



The Use of Technology in Stalking Cases

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Objectives

- ▶ In this on-line training course, we will accomplish the following:
 - ❑ Examine the role of technology in stalking investigations by describing the technologies available
 - ❑ Describe how these are used by those who engaging in stalking behaviors

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Stalking (Title IX): 34 U.S.C. 12291(a)(30)

- ▶ The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to
 - A. fear for his or her safety or the safety of others; or
 - B. (B) suffer substantial emotional distress.

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Stalking

Acts of stalking behavior

Directed at a specific person

Two or more acts

Fear or emotional distress

Reasonable person

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Stalking Behaviors



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Additional Violations



Unauthorized entry



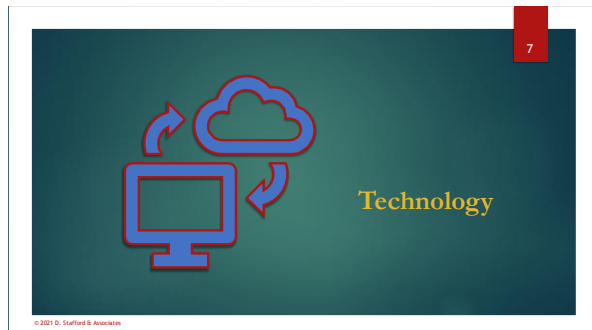
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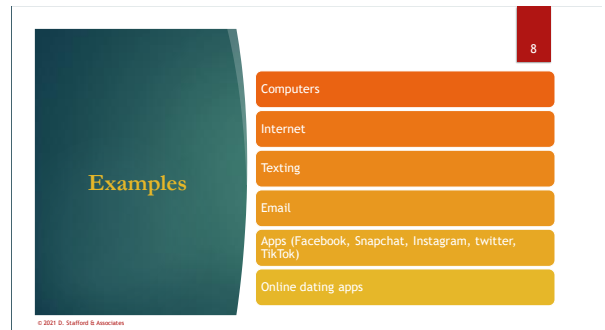
Theft

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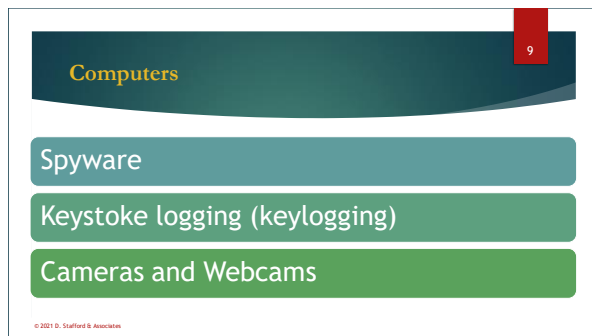
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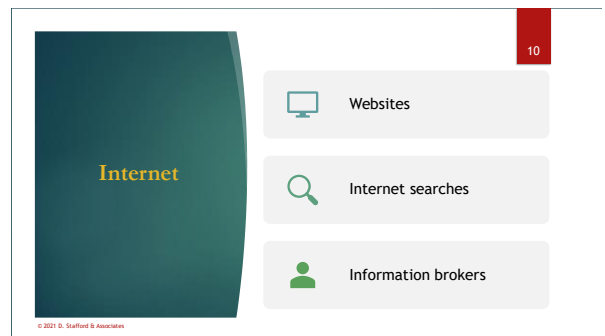
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Email

- Monitoring of emails by former partner
- False accounts
- Information gathering

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Problematic Behaviors

- ▶ "Revenge porn"
- ▶ Impersonating target
- ▶ Cyberstalking
- ▶ Doxing
- ▶ Video recording
- ▶ Password access
- ▶ Location access

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Facebook

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Snapchat

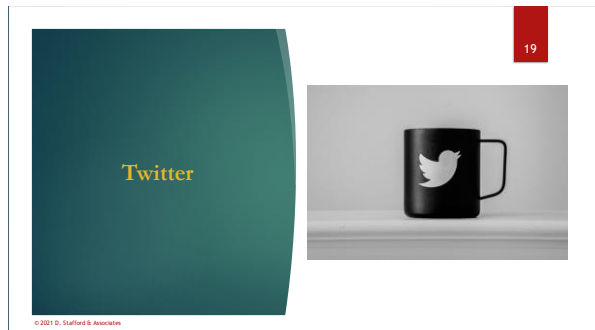
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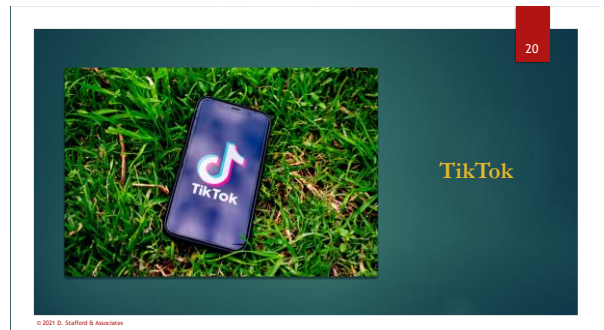
Instagram

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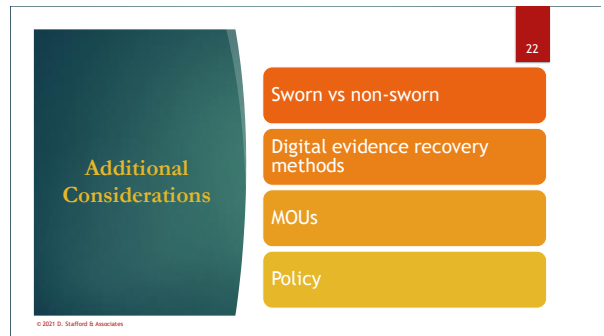
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Constructing the Investigative Report: Considerations for Intimate Partner Violence and Stalking Complaints

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Considerations in Drafting





Institutional Policy

Preliminary vs. final
Process for feedback
Mandated sections



Who views

Decision-maker
Complainant and respondent
Advisors
Title IX
General Counsel
Human Resources/Dean of Students



How shared

Electronic format
Hard copy

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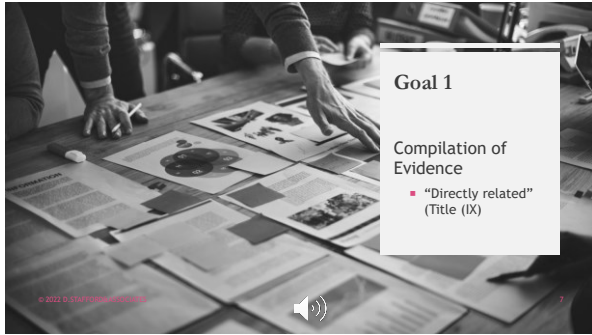
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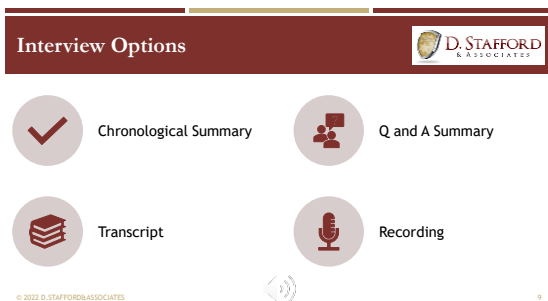
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Special Considerations

LENGTH OF REPORT

DATES

COURSE OF CONDUCT

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Evidence Options

Appendix/Exhibits

Filing Sharing

Separate Attachment

Special situations

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Evidence

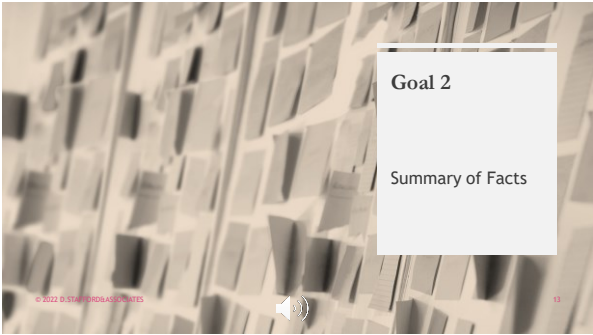
Inculpatory

Exculpatory

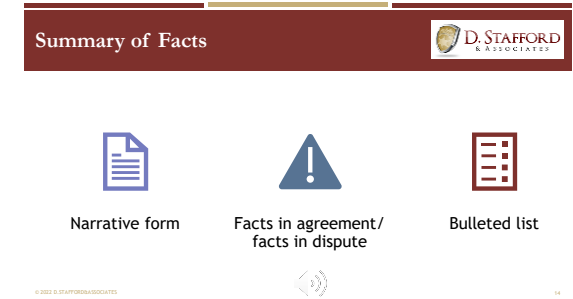
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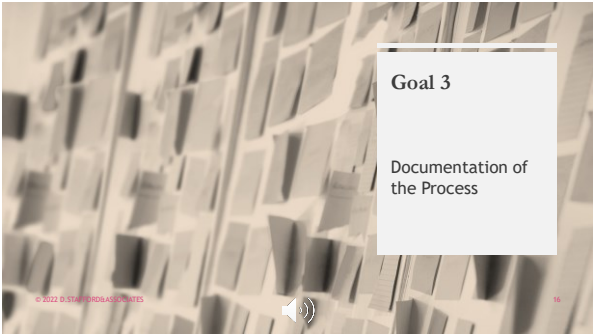
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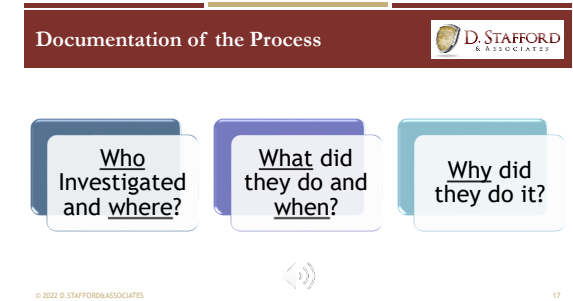
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Other possible sections





Timeline of
Relationship/Behaviors



Timeline of Notice

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THE
ELEMENTS

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Elements – Dating Violence



Relationship

- Length
- Type
- Interaction

Violence

- Sexual
- Physical
- Threats

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Elements – Domestic Violence



Relationship +

- Spouse/intimate partner
- Child in common
- Cohabitation
- Similarly situated
- Family violence laws

Crime of violence

- Felony
- Misdemeanor

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Elements – Stalking



Acts of
stalking
behavior

Two or more
acts

Directed at
a specific
person

emotional
distress/fear

Reasonable
person

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Other evidence

Background Information

Impact

Credibility

Jurisdiction (location, relationship to
school, timing)

24

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Investigating Incidents of Dating Violence

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Learning Outcomes

- Participants will review statistics regarding dating violence.
- Participants will be able to identify examples of dating violence.
- Participants will understand the various issues that are present when responding to reports of dating violence.
- Participants will understand how Behavioral Intervention Teams (BIT) play a vital role in the process.
- Participants will reflect on suggested recommendations regarding investigating incidents of dating violence.

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Lauren McCluskey

Photo credit: The Lauren McCluskey Foundation

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Lauren McCluskey Case

Two friends meet with RA and state that Lauren is in an unhealthy relationship, and that he is practically living in the residence hall. State that he is going to get Lauren a gun.

Lauren breaks up with Rowland, but he borrows her car to do errands; she receives multiple text messages about breaking his heart and to "go kill yourself."

30 Sep. 18

10 October 18

10 October 18

10 October 18

Plan to follow-up with Lauren, discussion of guest and firearm policies.

Lauren's mom calls UUPS about the car.

4

Lauren McCluskey Case

10/10-10/12 - Lauren receives text messages stating that Rowland was in a car accident and has died.

10/12/18 - Lauren calls UUPS to file a report that her ex-boyfriend is trying to lure her off campus and is told that they cannot do anything because the messages are not threatening.

10/13/18 - Lauren meets with UUPS regarding texts she has received regarding extortion, also tells the police she was scared when Rowland peeked through her window in the past; UUPS runs criminal history (only history of sexual offense provided); Detective updated.

5

Lauren McCluskey Case

Multiple back and forth missed calls between Lauren and UUPS; Lauren also called Salt Lake City Police Department (SLCPD) who transferred back to UUPS; Lauren sees her on-campus counselor.

Lauren sends screen shot of criminal history and offender status.

13-18 Oct.

19 Oct. 18

20 Oct. 18

22 Oct. 18

University Police start an investigation into the extortion.

CARE meets, no updates; Lauren sends email regarding "fake text" and calls UUPS; Lauren is killed.

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Statistics

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Prevalence – High School

- Nearly 1.5 million high school students nationwide experience physical abuse from a dating partner in a single year.¹
- 1 in 3 girls is the victim of emotional or verbal abuse²
- 1 in 10 high school students has been purposefully hit, slapped or physically hurt by a boyfriend or girlfriend³

¹Centers for Disease Control and Prevention, "Physical Dating Violence Among High School Students—United States, 2001," *Morbidity and Mortality Weekly Report*, May 19, 2006, Vol. 55, No. 10.

