

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

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Executive Summary

Despite heightened awareness in recent years, sexual violence continues to plague institutions of higher education. A national survey of 5,000 women aged 18-36 in 2007 suggested that “18 percent of U.S. women will be raped in their lifetime.”³ This same study found that 5 percent of college aged women were raped within the prior year.

Evidence also suggests that colleges and universities offer an environment that facilitates these crimes. Many incidents involve the voluntary use of drugs or alcohol, substances facilitating over half of sexual assaults among college women.⁴ Furthermore, research has found that these assaults have detrimental impacts on victim’s health and education. These include “increased risk of substance use, unhealthy weight control behaviors, sexual risk behaviors, pregnancy, and suicidality...declines in educational performance, the need to take time off, declines in grades, dropping out of school, and transferring schools.”⁵

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³ Rebecca Flintoft, “Sexual Assault” in *Violence Goes to College : The Authoritative Guide to Prevention and Intervention*, ed John Nicoletti, Christopher M. Bollinger, and Sally Spencer-Thomas (Charles C. Thomas Publisher Ltd., 2009), 131.

⁴ Flintoft 132.

⁵ Nancy Chi Cantalupo, “Title IX’s Civil Rights Approach and the Criminal Justice System: Enabling Separate but Coordinated Parallel Proceedings,” in *The Crisis of Campus Sexual Violence: Critical Perspectives on Prevention and Response*, ed Roland Mitchell and Sara Carrigan Wooten (Routledge, 2015), 127.

Federal Law

Federal law provides substantial protections for victims of sexual assault, primarily through Title IX of the Education Amendments of 1971, the Clery Act, and the Campus SaVE Act.

Title IX

Institutions of higher education receiving federal funds are prohibited from discriminating on the basis of sex, including protecting students who are victims of sexual assault. The Department of Education's Office of Civil Rights requires that institutions 1) "take immediate and appropriate action" to investigate reported sexual assaults, 2) end the sexual violence and prevent future incidents, 3) protect the complainant, 4) provide a grievance procedure for students, 5) use the preponderance of the evidence as the standard of evidence in this grievance procedure, and 6) notify both parties of the outcomes of the complaint.⁶

Clery Act

The Clery Act requires colleges and universities receiving federal financial aid to track crimes occurring on or near their property, report statistics on these crimes, and warn students of possible threats to the campus community.⁷

Campus SaVE Act

The Campus SaVE Act updates the Clery Act and requires institutions of higher education to 1) assist victims in reporting a crime to law enforcement, 2) provide accommodations to victims to help them avoid a hostile environment, 3) enforce no contact or restraining orders, 4) lay out the disciplinary process, and 5) provide victims information about on- and off-campus resources.⁸

State Laws

Though the federal government has taken significant steps on the issue of campus-based sexual assault, the states should also act to address this issue. In several areas, states can require universities to go beyond federal law. This includes

⁶ Traci Thomas-Card and Katie Eichele, "Comprehensive College- or University-Based Sexual Violence Prevention and Direct Services Program: A Framework," in *The Crisis of Campus Sexual Violence: Critical Perspectives on Prevention and Response*, ed Roland Mitchell and Sara Carrigan Wooten (Routledge, 2015), 150-152.

⁷ Ibid.

⁸ Ibid.

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more robust outreach programs, mandating affirmative consent, and conducting audits of institution's policies and practices.

States can also use their authority to protect against lackluster enforcement at the federal level. The Obama administration has been particularly active in enforcing federal law in this area, but future administrations may devote fewer resources to this task. States should pass their own statutes, aligned with federal law, in order to leverage their own enforcement resources to ensure that every effort is taken to prevent sexual violence and provide services for victims,

Lastly, the states retain the primary policymaking role in a number of issue areas. For instance, states take the lead on crafting K-12 curricula, drafting criminal statutes, and enforcing state law. Federal policymakers are unlikely to take a holistic approach incorporating these important areas, but states can.

This report outlines in-depth the actions that state governments have taken on the issue of campus-based sexual assault. This report is divided into three sections. The first lays out model legislation intended to improve all state's statutes on the issue of campus-based sexual violence. Section II includes in-depth case studies of six selected states: Colorado, Connecticut, Minnesota, Mississippi, North Carolina, and Pennsylvania. Finally, Section III includes fact sheets summarizing the sections of each state's statutes and regulations pertaining to sexual assault. These fact sheets include information not only on the laws pertaining to institutions of higher education, but also critical aspects of the criminal law in each state and the required curricula in K-12 schools.

Our review has found that states have room to improve in their handling of campus-based sexual assault. For example,

- Only 12 states have mandated education at the K-12 level on sexual assault and healthy relationships.
- Only 12 states require universities to train incoming students on sexual assault and prevention.
- Only 17 states require colleges and universities to implement any policies or protocols regarding allegations of sexual assault at all.

Though some states have made strides on this issue, in general, these findings reinforce that significant work remains for state lawmakers and advocates.

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MODEL LEGISLATION

The model legislation provided below accomplishes several goals:

1. It establishes sexual assault awareness and prevention education in K-12 schools.
2. It mandates new college students to participate in a sexual assault awareness and prevention education course as part of their orientation.
3. It requires institutions of higher education to establish certain policies:
 - a. Define and require affirmative consent,
 - b. Ensure that victims receive services and information, and
 - c. Ensure allegations of sexual misconduct are investigated using trauma-informed information gathering practices and adjudicated in line with best practices.

Awareness and Prevention Education in K-12 Schools

The State Board of Education shall adopt age-appropriate content for kindergarten and grades 1 to 12, inclusive, in sexual abuse and sexual assault awareness and prevention. This content must include, at a minimum, definitions of sexual assault and sexual abuse; characteristics of healthy relationships; and information regarding affirmative consent, defined as affirmative, conscious, and voluntary agreement to engage in sexual activity.

Awareness and Prevention Education for Incoming College Students

(1) Institution of higher education shall provide, as part of established campus orientations, educational and preventive information about sexual violence to new incoming students, in collaboration with campus-based and community-based victim advocacy organizations.

Institutions shall adopt and implement a rape and sexual assault education program for, and ensure maximum feasible participation of, students and student services professional staff members or student affairs professional staff members at each of their respective campuses or other facilities.

(2) Each institution of higher education shall post sexual violence prevention and education information on its campus Internet Web site.

(b) The educational and preventive information provided pursuant to this section shall include, but not necessarily be limited to, all of the following:

- (1) Common facts and myths about the causes of sexual violence.
- (2) Dating violence, rape, sexual assault, domestic violence, and stalking crimes, including information on how to file internal administrative complaints with the institution of higher education and how to file criminal charges with local law enforcement officials.
- (3) The availability of, and contact information for, campus and community resources for students who are victims of sexual violence.
- (4) Methods of encouraging peer support for victims and the imposition of sanctions on offenders.

(5) Information regarding campus, criminal, and civil consequences of committing acts of sexual violence.

(c) Institutions shall adopt policies to eliminate barriers for victims who come forward to report sexual assaults, and to advise students regarding these policies. These policies may include, but are not necessarily limited to, exempting the victim from campus sanctions for being in violation of any campus policies, including alcohol or substance abuse policies or other policies of the campus, at the time of the incident.

Institution Policies, Procedures, and Protocols

Ensuring Victims Receive Information and Services

(a) Each institution shall adopt and implement a written procedure or protocol to ensure that students, faculty, and staff who are victims of sexual assault committed at or upon the grounds of, or upon off-campus grounds or facilities maintained by the institution, or upon grounds or facilities maintained by affiliated student organizations, shall receive treatment and information. If appropriate on-campus treatment facilities are unavailable, the written procedure or protocols may provide for referrals to local community treatment centers.

(b) The written procedures or protocols adopted pursuant to subdivision (a) shall contain at least the following information:

- (1) The college policy regarding sexual assault on campus.
- (2) Personnel on campus who should be notified, and procedures for notification, with the consent of the victim.
- (3) Legal reporting requirements, and procedures for fulfilling them.
- (4) Services available to victims, and personnel responsible for providing these services.
- (5) A description of campus resources available to victims, as well as appropriate off-campus services.
- (6) Procedures for ongoing case management, including procedures for keeping the victim informed of the status of any student disciplinary proceedings in connection with the sexual assault, and the results of any disciplinary action or appeal, and helping the victim deal with academic difficulties that may arise because of the victimization and its impact.
- (7) Procedures for guaranteeing confidentiality and appropriately handling requests for information from the press, concerned students, and parents.
- (8) Each victim of sexual assault should receive information about the existence of at least the following options: criminal prosecutions, civil prosecutions, the disciplinary process through the institution, the availability of mediation, alternative housing assignments, and academic assistance alternatives.

Ensuring Allegations of Sexual Misconduct Are Adequately Addressed

Institutions shall adopt detailed and victim-centered policies and protocols regarding sexual assault, domestic violence, dating violence, and stalking involving a student that comport with best practices and current professional standards. At a minimum, the policies and protocols shall cover all of the following:

- (1) A policy statement on how the institution will provide appropriate protections for the privacy of individuals involved, including confidentiality.
- (2) Initial response by the institution's personnel to a report of an incident, including requirements specific to assisting the victim, providing information in writing about the importance of preserving evidence, and the identification and location of witnesses.
- (3) Response to stranger and non-stranger sexual assault.
- (4) The preliminary victim interview, including the development of a victim interview protocol, and a comprehensive followup victim interview, as appropriate.
- (5) Contacting and interviewing the accused.
- (6) Seeking the identification and location of witnesses.
- (7) Providing written notification to the victim about the availability of, and contact information for, on- and off-campus resources and services, and coordination with law enforcement, as appropriate.
- (8) Participation of victim advocates and other supporting people.
- (9) Investigating allegations that alcohol or drugs were involved in the incident.
- (10) Providing that an individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the institution's student conduct policy at or near the time of the incident, unless the institution determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.
- (11) The role of the institutional staff supervision.
- (12) A comprehensive, trauma-informed training program for campus officials involved in investigating and adjudicating sexual assault, domestic violence, dating violence, and stalking cases.
- (13) Procedures for confidential reporting by victims and third parties.

Anonymous Reporting

Institutions must establish a method for students and employees to report incidents of sexual harassment online for both anonymous and known victims. Institutions must publish annual statistics regarding sexual assault that are collected through this online service. This data must be posted to the institution's website.

Affirmative Consent

Institutions shall adopt a policy concerning sexual assault, domestic violence, dating violence, and stalking, as defined in the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1092(f)), involving a student, both on and off campus. The policy shall include all of the following:

- (1) An affirmative consent standard in the determination of whether consent was given by both parties to sexual activity. "Affirmative consent" means affirmative, conscious, and

voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

(2) A policy that it shall not be a valid excuse in the evaluation of complaints in any disciplinary process to alleged lack of affirmative consent that the accused believed that the complainant consented to the sexual activity under either of the following circumstances:

(A) The accused's belief in affirmative consent arose from the intoxication or recklessness of the accused.

(B) The accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain whether the complainant affirmatively consented.

(3) A policy that the standard used in determining whether the elements of the complaint against the accused have been demonstrated is the preponderance of the evidence.

(4) A policy that, in the evaluation of complaints in the disciplinary process, it shall not be a valid excuse that the accused believed that the complainant affirmatively consented to the sexual activity if the accused knew or reasonably should have known that the complainant was unable to consent to the sexual activity under any of the following circumstances:

(A) The complainant was asleep or unconscious.

(B) The complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the complainant could not understand the fact, nature, or extent of the sexual activity.

(C) The complainant was unable to communicate due to a mental or physical condition.

Referrals to Resources for Victims

Institutions shall enter into memoranda of understanding, agreements, or collaborative partnerships with existing on-campus and community-based organizations, including rape crisis centers, to refer students for assistance or make services available to students, including counseling, health, mental health, victim advocacy, and legal assistance, and including resources for the accused.

Institutions shall fund the costs of services provided through these memoranda of understanding, agreements, or collaborative partnerships with existing on-campus and community-based organizations.

Outreach Programs and Campus Climate Surveys

Institutions shall implement comprehensive prevention and outreach programs addressing sexual violence, domestic violence, dating violence, and stalking. A comprehensive prevention program shall include a range of prevention strategies, including, but not limited to, empowerment programming for victim prevention, awareness raising campaigns, primary prevention, bystander

intervention, and risk reduction. Outreach programs shall be provided to make students aware of the institution's policy on sexual assault, domestic violence, dating violence, and stalking. At a minimum, an outreach program shall include an annual campus climate survey conducted in line with best practices, a process for contacting and informing the student body, campus organizations, athletic programs, and student groups about the institution's overall sexual assault policy, the practical implications of an affirmative consent standard, and the rights and responsibilities of students and institution employees under the policy. Outreach programming shall be included as part of every incoming student's and employee's orientation.

CASE STUDIES

COLORADO

Background

A recent study from UC Boulder on sexual assault on Colorado's campuses found that 92% of sexual assault victims do not report to the university or police, mainly because they did not believe their experiences were serious enough or blamed themselves. The initial data reported that 28% of female undergraduates had experienced some form of sexual assault during their time in college.⁹ The Colorado Coalition Against Sexual Assault runs an active blog about how to support survivors of assault and donate resources, current policy advocacy during each legislative session, and information concerning the US Department of Education's Title IX reports.¹⁰ Recent news coverage has drawn attention to Colorado sexual assaults.

Activists and Advocacy

The Colorado Coalition Against Sexual Assault (CCASA) advocates for the rights of survivors and to end sexual violence.¹¹ Their agenda is widespread and not campus-specific, but they did recently lead the successful effort to implement confidential reporting for all survivors of sexual assault in Colorado, including college students.¹² They also worked to pass a recent law mandating that colleges and local hospitals create memoranda of understanding concerning medical treatment for survivors and sexual assault evidence collection.¹³ However, due to their large issue portfolio, they have not made a major push on campus sexual assault since 2015.

News Coverage

A UC-Boulder student named Austin Wilkerson received a sentence of two years on work-release and twenty years probation following his conviction for the rape of an incapacitated freshman woman in 2016.¹⁴ He may attend school during the day and must return to a local jail at

⁹ "Survey: 92% of Sexual Assault Victims at CU Boulder Don't Report," *The Denver Post*, July 13, 2016, <http://www.denverpost.com/2016/07/13/cu-boulder-sexual-assault-victims-dont-report/>.

¹⁰ "Blog," Colorado Coalition Against Sexual Assault, accessed December 12, 2016, <http://www.ccasa.org/blog/>.

¹¹ "About Us," Colorado Coalition Against Sexual Assault, accessed December 12, 2016, <http://www.ccasa.org/about-ccasa/>.

¹² "2015 Annual Report," Colorado Coalition Against Sexual Assault, accessed December 12, 2016, <http://www.ccasa.org/wp-content/uploads/2016/09/2015-CCASA-Annual-Report.pdf>.

