary measure. To be effective, the bill should be clearer as to what constitutes a campus sexual assault and should include all victims, whether students, visitors, or employees, in receiving an institution's

sexual assault policy and information regarding institutional disciplinary proceedings.

***Against:***

Some feel that the notion of the legislature dictating requirements to colleges and universities is actually a question of institutional responsibility that would be better addressed through a statement of legislative intent rather than a legislative directive.

***POSITIONS:***

The Michigan Conference of the National Organization for Women supports the bills. (5-21-97)

The Michigan Coalition Against Sexual and Domestic Violence supports the bills. (5-21-97)

The Presidents Council, State Universities of Michigan supports the intent of the bills, but has concerns regarding the financial aid sanctions and the notion of directives for institutions. (5-21-97)

Analyst: S. Stutzky

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.