²Nassi, Antonette, MPH, 2008. *Interpersonal and Physical Dating Violence among Teens*. The National Council on Crime and Delinquency. *Focus*. Available at: <https://www.ncjrs.gov/pdffiles1/lawandcrime/20053.pdf>

³Crabtree JA, Kern L, Kivlahan S, et al. 2004. *Youth Risk Behavior Surveillance—United States, 2003*. *Morbidity and Mortality Weekly Report*. 53(SS02): 1–16. Available at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss02a1.htm>

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Prevalence – College Students

- 43% of dating college women report experiencing violent and abusive dating behaviors⁴
- 36% of college students have given their partner their computer, email, or social network passwords⁵
- 16% of college women has been sexually abused in a dating relationship⁶

⁴Web & Pacific Companies, Inc., Formerly L2i Collaborative, Inc., Conducted by Knowledge Networks, (December 2010). "College Dating Violence and Abuse Poll." Available at: <https://www.knowledgenetworks.org/sites/default/files/2011/01/College-Dating-Violence-and-Abuse-Poll.pdf>

⁵Id.

⁶Id.

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Long-lasting Effects

- Higher risk for substance abuse, eating disorders, risky sexual behavior and further domestic violence⁷
- 6-10 times more likely to become pregnant and twice as likely to get a STI⁸
- Half of youth who have been victims of both dating violence and rape attempt suicide, compared to 12.5% of non-abused girls and 5.4% of non-abused boys⁹

⁷Dag G. Stenman, PhD, Anita Raj, PhD, Lorinda A. Hunt, MPH, Joanne E. Mathews, MS, MPH, "Dating Violence Against Adolescent Girls and Associated Substance Use, Unhealthy Weight Control, Sexual Risk Behavior, Pregnancy, and Sexuality," *JAMA*. 2001;286(15):1571-1576. doi:10.1093/jama.286.15.1571

⁸Chenier A, Silverman L, Raj G. 2005. *Dating Violence and Sexually Transmitted Disease Risk: Prevalence and Diagnosis Among Adolescent Females*. *Pediatrics*. 116: 272-276.

⁹Id. B. Richard, Minneapolis, MN, and S. Neumark-Sztainer, Division of Epidemiology, School of Public Health, University of Minnesota, Minneapolis, MN. *Dating Violence and Date Rape Among Adolescents: Associations with Disturbed Eating Behaviors and Psychological Health*. *Child Abuse & Neglect*. 26: 455-473. (2002).

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Reporting

- 70% of young victims do not recognize they are being abused¹⁰
- 57% say it is difficult to identify¹¹
- 58% do not know how to help¹²
- 52% of friends state that it is not appropriate to get involved¹³
- Reluctant Complainant

¹⁰Livorno, A. (2015, November 30). *The Truth About Domestic Violence on College Campuses*. Retrieved February 2, 2019, from <https://www.thetruthaboutdomesticviolence.org/college-campuses/>

¹¹Web & Pacific Companies, Inc., Formerly L2i Collaborative, Inc., Conducted by Knowledge Networks, (December 2010). "College Dating Violence and Abuse Poll." Available at: <https://www.knowledgenetworks.org/sites/default/files/2011/01/College-Dating-Violence-and-Abuse-Poll.pdf>

¹²Id.

¹³Livorno, A. (2015, November 30). *The Truth About Domestic Violence on College Campuses*. Retrieved February 2, 2019, from <https://www.thetruthaboutdomesticviolence.org/college-campuses/>

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Defining the Problem

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Dating Violence (42 U.S.C. 13925(a))

- ▶ The term "dating violence" means violence committed by a person—
 - (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. The length of the relationship.
 - ii. The type of relationship.
 - iii. The frequency of interaction between the persons involved in the relationship.

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Intimate Partner Violence

- ▶ The term "intimate partner violence" describes physical violence, sexual violence, stalking and psychological aggression (including coercive acts) by a current or former intimate partner
- ▶ An intimate partner is a person with whom one has a close personal relationship that can be characterized by the following (emotional connectedness, regular contact, ongoing physical contact/sexual behavior, identity as a couple, familiarity about each other's lives)
- ▶ 4 types - sexual violence, stalking behaviors, physical violence, psychological aggression

¹³Intimate Partner Violence Definitions. (2018, October 25). Retrieved from <https://www.ojp.gov/criminaljustice/ncj/210618/intimate-partner-violence-definitions.html>

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Unhealthy Relationships

Intensity	Jealousy	Manipulation	Isolation
Sabotage	Belittling	Guilt	Volatility
Deflecting responsibility	Betrayal		

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¹⁴O'Leary, (n.d.). 10 Signs of an Unhealthy Relationship. Retrieved from <https://www.johnmole.com/signs-unhealthy-relationships/>

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Responding to Reports

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Response – Predominant Aggressor

- ▶ The individual who poses the most serious, ongoing threat, which may not necessarily be the initial aggressor in a specific incident
- ▶ Expected to arrest any person who commits a criminal act(s) of intimate partner violence—unless there is a clear and compelling reason not to arrest (self-defense determination, lack of probable cause)—after a comprehensive investigation to identify the predominant aggressor

¹⁵International Association of Chiefs of Police, Intimate Partner Violence Response Policy and Training Content Guidelines 6 (2017), retrieved from http://www.iaaonline.org/determining_the_predominant_aggressor

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Response – Predominant Aggressor

Past behaviors?	Self Defense?	Who is afraid?
Body language of each?	Witnesses?	What does the scene look like?
Excited utterances?	What are the extent of the injuries?	

¹⁶Id.

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Strangulation

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- ▶ Signs are subtle and hard to find
- ▶ Look around eyes, under eyelids, nose, behind ears, inside mouth, neck, shoulders, and upper chest
- ▶ Horse or raspy voice; loss of voice, pain/difficulty swallowing; coughing; nausea/vomiting; neck injury; difficulty breathing; mental change; light headedness; involuntary urination or defecation

*Hirsch, G. B. "She hit me, too" Identifying the Primary Aggressor & Perpetrator's Perspective. Retrieved from http://www.ndtv.org/indianexpress/136_35_mg.pdf
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Response – Lethality Assessment Program (LAP)

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- ▶ 2 Components
 - 11 Questions on the Lethality Screen
 - Connection to services
- ▶ Used by law enforcement, health care professionals, case workers, court personnel
- ▶ Almost half of femicide victims did not recognize risk of fatal violence prior to death
- ▶ Helps identify warning signs and available services

*Lethality Assessment Program, How the LAP works. Retrieved from <https://lethalityassessmentprogram.org/about-lap-how-lap-works/>
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Response – Lethality Assessment Program (LAP)

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- ▶ Used or threatened with a weapon
- ▶ Threatened to kill you or children
- ▶ Do you think they might try and kill you
- ▶ Do they have access to weapon?
- ▶ Have they ever tried to choke you?
- ▶ Violently or consistently jealous, control daily activities
- ▶ Have you separated after living together/married
- ▶ Unemployed
- ▶ Suicide attempts
- ▶ Do you have a child that is not theirs
- ▶ Do they spy on you or leave threatening messages

*National Institute of Justice, Domestic Violence Lethality Screen for First Responders. (2005, August). Retrieved from <https://www.ojp.gov/ncjvictims/275/documents/domestic-violence-screening.pdf>
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Power and Control Wheel

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Threat Assessment Teams

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Accommodations and Interim Measures

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Options for, and available assistance, in changing academic, living, transportation, and working situations, if so requested by the victim . . . reasonably available, regardless of reporting.

- No contact orders
- Change in housing, academic or work schedules
- Withdraw from a class without penalty
- Access academic support
- Distance learning
- Change offices
- Physical and mental health support

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Safety planning

- Escorts and increased security
- Replacement cell phone
- Change in email/monitoring email

Protective Measures – Law Enforcement

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► Order of Protection (VAWA)

- ❑ Any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to, another person

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Protective/Supportive Measures

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Orders of No Contact

- Limit proximity
- Eliminate interaction
- Defuse conflict
- Count on voluntary compliance
- Violations can result in additional violations

Case-by-case basis and modify language as appropriate

Inform appropriate parties - campus police, and housing and faculty as needed

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Recommendations

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Recommendations

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Training

- Signs of dating violence
- Lethality Assessment Program
- Predominant aggressor
- Electronic communications

Threat assessment
team and system

Communication with
appropriate offices

Face-to-face interviews

Adjudication -
Restorative Justice
practices

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Final Thoughts

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What Investigators Need to Know About the 2020 Title IX Regulations

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Background

- ▶ NPRM Released November 2018
- ▶ Released May 6, 2020
- ▶ Implementation date of August 14, 2020
- ▶ Replaced prior guidance
- ▶ Applies to students and employees
- ▶ Established jurisdiction requirements

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§106.30 Definitions – Complainant & Respondent

COMPLAINANT
“an individual who is alleged to be the victim of conduct that could constitute sexual harassment”

RESPONDENT
“an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment”

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§106.30 Definitions – Formal Complaint

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- ▶ “... a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.”
- ▶ “At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.”
- ▶ “Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.”

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§106.30 Definitions - Sexual Harassment

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;
3. “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

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PRONG 1: Quid Pro Quo

- Must be an employee (not volunteer, visitor, student)
- "This for that" harassment
- When favorable professional or educational treatment is conditioned on a sexual activity

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PRONG 2: Hostile Environment+ (The Davis Standard)

- No definition of consent required
- Not the same Title VII "hostile environment" or 2001 Guidance
- First Amendment protections

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PRONG 3: The VAWA Crimes

Sexual Assault	Rape Fondling Incest Statutory Rape
Intimate Partner Violence	Dating Violence Domestic Violence
Stalking	

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§106.45 Grievance Process for Formal Complaints

Equitable	Objective evaluation	Impartiality and training
Presumption of "not responsible"	Prompt time frame	Respect privilege

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§106.45 Grievance Process for Formal Complaints




Notice Requirements Additional Allegations

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§106.45 Grievance Process for Formal Complaints

Burden of Proof

Equal Participation

No restrictions on Discussions

Advisor

Inspect and Review Evidence

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§106.45 Grievance Process for Formal Complaints

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graph TD
    A[Preliminary Report] --- B[All Evidence Collected]
    A --- C[Written Response]
  
```

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§106.45 Grievance Process for Formal Complaints

► Investigative report
 □ “fairly summarizes relevant evidence”

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§106.45 Hearings