¹³ Ibid.

¹⁴ Sam Levin, "No Prison for Colorado College Student Who 'Raped a Helpless Young Woman'," *The Guardian*, August 10, 2016, <https://www.theguardian.com/us-news/2016/aug/10/university-of-colorado-sexual-assault-austin-wilkerson>.

night. Without a minimum sentencing law, the judge was free to impose what many called an excessively light sentence, and others compared to the Brock Turner conviction in California.

Statutes

Colorado's statutes are relatively light compared to several other states. They define sexual assault as a Class 4 felony punishable by two to four years in prison, with several notable exceptions. Statutory rape is reduced to a Class 1 misdemeanor. Forcible sexual assault or the assault of someone who is physically helpless is a Class 3 felony punishable by four to eight years in prison. Multiple assailants, serious bodily injury, or the use of a deadly weapon all create a Class 2 felony, punishable by eight to twelve years in prison.¹⁵ Compared to laws in several other states, which make forcible rape or rape with a deadly weapon punishable by life in prison, these statutes seem rather lenient.

Colorado does have a fairly progressive law on illicit sexual photography, an area many states fail to properly address. Taking nude photographs without the consent of the subject is either a Class 1 misdemeanor or a Class 6 felony depending on the circumstances, a more stringent penalty than most states possess for a crime that is too often dismissed as insignificant.¹⁶

Legislative Proposals

Colorado does not have much on its legislative agenda to address campus sexual assault, but in the wake of the Bill Cosby allegations, it did extend the statute of limitations on sexual assault to twenty years. Cosby's victims only came forward years after he assaulted them, spurring a national conversation about the statute of limitations for these crimes. Two survivors are from Colorado, and capitalized on this dialogue to extend their own state's statute.¹⁷ HB 16-1260 has already passed the state legislature and been signed by the Governor.

Analysis

The State of Colorado has no overarching state policies regarding sexual assault on campuses. Colorado does not offer a 'bill of rights' of any kind to assault survivors, collegiate or otherwise. There does not seem to be a legislative agenda in Colorado to deal with campus assault. The Colorado Department of Higher Education does not address campus sexual assault at all. With the very public coverage of the Austin Wilkerson case, Colorado legislators need to address these issues on campus. The UC-Boulder survey reveals many issues that need to be addressed at both the campus and state levels.

¹⁵ Colorado Revised Statutes §18-3-402.

¹⁶ Colorado Revised Statutes §18-3-405.6

¹⁷ Claire Cleveland, "Gov. Hickenlooper Signs Bill Extending Rape Statute of Limitations, Inspired by Cosby Allegations," *The Denver Post*, June 10, 2016, <http://www.denverpost.com/2016/06/10/gov-hickenlooper-signs-bill-extending-rape-statute-of-limitations-inspired-by-cosby-allegations/>.

Recommendations

With so few policies regarding campus sexual assault, Colorado should start building from the ground up. It should pass new laws requiring institutions of higher education to define affirmative consent and require it in all sexual interactions. It should ensure that survivors receive services and information about counseling, medical treatment, and legal options. It should ensure that allegations of sexual misconduct are investigated using trauma-informed information gathering practices and adjudicated in line with best practices.

CONNECTICUT

Background

In November of 2015, the Higher Education Data Sharing Consortium randomly selected 6,000 students at the University of Connecticut to complete a campus climate survey on sexual assault. Undergraduate and graduate students answered questions regarding whether or not they felt safe on campus, knew of sexual assault resources, or had experienced some form of sexual assault. The sample represented the UConn student population, but only about 25% of students participated. Within this group, 83 respondents reported that they had been sexually assaulted while on campus or while attending an off campus event that was related to the college in some way--through student participation or proximity to campus.¹⁸ Despite this number, 82% of respondents agreed that they felt safe on UConn's campus. 77% of participants indicated that they understand what constituted sexual assault and how to recognize when it occurred, but only 55% responded that they were informed on how to report sexual assault or where to go for sexual assault resources.¹⁹

Activists and Advocacy

The Connecticut Alliance to End Sexual Violence is comprised of individual sexual assault crisis programs that work together in the hopes of ending sexual violence. By focusing on assisting victims, education, and advocacy, the alliance provides, "comprehensive and culturally competent sexual assault victim services." The group aims to procure and distribute funds that will support their member organizations who support victims of sexual assault and spur social change from the local to the national level.²⁰

News Coverage

On June 7, 2016, the Washington Post reported that UConn had the most reported rapes in the country, tying with Brown University. 43 rapes were reported to have happened on campus or at an off-campus, UConn-related event or activity. This number has increased over the years, but many activist say that there is a silver lining to this news. A higher number of *reported* rapes does not necessarily mean that there are more incidents of sexual assault this year than there have been in past years or at other universities. Sexual assault on UConn's campus is most likely occurring at the same rate as other schools across the country, but other schools may house a culture where victims do not feel able to come forward. This number most likely indicates that students are becoming more comfortable with speaking to school authorities or law enforcement

¹⁸ 2015 HEDS Sexual Assault Campus Climate Survey University of Connecticut Frequency Report

¹⁹ "UConn Releases Results of Sexual Violence Climate Survey." *UConnToday*, April 11, 2016. <http://today.uconn.edu/2016/04/uconn-releases-results-of-sexual-violence-climate-survey/>.

²⁰ "Connecticut Alliance to End Sexual Violence." End Sexual Violence. <http://endsexualviolencect.org/>.

regarding an incident of sexual assault and feel more confident that their report will be taken seriously.²¹

Statutes

Connecticut's state code, § 53a-70 defines sexual assault in the first degree as the use of force or threat to engage in sexual intercourse or engaging in sexual intercourse with a mentally incapacitated individual who is unable to give consent. This offense has a minimum sentence of ten years. Sexual assault in the second degree is defined as a person engaging in sexual intercourse with another person if that person is physically helpless or is in a subordinate position to the perpetrator. The minimum sentence for second degree sexual assault is nine months.²² Sexual assault in the third degree refers to sexual contact with the use of force or threat. A typical sentence falls between one and ten years. Sexual assault in the fourth degree is defined as subjecting another person to sexual contact without consent. This offense is classified as either a class A or class D misdemeanor. § 10a-55m defines the standard for consent, or affirmative consent as, "an active, clear and voluntary agreement by a person to engage in sexual activity with another person."²³ A new act has been adopted but not yet enacted that requires all colleges to include affirmative consent as a standard within their sexual assault policies and practices.²⁴

In regards to victim-response, the state of Connecticut requires a certain standard of care for survivors of sexual assault. Following a sexual assault, licensed health care facility must provide victims with medically and factually correct information regarding prescription drugs used to prevent pregnancy.²⁵

For pre-college sexual assault education, the Department of Children and Families and the Department of Education and Connecticut Sexual Assault Crisis Services, Inc. are expected to create a statewide sexual abuse and assault awareness and prevention program. This program will serve to guide local and regional boards of education in instructing teachers on child sexual abuse and how to provide resources for teachers, parents, and students on sexual abuse and assault. Students will be given age-appropriate learning materials that detail the skills needed to recognize abuse and assault.²⁶

Higher learning institutions within the state of Connecticut are required to adopt and disclose policies regarding sexual assault, as well as stalking and dating violence within their annual

²¹ Anderson, Nick. "These Colleges Have the Most Reports of Rape." *The Washington Post*, June 7, 2016. Accessed December 12, 2016.

https://www.washingtonpost.com/news/grade-point/wp/2016/06/07/these-colleges-have-the-most-reports-of-rape/?tid=sm_tw&utm_term=.8e2faa39743a.

²² Connecticut General Statutes §53a-71-70.

²³ Connecticut General Statutes §53a-70

²⁴ An Act Concerning Affirmative Consent and Consent For the Care and Treatment of College Students Who Are the Victim of Sexual Assault, Connecticut House Bill No. 5376 (2016)

²⁵ Connecticut General Statutes §19a-112e

²⁶ Connecticut General Statutes §17a-101q

campus crime report. These policies should be clear in stating that intoxication or failure to confirm consent is not a reasonable defense against allegations of sexual assault. A person is responsible for sexual assault if they knew or should have known that the other party was unconscious, asleep, unable to communicate due to a condition, or incapacitated due to intoxicating substances. Past romantic relationships do not constitute affirmative consent.²⁷

The policies should outline the standard procedure for assisting students and employees who have reported a sexual assault or other forms of dating violence and intimidation. These procedures should identify points of contacts who will provide information to victims regarding ongoing assault or the preservation of evidence following an assault. Students who do report these crimes will be provided proper resources and information concerning their rights as students or employees of the university. A victim has a right to notify law enforcement and acquire a protective order, such as a temporary restraining order. These students and employees will be informed of all assistance options through campus.

Any student or employee who reports a case of sexual assault may request an investigation to begin immediately. The investigation and hearing will be lead by a trained sexual assault official. Both the victim and the accused are welcome to be accompanied by a support person or advisor to any proceeding, and both have the opportunity to show evidence and bring forth witnesses. The college or university is prohibited from exposing the name and identity of either party.

All institutions of higher learning will be responsible for providing an annual sexual assault and intimate partner violence prevention and awareness program to students and employees. These programs will define affirmative consent, detail the procedures and options for reporting sexual assault, information on stalking and violence, bystander intervention strategies, and risk reduction. Throughout the school year, the institution will facilitate ongoing sexual assault, stalking, and dating violence prevention and awareness campaigns.

All of the policies and efforts taken by institutions of higher learning that adhere to § 10a-55m will be reported to the General Assembly. In addition, each institution must create a campus resource team that must be educated in sexual assault awareness and prevention, stalking and dating violence, and communicating with any student or employee victim. They will be informed of the provisions of Title IX and the role of each member on the campus resource team.²⁸ Every institution of higher learning will be required to enter into an MOU with one or more community-based sexual assault crisis service centers and domestic violence agencies, so that victims can receive free counseling on and off campus. This partnership will establish clear roles, so that both institution and service provider can respond to reports appropriately.²⁹

Each college or university Title IX coordinator, member of police force, or campus safety personnel will be educated in the prevention and awareness of stalking, dating violence, and sexual assault. This will include trauma-informed response, a response that is conscious of the

²⁷ Connecticut General Statutes §10a-55m

²⁸ Connecticut General Statutes §10a-55n

²⁹ Connecticut General Statutes §10a-55o

neurobiological impact of trauma and the social influences that may have contributed to or will impact the trauma from a sexual assault.³⁰ First responders will also receive this education.³¹

Legislative Proposals

In May of this year, the Connecticut Senate passed the “Yes Means Yes” Bill, or “An Act Concerning Affirmative Consent and Consent for the Care and Treatment of College Students who are the Victim of Sexual Assault,” which requires all public and private institutions of higher education to institute clear policies regarding sexual activity and include affirmative consent as a standard in college’s policies on sexual assault. The act requires schools to clearly define affirmative consent as active, clear and voluntary.³² Institutions will also be responsible for “awareness programming” or informing college students and staff of the affirmative consent standard, sexual assault prevalence, and the nature of sexual assault. This programming can be in the form of a poster campaign, informational videos, guest speakers, or through other informational platforms.³³

Analysis

Connecticut’s statutory law regarding sexual assault on campus is extensive. There are a number of statutes that require institutions of higher learning to implement policies aimed at reducing sexual assault and providing services for victims. Policies must be reported to the public and to the General Assembly, every institution must publish and enforce a definition of “affirmative consent” that corresponds with the one listed in Connecticut’s state code, and outside sexual assault service providers must have a partnership with institutions of higher education in their community and campus resource teams. Connecticut is a model for other states in regards to the policies implemented by the state legislature. There are a few recent laws that are too young to show progress, but it will be important to watch how institutions respond to new regulations and how sexual assault will be affected. Connecticut may experience an increase in reports of sexual assault, but it is important to note that sexual assault is a highly underreported crime. Therefore, as Connecticut policies and practices become more victim-forward, and reporting becomes less stigmatized, there may be an upswing in reports of sexual assault. Although these statistics are alarming regardless, it may also show that Connecticut is addressing a problem that would've otherwise gone unnoticed.

³⁰ Connecticut General Statutes §10a-55p

³¹ Connecticut General Statutes §10a-55q

³² Associated Press. "Bill requiring schools to adopt affirmative consent policies passes." *Fox 61*, May 4, 2016. Accessed December 12, 2016.

³³ An Act Concerning Affirmative Consent and Consent For the Care and Treatment of College Students Who Are the Victim of Sexual Assault, Connecticut House Bill No. 5376 (2016)

Recommendation

The state of Connecticut has many provisions in place that are intended to be trauma-informed and victim-centered. The passage of the “Yes-Means-Yes” Bill will set the standard for consent on college campuses, which is an important step in raising awareness about sexual assault and clearing up confusion or fear around reporting. Although Connecticut is further along than many of its fellow states in the fight against sexual assault, there are still improvements that can be made to strengthen Connecticut’s response. First, the state should implement some form of oversight for colleges. New laws have been passed and colleges are expected to adhere to new statutes. It is important that institutions are not left behind in the transition, or fail to meet the new state standards. In regards to any training or handling of a sexual assault case, schools should be evaluated and provided with feedback for how to improve curricula or response. Simply passing a law does not ensure that change will happen at every school in the state, there needs to be a governing body that can evaluate and oversee these new changes as well as past policies.

MASSACHUSETTS

Background

Regarding sexual assault on Massachusetts' campuses, the Clery Act campus reports revealed that reported rapes have increased from 2013 to 2015.³⁴ We suspect that more students are using the reporting process, and do not believe that an actual increase in assaults is occurring, but the data cannot differentiate. Across the different colleges in the report were varying definitions of "sexual offenses," which may have also influenced the data. In 2014, with the release of the DOE report, Harvard University and Boston College were among the 20 schools with the highest amount of reported sexual assaults, and 48 schools in the state had at least one reported instance of rape in the past year.

Activists and Advocacy

Despite a better-than-average perception among the public on this issue, Massachusetts has troubling indicators of ineffective policies. The only statewide advocacy group for these issues is Jane Doe, Inc - Massachusetts Coalition Against Sexual Assault and Domestic Violence.³⁵ Yet a keyword search of their website turns up no results for "campus," "college," or "university."

News Coverage

UMass Amherst has the longest unresolved campus sexual assault case in the country - their investigation has been ongoing for four and a half years. And as we noted in our state fact sheet, Massachusetts has no laws specifically countering campus sexual assault, mandating sexual assault education, or a definition of consent we would consider "affirmative." Given the infamous difficulty in getting survivors to report, and additional problems compiling these reports into accurate statistics, "no news" is not always good news, and Massachusetts may not deserve the largely positive reputation it has on campus sexual assault.

