

To the office of U.S. Senator Brian Schatz

Re: S 5614 (119th Congress), Beyond the Box for Higher Education Act of 2026 • Latest action (2026-09-30): Read twice and referred to the Committee on Health, Education, Labor, and Pensions.

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Office of record (Congress.gov): 722 Hart Senate Office Building Washington, DC 20510, Washington, DC • (202) 224-3934

Fair Start College Access Act

The measure, as described from the official record: Help more people with criminal or juvenile records apply to college by reducing the use of justice-history questions at the start of admission.

THE PROPOSAL

Congress has limited, listed powers. It may spend for the general welfare and may carry out that spending with laws that are necessary and proper, but control of college admissions stays largely with states, private colleges, and participating schools under the Tenth Amendment. That rule governs here: Washington may offer voluntary guidance and capped pilot funds, but it may not dictate admission questions. The strongest objection is that any federal role in admissions is overreach that risks campus safety. This draft answers it directly: no college would be forced to change its questions or admit any applicant, and schools could still screen for housing, clinical placements, licensure limits, and direct safety risks.

The VFA proposal would keep the original goal while making the federal role voluntary, practical, and measured. The official summary states the original bill calls for Department of Education guidance urging schools to drop criminal and juvenile justice questions. This draft would change that approach to model guidance that colleges may adopt.

Under this draft, the Department of Education would publish model guidance within 270 days. Colleges could delay justice-history questions until after an initial academic review, use them only when tied to safety or program rules, and give applicants a plain chance to explain the facts and show rehabilitation. No college would be forced to admit any applicant.

The draft would also create a five-year voluntary pilot. Interested public and nonprofit colleges could receive small grants to update forms, train admission staff, track outcomes, and counsel applicants on program requirements. The Department would report each year on applications, enrollment, persistence, completion, campus safety events, and costs, so Congress can judge what works.

Funding would be capped at \$8 million per year from existing Department funds, with no new tax and no required state match. Misused grant money would be recovered after notice and a chance to correct. The guidance and pilot would end after five years unless Congress renews them, keeping Washington within its proper role while states, students, and colleges keep control.

OPERATIVE PROVISIONS (VFA PROPOSAL)

Effective Date	Guidance due within 270 days of enactment; pilot grants begin the next award year.
Enforcement Mechanism	Voluntary guidance only; grant funds recovered for misuse after notice and a chance to correct, with appeal to the Department.
Funding Amount	Up to \$8 million per year for 5 years, subject to annual funding decisions.
Funding Source	Existing Department of Education administrative and grant funds, with no new tax and no required state match.
Oversight Body	Department of Education, with annual public reports to the Senate Health, Education, Labor, and Pensions Committee and the House Education and Workforce Committee.
Sunset Years	5 years

CONSTITUTIONAL BASIS

- Article I, Section 8, Clause 1
- Article I, Section 8, Clause 18
- Tenth Amendment

Concerns with the measure as written:

- A direct federal order telling colleges what admission questions they may ask would raise Tenth Amendment concerns, because control of education admissions rests largely with states, private institutions, and participating schools.
 - An inflexible bar on justice-history questions without safety exceptions could impair the ability of colleges to protect students in housing, clinical settings, and licensed programs.
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WHY BOTH SIDES CAN BACK IT (VFA'S ASSESSMENT)

VFA assesses this draft gives Republicans and conservatives a concrete gain: no mandate on colleges, preserved campus safety judgment for housing, clinical placements, and direct risks, capped spending from existing funds, a five-year sunset, and annual public reporting. VFA assesses it gives Democrats and progressives a concrete gain: clear federal model guidance to delay justice-history questions until after initial academic review, plain chance for applicants to explain rehabilitation, small grants to update forms and counsel applicants, and yearly data on access, persistence, and completion.

Strongest objection, and the answer: The strongest objection is that any federal role in admissions is overreach that risks campus safety. This draft answers it directly: no college would be forced to change its questions or admit any applicant, and schools could still screen for housing, clinical placements, licensure limits, and direct safety risks.

CHECK BEFORE RELYING ON THIS

Basis: The official Congress.gov summary of S. 5614 in the 119th Congress states the bill would have the Department of Education issue guidance and recommendations for colleges to remove

criminal and juvenile justice questions from admission applications, and the official record states it was read twice and referred to committee on September 30, 2026.

The full bill text, current law, eligibility rules, application rules, appeal rights, cost effects, and likely votes are not covered by the official summary and should be verified at the [Congress.gov](https://www.congress.gov) bill page before action.

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