```

graph LR
    A[Live Hearing]
    B[Cross-examination]
    C[Relevancy Determination]
    D[Participation Considerations]
  
```

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§106.71 Retaliation

“No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.”

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Assessing Credibility in Sexual Misconduct Complaints

1



TITLE IX

What is your role?

2

Sexual Misconduct

Sexual Harassment		
Quid pro quo	Hostile Environment	Sexual Assault, Dating Violence, Domestic Violence and Stalking

3

Personnel

Fair and impartial	Free of bias
No conflict of interest	

4

Fair and Equitable

Opportunity to participate and to present evidence and witnesses	Access to process	Written notice throughout
Transparent to the Respondent and Complainant	Includes an examination of evidence	

5

Evaluation

Evidence	Credibility
• Exculpatory • Inculpatory	• Not based on a person's status

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Evaluating the Credibility of the Parties

Perception Memory Deception

Motivation Bias Plausibility

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Evaluating the Credibility of the Parties

Detail Consistency

Corroboration

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Evaluating the Credibility of the Parties

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Evaluating the Credibility of the Parties

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Unrelated to Credibility

Appearance and behavior during interviews and hearing Character witnesses Party/witness credibility

Past conduct history Academic history

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Analysis of Statements



Narrative



Corroboration



Analysis

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In Closing



Reasonableness

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Constructing the Investigative Report: Considerations for Sexual Assault Complaints

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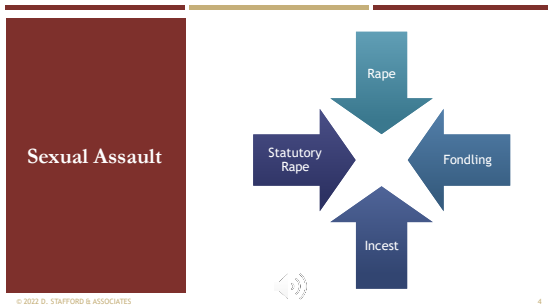
Considerations in Drafting



 Institutional Policy Preliminary vs. final Process for feedback Mandated sections	 Who views Decision-maker Complainant and respondent Advisors Title IX General Counsel Human Resources/Dean of Students	 How shared Electronic format Hard copy
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What offenses are charged?

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Rape vs. Fondling

Rape vs. Statutory Rape

Counterclaims

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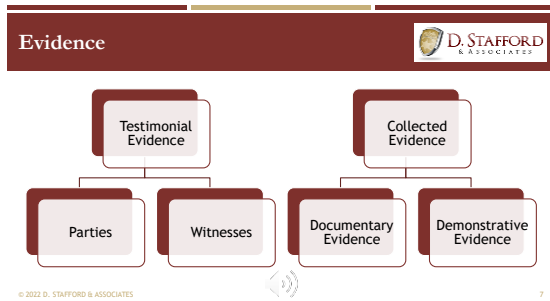
Goal 1

Compilation of Evidence

- "Directly related" (Title IX)

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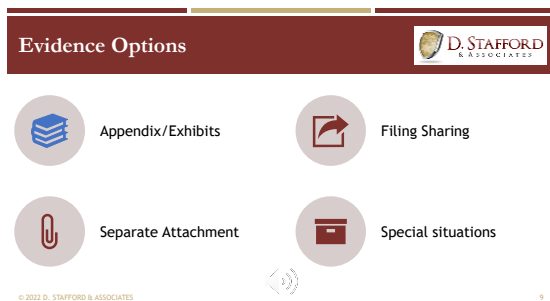
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Evidence

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Summary of Facts

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Summary of Facts

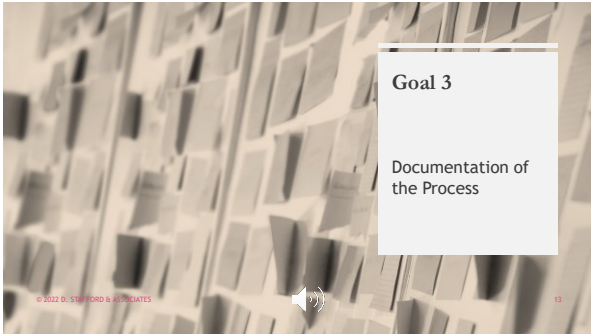
Narrative form

Facts in agreement/
facts in dispute

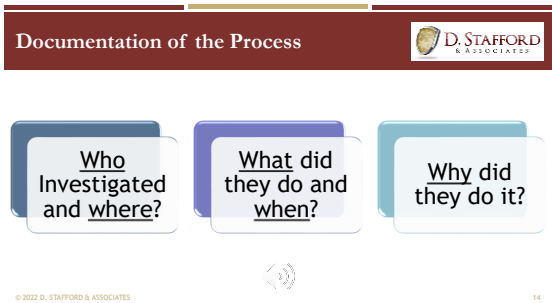
Bulleted list

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Other possible sections



 Timeline of Incident

 Diagrams

 Timeline of Notice



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THE ELEMENTS





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Elements of a Sexual Assault



Sex Act

Without Consent



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Elements – Rape



The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Sex Act

- Penetration

Without Consent

- Did not or
- Could not and
- Knowledge

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Elements – Fondling



The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim.

Sex Act

- Intentional Touching
- Private Body Parts

Without Consent

- Did not or
- Could not and
- Knowledge

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Alcohol and Incapacitation



Type

Amount

Timeframe

Person

Other influencers

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Parties

Witnesses

Capturing Incapacitation

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Two-sides of the Investigation

Did the Respondent know (or should have known)?

Was the Complainant Incapacitated?

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Other evidence

Background Information

Other consent issues: Incapacitation

Credibility

Jurisdiction (location, relationship to school, timing)

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Ensuring Equitable Civil Rights Investigations

1

What is Your Role?

- **Law Enforcement**
 - ❑ Meeting elements of a crime under state law
 - ❑ Consent may be defined in state law
 - ❑ Need probable cause to affect an arrest
 - ❑ Evidentiary standard for a finding of guilt is "beyond a reasonable doubt"
 - ❑ You can compel people and seize evidence
 - ❑ Constitutional safeguards in place
 - ❑ Don't have to tell people you are investigating them
- **Civil Rights**
 - ❑ Meeting elements of prohibited conduct under institutional policy
 - ❑ Consent is defined in institutional administrative policy
 - ❑ Thorough and equitable inquiry
 - ❑ Evidentiary standard is most often "preponderance of the evidence"
 - ❑ No ability to compel; no ability to seize (ask and receive)
 - ❑ Process must be fundamentally fair to both parties (afford due process) and include written notice

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Learning Outcomes

Identify	Identify rights that must be afforded to complainants in sexual misconduct complaints as required by the Clery Act.
Identify	Identify rights that must be afforded to the parties in allegations of sexual harassment under Title IX.
Discuss	Discuss the basics on ensuring the parties access and opportunity to participate in the investigative and adjudication processes is fundamentally fair.

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2013 Regulations Summary Violence Against Women Act

"A benefit of these final regulations is that they will strengthen the rights of victims of dating violence, domestic violence, sexual assault, and stalking on college campuses."

But what about the rights of the accused?

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2020 Title IX Regulations Summary

"Too many students have lost access to their education because their school inadequately responded when a student filed a complaint of sexual harassment or sexual assault . . . this new regulation requires schools to act in meaningful ways to support survivors of sexual misconduct, without sacrificing important safeguards to ensure a fair and transparent process."

- Secretary Betsy DeVos, May 5, 2020

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VAWA Training Requirements for "Officials"

- No conflict of interest or bias for "officials"
- Annual training on the issues related to dating violence, domestic violence, sexual assault and stalking and on how to conduct an investigation and hearing process that protects the safety of the victims and promotes accountability
- Should include (at a minimum):
 - ❑ Relevant evidence and how it should be used
 - ❑ Proper interview techniques
 - ❑ Basic procedural rules for conducting a proceeding
 - ❑ Avoiding actual/perceived conflicts

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Title IX Training Requirements

- ▶ All Title IX Personnel
 - Definition of sexual harassment
 - Scope of the recipient's education program or activity
 - How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable
 - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- ▶ Decision-makers
 - Technology to be used at a live hearing
 - Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant
- ▶ Investigators
 - Issues of relevance to create an investigative report that fairly summarizes relevant evidence

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VAWA Disciplinary Proceedings

Require	Require	Require	Require
Require institutions to describe each type of disciplinary proceeding (step, anticipated timelines, decision-making process, and how to file).	Require institutions to list all of the possible sanctions that the institution may impose.	Require institutions to describe the range of protective measures that the institution may offer.	Require institutions to provide for a prompt, fair, and impartial disciplinary proceeding. . .

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VAWA – Prompt, Fair, and Impartial

Officials are appropriately trained and do not have a conflict of interest or bias for or against the accuser or the accused;

the accuser and the accused have equal opportunities to have others present;

the accuser and the accused receive simultaneous notification, in writing, of the result of the proceeding and appellate rights;

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VAWA – Prompt, Fair, and Impartial

the proceeding is completed in a reasonably prompt timeframe;

the accuser and accused are given timely notice of meetings at which one or the other or both may be present; and

the accuser, the accused, and appropriate officials are given timely and equal access to information that will be used during disciplinary meetings and hearings.

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VAWA Training Requirements for "Officials"



No conflict of interest or bias for "officials"



Annual training on Clery Offenses



Relevant evidence, interviewing, and procedural rules

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VAWA: Advisor of Choice



ATTEND ALL MEETINGS



CANNOT LIMIT CHOICE OF ADVISOR



CAN ESTABLISH RULES AND RESTRICTIONS

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VAWA: Prompt Timeframe





INCLUDE TIMEFRAMES FOR PROCEDURAL STEPS

EXTENSION FOR REASONABLE CAUSE

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VAWA: Notice

- Notice of extension for good cause
- Notice of meetings in which one or both may attend
- Simultaneous notification to both parties of any results, appeals procedures, changes and when outcome becomes final
- Simultaneous notification of initial and interim decisions

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VAWA: Access Information

- Timely
- Equal
- Meetings
- Hearings

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Title IX Grievance Process (General)

- Treat parties equitably
- Require objective evaluation of all relevant evidence
- Training for Title IX Personnel
- Presumption of not responsible
- Reasonably prompt time frames
- Describe the range of disciplinary sanctions
- State the standard of evidence
- Provide the parties an opportunity to appeal
- Describe the range of supportive measures
- Provide proper notice
- Allow dismissal and consolidation of complaints

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Title IX Grievance Process (Investigation)

- Burden of proof on the institution
- Equal opportunity to present facts and witnesses
- No restrictions on discussing allegations
- Right to advisor of choice
- Written notice of meetings
- Inspect and review evidence
- Investigative report

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Title IX: Burden of Proof



ON INSTITUTION



CANNOT ACCESS PRIVILEGED DOCUMENTS WITHOUT CONSENT

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Title IX: Evidence

Evidence	Discussing allegations
• Equal opportunity • Inculpatory and exculpatory	• No restrictions

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Title IX: Advisor of Choice

 ALL MEETINGS	 NO RESTRICTIONS ON CHOICE
 CAN RESTRICT PARTICIPATION	 MUST PROVIDE ACCESS TO INFORMATION

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Title IX: Notice Rights

Formal Complaint
• Identities of the parties involved in the incident, if known • The conduct allegedly constituting sexual harassment • The date and location of the alleged incident, if known • Presumption of "not responsible" • Advisor of their choice, • Prohibit false statements
During Investigation
• Written notice to all meetings

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Title IX: Inspect and Review Evidence

 Inspect and review directly related evidence with an opportunity to respond
 Provide an opportunity to receive and respond to the investigative report and evidence prior to a hearing
 Provide for a live hearing with cross-examination

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Rights and Options, and Supportive Measures

VAWA • Written Notification of Rights and Options • What about Respondents?
Title IX • Supportive Measures for both parties

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Written Notification of Rights and Options

Right to written information for victims, whether the offense occurred on or off campus, about the following:

1. Importance of preserving evidence
2. How and to whom to report alleged offenses
3. Options for involving law enforcement
4. Order of protection, no-contact order etc.
5. Confidentiality of accommodations or protective measures and in Clery Act reporting
6. Existing counseling, health, mental health, victim advocacy, legal assistance, visa/immigration assistance, financial aid
7. Options and assistance to change academic, living, transportation, and working situations
8. An explanation of the procedures for institutional disciplinary

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VAWA Language

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"We note that responding to these sorts of allegations, whether in the criminal justice system or in an institution's disciplinary procedures will likely be very stressful for the accused as well as the accuser. Therefore, institutions should consider providing the accused with information about existing counseling, health, mental health, legal assistance, and financial aid services both within the institution and in the community. Although we encourage institutions to provide written notification of this sort to an accused student or employee, the statute does not refer to or support requiring it."

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Title IX: Supportive Measures

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Provided to both the Complainant and Respondent

Non-disciplinary and non-punitive

Without fee or charge

Designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party

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What Investigators Need to Know About the 2020 Title IX Regulations

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Background

- ▶ NPRM Released November 2018
- ▶ Released May 6, 2020
- ▶ Implementation date of August 14, 2020
- ▶ Replaced prior guidance
- ▶ Applies to students and employees
- ▶ Established jurisdiction requirements

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§106.30 Definitions – Complainant & Respondent

COMPLAINANT
“an individual who is alleged to be the victim of conduct that could constitute sexual harassment”

RESPONDENT
“an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment”

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§106.30 Definitions – Formal Complaint

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- ▶ “... a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.”
- ▶ “At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.”
- ▶ “Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.”

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§106.30 Definitions - Sexual Harassment

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;
3. “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

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PRONG 1: Quid Pro Quo

- Must be an employee (not volunteer, visitor, student)
- "This for that" harassment
- When favorable professional or educational treatment is conditioned on a sexual activity

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PRONG 2: Hostile Environment+ (The Davis Standard)

- No definition of consent required
- Not the same Title VII "hostile environment" or 2001 Guidance
- First Amendment protections

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PRONG 3: The VAWA Crimes

Sexual Assault	Rape Fondling Incest Statutory Rape
Intimate Partner Violence	Dating Violence Domestic Violence
Stalking	

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§106.45 Grievance Process for Formal Complaints

Equitable	Objective evaluation	Impartiality and training
Presumption of "not responsible"	Prompt time frame	Respect privilege

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§106.45 Grievance Process for Formal Complaints




Notice Requirements Additional Allegations

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§106.45 Grievance Process for Formal Complaints

Burden of Proof

Equal Participation

No restrictions on Discussions

Advisor

Inspect and Review Evidence

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§106.45 Grievance Process for Formal Complaints

```

graph TD
    A[Preliminary Report] --- B[All Evidence Collected]
    A --- C[Written Response]
  
```

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§106.45 Grievance Process for Formal Complaints

► Investigative report
 □ "fairly summarizes relevant evidence"

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§106.45 Hearings