Statutes

As previously noted, Massachusetts lacks statutes regarding campus sexual assault. Its provisions on general sexual assault are fairly standard, possibly slightly harsher than usual.

Rape inflicting serious bodily harm, or rape by multiple assailants, carries a potential life sentence.³⁶ Using a deadly weapon in that crime carries a minimum of ten years in prison. Rape

³⁴ Scott O'Connell, "Reports of Rape Increase on Central Mass. College Campuses," *Telegram.com*, October 18, 2016, <http://www.telegram.com/news/20161018/reports-of-rape-increase-on-central-mass-college-campuses>.

³⁵ "Home," Jane Doe Inc., accessed December 12, 2016, <http://www.janedoe.org/>.

³⁶ Massachusetts General Laws § 265-22(b)

of a child also carries a maximum of life in prison, and attempted rape carries up to 20 years in prison, with a five-year minimum if the assailant uses a deadly weapon.³⁷ The only statute directly mentioning campus safety is a provision for campus security policies and annual crime reports, which makes no mention of sexual assault.³⁸

Legislative Proposals

Three bills are currently under consideration. S.2465 would institute a unified sexual assault policy procedure for all campuses in Massachusetts. However, there is no mention of a definition of consent. Given the current ambiguity in Massachusetts law concerning consent, such a definition should be added. H.1041 would amend MA Gen L 6 § 168C (mentioned above) to have a section specifically detailing the procedure for sexual assault cases. Such a change would create uniform minimum standards for all colleges and universities in the state, a move that would help significantly. S.2471 calls for a campus climate survey on sexual assault in Massachusetts, a move that seems long overdue. All three bills are still in the legislative process.

Analysis

The Commonwealth of Massachusetts has no overarching state policies regarding sexual assault on campuses. In recent years, the state legislature has proposed bills to address the issue and specifically amend the Massachusetts General Laws to have an overarching state policy for universities, but these measures have yet to pass. To the state's credit, they do have several offices in their executive branch dedicated to combatting this issue, and those offices have persisted for decades. However, the lack of codified law supporting their mission remains a problem. Most glaringly, "consent" is undefined in the law, and left to the interpretation of the courts. Because a study order has been placed on legislation regarding campus sexual assault, it is up to the climate surveys that went out in 2016 to determine the fate of the legislation.

Recommendations

The proposed legislation should help increase sexual assault awareness on campuses. Passing these current measures through the General Assembly should therefore be advocates' first priority in Massachusetts. These bills introduce sexual violence training for police, and mandate continuing professional education on the subject. They also require colleges and universities to ensure that survivors receive services and information concerning psychological counseling, legal recourse, and medical attention.

We would recommend that a definition of affirmative consent be added to the bill(s), and that the bill(s) mandate(s) that allegations of sexual misconduct are investigated using trauma-informed information gathering practices and adjudicated in line with best practices.

³⁷ Massachusetts General Laws §265-22A-24

³⁸ Massachusetts General Laws 6 §168C

MINNESOTA

Background

In 2015, the Association of American Universities (AAU) conducted a campus climate survey of sexual assault and misconduct for the University of Minnesota Twin Cities (UMTC). Approximately 8,000 students responded to this survey, around 16% of the total student population. The survey results stated that 23.5% of female undergraduate respondents reported that they had experienced some form of sexual assault since their enrollment at UMTC. When asked whether the student had experienced sexual harassment, 47.9% of total participants responded affirmatively. 10% reported intimate partner violence, and 4.5% reported experiencing stalking since enrollment. Unsurprisingly, UMTC's results closely followed AAU's national aggregate data, reflecting a similar trend across the United States. Of these incidents claimed on the survey, only 25% of UMTC victims of sexual assault reported the crime. Students cited reasons such as, fear of not being taken seriously, embarrassment or shame, lack of confidence in the fact that anything would be done, and fear that they could not remain anonymous, as reasons for not reporting incidents of sexual assault. Fear of reporting may also stem from the fact that 71.9% of reported incidents involved the perpetrator or victim's use of alcohol.³⁹

Minnesota law requires that all postsecondary institutions report statistics on sexual assault to the Office of Higher Education (OHE) annually. The 2015 Sexual Assault Data Report found that there were 294 incidents of sexual assault reported to institutions, yet only 156 were investigated and 68 of the accused were found responsible. 28 incidents were recorded using the online reporting system.⁴⁰ Three colleges within Minnesota are currently under Title IX investigations, College of Saint Scholastica, St. Cloud State University, and St. Olaf College. A female student at the College of Saint Scholastica made two federal complaints against the college, claiming that the college mishandled her case. St. Cloud is facing a federal inquiry due to the school's handling of sexual-violence cases, and St. Olaf College is under investigation after one student has spoken publicly about her school's response to her sexual assault.⁴¹ The school established an independent Title IX Working Group to take a critical look at the college's policies and practices. The group was composed of ten members, both students and staff, as well as alumni, campus confidential resources, victim advocates, and Title IX experts. The Working Group came up with a list of recommendations for the school.⁴²

³⁹ "Association of American Universities (AAU): Campus Climate Survey of Sexual Assault and Sexual Misconduct." University of Minnesota. December 8, 2015. Accessed December 12, 2016. <http://aurora.umn.edu/educated/AAU.html>.

⁴⁰ *Sexual Assault Data Report*. Report. Minnesota Office of Higher Education. Accessed December 12, 2016. <http://www.ohe.state.mn.us/sPages/SADR.cfm>.

⁴¹ "Title IX The Chronicle of Higher Education." The Chronicle of Higher Education. 2016. Accessed December 12, 2016. http://projects.chronicle.com/titleix/investigations/?search_term=&states=Minnesota&start=&end=.

⁴² *Title IX Working Group*. Report. St. Olaf College. St. Olaf College, 2016.

Activists and Advocacy

Minnesota Coalition Against Sexual Assault (MNCASA) provides resources, response training, facts and guidance to advocates, lawmakers, schools, and anyone who wishes to promote better policies that will end sexual violence and assist victims. Within MNCASA, the Sexual Violence Justice Institute (SVJI) project serves sexual violence victims through the justice system by providing training and technical assistance. The goal of the project is to increase prosecution and respond to sexual violence in a way that respects the survivor.

News Coverage

Minnesota has been in the news recently for its new requirements for college students regarding sexual assault, as well as for sexual violence on campus. Minnesota college freshman are now required to participate in sexual assault training during orientation or within the first ten days of school.⁴³ The state is also giving students the option to report incidents anonymously through an online reporting system. Minnesota hopes that this new reporting avenue will improve prevention and response on Minnesota campuses. MNCASA supports the new system and hopes that it will “reduce some of the fear around reporting.”⁴⁴

University of Minnesota student, Abby Honold, has spoken out about her sexual assault that was committed by fellow student, Daniel Drill-Mellum. The former student and fraternity member assaulted Honold along with one other female student (only two students came forward formally) during his time at the University of Minnesota. Drill-Mellum was first expelled from school, after the 2014 rape, but he was not formally convicted until 2016. Both victims drafted a statement that was presented at court, discussing the emotional and physical trauma they experienced since the assault.⁴⁵ The perpetrator plead guilty to both counts and was sentenced to six years in prison.⁴⁶

Statutes

Sexual assault is defined as criminal sexual conduct in the first, second, third, and fourth degree. Minnesota state code defines criminal sexual conduct in the first degree as the act of sexual penetration if the other person is under fear or threat of imminent bodily harm to themselves or another; the offender is armed with a dangerous weapon; the offender causes injury to the victim

⁴³ Lerner, Maura. "Minnesota Campuses Face New Rules on Sexual Assault." *StarTribune*, July 31, 2016. Accessed December 12, 2016.

<http://www.startribune.com/minnesota-campuses-face-new-rules-on-sexual-assault/388793531/>.

⁴⁴ Soffen, Kim. "How One State Is Giving More Power to Students in Reporting Sexual Assaults on Campus -- Anonymously." *The Washington Post*, August 2, 2016. Accessed December 12, 2016.

https://www.washingtonpost.com/news/morning-mix/wp/2016/08/02/how-one-state-is-giving-more-power-to-students-in-reporting-sexual-assaults-on-campus-anonymously/?utm_term=.ab47514884e2.

⁴⁵ Mullen, Mike. "Read the Powerful Victim Statements from the University of Minnesota Rape Case." *City Pages*, September 1, 2016. Accessed December 12, 2016.

⁴⁶ Stahl, Brandon. "After Authorities Did Not Charge Her Rapist, U Student Fought Back." *StarTribune*, October 23, 2016. Accessed December 12, 2016.

by using force to accomplish penetration; the victim is mentally impaired, incapacitated, or physically helpless; or there are one or more offenders or accomplices. It is not considered a defense, if an offender claims he or she did not know whether the victim consented or not. The minimum sentence for this crime is 12 years, but may be no longer than 30 years.⁴⁷ Victims of sexual assault may be male or female.⁴⁸

The state law discusses the rights of victims beginning when the victim enters the hospital. A survivor who arrives at a Minnesota hospital seeking treatment will receive a written notice regarding his or her rights and resources available. This notice must state that it is the duty of the county to pay for a sexual assault examination, but the victim may incur costs for treatment of injuries. The notice will inform victims of their right to report to law enforcement, information on applying for reparations, and how to obtain a restraining or protection order.⁴⁹ If a prosecutor chooses not to try the defendant in a sexual assault, stalking, or domestic assault case, the victim will be notified before the defendant is released from custody (if he or she is still in custody), and the victim will be given information regarding an order for protection or restraining order without fee.⁵⁰

Institutions that are within the jurisdiction of the Board of Trustees of the Minnesota State Colleges and Universities and private postsecondary institutions and institutions governed by the Board of Regents of the University of Minnesota must develop a written policy on sexual harassment and violence. This policy must educate victims on their duties and rights, such as assistance provided by the Crime Victims Reparations Board and commissioner of public safety. The policies must list reporting procedures and disciplinary actions that will be taken against those who commit sexual assault. This information will be distributed upon a student's induction into the institution and post around the school's grounds.⁵¹

Postsecondary institutions must establish MOUs with local law enforcement authorities. The MOU must be in place by January 1, 2017. Every two years the MOU will be reviewed and updated. This MOU will require information sharing between the two entities and detail protocols for investigations. Higher education institutions must establish a method for students and employees to report incidents of sexual harassment online for both anonymous and known victims. Institutions must publish annual statistics regarding sexual assault that is collected through this online service. This data will be posted to the institution's website.

Higher education institutions will provide training for campus safety officers and administrators on preventing and responding to sexual assault. The training should include, information on sexual assault, neurobiological responses to trauma, and best practices. All students who are pursuing a degree or certificate at these institutions of higher learning will attend one or more training courses on campus regarding sexual assault. Individuals who are responsible for

⁴⁷ Minnesota Statutes § 609.342

⁴⁸ § 145.4711

⁴⁹ § 144.6586

⁵⁰ § 611A.0315

⁵¹ § 135A.15

responding to cases of sexual assault must be trained annually and there must be at least one designated staff member within an institution's health or counseling services who will serve as a confidential resources to meet with victims of sexual assault.⁵²

Legislative Proposals

Postsecondary education institutions sexual harassment and sexual violence policies modification bill has been introduced to the 89th Legislative Session. This bill expands the policy to cover students or employees of a postsecondary institution who are participating in any activity, program, or event sponsored by the institution, not just on property owned by the institution.⁵³

Analysis

Minnesota state code includes clear statutes designed to ensure that postsecondary education institutions are establishing victim-centered practices in regards to sexual assault prevention and awareness. Two key practices that Minnesota mandates for institutions of higher learning include, the online reporting service and mandatory sexual assault training for all students and faculty during the first ten days on campus. Online reporting is intended to decrease the fear surrounding reporting an incident of sexual assault. Although criminal investigations into cases with anonymous victims prove very difficult and often do not result in a conviction or resolution, the university has the option to begin an investigation on these anonymous reports. The reports could also serve to provide more evidence for an ongoing case, possibly for a repeat offender. Online reporting may give victims the opportunity to warm to the idea of coming forward, which could eventually increase formal reports and convictions. The site will also provide schools with a more accurate statistic of the incidence of sexual assault in combination with official reports.⁵⁴

The law also requires that colleges publish their annual statistics on the number of complaints received, and how many accused students are disciplined. The Clery Act does require schools who receive federal funding to report the number of sexual assault reports they receive, but this Minnesota law goes further than the Clery Act. The state code requires more statistics to be collected regarding the type of assault, as well as why victims chose not to come forward.⁵⁵ The second noteworthy law mandates sexual assault training within the first ten days of school. The program provides students with the proper information on reporting, resources, and outside sexual assault prevention organizations. The training must also discuss how to reduce the prevalence of sexual assault on campus. It is important to note that the law does not have a standard for the content that will be presented during these training sessions. It is unclear how these will be regulated. The law only provides brief guidance.⁵⁶

⁵² § 135A.15

⁵³ Minnesota State Legislature, HB 742, 2015 Session

⁵⁴ Soffen, 2016

⁵⁵ *Sexual Assault Data Report*

⁵⁶ Soffen, 2016

Recommendation

Minnesota state code addresses sexual assault, but there is always more that can be done. First, it is important to evaluate the new tools that Minnesota has put in place. The annual statistics mandated by the state code can serve as a starting point for evaluating training sessions and online reporting, but it may be valuable to identify another way in which success can be measured while these resources are relatively new and data is lacking. Second, Minnesota should develop a curriculum that higher education institutions can use for their training programs. If colleges are provided with little guidance for how to conduct these sessions, the training may not send a victim-centered and trauma-informed message to students and victims. It may make students fearful of coming forward, or confused about the reporting process.

MISSISSIPPI

Background

Mississippi has not held a statewide investigation into the prevalence of sexual assault on campuses. There has not been a statewide audit of the standard to which university prevention and support programming is held, beyond their baseline Title IX compliance. The state has only had a handful of campus sexual assault cases that have made the news, with the most high-profile examples being a recent fraternity sexual harassment charge and a member of the football team's arrest for sexual battery in 2014. With almost 80,000 students attending universities in Mississippi, the state either has an incredibly progressive mastery of sexual assault prevention or there is a deficit of transparency regarding the campus cultures in the state.⁵⁷

Activists and Advocacy

Mississippi Coalition Against Sexual Assault (MSCASA): Discusses and advocates for sexual assault victim support and response. Lists resources and state-specific statutes in easily-digestible language.⁵⁸

News Coverage

The Sigma Chi chapter at the University of Mississippi was investigated for reports of sexual harassment during their philanthropy event. The follow-up article indicated that most harsh punitive measures were changed to make the interaction more “educational” rather than “punishing” for their actions.⁵⁹

Statutes and Regulations

Miss. Code Ann. § 97-3- 71. Rape; assault with intent to ravish

This section defines that only a woman may be raped and only if she can be proven to have been “previously chaste.” The use of the word ravish, which is typically considered a “dated” term in sexual assault statutes, also adds qualification to the idea that the woman in question was to be chaste and traditionally-inclined prior to the assault.

⁵⁷ “Enrollment up at Mississippi Universities, Down at Community Colleges,” *Associated Press*, Sept. 10, 2014, available at: http://blog.gulflive.com/mississippi-press-news/2014/09/enrollment_up_at_mississippi_u.html.

⁵⁸ Mississippi Coalition Against Sexual Assault, available at: <http://www.mscasa.org/>, accessed Dec. 19, 2016.

⁵⁹ Royce Swayze and Bracey Harris, “Ole Miss Concludes Sexual Harassment Frat Investigation,” *The Clarion Ledger*, May 6, 2016, available at: <http://college.usatoday.com/2016/04/18/ole-miss-investigates-sexual-harassment-at-frat-event/>.

Miss. Code Ann. § 97-3- 69. Rape; chaste character presumed; uncorroborated testimony of victim

This statute specifically places the burden of proof upon the victim. Additionally, the immediate presumption of the female victim's character without a statement towards the male defendant's implies a defined legal framing for women in Mississippi.

Miss. Code Ann. § 97-3- 95. Sexual battery

For cases of sexual battery, the law does expand to include both genders as the potential perpetrators or victims. However the definition of what will and will not be considered consent is not provided. This lack of provision can, yet again, turn the burden of proof onto the victim as the two parties involved may have differing understandings of what consent is.

The provision under the “mentally incapacitated person” definition specifically discusses the victim being administered the substance without their consent. This provision could undermine a case of battery against a victim whom consumed substances within their own right but were then assaulted without consent.

Miss. Code Ann. § 97-3- 99: Sexual battery; defense

In creating statutes that prevent women from filing charges against spouses for sexual offenses, there is an underlying tone that the women are not in their own right to question or debate the actions done unto them by their spouse.

Evidence Code Rule 412

The rule does make the victim's reputation or past sexual behavior inadmissible in court, the caveats to the rule are that past “false allegations” of sexual offense are admissible and evidence can be offered if it proves the victim's consent.

Legislative Proposals

In the past year, the only updates to sexual assault legal statutes have been in regards to the sexual battery of children.⁶⁰ Beyond this update, there has not been a presented legislative agenda in the state of Mississippi regarding sexual assault for at least the past three years.

Analysis

The Mississippi legal statutes regarding sexual assault are inconclusive and non-supportive to the victim. The burden of proof to confirm that they are actually capable of being considered a victim under state law falls upon the victim. In viewing survivors as only women and only women who behave in a manner considered “chaste” –a term that is not fully described, beyond the cultural inference –heavy limitations are placed on their ability to seek justice for

⁶⁰ Mississippi Legislature, HB1240, 2016 Regular Session, available at: <http://billstatus.ls.state.ms.us/documents/2016/html/HB/1200-1299/HB1240PS.htm>.

wrongdoing. Additionally, the provision under the “mentally incapacitated person” definition specifically discusses the victim being administered the substance without their consent. This provision could undermine a case of battery against a victim whom consumed substances within their own right but were then assaulted without consent.

Recommendation

There is no basis of information regarding current campus sexual assault situation in Mississippi. A next step should be an audit of the prevalence of sexual assault, harassment, and related instances on state campuses. The code should be refined to clearly define consent as well as alter the terminology used to indicate a lack of chastity as a defense of sexual actions. The legislation should require institutions of higher education to establish certain policies:

1. Define and require affirmative consent,
2. Ensure that victims receive services and information, and
3. Ensure allegations of sexual misconduct are investigated using trauma-informed information gathering practices and adjudicated in line with best practices.

NORTH CAROLINA

Background

The state Council on Women surveys sexual assault and rape crisis centers on the use of their services. During the 2015-2016 fiscal year, rape crisis centers report fielding about 20,700 calls and serving nearly 11,000 clients.⁶¹

A campus climate survey found that among female undergraduates at the University of North Carolina at Chapel Hill, over 24 percent experienced either sexual assault or unwanted sexual touching since starting school and over 14 percent have experienced this during the current school year.⁶²

Activists and Advocacy

North Carolina Coalition Against Sexual Assault - a statewide alliance organized in 1986 for local rape crisis center advocates. It provides resources for rape crisis programs and organizes advocacy efforts.⁶³ Its annual retreat has grown to include over 150 participants representing rape crisis advocates, law enforcement, nurses, campus administrators, and others. It regularly sponsors legislative proposals in the General Assembly, counting a change in the state's marital rape laws and increased funding for rape crisis centers among its victories.⁶⁴

North Carolina Campus Consortium - Network of campuses working to prevent campus-based sexual violence as a collaborative project of the North Carolina Coalition Against Sexual Assault (NCCASA) and the North Carolina Coalition Against Domestic Violence (NCCADV) through a contract with the North Carolina's Department of Public Health's Injury and Violence Prevention Branch. It has three primary goals: 1) to provide campuses with the information need to design prevention campaigns, protocols, and policies; 2) to allow campuses statewide to work together to end sexual violence; and 3) to develop partnerships between campuses and local rape crisis centers.⁶⁵

⁶¹ North Carolina Council for Women, "State of North Carolina Women Statistics," available at: <https://ncadmin.nc.gov/about-doa/divisions/council-for-women/women-statistics>, accessed on Dec. 19, 2016.

⁶² David Cantor, Bonnie Fisher, Susan Chibnall, Carol Bruce, Reanne Townsend, Gail Thomas, Hyunshik Lee, "Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct: The University of North Carolina at Chapel Hill," Westat, Sept. 21, 2015, available at: http://safe.unc.edu/content/uploads/2015/09/UNC_CHAPEL_HILL_FINAL_REPORT1.pdf.

⁶³ North Carolina Coalition Against Sexual Assault, "Our Mission," available at: <http://www.nccasa.org/about/our-mission>, accessed on Dec. 19, 2016.

⁶⁴ North Carolina Coalition Against Sexual Assault, "Our History," available at: <http://www.nccasa.org/about/our-history>, accessed on Dec. 19, 2016.

⁶⁵ North Carolina Coalition Against Sexual Assault, "Our History," available at: <http://www.nccasa.org/projects/campus/campus-consortium>, accessed on Dec. 19, 2016.

North Carolina Coalition Against Domestic Violence - a statewide alliance dedicating to ending domestic violence.⁶⁶ They provide trainings and technical assistance for domestic violence centers, engage in prevention activities, and lead legal and policy advocacy efforts. Their members include not only domestic violence centers, but also community partners, individuals, and campuses.

News Coverage

Most recently, the *Daily Tar Heel*, the student newspaper on the campus of the University of North Carolina-Chapel Hill, has requested records from the university regarding sexual assaults among its students. Citing the Family Educational Rights and Privacy Act, the university denied this request, prompting a lawsuit from the publication. As of December 6, 2016, the dispute remains unresolved.⁶⁷

Statutes

As discussed in more detail in North Carolina's state fact sheet, sexual assault constitutes the crimes of forcible rape, "sexual offense," or sexual battery. Forcible rape includes vaginal penetration, while the crime of sexual offense includes only oral or anal penetration. These two crimes can be in either the first- or the second-degree, with the first degree marked by 1) a dangerous or deadly weapon, 2) serious personal injury, or 3) the aid of another assailant and the second degree occurring when a victim is mentally disabled, mentally incapacitated, or physically helpless. These crimes in the first degree are class B1 felonies, carrying prison sentences of 12 years or longer, while in the second degree it is a class C felony with prison sentences as low as 44 months. Sexual battery is any nonconsensual sexual contact occurring when a victim is mentally disabled, mentally incapacitated, or physically helpless. It is a class A1 misdemeanor.

For a victim to be considered mentally incapacitated, they must be the victim of an act rendering them substantially incapable of resisting the sexual act. A physically helpless victim is either unconscious or physically unable to resist an assault. Status as the victim's spouse is not a defense for any of these crimes, though the state does permit some of the victim's past sexual behavior to be admitted as evidence in court as a defense.

State Funding

North Carolina has established several funds to help finance sexual assault, rape crisis, and domestic violence prevention services. These are administered by the state's Council on Women within the Department of Administration.

⁶⁶ North Carolina Coalition Against Domestic Violence, available at: <https://nccadv.org/>, accessed on Dec. 19, 2016.

⁶⁷ Acy Jackson, "Year in Review: Sexual Assault at UNC," *The Daily Tar Heel*, Dec. 7, 2016, available at: <http://www.dailytarheel.com/article/2016/12/year-in-review-sexual-assault-at-unc>.

Domestic Violence Center Fund

The state has established a fund to provide grants for domestic violence centers and the North Carolina Coalition Against Domestic Violence. In both the 2015-2016 and 2016-2017 fiscal years, the General Assembly appropriated \$4,860,698 toward this fund.⁶⁸ Of this, the majority - \$4,678,198 each year - was distributed directly to nonprofit organizations. This sum remains largely unchanged from the prior two budget cycles.

To be eligible to receive funds under this section, a domestic violence center must meet the following requirements:

- (1) It shall have been in operation on the preceding July 1 and shall continue to be in operation.
- (2) It shall offer all of the following services: a hotline, transportation services, community education programs, daytime services, and call forwarding during the night and it shall fulfill other criteria established by the Department of Administration.
- (3) It shall be a nonprofit corporation or a local governmental entity.⁶⁹

Sexual Assault and Rape Crisis Center Fund

The state has also established a fund that provides grants to sexual assault and rape crisis centers, along with the North Carolina Coalition Against Sexual Assault. In both the 2015-2016 and 2016-2017 fiscal years, the General Assembly appropriated \$2,894,972 toward this fund.⁷⁰ Of this, the majority - \$2,819,092 each year - was distributed directly to nonprofit organizations. This sum remain largely unchanged from the prior two budget cycle.

To receive these funds an organization must

- (1) Have been in operation on the preceding July 1 and continue to be in operation.
- (2) Offer all of the following services: hotline, transportation services, community education programs, daytime services, and call forwarding during the night; and fulfill other criteria established by the Department of Administration.
- (3) Be a nonprofit corporation or a local governmental entity.
- (4) Have a mission statement that clearly specifies rape crisis services are provided.
- (5) Act in support of victims of rape or sexual assault by providing assistance to ensure victims' interests are represented in law enforcement and legal proceedings and support and referral services are provided in medical and community settings.⁷¹

Of the appropriated funds, 35 percent are to be equally divided between the NCCASA and organizations whose services are limited to rape crisis and sexual assault services and the

⁶⁸ North Carolina Office of State Budget and Management, "Certified Budget: Summary by Purpose," available at: https://ncosbm.s3.amazonaws.com/s3fs-public/documents/files/2015-17_Certified_130_Administration.pdf, accessed on Dec. 19, 2016.

⁶⁹ North Carolina General Statutes, § 50B-9. Domestic Violence Center Fund.

⁷⁰ North Carolina Office of State Budget and Management, "Certified Budget: Summary by Purpose," available at: https://ncosbm.s3.amazonaws.com/s3fs-public/documents/files/2015-17_Certified_130_Administration.pdf, accessed on Dec. 19, 2016.

⁷¹ North Carolina General Statutes, §143B-394.21. Sexual Assault and Rape Crisis Center Fund.

remainder are to be equally divided between organization whose services include rape crisis and sexual assault services.

Analysis

North Carolina has substantial room to improve on the issue of sexual assault. Currently, the state's criminal statutes may prevent a large number of sexual assaults from being prosecuted by narrowly defining the crimes of second-degree forcible rape and sexual offense as only occurring to victims who are physically helpless or mentally disabled or incapacitated. This excludes a sizable share of campus-based assaults, many of which are facilitated by voluntary drug or alcohol use. The state also does nothing to compel institutions of higher education to implement more victim-centered policies.

Recommendations

A 2015 legislative proposal, HB 815, would have made considerable strides in improving sexual assault policies at North Carolina's community colleges and universities. This legislation should be reintroduced and enacted into law. The state should also revisit its criminal laws so that all sexual assaults violate the law, including those facilitated by voluntary drug or alcohol use. Furthermore, lawmakers should implement a more thorough rape shield and forbid any evidence of a victim's past sexual behavior from being considered in court.

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ALABAMA

Summary

The Criminal Code of Alabama Chapter 6, Article 4 § 13A-6-60 - 71 covers state law on sexual offenses. Relevant code includes,

- definitions (for sexual offense terminology),
 - rape in the first degree,
 - rape in the second degree,
 - sodomy in the first degree,
 - sodomy in the second degree,
 - sexual misconduct,
 - sexual torture,
 - sexual abuse in the first degree,
 - sexual abuse in the second degree,
 - and lack of consent.

According to Alabama Law Enforcement Agency, 1,890 rapes were reported in the state of Alabama in 2014. This number shows a decline in rapes from the previous year despite expanding the definition of rape in 2013. The word “forcible” has been replaced with, “without the consent of the victim,” and the definition now includes male victims and other forms of sexual assault offenses. Most recently on the legislative agenda, the Alabama Senate has referred a bill to the House of Representatives Committee on Judiciary requiring local funds to be used to enforce a STOP order against sexual assault and related behaviors.⁷²

Outside of the legislature, the Alabama Department of Public Health, the Injury Prevention Division of the Alabama Department of Public Health, and the Alabama Coalition Against Rape (ACAR) have formulated Alabama’s Sexual Violence Prevention Plan 2010-2016 in order to, “develop and implement a comprehensive sexual violence prevention plan that will change attitudes, norms, and behaviors that condone, support, or promote sexual violence.” These organizations intend to achieve their mission through a four step process: define the problem, identify risk and protective factors, develop and test prevention strategies, and ensure widespread adoption.⁷³

Statutes

Notable definitions within the state code include,

- **sexual intercourse**, such term has its ordinary meaning and occurs upon any penetration, however slight; emission is not required;
- **deviate sexual intercourse**, any act of sexual gratification between persons not married to each other involving the sex organs of one person and the mouth or anus of another;
- **sexual contact**, any touching of the sexual or other intimate parts of a person not married to the actor, done for the purpose of gratifying the sexual desire of either party;
- **mentally defective**, such term means that a person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct;
- **mentally incapacitated**, such term means that a person is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other incapacitating act committed upon him without his consent;
- **physically helpless**, such term means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to act;
- and **forcible compulsion**, physical force that overcomes earnest resistance or a threat, express or implied, that places a person in fear of immediate death or serious physical injury to himself or another person.

⁷² *Crime in Alabama 2014*. Report. Alabama Law Enforcement Agency.

⁷³ Mehren, Savannah H., ed. *The Sexual Violence Prevention Plan*. Report. Alabama Department of Public Health Bureau of Health Promotion & Chronic Disease Injury Prevention Division.