```

graph LR
    A[Live Hearing] --- B[Cross-examination]
    B --- C[Relevancy Determination]
    C --- D[Participation Considerations]
  
```

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§106.71 Retaliation

“No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.”

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**From the Campus to the Courtroom:
Prosecuting College Sexual Assaults**

TONI M. RANDALL, DEPUTY COMMONWEALTH'S ATTORNEY,
HENRICO COUNTY, VIRGINIA

1

TYPES OF OFFENSES-As Defined in the FBI UCR Program

- ▶ Sexual Assault
 - ❑ Rape
 - ❑ Fondling
 - ❑ Incest
 - ❑ Statutory Rape



*For purposes of this presentation, we will use the pronoun "she" to refer to the victim. This is not intended to lessen the impact of male victimization but is intended to demonstrate that the vast majority of complaints that are prosecuted involve women and girls as the victim.

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UCR: Rape

UCR Rape Definition includes:

- ▶ Sodomy; and
- ▶ Sexual Assault with an Object Definitions



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UCR: The Elements of the Offense-Rape

"Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This definition includes any gender of victim or perpetrator."

Sexual penetration means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object.

This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol).

Physical resistance is not required on the part of the victim to demonstrate lack of consent.

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In contrast, State of Virginia:

- ▶ The Commonwealth of Virginia defines "Rape", "Sodomy", and "Object Sexual Penetration" as separate and distinct crimes under State law. All offenses include the following elements as means by which to accomplish the offense:
 - ❑ By force, threat, or intimidation; or
 - ❑ Through the use of the victim's mental incapacity or physical helplessness.
- ▶ In contrast, all are appropriately translated and classified as "Rape" under the FBI UCR program and reported to the Department of Education as a statistic for "rape."

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UCR: The Elements of the Offense-Rape

- ▶ This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol).
- ▶ Physical resistance is not required on the part of the victim to demonstrate lack of consent.

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UCR: The Elements of the Offense-Fondling

The touching of the private body parts of another person for the purpose of sexual gratification without consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or temporary or permanent mental or physical incapacity.

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UCR: Incest and Statutory Rape

Unlawful, non-forcible sexual intercourse.

Incest

Relationship of Parties

Statutory Rape

Age of Victim

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UCR: Incest

Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

► **NOTE:** Males and Females can be a victim

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UCR: Statutory Rape

Non-forcible sexual intercourse with a person who is under the statutory age of consent

- If force or threat of force exists—count as rape.
- Count only the victims that fit the state's statutory age limit.
- Males and Females can be a victim.

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Force, Threat, or Intimidation Defined 10 U.S. Code § 920 - Art. 120

- The term "force" means—
 - ❑ (A) the use of a weapon;
 - ❑ (B) the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or
 - ❑ (C) inflicting physical harm sufficient to coerce or compel submission by the victim.
- The term "threatening or placing that other person in fear" means—
 - ❑ a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another person being subjected to the wrongful action contemplated by the communication or action.

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Mental or Physical Incapacity Under 10 U.S. Code § 920 - Art. 120

- impairment by any drug, intoxicant, or other similar substance, and that condition is known or reasonably should be known by the person; or
- a mental disease or defect, or physical disability, and that condition is known or reasonably should be known by the person;
- asleep, unconscious, or otherwise unaware that the sexual act is occurring.

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The Elements of the Offense-State Law Example

- ▶ The Commonwealth of Virginia defines “Fondling” as “Aggravated Sexual Battery.” Taking into account the same factors of:
 - ❑ Victim’s age
 - ❑ Mental incapacity or physical helplessness

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The Charging Decision: Consult with Local Prosecutor



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Where to begin...

▶ THE VICTIM

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Who is she?

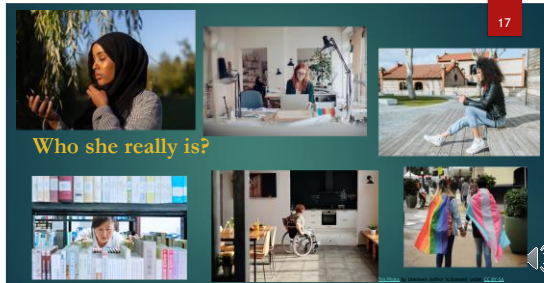
Question:
What bias, myths or stereotypes
are people likely to
have/hold/believe about a
victim of sexual assault?



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Who she really is?



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Hurdles in the Case



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We Can Overcome:

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- ▶ Prior sexual relationships
- ▶ Prior sexual relationships with the accused party
- ▶ Alcohol and/or drug use (legal or illegal)
- ▶ Counterintuitive behaviors
 - ❑ Victims' individual responses to trauma that are often counterintuitive to public expectations

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Rape Shield Statutes

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Prior Sexual Conduct

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- ▶ General reputation or opinion evidence of the complaining witness's unchaste character or prior sexual conduct shall not be admitted
- ❑ VIRGINIA CODE SECTION § 18.2-67.7

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Exceptions to Exclusion

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- ▶ *Evidence offered to provide an alternative explanation for physical evidence of the offense charged which is introduced by the prosecution, limited to evidence designed to explain the presence of semen, pregnancy, disease, or physical injury to the complaining witness's intimate parts*
- ❑ VIRGINIA CODE SECTION § 18.2-67.7 (1)

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Prior Sexual Conduct with Defendant

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- ▶ GENERALLY, IT IS NOT ALLOWED
- ▶ Evidence of sexual conduct between the complaining witness and the accused offered to support a contention that the alleged offense was not accomplished by force, threat or intimidation or through the use of the complaining witness's mental incapacity or physical helplessness, provided that the sexual conduct occurred within a period of time reasonably proximate to the offense charged under the circumstances of this case
- ❑ Virginia Code § 18.2-67.7 (2)

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Drug/ Alcohol Usage

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How Intoxicated Was the Victim?

- ▶ Amount of alcohol or drugs used
- ▶ Type of alcohol or drugs used
- ▶ Location of consumption
- ▶ Timing of consumption
- ▶ Was she conscious? blackout?
- ▶ Did she vomit?
- ▶ How were her motor skills?
- ▶ Was she coherent/slurring?

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How Did the Victim Become Intoxicated? Who is the Accused?



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Offender Focused Prosecution

- ▶ Explains why a rapist preys upon someone like the victim
- ▶ Shows the defendant as a predator
- ▶ The victim's vulnerability makes her a target
- ▶ Shaming her into silence because of her behavior
- ▶ Offender tricks the victim
 - ❑ "come to my apartment to use bathroom"

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Offender Focused Prosecution

- ▶ How drunk was he?
- ▶ Was there any attempts to control the situation?
- ▶ Did the defendant isolate the victim?
- ▶ Did the defendant "groom" the victim?
- ▶ Buy "special drinks", supply alcohol, gain her trust
- ▶ Prey on her vulnerabilities

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Corroboration and Credibility



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Victim's Credibility

- ▶ Actual credibility
 - ❑ Honesty is the best policy
- ▶ Ability to perceive at the time of the incident
 - ❑ Details of the event (time and space)
- ▶ Victim's ability to remember
 - ❑ Fragmented recollection

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Victim's Credibility

- ▶ Victim's relatability
 - ❑ Appears hostile or defensive?
 - ❑ Jurors believe people they like
- ▶ Flaws that make the victim a target also may make her unrelatable
- ▶ Victim's risky behavior = yes = consent = not guilty
- ▶ Assumption of the risk
- ▶ Voluntary consumption

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Victim's Credibility

- ▶ Existence of corroborative evidence
- ▶ Physical/scientific evidence
- ▶ Medical evidence
- ▶ Recent complaint
- ▶ Friends of the victim
- ▶ Friends of the defendant
- ▶ Eyewitnesses leading up to the event (bartender)
- ▶ Surveillance tapes
- ▶ Defendant's statement

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Trying the Case

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Jury Selection

- ▶ Voir Dire: The preliminary examination of prospective jurors to determine their qualifications and suitability to serve on a jury, in order to ensure the selection of a fair and impartial jury.

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Goals for Voir Dire

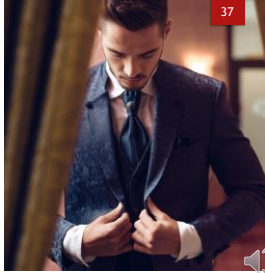
01 Eliminate jurors who cannot be fair	02 Lay the foundation for State's theory of its case	03 Reveal individual's preconceived notions regarding victim behavior	04 TRIAL STARTS NOW!!
---	---	--	--------------------------

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Witness Order

- ▶ Not always chronological in order
- ▶ Support the victim's testimony before she even takes the stand
 - ❑ First responding officer
 - ❑ Recent complaint witnesses
- ▶ Butress her testimony afterwards
 - ❑ Sane Nurse



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Working with the Victim

Support	Support the victim
Protect	Protect the victim
Prepare	Prepare the victim

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Goals for Direct Examination

Personalize	Personalize the victim to the jury
Understand	Understand who she is to understand her choices and behavior
Introduce	Introduce the victim with sufficient foundation questions

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Goals for Direct Examination

- ▶ Why the victim initially trusted the defendant?
- ▶ How the defendant took advantage of that trust?
- ▶ At what point, did the victim realize she was in danger?
- ▶ What changes occurred in the defendant's behavior?
- ▶ Argue that the defendant became a stranger when he raped her

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Preparing Victim's Testimony

- ▶ Initial Meeting with the Victim
 - ❑ Review criminal process
 - ❑ Services available
 - ❑ Do not discuss details of the case initial meeting (building rapport)
- ▶ Second Meeting
 - ❑ Review details of attack
 - ❑ Discuss inconsistencies
 - ❑ Discuss partial revelations

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Preparing Victim's Testimony

- ▶ Third Meeting
 - ❑ Practice in the courtroom
 - ❑ Direct and cross examinations
 - ❑ Mock jurors
- ▶ Fourth Meeting
 - ❑ Touch base and review
 - ❑ Pep talk and allay any fears

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Tips for Cross-Examination

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- ▶ Listen
- ▶ Don't argue
- ▶ These responses are acceptable:
 - ❑ "I don't know"
 - ❑ "I don't remember"
 - ❑ "I don't understand"



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Final Thoughts

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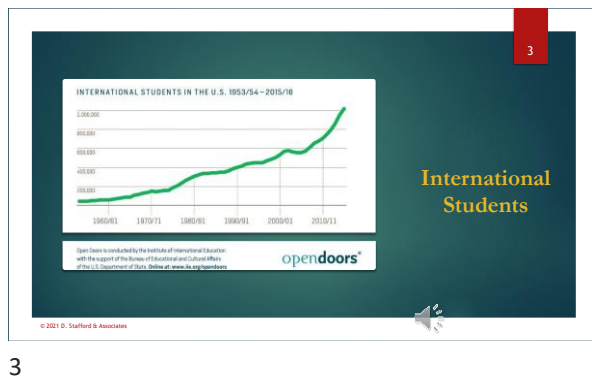
Working with International Student Victims of Sexual Assault

1

Section Learning Outcomes

- 1 Explore the issues facing international students and characteristics that may increase their vulnerability to sexual harassment and assault.
- 2 Understand the barriers to reporting for international students and accommodation and protective measure considerations.
- 3 Examine procedural and policy impacts for investigations and adjudications of cases involving sexual assault.

2



U Nonimmigrant Status (VTVPA)

(Victims of Trafficking and Violence Protection Act, including the Battered Immigrant Women's Protection Act)

- ▶ The U Nonimmigrant status (U Visa) is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity.

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VTVPA—Goals of the Legislation

- ▶ Strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes,
- ▶ Protect victims of crimes who have suffered substantial mental or physical abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity.
- ▶ Helps law enforcement agencies to better serve victims of crimes.

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Qualifying Offenses

•Abduction •Abusive Sexual Contact •Blackmail •Domestic Violence •Extortion •False Imprisonment •Female Genital Mutilation •Felonious Assault •Fraud in Foreign Labor Contracting	•Hostage •Incest •Involuntary Servitude •Kidnaping •Manslaughter •Murder •Obstruction of Justice •Peonage •Perjury •Prostitution •Rape	•Sexual Assault •Sexual Exploitation •Slave Trade •Stalking •Torture •Trafficking •Witness Tampering •Unlawful Criminal Restraint •Other Related Crimes*) *)Includes any similar activity where the elements of the crime are substantially similar. Also includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes.
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T Nonimmigrant Status (VTVPA)

- ▶ The legislation strengthens the ability of law enforcement agencies to investigate and prosecute human trafficking, and also offer protection to victims.
- ▶ The T Nonimmigrant Status (T visa) is set aside for those who are or have been victims of human trafficking, protects victims of human trafficking and allows victims to remain in the United States to assist in an investigation or prosecution of human trafficking.

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Title IX and International Students

- ▶ Ensure all students are aware of their rights (even undocumented and international students)
- ▶ Ensure school reporting forms, information and training is provided in accessible way (including English language learners).
- ▶ Coordinate with international office to communicate Title IX information in other languages
- ▶ Provide information on the U nonimmigrant status and the T nonimmigrant status

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Title IX and International Students

- ▶ Encourage employees involved in handling sexual violence complaints and those counseling students to talk to the designated school official for student visas about possible issues.
- ▶ Employees working with international students should be trained on school's sexual violence policies.