The definition of rape in the first and second degree only acknowledges nonconsensual sexual intercourse perpetrated by males upon the *opposite sex*.⁷⁴ When this language came into question, Alabama Criminal Appeals Court stated that no evidence has been presented that indicates that non-consensual sexual intercourse perpetrated by females is a serious issue.⁷⁵ The statute does include those who are incapable of consent by reason of being helpless or mentally incapacitated along with the original forcible compulsion language. The definition of forcible compulsion has been extended through the courts to include cases where the victim did not resist out of fear. Consent may be implied, if the conduct of the alleged victim led the defendant to believe that she consented to the act. This grounds for acquittal were established by *McQuirk v. State*.⁷⁶ Alabama statute criminalizes sodomy, referring to deviate sexual intercourse with another person by forcible compulsion, with a person who is incapable of consent, or with a person who is of a certain age.⁷⁷

Legislative Agenda

The 2016 Alabama Senate Bill No. 368 would provide temporary and permanent restrictions against sexual assault, stalking, and human trafficking, or a STOP order. Any violation of the STOP order would be criminalized, and law enforcement would be able to arrest violators without a warrant under certain conditions. This bill would require local funds to be used to enforce the STOP order. The Senate Bill has been referred to the House of Representatives Committee on Judiciary.⁷⁸

Sexual Assault and Education

According to the Sexual Violence Prevention Plan Alabama 2010-2016, Alabama receives approximately \$580,000 from the Center for Disease Control to implement Rape Prevention and Education Program. Before 2007, prevention education programs were only provided to females. Now programs are open to women, men, youth, and adults. The new standardized curriculum targets middle and high school students, but the state of Alabama does not require school systems to adopt this sexual violence prevention education if they do not wish to. The state leaves this up to the individual school systems, therefore prevention education is not seen statewide. Their goals include increasing the number of primary prevention programs among youth, enhance sexual violence prevention efforts among college students, and encourage societal norms and attitudes that promote respect and decrease attitudes that allow sexual violence to continue.⁷⁹

⁷⁴ Alabama State Code §13A-6-61-62

⁷⁵ *Smith v. State*, 409 So.2d 455 (Ala.Crim.App.1981)

⁷⁶ *McQuirk v. State* (July 17, 1888) (WestLaw, Dist. file).

⁷⁷ Alabama State Code § 13A-6-63

⁷⁸ Protection orders, issuance of temporary and permanent orders against sexual assault, stalking, and human trafficking by circuit court, procedures, hearings, criminal penalties for violations, Alabama S. 368 (2016).

⁷⁹ Mehren, Savannah H., ed. *The Sexual Violence Prevention Plan*.

ALASKA

Summary

Alaska's Criminal Law Chapter 41, Article 4 § 11.41.410 - 470 covers state law on sexual offenses. Relevant code includes,

- § 11.41.410-425 Sexual assault in the first, second, third, and fourth degree;
- § 11.41.432 Defenses (for crimes of sexual assault);
- § 11.41.445 General provisions;
- § 11.41.470 Definitions.

The Alaska Justice Statistical Analysis Center published a fact sheet, "Sexual Misconduct and Sexual Assault Committed Against University of Alaska Students" displaying statistical findings on undergraduate and graduate students enrolled in University of Alaska system, the University of Alaska Anchorage (UAA), the University of Alaska Fairbanks (UAF), and the University of Alaska Southeast (UAS), during the spring of 2016. The study found that one out of every nine UA students experienced some form of sexual assault or misconduct.⁸⁰ Most recently, the Alaskan legislature has addressed the extensive backlog of sexual assault examination kits with House Bill No. 117, but there has been no recent state legislation addressing sexual misconduct on college campuses specifically.⁸¹

Statutes

- Alaska's criminal code defines sexual assault in the first degree as an offender engaging or attempting to engage in sexual penetration with another person:
 - without consent of that person
 - engaging with a person who is mentally incapable
 - engaging with a person who is unaware that a sexual act is being committed.
- "Without consent" is defined as, "a person with or without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or is incapacitated as a result of an act of the defendant."⁸²
- Sexual assault in the second degree includes sexual penetration with a person who the offender knows is incapacitated, which is defined as, "temporarily incapable of appraising the nature of one's own conduct or physically unable to express unwillingness to act."⁸³

The criminal code also covers situations in which the victim is assaulted by a supervisory figure, such as, juvenile facility staff, juvenile probation officer, parole officer, peace officer, or probation officer.

In §11.41.432 Defenses, the Alaska code states that it is a defense to a sexual assault crime that the offender is either mentally incapable or married to the victim but neither party has filed for legal separation, divorce, or dissolution of the marriage. It is not a defense to simply be married.

Alaska Department of Public Safety established a Council on Domestic Violence and Sexual Assault under §18.66.010, for the purpose of providing planning and coordinating services for victims of domestic violence and/or sexual assault.

Legislative Agenda

⁸⁰ Blumenstein, Lindsey, and Brad Myrstol. *Sexual Misconduct and Sexual Assault Committed Against University of Alaska Students*. Alaska Justice Statistical Analysis Center, University of Alaska Anchorage.

⁸¹ An Act requiring an inventory and reports on untested sexual assault examination kits; and providing for an effective date, Alaska H.R. 117 (2015).

⁸² Alaska State Code §§ 11.41.470.8.A-B

⁸³ Alaska State Code § 11.41.470

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

In March of 2015, the House State Affairs Committee in the 29th Legislature of Alaska put forth a bill, “An Act requiring an inventory and reports on untested sexual assault examination kits; and providing for an effective date.” This bill demands that each law enforcement agency and state department responsible for managing sexual assault examination kits take inventory of all untested kits and report how many kits have not been tested and the dates in which each was collected to the Department of Public Safety. If a sexual assault kit has not been tested, this means the collected evidence has not undergone serological or DNA examinations. The Department of Public Safety will report these findings and formulate a plan for addressing the backlog of untested kits and how to avoid a backlog in the future.⁸⁴

Sexual Assault and Education

In the spring of 2016, 1,982 students at UAA, UAF, and UAS responded to the *University of Alaska Campus Climate Survey* conducted by the Alaska Justice Statistical Analysis Center (AJSAC). The study intended to, “establish baseline prevalence measures of sexual misconduct and sexual assault for the total population of UA students, as well as to establish baseline prevalence measures for each of the three MAUs within the UA system,” (AJSAC). Survey respondents were asked if another person had attempted or succeeded in engaging in unwanted/uninvited sexual contact with them since January 2015. The results showed that one out of every nine UA students or 11.4% experienced some form of sexual misconduct.⁸⁵

⁸⁴ Alaska H.R. 117 (2015).

⁸⁵ Blumenstein, Lindsey, and Brad Myrstol

ARIZONA

Summary

Arizona's State Code provides definitions for sexual assault and consent. There are a few legislative amendments that are under consideration currently, dealing with postsecondary education on sexual assault and consent, sexual assault advocates, and K-12 sex education programs. These amendments would augment current Arizona state statutes relating to consent and sex education in Arizona public schools.

Statutes

Arizona's criminal code defines sexual assault as, "intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without consent of such person." Sexual assault is defined as a Class 2 felony, with a minimum sentence of 5.25 years. Depending on the circumstances, the sentence may be extended, such as the administration of flunitrazepam, gamma hydroxy butyrate or ketamine hydrochloride without the victim's knowledge. The use of these "date rape" drugs increases a sentence by three years. The corresponding sentence for an act of sexual assault that involved serious physical injury is life imprisonment. Those convicted will not be eligible for probation or pardon except by specific authorized or after 25 years have been served.⁸⁶

A victim does not provide consent if the victim is,

- coerced by the use of or threat of force against a person or property;
- incapable of consent due to mental disorder, defect, drugs, alcohol, sleep, or any other similar impairment;
- deceived;
- led to believe that the assailant is the victim's spouse.⁸⁷

State v. Denton (1966) established that consent provided only due to fear or force is not seen as consent under Arizona state law. A defendant remains guilty of rape even if a woman yields, if she yields for reasons outside of being aroused or giving consent.⁸⁸ A woman may yield due to the use of force, coercion, deception, or mental incapacity--threats do not have to specifically be verbal.⁸⁹ *State v. Quinn* established that a victim's prior sexual history is not relevant to the issue of consent, but a victim could be questioned about their prior sexual conduct outside of the presence of the jury. This information could be used as an offer of proof.⁹⁰

State v. Denton established that a female must resist to the utmost of her ability until the offense is complete for the act to be considered rape, in the absence of evidence of intimidation or force. If the victim is over the age of 14, the burden of proof for lack of consent is on the state.⁹¹

Legislative Agenda

In Arizona's 52nd Legislature, House Bill No. 2278 has been filed to amend Title 15, chapter 14 by adding article 12, relating to postsecondary education. The proposed article states, "[e]ach public and private college, university and community college in this state shall adopt policies to define consent to sexual activity as informed and freely given words or actions that indicate a willingness to participate in mutually agreed-on sexual activity." These policies must include a clear definition of what does not constitute consent. These policies should state that a person cannot consent by way of,

- silence,
- passivity or lack of resistance,

⁸⁶Arizona State Code § 13-1406

⁸⁷ *State v. McCray* (2008) 218 Ariz. 252

⁸⁸ *State v. Denton* (1966) 101 Ariz. 455

⁸⁹ *State v. Van Adams* (1999) 194 Ariz. 408

⁹⁰ *State v. Quinn* (App. Div.1 1978) 121 Ariz. 582

⁹¹ *State v. Denton* (1966)

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

- a current or previous dating or sexual relationship,
- the acceptance or offering of a gift,
- previous consent to a before sexual act, force, coercion, threat.

A person has the right to withdraw consent during a sexual act, and consent to one type of sexual act does not permit in another act. Consent cannot be given by a person who is incapacitated by drugs, alcohol or any other substance, and a person cannot use the excuse of alcohol or drugs for not obtaining consent. If a person is unconscious, asleep, physically or mentally unable to make rational decisions, or is underage, this person is not able to provide consent.⁹²

Arizona Senate Bill No. 1410, Sexual assault victim advocates; privileges, proposes, “[i]n a civil action, a sexual assault victim advocate shall not be examined as to any communication made by the sexual assault victim to the sexual assault victim advocate.” This would serve to protect the privacy of the victim and what the victim has disclosed to a trained sexual assault victim advocate.⁹³

Arizona Senate Bill No. 1020, sex education programs; requirements, would amend Section 15-711, Arizona Revised Statutes to demand that all school districts, not just those with existing sex education curricula, provide accurate and age-appropriate sex education for students K-12. The amendment states that sex education instruction should help students develop healthy relationships based on mutual respect and that each school district should report its sex education curriculum to the Arizona Senate and House of Representatives.⁹⁴

Sexual Assault and Education

Currently, all school districts within the state of Arizona who have existing sex education curricula must discuss laws relating to minor sexual misconduct to grades seven through twelve. Each school district is given discretion to develop their own course of study on sex education. A school district is also given the choice to include dating abuse education. The statute defines dating abuse as, “a pattern of behavior in which one person uses or threatens to use physical, sexual, verbal or emotional abuse to control the person’s dating partner.”⁹⁵ School districts are allowed to include education on date rape drugs, drugs, and alcohol, as long as the education meets the standards of chemical abuse prevention education outlined in Arizona’s state code.⁹⁶

⁹² Arizona H.R. 2278

⁹³ Arizona S. 1410

⁹⁴ Arizona S. 1020

⁹⁵ Arizona State Code ARS 15-712.01

⁹⁶ Arizona State Code ARS 15-712

ARKANSAS

Summary

Arkansas defines sexual assault as sexual intercourse or deviate sexual activity with another person by threat or force or sexual contact with a person who is unable to consent due to age or mental or physical inability. Following an incident of sexual assault, if a victim wishes to undergo a sexual assault examination at no cost, the victim must report the incident to local law enforcement. The practice at many large universities in Arkansas is that complaints of sexual misconduct to an employee or affiliate of the university must be reported to the Title IX Counselor, and an investigation will begin. The confidentiality of the victim cannot be guaranteed. Although campus climate surveys have not been performed across the state, the University of Arkansas undertook a climate survey in 2014. The results displayed a concerning portrait of the prevalence of sexual assault on campus.

Statutes

Arkansas's State Code, § 5-14-103, defines rape as sexual intercourse or deviate sexual activity with another person by physical force or threat who is not able to give consent.

A victim is incapable of consent if the victim is,

- physically helpless;
- mentally defective;
- mentally incapacitated; or
- less than fourteen years of age.

Mentally incapacitated is defined as a state in which a person is temporarily unable to control his or her conduct due to an intoxicating substance that is administered to the person without consent or that renders a person unaware that a sexual act is occurring. Rape is a Class Y felony, requiring a minimum of six years. This can be extended based on additional evidence.⁹⁷

Sexual assault in the first degree is defined as sexual intercourse or deviate sexual activity with a minor who is not the actor's spouse, if the actor is employed by the city or county jail and the victim is in custody of the city or county jail. The definition also includes anyone who is in a position of trust or authority over the victim, a school district employee, temporary caretaker. It is not defense that the victim consented to the sexual act in this case.⁹⁸

Sexual assault in the second degree is defined as sexual contact with another person by force or threat, sexual contact with another person who is unable to consent due to being physically helpless, mentally defective, or mentally incapacitated. The definition also covers a person of eighteen years of age or older who engages in sexual contact with another person less than fourteen years old and not the person's spouse.⁹⁹

Arkansas's Administrative Code 143.00.1-20 discusses the Sexual Assault Reimbursement Program requirements and application review procedure. This code outlines the procedures that must be followed for the medical treatment of adult victims of sexual assault. Notable requirements include,

- any adult victim has the right to make the decision of whether he or she will report the incident to law enforcement;
- no medical personnel may decide that receiving medical treatment is contingent on the victim reporting the incident to law enforcement; and
- evidence will only be collected if the victim is mentally capable of consenting to the collection of evidence, therefore the victim must not be intoxicated or mentally incapacitated.

The regulations also state that victims will be exempt from the cost of medical-legal examination if the victim,

⁹⁷ Arkansas State Code § 5-14-101

⁹⁸ Arkansas State Code § 5-14-124

⁹⁹ Arkansas § 5-14-125

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

- Reports the assault to law enforcement, and
- Receives a medical-legal exam within 72 hours of the attack.¹⁰⁰

Legislative Agenda

On April 22, 2016, the Crime Victims Reparations Board set forth proposed regulations for Rule 12: Application Review Procedure. The Amendment to Rule 12 of the Arkansas Crime Victims Reparations Board Rules and Regulations proposes allowing direct reimbursement to medical-care providers for sexual-assault testing kits and the costs associated.¹⁰¹

Sexual Assault and Education

An Arkansas school district must appropriate funding for the training and education for the Safe Schools Initiative training. This training may include education to students and faculty on sexual assault, but it is not required.¹⁰²

At both the University of Arkansas and University of Central Arkansas, all employees of the University as well as anyone affiliated with the university in an official capacity are mandatory reporters. The employee or affiliate must contact the Title IX coordinator. The University of Central Arkansas states that it will only make reasonable efforts to maintain confidentiality of the complaints. Even if the victim requests confidentiality or asks the complaint not to be pursued, the university will investigate and respond to complaint and report the incident to local law enforcement authorities if it is a health and safety danger to the campus.¹⁰³

State Representative Greg Leding of Fayetteville, Arkansas has proposed conducting a campus climate survey for all institutions of higher learning in Arkansas. The director of the Arkansas Department of Higher Education approximated that 20% of female students in Arkansas colleges and universities have experienced some form of sexual assault on campus. At the University of Arkansas, 121 sexual misconduct complaints have been made under Title IX in the past three years.¹⁰⁴

¹⁰⁰ Arkansas State Code § 143.00.1-20

¹⁰¹ AR ADC 143.00.1-12

¹⁰² Arkansas State Code § 6-15-1303

¹⁰³ *Sexual Misconduct Policy*. Publication. University of Central Arkansas. August 2014.
<http://uca.edu/titleix/sexual-misconduct-policy/>.

¹⁰⁴ Kauffman, Jacob. "Looking For Sexual Assault Data On Arkansas College Campuses." *NPR*, June 17, 2016.

CALIFORNIA

Summary

California has implemented perhaps the most progressive reforms on campus-based sexual assault including mandating affirmative consent. Though California's laws cover the issue in depth, gaps remain. For instance, provisions may not always be binding on certain types of institutions and may be reliant on dedicated state funding. For instance, school districts are merely encouraged to implement sexual assault awareness and prevention education. Also, many provisions only apply to community colleges if the state explicitly funds it. Furthermore, many provisions only apply to the University of California if approved by their Board of Regents.

Statutes

Criminal Laws:

- Rape - Ca Pen Code § 261
- Consent - Ca Pen Code § 261.6
- Spousal Rape - Ca Pen Code § 262
- Sodomy - Ca Pen Code § 286
- Oral Copulation - Ca Pen Code § 288a
- Forceful Penetration with a Foreign Object - Ca Pen Code §289

Legislative Agenda

Cal Ed Code § 67391. Adoption and implementation of rape and sexual assault education program

- Community colleges, UC, CSU, Hastings, should use existing resources to implement rape and sexual assault education program for students, student services professional staff members or student affairs professional staff members.

Cal Ed Code § 67393. Application of chapter to California Community Colleges

- § 67391 only applies to the community colleges if the legislature funds it.

Cal Ed Code § 67400. Applicability of provisions to University of California

- None of this part applies to UC except to the extent that the Regents make it applicable.
 - Constitutionally, the UC system has discretion in choosing what state laws to follow. If the Regents board chooses to follow, then they will, but only if the board votes to accept the law.

Sexual Assault and Education

Cal Ed Code § 51900.6. Sexual abuse and sexual assault awareness and prevention instruction

- Requires the state board of education to consider adding age-appropriate content on sexual abuse and sexual assault awareness and prevention for the health content standards. Also allows schools to add this content to their instruction. Also allows parents to opt their children out.

Cal Ed Code § 67380. Compilation and availability of records relating to campus security; Campus safety plan

- Requires colleges and universities to disclose reported sexual assault to local law enforcement, while maintaining the anonymity of the victim (unless the victim consents to identification).
- The identity of the alleged assailant may not be disclosed unless they represent a serious or ongoing threat to the safety of students, employees, or the institution or the law enforcement agency's immediate assistance is needed to contact or detain the assailant.
- This section includes the following definition: "'Sexual assault' includes, but is not limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or the threat of any of these."
- This section applies to the governing board of the community colleges, the trustees of the California State University, the Board of Directors of the Hastings College of Law, the Regents of the University of California, and the governing board of any postsecondary educational institution receiving public funds for student financial assistance.

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- It only applies to institutions and campuses with more than 1,000 students enrolled (FTE). It also only applies to the community colleges if the Legislature provides dedicated funds.

Cal Ed Code § 67381. Kristin Smart Campus Safety Act of 1998

- Universities must enter into written agreements with local law enforcement agencies that clarify operational responsibilities, including geographical boundaries, for investigations of Part 1 violent crimes, sexual assaults, and hate crimes occurring on campus.

Cal Ed Code § 67383. Adoption and implementation of policy to ensure that report of violent crime, sexual assault, or hate crime is reported to law enforcement agency

- Universities must adopt and implement written policies and procedures to ensure that any report of a Part 1 violent crime, sexual assault, or hate crime, committed on- or off-campus and received by a campus security authority must be forwarded to the appropriate law enforcement agency.

Cal Ed Code § 67385. Protocols for services for victims of sexual assault

- Community colleges, CSU, UC and Hasting College of Law must establish written protocols to ensure that victims receive treatment and information including
 - College policies
 - Personnel on campus who should be notified
 - Legal reporting requirements
 - Services available to the victim (hospital transport, counseling center, etc).
 - On- and off-campus resources for victims
 - Case management procedures
 - Confidentiality procedures
 - Information about options for victims: criminal or civil prosecutions, campus disciplinary processes, mediation, alternative housing assignments, and academic assistance.

Cal Ed Code § 67385.7. Provision of educational and preventative information about sexual violence to students on college campuses

- CSU, UC and the community colleges are requested to provide educational/preventative information about sexual violence during orientations.
- They also are asked to post information on their websites.
- This information shall include
 - Common facts/myths about the causes of sexual violence
 - How to file internal administrative complaints and criminal charges with local law enforcement
 - Contact info for campus/community resources for victims
 - Ways to encourage peer support for victims, imposition of sanctions on offenders.
 - Info on the consequences of committing acts of sexual violence.
- These schools are asked to develop policies to encourage reporting crimes
- They are urged to eliminate barriers for victims (exempting the victim from campus policies, like alcohol/substance abuse policies).
- The community colleges and CSU must promulgate regulations, while UC is only requested to.

Cal Ed Code § 67386. Adoption of policies, protocols, and programs regarding sexual assault, domestic violence, dating violence, and stalking

- To get state funds for student financial assistance, community colleges, CSU, UC and independent schools must adopt a policy concerning sexual assault, domestic violence, dating violence, and stalking, including:
 - Affirmative consent
 - Standards used in complaints as the preponderance of evidence
 - Confidentiality
 - Initial responses to a reported incident
 - The preliminary victim interview (protocols, follow-ups)
 - Contacting/interviewing the accused
 - Identifying witnesses and protections from student conduct sanctions

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

- Providing information about resources for victims
- Victims advocates
- Investigations of allegations of drug and alcohol involvement
- Training programs for campus officials involved in investigating and adjudicating cases.
- They must enter into MOU/agreements/partnerships with existing on-campus or community-based organizations - rape crisis centers, etc. Counseling, health, mental health, victim advocacy, legal assistance, including resources for the accused.
- They must implement comprehensive prevention and outreach programs
 - Empowerment programming for victim prevention
 - Awareness raising campaigns
 - Primary prevention
 - Bystander intervention
 - Risk reduction
 - At minimum, must include process for contacting/informing student body, campus orgs, etc about policies.

Cal Ed Code § 94385. Written procedures and protocols for victims of sexual assault

- Private postsecondary institutions must establish a written procedure to ensure that victims receive treatment and information.
 - College policy on sexual assault
 - Personnel who should be notified
 - Legal reporting req.
 - Services for victims
 - Description of campus resources
 - Case management procedures
 - Confidentiality
 - Info on options for victims

Cal Pen Code § 290.01. Registration with campus police department

- Sex offenders must register with campus police (students or staff)

Training for Law Enforcement

- 11 CCR 1081, Lays out required course on sexual assault for all of California's law enforcement officers.

COLORADO

Summary

The State of Colorado has no overarching state policies regarding sexual assault on campuses. Colorado does not offer a 'bill of rights' of any kind to assault survivors, collegiate or otherwise. There does not even seem to be a legislative agenda in Colorado to deal with campus assault.

Statutes

Definition of Consent

- Consent is defined as "cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act." (§ 18-3-401)
- The same statute states that incapacity violates consent, but also states that incapacity only applies if the victim is "unable to indicate willingness." If the victim fails to affirmatively consent, but the judge believes their attitude was indicative of "an exercise of free will and with knowledge of the nature of the act," it can constitute consent.

Specific Offenses

- § 18-3-402 Sexual Assault:
- Generally a Class 4 felony (2-4 years), except:
 - Statutory rape, which is a Class 1 misdemeanor subject to special sentencing
 - When the victim is physically helpless and the assailant knows it: Class 3 felony (4-8 yr.)
 - When the assailant uses force: Class 3 felony
 - When there is more than one assailant: Class 2 felony (8-12 yr.)
 - When the victim suffers a serious bodily injury: Class 2 felony
 - When a deadly weapon is used in the commission of the act: Class 2 felony
- No separate provisions for "sodomy" or any other type of sexual assault.

Miscellaneous Statutes

- § 18-3-405.6 Invasion of privacy for sexual gratification
 - Taking nude photographs etc. without consent is a Class 1 misdemeanor or Class 6 felony

Legislative Agenda

No current Legislative Agenda seems to be in motion.

Sexual Assault and Education

No state laws appear to directly address campus sexual assault.

CONNECTICUT

Summary

Connecticut's statutory law regarding sexual assault on campus is extensive. There are a number of statutes that require institutions of higher learning to implement policies aimed at reducing sexual assault and providing services for victims. Policies must be reported to the public and to the General Assembly, every institution must publish and enforce a definition of "affirmative consent" that corresponds with the one listed in Connecticut's state code, and outside sexual assault service providers must have a partnership with institutions of higher education in their community and campus resource teams.

Statutes

Connecticut's state code, § 53a-70 defines sexual assault in the first degree as the use of force or threat to engage in sexual intercourse or sexual activity without consent due to mental incapacitation. This offense has a minimum of ten years. Sexual assault in the second degree is defined as a person engaging in sexual intercourse with another person if that person is physically helpless. The minimum sentence for second degree sexual assault is nine months.¹⁰⁵ Sexual assault in the third degree refers to sexual contact with the use of force or threat with a usual sentence of one to ten years. Sexual assault in the fourth degree is defined as subjecting another person to sexual contact without consent. This offense is classified as either a class A or class D misdemeanor. § 10a-55m defines affirmative consent as, "an active, clear and voluntary agreement by a person to engage in sexual activity with another person."¹⁰⁶

The state of Connecticut requires a certain standard of care for victims of sexual assault. Each licensed health care facility must provide victims with medically and factually correct information regarding prescription drugs used to prevent pregnancy following sexual intercourse.¹⁰⁷

Legislative Agenda

In May of this year, the Connecticut Senate passed the "Yes Means Yes" Bill, or "An Act Concerning Affirmative Consent and Consent for the Care and Treatment of College Students who are the Victim of Sexual Assault," which requires all public and private institutions of higher education to institute clear policies regarding sexual activity and include affirmative consent as a standard in college's policies on sexual assault.¹⁰⁸

Sexual Assault and Education

The Department of Children and Families and the Department of Education and Connecticut Sexual Assault Crisis Services, Inc. are expected to create a statewide sexual abuse and assault awareness and prevention program. This program will serve to guide local and regional boards of education on instructing teachers on child sexual abuse and assault and on how to provide resources for teachers, parents, and students on sexual abuse and assault. Students will be given age-appropriate learning materials that detail the skills needed to recognize abuse and assault.¹⁰⁹

§ 10a-55m discusses,

- sexual assault, stalking and partner violence policies;
- prevention and awareness programming and campaigns;
- anonymous reporting and disclosure; and
- notification of victim's rights and options.

Higher learning institutions within the state of Connecticut are required to adopt and disclose policies regarding sexual assault, stalking and dating violence within their annual campus crime report. The policies should inform students and campus employees that affirmative consent is the standard for deciding whether both parties consented

¹⁰⁵ Connecticut State Code § 53a-71

¹⁰⁶ Connecticut State Code § 10a-55m

¹⁰⁷ Connecticut State Code § 19a-112e

¹⁰⁸ Connecticut House Bill No. 5376 (2016)

¹⁰⁹ Connecticut State Code § 17a-101q

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to a sexual act, affirmative consent may be revoked during a sexual activity, and affirming consent is the responsibility of all parties involved. These policies should be clear to state that intoxication or failure to confirm consent is not a reasonable defense against allegations of sexual assault. A person is responsible for sexual assault if they knew or should have known that the other party was unconscious, asleep, unable to communicate due to a condition, or incapacitated due to intoxicating substances. If the two parties were involved in a past romantic relationship together, this does not constitute affirmative consent.¹¹⁰

The policies should outline the standard procedure for assisting students and employees who have reported a sexual assault or other forms of dating violence and intimidation. These procedures should identify points of contacts who will provide information to victims regarding ongoing assault or the preservation of evidence following an assault. Students who do report these crimes will be provided proper resources and information concerning their rights as students or employees of the university. These rights will include notifying law enforcement and acquiring protective order such as a temporary restraining order. Students and employees will be informed of all available options for assistance through the university or college.¹¹¹

Any student or employee who reports a case of sexual assault may request an investigation to begin immediately. The investigation and hearing will be lead by a trained sexual assault official. Both the victim and the accused are welcome to be accompanied by a support person or advisor to any proceeding, and both have the opportunity to show evidence and bring forth witnesses. The college or university is prohibited from exposing the name and identity of either party.¹¹²

All institutions of higher learning will be responsible for providing an annual sexual assault and intimate partner violence prevention and awareness program to all students and employees. These programs will define affirmative consent, detail the procedures and options for reporting sexual assault, information on stalking and violence, bystander intervention strategies, and risk reduction. Throughout the school year, the institution will facilitate ongoing sexual assault, stalking, and dating violence prevention and awareness campaigns.¹¹³

All of the policies and efforts taken by institutions of higher learning to adhere to § 10a-55m will be reported to the General Assembly. In addition, each institution must create a campus resource team that will represent each campus. The team will consist of

- the Title IX coordinator and chief student affairs officer,
- at least one member from administration,
- counseling services office,
- health services office,
- women's center,
- special police force,
- campus police force or safety personnel,
- faculty,
- senior and mid-level staff,
- student body,
- residential life office, and
- judicial hearing board.