- ▶ Employees working with sexual violence victims are trained around international student issues.
- ▶ Threatening a student with deportation or invoking immigration status to deter a report is retaliation

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Understanding Victimology

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Vulnerability

Cultural differences	Language barriers	Isolation—lack of support network	Lack of financial resources	Attempts to culturally assimilate
Misunderstanding of law	Shorter stint at school	LGBTQ International students	Inexperience with alcohol, social situations	High academic pressures

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Vulnerability

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Range of Reasons for Under Reporting

- ▶ Fear that their family will find out
- ▶ Shame (and shame to family)
- ▶ Fear of assailant (and tools to exploit the fear)
- ▶ Fear of further social isolation
- ▶ Fear or police or that police will not believe them
- ▶ Fear student visa will be revoked
- ▶ Misunderstanding of how and where to get help

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International Barriers to Reporting

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The New York Times

Too Scared to Report Sexual Abuse. The Fear: Deportation.

4/30/17

MARCH 26, 2017 12:01PM EDT | Singapore

Damaging Myths on Domestic Violence Alive and Well in the UK

Men Who Attacked His Wife Spared Jail After Court Does Not Find Victims 'Vulnerable'

Policy Implications

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Accommodations

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- ▶ Leave options
 - ❑ How will it impact student visa?
 - ❑ If leave campus, where is it safe to go?
- ▶ Counseling and Health Services
 - ❑ Understanding confidentiality
 - ❑ Cost of services
- ▶ Reduced course load
 - ❑ How will it impact student visa?

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Investigations

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- ▶ Confidentiality and privacy
- ▶ Translation issues
- ▶ Refusal to cooperate
- ▶ Need for appointed advisor/support person
- ▶ Clarifying understanding of consent

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International Perpetrators

Managing Mixed Messages:

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- ▶ Differing cultural norms and definitions
- ▶ Use of “culture” as an excuse
- ▶ US Media (and current political climate)
- ▶ Inability to prosecute (fleeing country)

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Recommendations

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Include	Include mandatory and specialized training as part of International Student Orientation.
Educate	Educate “host families” or provide emergency host family options for students in crisis.
Provide	Provide free translation services for all meetings and hearings (but do not count the translator as the advisor of choice).
Include	Include staff person in international student office on Title IX team (and provide training for whole team on visa implications and options).

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Thank you for your time and attention.

23

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Unpacking Incapacitation

1

Learning Outcomes

Examine	Examine the general definition of consent.
Understand	Understand the various ways in which a person can be incapacitated.
Identify	Identify the differences between impairment, intoxication, and incapacitation.
Recognize	Recognize the impact that alcohol can have on consent.
Understand	Understand that findings regarding incapacitation require a two-step process.
Reflect on	Reflect on policy and reporting implications as well as educational programming.

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Consent

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Consent

- ▶ When is touching ok?
- ▶ When is sexual touching ok?
- ▶ How do you know if you have consent to sexual touching?
- ▶ How do you know when consent is withdrawn?

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Consent

- ▶ Consent is sexual permission. It is given through verbal communication. It can also be inferred through body movement and reciprocation. It is ongoing and can be revoked at any time.
- ▶ Consent is not present when there is a temporary or permanent mental or physical condition resulting in a lack of awareness that the sexual act is taking place.
- ▶ Consent is never present when someone is unconscious or in and out of consciousness due to sleep or the intake of alcohol or controlled substances.
- ▶ Consent is also not present if threats, coercion, or force are used.
- ▶ Consent cannot be present if a person cannot legally consent (age, cognitive ability).

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Consent Can Be

- ▶ Communicating before you change the type or degree of sexual activity with phrases like "Is this OK?"
- ▶ Explicitly agreeing to certain activities, either by saying "yes" or another affirmative statement, like "I'm open to trying."
- ▶ Using physical cues to let the other person know you're comfortable taking things to the next level.

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Consent is NOT

- ▶ Refusing to acknowledge “no,” or taking it as a challenge.
- ▶ Assuming that wearing certain clothes, flirting, or kissing are an invitation for anything more.
- ▶ Able to be provided by someone being under the legal age of consent, as defined by the state.
- ▶ Able to be provided by someone who is asleep.
- ▶ Able to be provided by someone being incapacitated because of drugs or alcohol.
- ▶ Pressuring someone into sexual activity by using fear, intimidation, coercion, or threats.
- ▶ Assuming you have permission to engage in a sexual act because you've done it in the past.

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Incapacitation

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Incapacitation

- ▶ “A state of being that prevents an individual from having the capacity to give consent. For example, incapacitation could result from the use of drugs or alcohol, a person being asleep or unconscious, or because of an intellectual or other disability.”
- ▶ “Incapacitation means a person cannot understand the fact, nature, or extent of the sexual activity. An incapacitated person lacks the physical and mental capacity to make informed, reasonable judgements about whether or not to engage in sexual activity. A person who is incapacitated may not be able to understand where they are, whom they are with, how they got there, or what is happening.”
- ▶ “Incapacitation is when a person temporarily is incapable of appraising or controlling their conduct.”
- ▶ “... The inability to make rational, reasonable decisions, or judgements regarding one's well-being or welfare.”

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Incapacitation

Incapacitation includes those who may be suffering from a temporary or permanent mental or physical condition, asleep, unconsciousness, or unaware of the sexual act is taking place.



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Incapacitation and Alcohol

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What's a drink?



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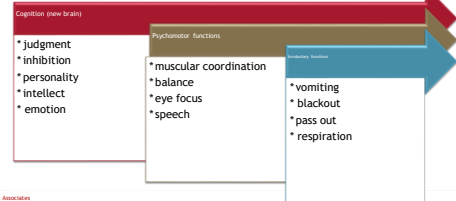
What's a drink in college?



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Impact of Alcohol Consumption Levels



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Levels of Impact for Alcohol Consumption



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Impairment

- ▶ The state of being diminished or weakened due to the consumption of alcohol.
- ▶ Alcohol is nervous system depressant.
- ▶ Impairment begins as soon as alcohol enters the bloodstream.
- ▶ Impairment increases with consumption of alcohol.



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Intoxication

An act or instance of inebriation; drunkenness.

- ▶ Intoxication is legally met when an individual's blood alcohol level reaches .08 or greater.

Question: Can two drunk (intoxicated) people legally have sexual intercourse?

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Incapacitation

- ▶ "A state of being that prevents an individual from having the capacity to give consent. For example, incapacitation could result from the use of drugs or alcohol, a person being asleep or unconscious, or because of an intellectual or other disability."
- ▶ "Incapacitation means a person cannot understand the fact, nature, or extent of the sexual activity. An incapacitated person lacks the physical and mental capacity to make informed, reasonable judgements about whether or not to engage in sexual activity. A person who is incapacitated may not be able to understand where they are, whom they are with, how they got there, or what is happening."
- ▶ "Incapacitation is when a person temporarily is incapable of appraising or controlling their conduct."

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Incapacitation

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- ▶ Unable to understand the fact, nature, or extent of sexual activity. . .
- ▶ Unaware that sexual activity is occurring. . .
- ▶ States of incapacitation include, but are not limited to, unconsciousness, sleep, and blackouts. Incapacitation may result from the voluntary or involuntary consumption of alcohol and/or other drugs. Where alcohol or other substances are involved, incapacitation is determined by how the substance impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. For purposes of this Policy a person is not incapacitated merely because the person has been drinking or using drugs.

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Incapacitation

WHAT DOES IT LOOK LIKE?

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How can we determine this?

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Incapacitation

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- ▶ Factors that influence an individual's Blood Alcohol Concentration (BAC):
 - Time
 - Amount of alcohol consumed
- ▶ Factors that impact presentation:
 - Amount:
 - Food
 - Sleep
 - Altitude
 - Menstruation
 - Consumption of drugs (prescription or illicit.)

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Estimating BAC

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Number of Drinks	Body Weight in Pounds										Driving Condition
	100	120	140	160	180	200	220	240			
0	M 0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00			Only Safe
	F 0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00			Driving Limit
1	M .08	.06	.04	.04	.03	.03	.03	.02			
	F .07	.06	.05	.04	.04	.03	.03	.03			
2	M .12	.10	.09	.07	.07	.06	.05	.05			Driving Skills Impaired
	F .11	.11	.09	.08	.07	.07	.06	.06			
3	M .16	.15	.13	.11	.10	.09	.08	.07			
	F .15	.14	.13	.12	.11	.10	.09	.08			
4	M .20	.19	.17	.15	.14	.13	.12	.11			Legally Impaired
	F .19	.18	.17	.16	.15	.14	.13	.12			
5	M .24	.23	.21	.19	.18	.17	.16	.15			
	F .23	.22	.21	.20	.19	.18	.17	.16			

1 drink = 1.5 oz. 40 proof liquor; 12 oz. 5% beer; or 5 oz. 12% wine.
 Subtract .01% for each 40 minutes of drinking.
 Fewer than 5 persons out of 100 will exceed these values.

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Estimating BAC

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BAC Level	Effects, Gross Observed
0.01 - 0.02 BAC	No loss of coordination, slight euphoria and loss of shyness. Mild relaxation and muscle aches heightened.
0.04 - 0.06 BAC	Feeling of well-being, more confidence, and relaxation. Impaired to slight impaired. More impairment of reasoning and memory, and less caution. Your behavior can become unpredictable and erratic. (as happens in railroad yard more impaired)
0.07 - 0.09 BAC	Impaired reaction to emergency. Drinking ability weak or under question. Poor reasoning and reaction time are impaired along with balance, speech, and hearing. Markings of euphoria in some. Self-control and caution are reduced. Motor behaviors (drifted, swayed, veered, and erratic) appear. You are likely to believe that you are functioning better than you really are.
0.10 - 0.12 BAC	0.10 BAC is legally impaired and it is illegal to drive at this level. Significant impairment to motor coordination and loss of good judgment. Reaction may be slowed. Balance, vision, reaction time, and hearing will be impaired. Probably not thinking straight.
0.13 - 0.15 BAC	Very noticeable decline. Some impairment to judgment, coordination, and motor motor skills. Very slow reaction time. Memory, vision, type of balance and forward speech. Markings of well-being starting to be replaced by anxiety and restlessness (displaced, confused, nervous, and erratic) appear. You are likely to believe that you are functioning better than you really are.
0.16 - 0.18 BAC	At 0.15 BAC you are 100 times more likely to be in a fatal crash than you are sober. You cannot see the weakness of a "drunk drive" at this point, most drivers have to feel it themselves. Many motor drivers cannot see their friends begin to act and drive the obvious "drunk" way.
The average BAC among fatally injured drivers is 0.17, which is also the average for persons arrested for drunk driving.	
0.20 BAC	Get off of control. 0.02. Reaction time to react or walk. If stopped may not feel the pain. Nausea and vomiting. The gag reflex is impaired and you are likely to vomit. Blackouts are likely.
0.25 BAC	All mental, physical and sensory functions are severely impaired. Near total loss of motor function control. Increased risk of asphyxiation from choking on vomit, and of cardiac arrest caused by take in other accidents.
0.30 - 0.40 BAC	Extremely life threatening. You have little comprehension of where you are. You may pass out suddenly and be difficult to awaken. Complete consciousness. Come to possibly. This is the time of rapid anesthesia. Death may occur.
Over 0.45 BAC death will occur in most people.	

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Incapacitation

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- Smell of alcohol about the person
- Slurred speech
- Bloodshot eyes
- Cannot stand
- Cannot walk without assistance
- In and out of consciousness
- Blackout
- Vomiting
- Out of control behavior

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Incapacitation

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- ▶ It does not always correlate to a specific BAC and could be a result of drug use (subjective).
- ▶ It is demonstrated in a variety of ways:
 - ❑ In an individual's ability to make informed decisions.
 - ❑ In an individual's ability to understand space, time, nature of the act, and other facts.
 - ❑ In an individual's ability to understand consequences.

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Incapacitation

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An individual is incapacitated for purposes of sexual misconduct policy when they lack the mental capability to understand:

1. Who is having sex with them? (Name, more than 1?)
2. When are they having sex? (What time is it?)
3. Where are they having sex? (What is my location?)
4. How am I having sex? (Is someone having sex with me in a way I do not like/am not aware of?)

Consent must be informed. An individual who does not know even one of the above could be incapacitated.

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Additional Considerations