The campus resource team must be educated in sexual assault awareness and prevention, stalking and dating violence, and communicating with any student or employee victim. They will be informed of the provisions of Title IX and the role of each member on the campus resource team.¹¹⁴ Every institution of higher learning will be required to enter into an MOU with one or more community-based sexual assault crisis service centers and domestic violence

¹¹⁰ Connecticut Code § 10a-55m

¹¹¹ Connecticut State Code § 10a-55p

¹¹² Connecticut State Code § 10(a)(6)(A)

¹¹³ Connecticut State Code § 10(c)(1)

¹¹⁴ Connecticut State Code § 10a-55n

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

agency, so that victims can receive free counseling on and off campus. This partnership will establish clear roles, so that both institution and service provider can respond to reports appropriately.¹¹⁵

Each college or university Title IX coordinator, member of police force, or campus safety personnel will be educated in the prevention and awareness of stalking, dating violence, and sexual assault. This will also include trauma-informed response, or a response to sexual assault that is conscious of the neurobiological impact of trauma and the social influences that may have contributed to or will impact the trauma.¹¹⁶ First responders will also receive this education.¹¹⁷

¹¹⁵ Connecticut State Code §10a-55o

¹¹⁶ Connecticut State Code § 10a-55p

¹¹⁷ Connecticut State Code §10a-55q

DELAWARE

Summary

Delaware defines consent thoroughly (though not as affirmative consent) in its State Code and covers a wide range of possible offenses. The mandate for higher education institutions to have sexual assault policies, with the first sections of the law effective mid-2016. The policy is thorough, however, it will take at least three years to have it fully implemented. During this transition process, it is important that campuses work with survivors to get them through the process as everyone is on a new learning curve.

Statutes

Delaware Code Title 11 Chapter 5 Subchapter II § 761 Definitions, “without consent” means

- The defendant compelled the victim to submit by any act of coercion, and the victim need resist only to the extent that it is reasonably necessary to make the victim’s refusal known
- The defendant knew that the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed
- The defendant knew that the victim suffered from a cognitive disability, mental illness or mental defect which rendered the victim incapable of appraising the nature of the sexual conduct or incapable of consenting

Specific Offenses

- § 601 Offensive touching
- § 762 Provisions generally applicable to sexual offenses
- § 767-767 Unlawful sexual contact in the third, second, and first degrees
- § 770-773 Rape in the fourth, third, second, and first degrees

Miscellaneous Offenses

- §780 Female Genital Mutilation

Legislative Agenda

2016 Highlights

- HCR 67 (& HCR 17) - recognizing April as “Sexual Assault Awareness and Prevention” Month in the State of Delaware - Senate Passed
- House Substitute 1 for HB 1 - creation of Chapter 90A of Title 14 - signed

2015 Highlights

- SJR 1 - establishing a reporting deadline on unsubmitted/untested sexual assault collection kits - signed
 - Note: “PERK” not mentioned at all
- HB 2 - requires on-going sexual assault training for police officers and Deputy Attorney Generals in the Criminal and Family Divisions - signed

Sexual Assault and Education

Title 14 Education § 9001A-9007A

Chapter 90A. Sexual assault policy for institutions of higher education; approved by General Assembly June 30, 2016

- Sections effective June 30, 2017; initial provisions
 - Definitions: § 9001A - academic institution, advocate, responsible employee, sexual assault
 - Training: § 9004A - for responsible employees, introductory and refreshers; for incoming students; for at-risk populations (Title IX)
- Sections effective June 30, 2018; to be implemented after initial provisions
 - Duties of responsible employees, law enforcement, and academic institutions: § 9002A - upon notification of an alleged sexual assault, an immediate offer must be made to notify university law enforcement

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

- Exceptions (to 9002A): § 9003A - if the information was obtained through communication considered privileged or confidential under state/federal law, if the employee is an advocate, if it was disclosed at a student-led speak out event
- Annual report: § 9006A - report to DOJ by October 1 annually to certify compliance with training, include total amount of reports, and compile non-personally identifiable data
- Sections effective June 30, 2019; after the first annual report is filed
 - Penalty for violation: § 9005A - violation of 9002A, 9004A, or 9006A, may provoke a civil penalty under DOJ jurisdiction
 - Limitations: § 9007A - aims to be in accordance with Title IX and other relevant laws; violation does not give rise to private right of action
- Notes on this section of Title 14
 - Use of the language “victim”
 - Will not be fully implemented for another 3 years
 - Offer of law enforcement involvement must be included in mandatory reporters’ reports to the Title IX Coordinator

Regulations, Pre-College Education, and Campus Resources

- Progress will hopefully be seen here as a campus policies are implemented
- Campus policies require a confidential advocate on campuses

DISTRICT OF COLUMBIA

Summary

The District of Columbia has better policies than some states, and current bills in Council have the opportunity to directly address on-campus issues. Additions to Title 38 could greater improve on-campus sexual assault prevention.

Statutes

Definition of Consent

Consent: “words or overt actions indicating a freely given agreement to the sexual act or contact in question” (DC Code § 22-3001)

Specific Offenses

- DC Code § 22-3001 defines “sexual act” as any type of penetration, however slight, and oral contact, emission of semen is not required
- DC Code § 22-3001 defines “sexual contact” as sexual touching either clothed or unclothed
- DC Code § 22-3002, first degree sexual abuse
 - Nonconsensual **sexual act** by the use of force, threats, making the victim unconscious, or use of substances
- DC Code § 22-3003, second degree sexual abuse
 - Nonconsensual **sexual act** by the use of threats or placing the other person in reasonable fear (less than first degree)
- DC Code § 22-3004, third degree sexual abuse
 - Nonconsensual **sexual contact** by the use of force, threats, making the victim unconscious, or use of substances
- DC Code § 22-3005, fourth degree sexual abuse
 - Nonconsensual **sexual contact** by the use of threats or placing the other person in reasonable fear (less than third degree)

Miscellaneous Statutes

Title 23, Chapter 19 Crime Victims’ Rights, Subchapter II

- Sexual assault victims’ rights amended in 2014 to include sexual assault victim rights to have a sexual assault victim advocate present at medical examinations and initial law enforcement interviews, and making communications between the victim and advocate confidential

Legislative Agenda

- CB 21-0889 Campus Sexual Assault Victims Assistance Act of 2016 - to require postsecondary institutions to have a program for incoming students about sexual assault prevention, campus security officers to receive trauma related training, and requires institutions to have a sexual assault worker on campus - *referred to Committee on Judiciary*
- CB 21-0327 Postsecondary Sexual Assault Prevention Act of 2015 - to require a section entitled “On-campus sexual assault victims’ rights” in Title 23, Chapter 19 - *Notice of Intent to Act published in DC Register*
- CR 21-0326, CR 21-0429, CB 21-0355, CB 21-0489, CB 21-0354 all referring to the extension of the Sexual Assault Victim Rights Taskforce report.

Sexual Assault and Education

No mention of campus sexual assault in Title 38, Chapters 11 or 12 on higher and postsecondary education

FLORIDA

Summary

Florida's definition of consent appears to follow the affirmative consent definition very closely. Victim services facilitate an environment of anonymity and encourage reporting, but do not force the victim to do anything they do not feel comfortable doing. The Florida House of Representatives has proposed a bill regarding sexual assault investigations and evidence collection, but the proposal has not been passed. Florida has a sexual predator and sexual offender notification system in place that informs students and faculty of sexual predators in the area.

Statutes

Florida's State Code, § 794.011 defines consent as, "intelligent, knowing, and voluntary...and does not include coerced submission." A person cannot give consent when he or she is under the influence of an intoxicating substance that was administered without his or her consent. The state code identifies being "physically helpless" or unconscious, asleep, or otherwise unable to communicate unwillingness to act as a reason for being unable to give consent. Sexual battery is defined as oral, anal, or vaginal penetration by the sexual organ of another person or object.¹¹⁸ Sexual battery by multiple perpetrators "presents a great danger to the public and is extremely offensive to civilized society." Therefore, acts of this nature will be reclassified to a felony of the first degree.¹¹⁹ Under §794.027, anyone who witnesses sexual battery and has the ability to report and assist the victim and fails to is guilty of a misdemeanor of the first degree.

A victim of sexual assault is provided counselor-victim privilege, therefore the communication between the two is confidential.¹²⁰ Any licensed facility that provides services for victims, must ensure the victim's anonymity and may encourage the victim to cooperate with law enforcement.¹²¹ It is unlawful for a public employee or officer to disclose identifying information regarding a victim of sexual assault.¹²² In order for these facilities to operate, trust fund moneys collected when a defendant pleads guilty or is found guilty are used to provide services for victims of sexual assault. The Rape Crisis Program Trust Fund within the Department of Health serves the purpose of funding rape crisis centers throughout the state.¹²³

Legislative Agenda

The Florida House of Representatives has put forth a bill that would require law enforcement agencies to adopt standards related to collecting evidence in sexual assault investigations. These standards would include a time period for processing backlogged evidence, demanding a fee from those who have convicted sexual assault to fund the evidence collecting process. This bill has been put forth to address the backlogs of rape kits that have not been processed.¹²⁴

Sexual Assault and Education

Florida has a sexual predator and sexual offender notification system in place. Florida College System institutions, state universities, and career centers statute require each Florida College System institution to inform students and employees of the Department of Law Enforcement's sexual predator and offender registry and telephone number.¹²⁵

¹¹⁸ Florida State Code § 794.011

¹¹⁹ Florida State Code §794.023

¹²⁰ Florida State Code § 90.5035

¹²¹ Florida State Card § 295.1021

¹²² Florida State Code § 794.024

¹²³ Florida State Code § 794.056

¹²⁴ 2016 Florida House Bill No. 167

¹²⁵ Florida State Code § 1006.695

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

The 2015 Campus Climate Survey on Sexual Assault and Sexual Misconduct was administered to students at the University of Florida. This survey found that 10.4% of undergraduates experienced nonconsensual sexual touching. 12.7% of undergraduate experienced nonconsensual sexual contact involving physical force or incapacitation.¹²⁶

¹²⁶ Cantor, David, Bonnie Fisher, Susan Chibnall, Carol Bruce, Reanne Townsend, Gall Thomas, and Hyunshilk Lee. *Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct*. Report. The University of Florida. September 21, 2015.

GEORGIA

Summary

Georgia Sexual Assault Laws are not particularly inclusive or descriptive. The five sexual offenses most applicable to students are rape, aggravated sodomy, sexual battery, aggravated sexual battery, and the publication of the name of a female raped or assaulted with intent. The rape laws are specific to a female being attacked by a male. Campuses in Georgia have very loose rules and overarching regulations, resulting in only 90 recorded reports of rape or sodomy at five of the largest universities over five years, with none resulting in criminal prosecution.

Statutes

Does not define consent. Does define “without consent” as a person whose concurrence is required has not, with knowledge of the essential facts, voluntarily yielded to the proposal of the accused or of another.

Multiple state laws reference that “consent of the victim shall not be a defense to a prosecution” however there is no definition of consent. Additionally, the victim’s past sexual history can be admissible by the defense in some circumstances.

16-6-1. Rape occurs when he has carnal knowledge (penetration of the female sex organ by the male organ) of a female forcibly against her will.¹²⁷ Punishment for conviction is death or imprisonment for life.

16-6-2. Aggravated sodomy is an act involving the sexual organs of one person and the mouth/anus of another with force and against the will of the other party. Punishment is imprisonment for life or imprisonment for more than 20 years and then parole for life.

16-6-5.1 Sexual assault is between a person of authority and someone beneath them, like a teacher-student relationship or a doctor-patient. Punishment is 1-25 years or a fine of \$100,000.

16-6-22.1 Sexual battery occurs when a person intentionally makes physical contact with the intimate parts of another person’s body without consent. Person shall be guilty of a felony and subject to 1-5 years in prison.

16-6-22.2 Aggravated Sexual Battery occurs when a person intentionally uses a foreign object to penetrate the sexual organs or anus of another person without consent. Punishment is imprisonment for life or imprisonment for more than 25 years and then parole for life.

16-6-23 The publication or the name or identity of a female raped or assaulted with intent is prohibited in everything from news media to published on social media. Violation is a misdemeanor

15-5-71 investigating law enforcement agency must maintain custody of evidence for not less than 12 months from the date collected.

42-1-12 Anyone convicted of rape, sodomy, or aggravated sexual battery are required to register as sex offenders. You are also required to register on your second sexual battery conviction.

Legislative Agenda

- HB 859 –Campus Carry Bill that would allow those 21 and over to carry a gun on campuses. The goal is to allow people to protect themselves and sexual assault is specifically cited as a reason. Was vetoed by the Governor in May.
- State Rep. Earl Ehrhart is suing the US Department of Education for infringing in University operations and “micromanaging student sex lives.”
- 35-1-2 ensures timely collection and submission of sexual assault kits for those who want to proceed with a criminal justice response in reporting to law enforcement. Passed and went into effect in July.

Sexual Assault and Education

None, and those presented tend to face stiff opposition.

¹²⁷ Not relevant to research, but it’s also for females under the age of 10.

HAWAII

Summary

Hawaii has been recognized by NASPA for their creation of an Affirmative Consent Taskforce to evaluate the University of Hawaii System's interim executive policy on sexual assault. However, the state does not have a definition of consent and within other laws and provisions the definition varies. The Taskforce gave recommendations, some of which have already been signed into law, but these changes have not been reflected in the Hawaii Code of Education section on the University of Hawaii System (Chapter 304A) as of yet. If the University of Hawaii System and the state legislature collaborate to discern the best plan of action these issues can be mitigated.

Statutes

Definition of Consent

- Definition of consent is not stated in the Hawaii Penal Code

Specific Offenses

- § 707-730 sexual assault in the first degree - "person knowingly subjects another person to an act of sexual penetration by strong compulsion"
- § 707-731 through 733 - sexual assault in the second, third, and fourth degrees

Sexual Assault and Education

- While there is no mention of sexual assault in the Hawaii Code of Education section on the University of Hawaii System (Chapter 304A), "Campus safety and accountability" should have been added to be effective July 1, 2016.
- The University of Hawaii System Board of Regents adopted an Interim Executive Policy in 2015 to address sexual assault. The creation of the Affirmative Consent Taskforce in 2015 by the Governor signing bill into law is to evaluate this interim policy.