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- ▶ Blacked out v. passed out
- ▶ Self-incapacitation
- ▶ Second step of incapacitation assessment:
 - ❑ Did the respondent know incapacitated, or would a reasonable person know?

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Blackout vs. Pass Out

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Fragmentary blackout

En bloc blackout

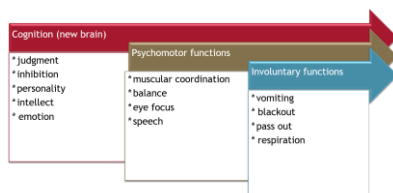
Pass out

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Impact of Alcohol Consumption Levels

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Incapacitation

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- ▶ Does it matter whether the complainant self-incapacitates, or the alleged student incapacitates the complainant?
 - ❑ If yes, when might it matter?
 - ❑ If no, why not?

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Incapacitation

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- ▶ If we are trying to determine incapacitation, the investigation must also focus on:
 - ❑ Did the respondent know the other person was incapacitated?
 - ❑ Would a reasonable person know the other person was incapacitated?

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**Final
Thoughts**

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Working with Students with Disabilities during the Sexual Misconduct Process

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1

Learning Outcomes

- Examine the general statistics as it relates to sexual misconduct on campus.
- Identify the most common disabilities that exist on a college campus.
- Understand how different disabilities present different issues, including those who are deaf and hard-of-hearing, visually impaired, experience mobility issues, and those on the autism spectrum, and how to address these specific issues.
- Identify the barriers people with disabilities face regarding reporting and adjudication, and how to address those barriers.
- Reflect on suggested recommendations to improve outcomes for this population.

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Statistics

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Students with Disabilities

- In 2013-14, 13% of all public school students (6.5 million) receive special educational services.¹
- In 2011-12, 11% of students (around 16,000) in postsecondary institutions report having a disability.²
- From 1999-2009, there was a 69% increase in the number of undergraduates with disabilities enrolled at degree granting institutions.³

¹ Children and Youth with Disabilities. (2016). Retrieved January/February, 2019, from https://nces.ed.gov/ipeds/data/ipedsreports/indicator_COGLCes_cop_2016_06.pdf

² Students with Disabilities. (2015). Retrieved January 31, 2019, from <https://nces.ed.gov/fastfacts/display.asp?id=60>

³ LaVerne McQuillie Williams, *Sexual Victimization of Deaf and Hard-of-Hearing College Students: Intersections of Identity and Sexual Violence on Campus, Centering Minoritized Students' Experiences*. Eds. Jessica C. Harris and Chris Linder. Virginia: Stylus, 2017, 140. Print

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College Students with Disabilities

11% of college students overall have a disability

- 21% of veteran students
- 16% of students 30 and over
- 9% of dependent undergraduates
- 13% of married undergraduates
- 5% of post baccalaureate⁴

⁴ Students with Disabilities. (2015). Retrieved January 31, 2019, from <https://nces.ed.gov/fastfacts/display.asp?id=60>

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College Students with Disabilities

- 31% Specific Learning Disabilities (SLDs)
- 18% ADD or ADHD
- 15% Mental illness
- 11% Health impairments, including chronic conditions
- 7% Mobility issues
- 4% Difficulty hearing
- 3% Difficulty seeing
- 3% Cognitive difficulties
- 2% Traumatic brain injury
- 2% Autism Spectrum Disorders
- 1% Difficulty speaking or language impairment⁵

⁵ Raue, K., & Lewis, L. (2011, June/July). Students With Disabilities at Degree-Granting Postsecondary Institutions. Retrieved January 31, 2019, from <https://nces.ed.gov/ipeds/data/ipedsreports/2011/1018.pdf>

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Sexual Violence and Disability



- 1.3 million violent crimes occur each year against people with disabilities.
- 3x more likely to experience rape, sexual assault, aggravated assault and robbery.
- 3x more likely to be sexually abused as children.⁶

⁶ Vera Institute of Justice (2019). Violence Against People with Disabilities Occurs at Alarming Rates. Retrieved December 4, 18, from <https://www.endabusepwd.org/problem/alarms-rates/>

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Sexual Violence and Disability--IHE



- 31.6% of female undergraduates with disabilities reported nonconsensual sexual contact involving physical force or incapacitation compared to 18.4% of undergraduate females.⁷
- 1 out of every 3 students with a disability has been sexually assaulted during their time at college.⁸

^{7,8} Not on the Radar: Sexual Assault of College Students with Disabilities (p. 17, Rep.). (2018). Washington, DC: National Council on Disability. doi: https://ncd.gov/sites/default/files/NCD_Not_on_the_Radar_Accessible.pdf

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Sexual Violence and Disability--IHE



- Students with disabilities (physical, mental, or learning) are twice as likely to experience Intimate Partner Violence than those without disabilities.⁹
- 3.3% participants with disabilities experienced sexual abuse *in the past year* compared with 1.2% students without disabilities.¹⁰

^{9,10} Williams, 143.

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Sexual Violence Among College Students with Disabilities



- Limited data
- Not broken into categories

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Learning about Complainants



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Risk Factors



- Vulnerability
- Isolation
- Compliance
- Marginalized
- Lack of reporting¹¹

¹¹ Vera Institute of Justice. (2019). Why are so many people with disabilities abused? Retrieved February 1, 2019, from <https://www.endabusepwd.org/problem/alarms-rates/why-are-so-many-people-with-disabilities-abused/>

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Barriers to Reporting - Invisible



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Barriers to Reporting – Accessibility

Accessibility of educational programs and info¹²:

- On-line training programs
- In-person programs
- Sexual assault information, policies, reporting options
- Printed materials
- Universal design

¹²Not on the Radar: Sexual Assault of College Students with Disabilities, p. 32-36.

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Barriers to Reporting - Access

■ Sexual Assault Trauma Support Service¹³:

- Physical access
- Lack of immediate auxiliary aides or disability-related supports
- Lack of policies and procedures detailing responses in crisis situations
- Accommodations during conduct process and communication with law enforcement
- Access to off-campus services

¹³Id. 36-46.

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Barriers to Reporting - Thoughts

- Mandatory reporting – how does the law work in your state regarding “disabled?”
- Mental health
- Stigma
- Reluctance to report

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Special Considerations

Hearing Impairment

Specific factors to consider¹⁴:

- Stereotypes
- Deaf culture
- Communication abuse
- Communication barriers when reporting

¹⁴Williams, 142-146.

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Hearing Impairment

- 50% in the Deaf community (not just college students) have experienced sexual violence in their lifetime¹⁵
- ¼ students* report having been forced to have sex against their wishes (unsure of age of occurrence)¹⁶

¹⁵ *Id.*, 142
¹⁶ *Id.*, 146.

Hearing Impairment

- Students who were deaf were at twice the risk of sexual abuse and 2 ½ times the risk of physical and psychological abuse than hearing students¹⁷
- Deaf LGBTQ students were 6 times as likely for sexual abuse, 4 times as likely for physical abuse, and 3 times for psychological abuse than heterosexual students¹⁸

¹⁷⁻¹⁸ *Id.*, at 147

Autism Spectrum Disorders (ASD)

- 2% of college population?
- The Nexus of Autism and TIX

Autism Spectrum Disorders (ASD)

- Presentation¹⁹:
 - “Typically male; physically clumsy or rigid; down or depressed; violate personal space by standing too close or talking too loud; vocal characteristics might be off; use of strange phrases; have a sing-song or monotone; poor eye contact or might fix you with a stare; dress and body habits might be off; appears bright but also seems lost and not totally understanding you”
 - Socially awkward and has limited use of social language, poor understanding of non-verbal cues

¹⁹ Wolf, L. E., Ph.D., Brown, J. T., Ed.D., & Kukiela Bork, G. R., M.Ed. (2009). *Students with Asperger Syndrome: A Guide for College Personnel*. Shawnee Mission, Kansas: AAPC Publishing, 9-10, 17.

Thoughts from the Experts



Lee Burdette Williams

Director of Higher Education
Training and Development for
the College Autism Network

Recommendations

Recommendations

- More awareness and research
 - How do rates vary by disability type?
 - Who are respondents?
- Work with disability services
 - Inclusion and trainings (Power and Control Wheel)
- Increase visibility of those with disabilities
 - Hiring practices, conversations, committees,
- Inclusive trainings and programs
 - Universal design for learning²⁰⁻²¹

²⁰Not on the Radar: Sexual Assault of College Students with Disabilities", 47-47, 65-69
²¹National Council on Disability, (2018, January 30). Policy Briefing: January 30 release of NCD College Sexual Assault Report.Video posted to <https://nccd.gov/events/2018/january-30-release-sexual-assault-report>

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Recommendations

- Accessibility
- Provide accommodations
 - Accommodation language in policies and letters, accessible materials, interpreters
- Crisis policies and agreements with local agencies
 - MOUs to include protocols
- Safe-spaces for those with disabilities to have more nuanced conversations about sexual misconduct and disability²²

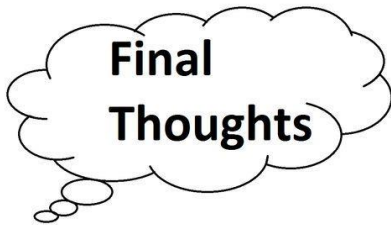
²²Id.

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Final Thoughts



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Working with Students from Marginalized Populations in the Sexual Misconduct Process

1

Learning Outcomes

- Participants will learn about the historical implications that may impact both our personal biases and university processes
- Participants will examine general statistics as it relates to sexual assault on campus involving marginalized populations, specifically, students of color, students of Latino descent, students of Asian descent, and students who identify as LGBTQ
- Participants will understand how different identities impact students, including complainants and respondents
- Participants will reflect on suggested recommendations when working with students from marginalized populations through the sexual misconduct process

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2

Historical Context and Impact

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3

Recognizing our Biases

- What and who do we imagine?
- What has impacted that perspective?



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4

Historical Context

- Impact of¹:
 - Legal systems
 - Universities/university grievance systems
 - Advocacy
 - Policy development

¹ Chris Linder, "Reexamining our Roots," in *The Intersection of Identity and Sexual Violence on Campus, Centering Minoritized Students' Experiences*, eds. Jessica C. Harris and Chris Linder (Virginia: Stylus, 2017), p. 60-78.

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Statistics

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Reporting Sexual Violence

- Fewer than 5% of sexual assaults on campus are reported to the police²
- People of color, men, trans* and queer report less³
- Less likely to report acquaintance rape⁴
- More likely to report when respondent is a different race⁵

² Fisher, B. S., Cullen, F. T., & Turner, M. G. (2000). *The sexual victimization of college women* (Report No. NCJ-182369). Washington, DC: Bureau of Justice Statistics, U.S. Department of Justice.

³ Chris Linder, "Reexamining our Roots, A History of Racism and Antirape Activism," p. 72.

⁴ Jessica Harris and Chris Linder, "Introduction" in *Sexual Violence on Campus, Centering Minoritized Students' Experiences*, eds. Jessica C. Harris and Chris Linder (Virginia: Stylus, 2017), p. 8.

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Race/Ethnicity

- Rape during a women's lifetime in the US⁶:
 - 32.3% of multiracial women
 - 27.5% of American Indian/Alaska Native women
 - 21.2% non-Hispanic black women
 - 20.5% of non-Hispanic white women
 - 13.6% of Hispanic women
- Sexual Violence is primarily an intra-racial crime.
- 78% of female victims and 62% of male victims are assaulted by someone of the same race.

⁶ U.S. Department of Justice, Bureau of Justice Statistics. 2003. *National Crime Victimization Survey, 1992-2000*. Ann Arbor, MI: Inter-university Consortium for Political and Social Research.

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Rape and Sexual Orientation

- Sexual Violence experienced by a member of LGBTQ during their lifetime in the US⁷
 - 13% lesbians have been raped
 - 45% bisexual have been raped
 - 47% transgender have been raped
 - 40% gay men and 47% bisexual men have experienced sexual violence other than rape

⁷ The National Intimate Partner and Sexual Violence Survey: An Overview of 2010 Findings on Victimization by Sexual Orientation, https://www.cdc.gov/violenceprevention/pdf/nisvs_victimization_final-a.pdf, visited on 1/25/19.

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IPV and Race

- IPV during a women's lifetime in the US⁸:
 - 56.6% multiracial
 - 47.5% American Indian/Alaska Native
 - 45.1% non-Hispanic Black
 - 37.3% non-Hispanic White
 - 34.4% Hispanic
 - 18.3% of Asian or Pacific Islander

⁸ The National Intimate Partner and Sexual Violence Survey p. 120, <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf#page=135>, visited on 1/25/19.

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IPV and Race

- IPV during a man's lifetime in the US⁹:
 - 42.3% multiracial
 - 40.5% American Indian/Alaska Native
 - 40.1% non-Hispanic Black
 - 30.3% non-Hispanic White
 - 30.0% Hispanic
 - 13.7% Asian or Pacific Islander

⁹ The National Intimate Partner and Sexual Violence Survey , p. 123, <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf#page=135>, visited on 1/25/19.

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IPV and Sexual Orientation

- IPV experienced by LGBTQ during lifetime¹⁰
 - 44% lesbians
 - 22% lesbians raped by an intimate partner
 - 61% bisexual women
 - 26% gay men
 - 37% bisexual men
 - 31.1%-50% transgender¹¹

¹⁰ Human Rights Campaign, Sexual Assault and the LGBTQ Community, <https://www.hrc.org/resources/sexual-assault-and-the-lgbt-community>, visited on 1/25/19.

¹¹ Intimate Partner Violence and Sexual Abuse Among LGBT People, <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Intimate-Partner-Violence-and-Sexual-Abuse-among-LGBT-People.pdf>, visited on 1/15/19.

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IPV and Bisexual women

- At higher risk than heterosexual women¹²:
 - The rate of stalking among bisexual women is more than double the rate among heterosexual women.
 - Among rape victims, bisexual women experienced rape earlier in life compared to heterosexual women.
 - A higher percentage of bisexual women reported being concerned for their safety or injured as a result of IPV.
 - *Most reported only male perpetrators.*

¹² Walters, M.L., Chen J., & Breiding, M.J. (2013). *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Findings on Victimization by Sexual Orientation*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. Retrieved from http://www.cdc.gov/ViolencePrevention/pdf/NISVS_SOFindings.pdf.

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Students – Race

- Impact of Race¹³:
 - Asian women less likely to experience assault than non-Hispanic White students
 - Asian women less likely to experience penetrative assault
 - Black women increased odds of touching-only than non-Hispanic White women

¹³ Mellins CA, Walsh K, Sarvet AL, Wall M, Gilbert L, Santelli JS, et al. (2017) Sexual assault incidents among college undergraduates: Prevalence and factors associated with risk. *PLoS ONE* 12(11): e0186471. <https://doi.org/10.1371/journal.pone.0186471>, p. 12-13.

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Students – Sexual Orientation

- Impact of Sexual Orientation¹⁴:
 - Non-heterosexual women more likely to experience sexual assault than heterosexual females
 - Gay men more likely to experience sexual assault than heterosexual males
 - Majority were victimized by males
 - Incapacitation was most common method

¹⁴ *Id.*, p. 15-16.

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Special Considerations when Working with Complainants and Respondents

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Stereotypes

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Impact of Stereotypes

- Racial Stereotypes¹⁵:
 - ❑ Native women considered dirty
 - ❑ Black women considered Jezebels or promiscuous
 - ❑ Asian women considered exotic, inferior, passive
 - ❑ Latina women considered harlots and spitfires
 - ❑ Multi-racial women considered mentally, emotionally and socially weak, powerless, and tormented
 - ❑ White women are considered pure and virginal

¹⁵ Jessica C. Harris, "Centering Women of Color in the Discourse on Sexual Violence on College Campuses," in *The Intersection of Identity and Sexual Violence on Campus, Centering Minoritized Students' Experiences*, eds. Jessica C. Harris and Chris Linder (Virginia: Stylus, 2017), p. 49-50.

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College Student Perceptions

- Perceptions regarding sexuality¹⁶:
 - ❑ Greater acceptance of rape myths
 - ❑ White women as sexually liberal
 - ❑ Black women as promiscuous
 - ❑ Latina women as sexy and feisty
 - ❑ Asian women as submissive
 - ❑ White women less responsible for rape when raped by a black respondent, than black women

¹⁶ *Id.*, p. 51.

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Internalized Biases

- Internalized biases for people of color¹⁷:
 - ❑ Latinas more likely to blame other Latinas
 - ❑ Hispanic American women and Asian American women display higher acceptance for rape myths
 - ❑ Hispanic American hold less positive attitudes towards rape victims than white women
 - ❑ Black women less likely to report because of self-blame or awareness of stereotypes

¹⁷ *Id.*, p. 51-52.

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Reporting- Race

- African-American and Latina women¹⁸:
 - ❑ 17% of Black women report to police v. 44% of white women
 - ❑ Female African American and Latina college students under-report
 - ❑ Have the highest rate of physical forced intercourse (18.8% African American, 21.1% Latina)
 - ❑ Negative stereotypes
 - ❑ Would not be considered serious enough due to race
 - ❑ Cultural norms, adherence to traditional gender roles, racial stereotypes

¹⁸ Lewis, K. R. (2013). *Race, Ethnicity, and Differential Perceptions of Sexual Victimization (Assault)*. (Doctoral dissertation). Retrieved from <http://scholarcommons.sc.edu/etd/2673>

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Reporting – Race

- Asian/Pacific Islander American (APIA)¹⁹:
 - ❑ Conformity to gender roles
 - ❑ Fear and Shame
 - ❑ Rejection of stereotypes
 - ❑ Fear or shame
 - ❑ Community Values²⁰

¹⁹ Ciera V. Scott, Anneliese A. Singh, and Jessica C. Harris, "Intersection of lived oppression and Resilience," in *The Intersection of Identity and Sexual Violence on Campus, Centering Minoritized Students' Experiences*, eds. Jessica C. Harris and Chris Linder (Virginia: Stylus, 2017), p. 125-126.

²⁰ Women of Color Network and Facts and Stats: Domestic Violence in Communities of Color – June 2006 retrieved at https://www.doi.state.or.us/wp-content/uploads/2017/08/women_of_color_network_facts_domestic_violence_2006.pdf

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Reporting – Sexual Orientation

- LGBTQ²¹:
 - ❑ Fear of being "outed"
 - ❑ Stereotypes
 - ❑ Exclusion
 - ❑ Lack of training²²

²¹ Dastagir, Alla, USA Today, She was Sexually Assaulted within Months of Coming Out. She is not alone., published June 13, 2018, retrieved on 1/31/19 at <https://www.usatoday.com/story/news/2018/06/13/sarah-mcbride-gay-survivors-helped-launch-me-too-but-rates-lgbt-abuse-largely-overlooked/692094002/>

²² Susan B. Marine, "For Brandon, For Justice, Naming and Ending Sexual Violence Against Trans College Students," in *The Intersection of Identity and Sexual Violence on Campus, Centering Minoritized Students' Experiences*, eds. Jessica C. Harris and Chris Linder (Virginia: Stylus, 2017), p. 90-91.

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Response - Race

- Women of Color²³:
 - ❑ Less likely to report
 - ❑ PTSD
 - ❑ Substance abuse
 - ❑ Depression
 - ❑ Self-blame as opposed to isolation

²³ Ciera V. Scott, Anneliese A. Singh, and Jessica C. Harris, "The Intersection of Lived Oppression and Resilience," p. 121-122.

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Response – Sexual Orientation

- LGBTQ²⁴⁻²⁵:
 - ❑ Ignore or minimize
 - ❑ Isolation
 - ❑ Victim blaming
 - ❑ Depression
 - ❑ Anxiety
 - ❑ Isolation
 - ❑ Hypervigilance
 - ❑ Maladaptive coping (alcohol drug use, self-harm)

²⁴ Jason C. Garvey, Jessi Hitchens, and Elizabeth McDonald, "Queer-Spectrum Student Sexual Violence," in *The Intersection of Identity and Sexual Violence on Campus, Centering Minoritized Students' Experiences*, eds. Jessica C. Harris and Chris Linder (Virginia: Stylus, 2017), p. 160.

²⁵ Susan B. Marine, "For Brandon, For Justice," p. 89.

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Respondents

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Respondents - Race

- Racial breakdown of perpetrators ²⁶:
 - ❑ 57% white
 - ❑ 27% black
 - ❑ 8% unknown
 - ❑ 6% other
 - ❑ 1% mixed group
 - ❑ College – N/A

²⁶ Source: Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Female Victims of Sexual Violence, 1994-2010* (2013). Found at RAINN Perpetrators of Sexual Violence: Statistics Race of Perpetrators, <https://www.rainn.org/statistics/perpetrators-sexual-violence>

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Respondents

- Stereotypes²⁷
- Black men 6% of college undergraduates but overrepresented in complaints²⁸
- Lack of resources
- Racial bias

²⁷ Susan Iverson, "Mapping identities," in *The Intersection of Identity and Sexual Violence on Campus, Centering Minoritized Students' Experiences*, eds. Jessica C. Harris and Chris Linder (Virginia: Stylus, 2017), p. 225.

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Respondents - Credibility

- Evidence that evaluations of remorse via demeanor are problematic when it crosses racial and cultural divides, juveniles, intellectually disabled, mentally ill, or taking medication
- People decode emotions of those in their own racial group more carefully
- Racial stereotypes – blackness as dangerousness
- "lack of" could be for many reasons:
 - ❑ Eye contact – some cultures regard eye contact as disrespectful or a sign of weakness
 - ❑ Impassive – juveniles are taught not to show vulnerability, or might not understand gravity of situation
 - ❑ Medications might impact physical abilities or ability to express emotion²⁹

²⁸ Emily Yoffe, *The Atlantic*, The Question of Race in Campus Sexual-Assault Cases, Is the System Biased Against Men of Color September 11, 2017, retrieved on 1/31/19 at <https://www.theatlantic.com/education/archive/2017/09/the-question-of-race-in-campus-sexual-assault-cases/539361/>

²⁹ Bantjes, Susan, *Remorse and Criminal Justice*, *Emotion Review* Vol. 8, No. 1 (1/2016)

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Recommendations

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Recommendations

- Start the conversation
- Check our bags
- Social Justice Paradigm³⁰
- Primary prevention efforts³¹
- Education³²

³⁰ Luokuo Hong, "Digging up the Roots, Rusting the Leaves," in *The Intersection of Identity and Sexual Violence on Campus, Centering Minoritized Students' Experiences*, eds. Jessica C. Harris and Chris Linder (Virginia: Stylus, 2017), p. 31-37.

³¹ Nadia Cherre Palacios and Karla Aguilar, "An Empowerment-Based Model of Sexual Violence Intervention and Prevention on Campus," in *The Intersection of Identity and Sexual Violence on Campus, Centering Minoritized Students' Experiences*, eds. Jessica C. Harris and Chris Linder (Virginia: Stylus, 2017), p. 201-204.

³² Jessica C. Harris, "Centering Women of Color in the Discourse on Sexual Violence on College Campuses," p. 52-54.

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Recommendations

- Inclusive practices
- Culture of support³³
- Training
- Policies

³³ Ciera V. Scott, Anneliese A. Singh, and Jessica Harris, "The Intersection of Lived Oppression and Resilience," 129-132.

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Final Thoughts



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Key Takeaways from the Sex Offender Management Assessment and Planning Initiative (SOMAPI)

1

What is the Sex Offender Management Assessment and Planning Initiative (SOMAPI)

- ▶ Updated March 2017
- ▶ Divided into Adults and Juveniles
- ▶ Sections authored by leading experts in the field
- ▶ Produced by the National Criminal Justice Association
- ▶ Result of a grant from the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART)
- ▶ The Report can be found at SMART.gov/SOMAPI

2

Comparison of Adults and Juveniles



Age



Developmental differences



Justice system

Przybylski, Roger, and Christopher Lobanov-Rotovsky. "Section 2, Chapter 1: Unique Considerations Regarding Juveniles Who Commit Sexual Offenses." *Sex Offender Management Assessment and Planning Initiative*. Mar. 2017. pp. 223-224. SMART.gov/SOMAPI.

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Incidence and Prevalence of Sexual Offending

- ▶ Data¹
 - ❑ Varying definitions
 - ❑ 16 different data sources
 - ❑ Low reporting
- ▶ Adults¹
 - ❑ Most perpetrators are adults
 - ❑ UCR - 79,770 forcible rapes in 2012
 - ❑ UCR - 21,407 arrests
 - ❑ UCR - 37% of rape arrests 18-29
- ▶ Juveniles²
 - ❑ 1 out of 4 sexual offenders
 - ❑ UCR - 15% of rape arrests under 18
 - ❑ 4 out of 10 based on victim reports

¹ Wiseman, Jane, and Christopher Lobanov-Rotovsky. "Section 1, Chapter 1: "Incidence and Prevalence of Sexual Offending." *Sex Offender Management Assessment and Planning Initiative*. Mar. 2017. pp. 4-5. SMART.gov/SOMAPI.

² Przybylski, Roger, and Christopher Lobanov-Rotovsky. "Section 2, Chapter 1," p. 221.

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Incidence and Prevalence of Sexual Offending



- ▶ Sexual offending on college campuses¹
 - ❑ Lower rates than non-students
 - ❑ Off-campus victimizations 14X greater (except for rape)
 - ❑ 11.5% of college females experienced rape in lifetime
 - ❑ 5.2% in past year
 - ❑ 12% reported to law enforcement
 - ❑ Drug-related assaults 29.6-84.6%
 - ❑ Force 5.4%
 - ❑ 13% stalked
 - ❑ 8 in 10 know offender

Wiseman, Jane, and Christopher Lobanov-Rotovsky. "Section 1, Chapter 1," p. 19-20

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Etiology (the Why)



Prevention



Management



Treatment



Policy

Finkel, Susan and Roger Przybylski. "Section 1, Chapter 2: Etiology of Adult Sexual Offending." *Sex Offender Management Assessment and Planning Initiative*. Mar. 2017. p. 37. SMART.gov/SOMAPI.

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Etymology

Adults

- Past abuse
- Learned behavior
- Cognitive distortion
- Pornography
- Self-regulation
- Sexual coercion
- Other

Juveniles

- Past victimization
- Family background
- Criminality
- Pornography
- Mental health

Faupel, Susan and Roger Przybylski, "Section 1, Chapter 2," p. 51-52
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Liversone, Tom, "Section 2, Chapter 2: Etiology and Typologies of Juveniles Who Have Committed Sexual Offenses," Sex Offender Management Assessment and Planning Initiative, Mar. 2017, pp. 239-236., SMART.gov/SDMAP.

7

Typology

- Child sex abusers
- Rapists
- Female sexual offenders
- Internet offenders
- Adolescent typologies

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Typology – Child Sexual Abusers

- Definition
- Child Abusers v. Rapists
- Pedophilic v. Nonpedophilic
- Victim-gender
- Intrafamilial v. Extrafamilial

Simons, Dominique, "Section 1, Chapter 3: Sex Offender Typologies," Sex Offender Management Assessment and Planning Initiative, Mar. 2017, pp. 61-64., SMART.gov/SDMAP.

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Typology – Rapists

- Characteristics
- Violent Offenders
- Types

Id. p. 64-66

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Typology - Female

- Characteristics
- Co-offenders
- Alone
- Sex trafficking
- Female victims

Id. p. 66-67

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Typology – Internet

- Characteristics
- Internet offenders
- Met victims online

Id. p. 68-69.

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Typologies – Adolescents

- Victim age
- Delinquent history
- Age and history
- Age and characteristic

Levenson, Tom. "Section 2, Chapter 2," pp. 237-245
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Recidivism

- Low reporting
- Definitions
- Follow-up period
- Population studied
- Methods used

Przybylski, Roger. "Section 1, Chapter 5: Adult Sex Offender Recidivism." Sex Offender Management Assessment and Planning Initiative, Mar. 2017, pp. 107-116., SMART.gov/SONAPI.
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Recidivism

Adults	Juvenile
Typology	Age of victim
General recidivism	Lower than adults
Females	General recidivism

Przybylski, Roger. "Section 1, Chapter 5," pp. 121-122
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Lubiano-Rotovsky, Christopher. "Section 2, Chapter 3: Recidivism of Juveniles Who Commit Sexual Offenses." Sex Offender Management Assessment and Planning Initiative, Mar. 2017, pp. 261-262, SMART.gov/SONAPI.

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Risk Assessment



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Risk Assessment

Adults	Juveniles
Uses	Uses
Types	Models
Risk factors	Risk factors
Tools	Tools

Baldwin, Kevin. "Section 1 Chapter 6: "Sex Offender Risk Assessment." Sex Offender Management Assessment and Planning Initiative, Mar. 2017, pp. 133-143, SMART.gov/SONAPI.
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Rich, Phil. "Section 2, Chapter 4: Assessment of Risk in Juveniles Who Commit Sexual Offenses." Sex Offender Management Assessment and Planning Initiative, Mar. 2017, pp. 269-271, SMART.gov/SONAPI.

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Treatment

- Impact
- Standard
- Tailored approach

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Treatment

Adults

- Programs
- Examples
- Findings

Juveniles

- Programs
- Types
- Findings

Przybylski, Roger, "Section 1: Chapter 7: Effectiveness of Treatment for Adult Sex Offenders." Sex Offender Management Assessment and Planning Initiative, Mar. 2017, pp. 155-175. SMART.gov/SCMAPL.
© 2020 D. Stafford & Associates.

Przybylski, Roger, "Section 12 Chapter 5: Effectiveness of Treatment for Juveniles Who Sexually Offend." Sex Offender Management Assessment and Planning Initiative, Mar. 2017, pp. 303-313. SMART.gov/SCMAPL.
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Management

- ✓ Programs
- Therapy
- TM Registration?

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Management

Adults

- Supervision
- Programs
- CPI
- Sex Offender Civil Commitment
- Registry
- Residency restrictions
- Collateral

Juveniles

- Therapy
- Registration?

Labanov-Rotovsky, Christopher, "Section 1 Chapter 8: Sex Offender Management Strategies." Sex Offender Management Assessment and Planning Initiative, Mar. 2017, pp. 181-206. SMART.gov/SCMAPL.
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Labanov-Rotovsky, Christopher, "Section 2 Chapter 6: Registration and Notification of Juveniles Who Commit Sexual Offenses." Sex Offender Management Assessment and Planning Initiative, Mar. 2017, pp. 319-324. SMART.gov/SCMAPL.
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Final Thoughts

Summary

Takeaways

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What Investigators Need to Know About the 2020 Title IX Regulations

1

Background

- ▶ NPRM Released November 2018
- ▶ Released May 6, 2020
- ▶ Implementation date of August 14, 2020
- ▶ Replaced prior guidance
- ▶ Applies to students and employees
- ▶ Established jurisdiction requirements

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2

§106.30 Definitions – Complainant & Respondent

COMPLAINANT

"an individual who is alleged to be the victim of conduct that could constitute sexual harassment"

RESPONDENT

"an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment"

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§106.30 Definitions – Formal Complaint

- ▶ "... a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment."
- ▶ "At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed."
- ▶ "Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party."

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§106.30 Definitions - Sexual Harassment

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

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PRONG 1: Quid Pro Quo



Must be an employee (not volunteer, visitor, student)



"This for that" harassment



When favorable professional or educational treatment is conditioned on a sexual activity

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PRONG 2: Hostile Environment+ (The Davis Standard)



No definition of consent required



Not the same Title VII "hostile environment" or 2001 Guidance



First Amendment protections

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PRONG 3: The VAWA Crimes



Sexual Assault

Rape
Fondling
Incest
Statutory Rape



Intimate Partner Violence

Dating Violence
Domestic Violence



Stalking

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§106.45 Grievance Process for Formal Complaints

Equitable

Objective
evaluation

Impartiality
and training

Presumption
of "not
responsible"

Prompt time
frame

Respect
privilege

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§106.45 Grievance Process for Formal Complaints



Notice Requirements



Additional Allegations

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§106.45 Grievance Process for Formal Complaints

Burden of
Proof

Equal
Participation

No
restrictions on
Discussions

Advisor

Inspect and
Review
Evidence

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§106.45 Grievance Process for Formal Complaints

Preliminary
Report

All
Evidence
Collected

Written
Response

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§106.45 Grievance Process for Formal Complaints

- ▶ Investigative report
 - ▢ “fairly summarizes relevant evidence”



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§106.45 Hearings

Live Hearing

Cross-examination

Relevancy Determination

Participation Considerations

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§106.71 Retaliation

“No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.”

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Lessons Learned from Conducting Sexual Misconduct Investigations During a Pandemic

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2



Wi-Fi issues



The Room Where
It Happened



Roommates



Lurkers

Some people will do their
interview in the bathroom.

3









Waiting Rooms



Chat Function

Embrace the technology.



Whiteboards



Breakout Rooms



7

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Cameras On



Rapport

Break the virtual wall.



Line of Sight



Communication Cues



8

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Request Location Photos



Evidence Sharing - Parties & Witnesses

Get creative with evidence collection and sharing.



Google



Evidence Sharing - Investigators



9

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Helpful Meeting Notice Language



- Please be in a location with good Wi-Fi and have your camera on.
- For confidentiality purposes, please find a private location. Be sure no other persons, except for your advisor, are in the room (on or off camera) during the interview.
- As it can take a few minutes to log in, please begin the login process 10 minutes before the start time.
- If you are unable to secure a private location or you have Wi-Fi issues, please contact Dr. Roe's office and they will assist you in looking for an alternative space for the zoom interview.
- You will join a waiting room - please be patient - the investigators will join you into the meeting when the previous interview has finished.
- If you have evidence to share, please send it in advance of the interview to droe@college.edu

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Understanding the Sexual Assault Medical Forensic Examination

BONNIE PRICE, DNP, RN, SANE-A, SANE-P, AFN-BC

1

Objectives

- 1 Discuss care options for victims of sexual assault
- 2 Describe the sexual assault medical forensic examination
- 3 Discuss patient-centered care for victims of sexual assault

2

Reporting Options

- ▶ Medical exam
- ▶ Medical forensic exam with reporting to law enforcement
- ▶ Medical forensic exam without reporting to law enforcement

* Except in jurisdictions where sexual assault is a mandatory reporting event, the decision to report should be left up to the patient.

3

Non-Reporting Options (Blind, Anonymous)



**INFORMED
CONSENT
PROS AND CONS OF
CHOICES**

4

Patient-Centered Care

- Medicine takes precedence over forensics
- Tailoring the medical forensic exam
- Patient privacy and confidentiality
- Advocacy and support throughout process

5

Adapting Exam Process To Address Unique Needs

- ▶ Gender and/or perceived identity
- ▶ Disability
- ▶ Language needs
- ▶ Ethnic & cultural beliefs
- ▶ Sexual orientation
- ▶ Past history of abuse
- ▶ Assault by an authority figure
- ▶ Involved in self-blaming activities before assault

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What services are available in your community?

- ▶ Sexual assault nurse examiner/forensic nurse program
- ▶ Emergency department
- ▶ Student health
- ▶ Other health care providers

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SANE/Forensic Nurse

- ▶ A sexual assault nurse examiner (SANE) is a registered nurse who has received specialized education in the care of patients following a sexual assault.

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Sexual Assault/Forensic Medical Exam

- ▶ Crisis intervention
- ▶ Gathering a history
- ▶ Physical examination
- ▶ Medicolegal specimen collection
- ▶ Photography
- ▶ Pregnancy/STD prevention & testing
- ▶ Medicolegal documentation
- ▶ Discharge and safety planning

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Crisis Intervention

Short- and Long-Term Trauma Informed Care

- ▶ Advocates
- ▶ Hospital accompaniment
- ▶ Trauma-informed counseling

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Medical-Forensic History

- ▶ Past medical history
- ▶ History of events
 - Potential sources of evidence
- ▶ Safety assessment

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Medical-Forensic History versus Law Enforcement Interview

A forensic history is to develop a diagnosis and plan of care for the patient.

A law enforcement interview is to determine if a crime was committed.

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Physical Assessment

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- ▶ Assess for findings & injuries
- ▶ Potential evidence
 - ❑ Body fluids
 - ❑ Hair
 - ❑ Trace evidence
 - ❑ Clothing
- ▶ Medical specimens for pregnancy & STD testing & treatment
- ▶ Chain of custody drug screens



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Medicolegal specimen collection

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- ▶ Dependent on:
 - ❑ Time frame for collection
 - *72 - 120 hours
 - ❑ Type of assault
 - ❑ Consent
 - ❑ Report to law enforcement vs. blind reporting



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Preserving Evidence in Cases of Sexual Assault

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It is important to encourage the patient **not** to do the following:

- ▶ Drink
- ▶ Eat
- ▶ Shower
- ▶ Change clothing
- ▶ Smoke or chew gum
- ▶ Use the bathroom and wash their hands



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Evidence Collection

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- ▶ DNA standards
- ▶ Hair
- ▶ Trace evidence
- ▶ Biological fluids
- ▶ Clothing
- ▶ Tampons/pads



For Police Use - Evidence Collection Container (L2) (MCH)

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Potential Evidence

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- ▶ Blood
- ▶ Semen
- ▶ Saliva
- ▶ Hair
- ▶ Epithelial cells
- ▶ Foreign materials (i.e. fibers, fingernail scrapings)
- ▶ Clothing
- ▶ Injuries
 - ❑ Genital
 - ❑ Nongenital



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Special Care In Cases of Strangulation

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- ▶ Forensic medical history
- ▶ Ask about the first, last and worst
- ▶ Photography (8 views of neck)
- ▶ Assess mouth/lips
- ▶ Chain of custody blood and urine drug screen
- ▶ Touch DNA swab of neck
- ▶ Neck circumference
- ▶ Hands on mannequin (with pics)
- ▶ Fingernail scrapings



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Signs and Symptoms

- ▶ Scratch marks, fingernail marks
- ▶ Petechia- found above the point of applied pressure
- ▶ Lip abrasions where lips are pushed against teeth
- ▶ Chest Pain
- ▶ SOB
- ▶ LOC or Memory Loss
- ▶ Change in vision/hearing
- ▶ Red linear ligature marks or bruising
- ▶ Light-headed/headache
- ▶ Fainting/unconsciousness
- ▶ Loss control of bodily functions
- ▶ Oxygen deprivation = symptoms of ETOH, Drugs and Psychosis

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Alternative/Adjunct Techniques & Tools

- ▶ Light sources (UV light)
- ▶ Colposcopy
- ▶ Speculum
- ▶ Toluidine blue dye
- ▶ Foley cath & Q-tip technique

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What substances may react under UV light?

Body fluids

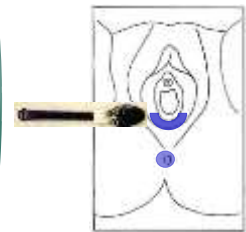
Detergents and lotions

Chemicals

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Toluidine Blue Dye



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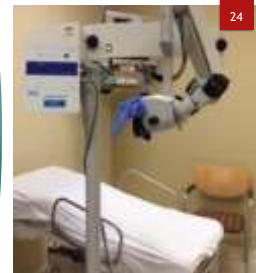
Speculum



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Colposcope



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Foley & Swab

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Will a drug screen automatically be collected and is there a difference between a chain of custody drug screen and a hospital drug screen?

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Alcohol & Drug Facilitated Sexual Assault

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- ▶ Indications for testing
 - ❑ Symptoms (memory loss, severe intoxication, drowsiness, dizziness)
 - ❑ Patient reports or suspects being drugged
- ▶ Obtain consent from patient
- ▶ Collect samples as soon as possible

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Evidence Myths & Mistakes

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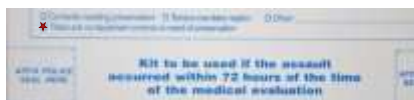
- ▶ She's showered so you won't find evidence
- ▶ The clothes have been washed already
- ▶ It happened too long ago so a forensic exam won't matter
- ▶ I told her to go to her regular doctor for the exam
- ▶ The hospital will test her for alcohol that's good enough

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Does my kit need to be refrigerated?

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Medicolegal Documentation

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- ▶ Written report
- ▶ Diagrams
- ▶ Photographs
- ▶ Genital
- ▶ Non-genital



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Discharge and Safety Planning

- ▶ Medications
 - ❑ STD prophylaxis
 - ❑ Emergency contraception
 - ❑ HIV NPEP
- ▶ Follow-up
 - ❑ Forensic evaluation
 - ❑ Medical care
- ▶ Safety planning



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Suspect Kit



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Ask yourself these question?

911 is called by a female saying her roommate thinks she was sexually assaulted last night. The caller reports they were all really drunk and had been bar hopping.

- ▶ What should be done first?
- ▶ What should not be done?
- ▶ Do the appropriate people know what to do and how to do it without delay?
- ▶ Would the right thing happen every single time?



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Coordinated Community Response

- ▶ Sexual Assault Response Team (SART)
 - ❑ Work as a team and promote a systematic response
 - ❑ Forum to discuss and clarify the roles and responsibilities of each team member
 - ❑ Method to establish and review guidelines for the response to victims of sexual assault
 - ❑ Evaluate strength & weakness of response



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Resources

- ▶ End Violence Against Women International
 - ❑ www.evawintl.org
- ▶ National Institutes of Health
 - ❑ www.nih.gov
- ▶ International Association Of Forensic Nurses (IAFN)
 - ❑ www.iafn.org
- ▶ United States Department of Justice
 - ❑ www.justice.gov
- ▶ NCJRS
 - ❑ www.ncjrs.gov/pdffiles1/ovw/241903.pdf
 - ❑ A National Protocol for Sexual Assault Medical Forensic Examinations



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