Legislative Agenda

- SB 387 creates the Affirmative Consent Taskforce with a purpose of providing a review of UH interim policy, consider campus definitions of consent - passed, signed by Governor as Act 222
- HB 2722 requires UH to train employees and students on sexual violence etc, appoints a confidential advocate at each campus as a result of the Affirmative Consent Taskforce - passed, signed by Governor as Act 208
 - Amending Chapter 304A, effective July 1 2016
- HB 1907 law enforcement to collect inventory on stored PERKs and report to Attorney General - passed, signed by Governor as Act 207
- HB 451 requiring UH to establish and enforce an affirmative consent standard for all policies - referred to House Judiciary Committee
- SB 3119 requires UH to adopt policies preliminarily recommended by the Affirmative Consent Taskforce - referred to Higher Education Committee
 - To add "Campus safety and accountability" to Chapter 304A
- SB 275 establishes Hawaii sexual assault response and training program - referred to House Finance Committee
- HB 1787 appropriates funds to review public school education about sexual abuse and sex trafficking - conference committee deferred measure
 - Effective date July 1, 2060
- HB 459 comprehensive sex education - re-referred to Senate Education Committee
 - Effective date July 1, 2050

Sexual Assault and Education

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

- UH System Interim Executive Policy EP 1.204
 - Defines consent as “affirmative, conscious, and voluntary agreement to engage in agreed upon forms of sexual contact,” lack of protest is not consent, existence of a previous relationship is not consent within itself
 - Defines confidential resource and states that each campus should have one
 - To be reviewed July 2017 after Affirmative Consent Taskforce is done
- § 8-19-6 regarding public schools not only defines sexual assault and offenses but also deems sexual assault prohibited student conduct and a Class A offense. Within the definition of sexual offense, consent is only mentioned in the case of being unable to give it.
- HB 1782/SB 151 referred to House Education Committee, to establish a sexual abuse prevention instructional program for public schools modeled after Erin's law.

IDAHO

Summary

The Idaho Code has not been updated to include criminal laws that strictly prohibit unwanted sexual touching or other acts besides oral, anal, and vaginal penetration, whereas all other states besides Mississippi have proposed and passed this necessary addition. There is also no state definition of consent, or any mention of campus sexual assault in the Code or pending legislation. Nonprofits in Idaho are working hard to implement prevention programs in schools, but there is no legislative support as of yet.

Statutes

The state code defines consent only in terms of “legal consent” regarding mental incapacitation.

Specific Offenses

Idaho Code 18-6101

- Rape is defined as the penetration of oral, anal, or vaginal openings with a penis
- Specifically states both males and females can commit the crime as defined, yet the definition only states penetration by a penis

Legislative Agenda

- HB 507 sexual assault evidence kits - amends existing Code - passed

Sexual Assault and Education

- Title 33 Education, Chapter 24 Postsecondary and Proprietary Schools has no mention of sexual assault on campuses
- Regulations, Pre-College Education, and Campus Resources
 - Idaho Sexual Violence Prevention Program has implemented prevention programs in three colleges and six high schools through the Idaho Coalition Against Sexual & Domestic Violence
 - A model secondary school policy was created in 2014

ILLINOIS

Summary

Illinois does better than many states, especially in terms of their state comprehensive definition of consent. Recently passed laws are making waves in the area of sexual assault in general, and specifically in regard to the requirement of comprehensive policies implemented by each campus. The true test will be after the first annual report submissions to the AGO in 2017. Illinois state law does define affirmative consent.

Statutes

Definition of Consent

Consent - freely given agreement to the act of sexual conduct in question, lack of verbal or physical resistance to force does not constitute consent, the manner of dress does not constitute consent, and consent can be withdrawn at any time

- “A person who initially consents to sexual penetration or sexual conduct is not deemed to have consented to any sexual penetration or sexual conduct that occurs after he or she withdraws consent during the course of that sexual penetration or sexual conduct.”

Specific Offenses:

Illinois State Code: 720 ILCS 5/11-1.20, 5/12-12, 5/11-1.70(a), (c)

- Sexual assault/rape - individual commits a penetrative sexual act against another without their consent or ability to give consent
 - Criminal sexual assault can be deemed also aggravated or predatory

Legislative Agenda

- SB 3096 - Sexual Assault Incident Procedure Act - approved by Governor, enrolled as Public Act 99-0801
 - Amends Code of Criminal Procedure of 1963; all law enforcement agencies shall develop, adopt, and implement written policies regarding the procedures for incidents of sexual assault by January 1, 2018
- SB 3106 - Expands Hearsay Exception for People with Disabilities - approved by Governor, enrolled as Public Act 99-0752
 - Redefines moderately and severely intellectually disabled person
- HB 3848 - Illinois Sexual Assault Emergency Treatment Program Fund - approved by Governor, enrolled as Public Act 99-0454
 - No services rendered for treatment after sexual assault are directly billed to the survivor, effective January 1, 2016
- HB 3520 - Investigations of Sexual Assault in Higher Education Act - referred to House Rules Committee
 - This bill would involve municipal police in campus sexual assault reports and campus police departments would cease involvement if passed
- HB 6332 - amends Sexual Assault Evidence Submission Act - pursuant to Senate rule referred to Assignments
 - Would link Department of State Police and investigating law enforcement in cases of consistent DNA profiles from sexual assault evidence

Sexual Assault and Education

Higher Education: 110 ILCS 155

- Preventing Sexual Violence in Higher Education Act (Effective 8/21/15)
 - 155/5: Definitions
 - Awareness programming- institutional action to communicate the prevalence of sexual violence
 - Bystander intervention, complainant, comprehensive policy, confidential advisor, higher education institution

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

- Primary prevention programming- “means institutional action and strategies intended to prevent sexual violence before it occurs by means of changing social norms and other approaches”
 - respondent, sexual violence, survivor, survivor-centered, trauma-informed response
 - 155/10: All institutions must adopt comprehensive policy by August 1, 2016 including a definition of consent that follows the ILCS definition with additional explicit mention of incapacitation due to the use or influence of alcohol or drugs, reporting information, information about local health centers, interim protection measures available, and other provisions
 - 155/15: Survivor notification of rights and options
 - Right to report or not report
 - Clear access to the institution’s Title IX coordinator
 - 155/20: Identification of trained confidential advisors on campus
 - Confidential advisors- employees who are not required to report to the Title IX office on campus. All confidential advisors receive 40 hours of training. Advisors will know how to inform and provide services to survivors
 - 155/25: Outlines complaint resolution procedures
 - 155/30: Campus training, education, and awareness
- Schools required to submit data to the IL Attorney General’s Office annually on prevention, incidents, and outcomes starting November 1, 2017
- Regulations, Pre-College Education, and Campus Resources
 - Healthcare providers cannot bill survivors who utilize services, and healthcare providers must comply with this new law, otherwise the grants to fund this program from Illinois Criminal Justice Information Authority (ICJIA) will not be applicable.
 - Sexual Assault Nurse Examiners (SANE) nurses are also funded by these ICJIA grants through the Office of the Illinois Attorney General
 - On-campus confidential advocates who are not involved in other roles as Title IX mandated reporters and go through 40 hours of training
 - Campus resources for survivors are a requirement under the Preventing Sexual Violence in Higher Education Act
 - Illinois school districts choose whether or not to teach sex education, including whether or not to teach any aspect of sexual assault prevention
 - Illinois Coalition Against Sexual Assault (ICASA)
 - Coalition of 29 sexual assault response centers across the state

INDIANA

Summary

Indiana's state code defines sexual assault and other sexual criminal activity. The code discusses the processing of sexual assault evidence and a designated victim response team. Indiana does not discuss sexual assault in regards to higher education within its state code.

Statutes

Indiana's State Code § 35-42-4-1 defines rape as the intentional act of having sexual intercourse with another person or intentionally causing another person to perform or submit to sexual conduct when the victim is threatened or forced to comply, the other person is unaware of what is occurring, or the person is mentally handicapped or deficient that consent can not be given. Sexual battery is described as the act of satisfying one's own sexual desires by touching another person who is under threat or force, mentally disabled or deficient, or unaware of the touching.¹²⁸

Following an incident of reported rape or sexual battery, law enforcement is required to obtain results collected from a forensic medical examination of a victim. This sample will be kept in storage for one year or until it will be tested for evidence. The victim will be notified before the year mark that their sample will be destroyed if they do not press charges.¹²⁹ Each county or region will have a sexual assault response team which will have a plan in place for victim response and treatment. These teams will be responsible for, collection, preservation, secured storage, and destruction of samples.¹³⁰ A 12-member sexual assault victim advocate standards and certification board requires a division of the Indiana criminal justice institute to provide victim services. The board is responsible for,

- establishing standards for sexual assault victim advocate certification,
- deciding the price of fees for certification, and
- certifying advocates.

Within the state general fund, money must be allocated for rape crisis centers, which are responsible for providing a range of services such as advocacy, hotlines, and general support for victims. Indiana trauma informed sexual assault services include victim centered care, medical care, and forensic services.

Indiana's State Code requires sexual assault victims assistance fees to be taken from the offender and given to the victim of rape, sexual battery, sexual misconduct, and other sex-related crimes. This fee will be between the amount of \$500 and \$5,000.¹³¹ During a criminal or civil sexual misconduct proceeding, evidence that serves the purpose of proving that a victim or witness engaged in prior sexual behavior or that he or she is of a certain sexual predisposition is inadmissible.¹³²

¹²⁸ Indiana State Code §35-42-4-8

¹²⁹ Indiana State Code §16-21-8-10

¹³⁰ Indiana State Code §16-21-8-2

¹³¹ Indiana State Code §33-37-5-23

¹³² Rule 42. Sex-Offense Cases: The Victim's or Witness's Sexual Behavior or Predisposition

IOWA

Summary

The Iowa State Board of Regents has a policy in place for only the five universities it presides over, so in order for all campuses to be required to have procedures in place, HF 390/SF 79 will have to pass in the next legislative session. Consent is well-defined in the Regents policy, but could be more explicitly affirmative. Iowa congresspeople have very publicly backed the national “Campus Accountability and Safety Act,” so the state legislature should take notes from them.

Statutes

Consent used often in the chapter for sexual abuse, yet no clear definition is given.

Specific Offenses:

Iowa Code Annotated § 709.1 “Sexual Abuse Defined” states that sexual abuse is any sex act between persons if either of the persons does the act against the will of the other, or if the act is done while one person is unconscious under any circumstances

- Offenses are first, second, or third degree and all are felonies

Miscellaneous Statutes:

Iowa Code § 709.22 “Prevention of further sexual assault -- notification of rights” defines duties of peace officers and survivor rights, including a sexual assault examination performed at state expense among others

Legislative Agenda

- HF 390/SF 79 relating to sexual assault policies adopted by state and accredited private postsecondary institutions - referred to House/Senate Education Committees

Sexual Assault and Education

No provisions under Iowa State Code Title VII Education and Cultural Affairs Subtitle 3 Higher Education

Iowa Code Chapter 262 charges Board of Regents with governing Iowa state universities; Chapter 2 of Section IV “Students” of the Board of Regents policy is “Sexual misconduct, dating/domestic violence, or stalking involving students”

- Consent defined as “freely and affirmatively communicated willingness to participate in particular sexual activity or behavior, expressed by words or clear, unambiguous actions”

Regulations, Pre-College Education, and Campus Resources

- Iowa Sexual Violence Prevention Planning Committee completed an assessment of sexual violence prevention programming and capacity from 2007 to 2009
 - Problems trying to collaborate with the state department of education in the development of prevention resources for local high schools

Campus resources under the Board of Regents policy include confidential assistance from RVAP or DVIP, academic and housing accommodations, protection against retaliation, and medical assistance

- Campuses are not required to have an on-site confidential resource under this policy
- Resources are also outlined for the accused

KANSAS

Summary

Necessary bills in the realm of campus sexual assault have been proposed and quickly struck down by a unified Republican government. Without even a definition of consent in the Kansas Statute, there is no mention of sexual assault in the recently edited Higher Education Coordination Act. There will hopefully be some changes after the 3 year research study, but in the meantime there are no state measures in place to stand with survivors.

Statutes

The definition of consent is not clearly defined.

Specific Offenses

Kansas Statute, Chapter 21, Article 55 Sex Offenses

- 22-5503: Rape - knowingly engaging in sexual intercourse with a victim who does not consent to it

Legislative Agenda

2015 - 2016 Highlights

- HB 2266 - requiring postsecondary education institutions to adopt a policy on sexual assault, domestic violence, dating violence and stalking - died in committee
- SB 378 - employment discrimination or retaliation protections for victims of domestic violence or sexual assault; complaint procedure; application of Kansas act against discrimination - motion to strike from calendar adopted

Sexual Assault and Education

Kansas Statute, Chapter 74, Article 32 Higher Education Coordination; State Board of Regents

- There is no mention of campus sexual assault; the goal of this Act is to improve postsecondary education statewide.

Regulations, Pre-College Education, and Campus Resources

- Heartland Sexual Assault Policies and Prevention on Campuses Project: US Department of Health and Human Services Office on Women's Health \$750,000 grant for a 3 year research study done by University of Kansas researchers
 - Sample size of universities from 3 states in the midwest, study to begin in 2017

KENTUCKY

Summary

The State of Kentucky has neither an extensive list of defenses nor any overarching state policies regarding sexual assault on campuses. Kentucky does not offer constitutional rights or a ‘bill of rights’ of sorts to crime victims in Kentucky. There does not even seem to be a legislative agenda in Kentucky to deal with the rather public issue of campus assault on the many public university campuses.

Statutes

Lack of consent can result from:

- Forcible compulsion,
- Incapacity to consent,
- When the victim does not expressly or impliedly acquiescence to offender's conduct

“Physically helpless” requires that the victim be unconscious or physically unable to communicate unwillingness to an act.

Specific Offenses

- 510.040 Rape, first degree, when a foreign object is inserted into another’s sex organs forcibly or with someone who is “physically helpless” and unable to consent. A Class B felony with 10-20 years imprisonment, unless serious physical injury. Then it is a Class A felony with 20-50 years imprisonment.
- 510.070 Sodomy, first degree. Forcibly achieving sexual gratification with the sex organs of one person and the mouth/anus of another, resulting in a Class B felony with 10-20 years imprisonment, Class A felony if the victim is seriously injured physically. Penetration is not required for sodomy
- 510.110 Sexual abuse, first degree, is when one subjects another person to sexual contact by force compulsion or if they are physically helpless. Class D felony, with 1-5 years in prison.

Miscellaneous Statutes

- 17.500, 17.510 Conviction of sexual abuse, rape, and sodomy result in the convicted being registered as a sex offender.
- Malone v Commonwealth Ky held that voluntary intoxication is not a defense to forcible rape/sodomy
- Gregory v Commonwealth Ky supports that circumstantial evidence alone is sufficient to support a criminal conviction of rape or sodomy.

Legislative Agenda

Does not appear to be a current Legislative Agenda.

Sexual Assault and Education

The University of Kentucky is suing one of its student newspapers over the *Kentucky Kernel* filing an appeal with the Kentucky attorney general requesting the release of documents from the UK Open Records office that would discuss the investigation of an Associate Professor’s accusation of sexual assault. UK refused to release the document despite the state’s Attorney General stating they must and are now suing the *Kernel* as a means to appeal the attorney general’s decision.

LOUISIANA

Summary

The sexual assault laws for Louisiana are relatively middle-of-the-road. There is no legal definition of consent—instead, each specific offense has a description of what would be considered non-consensual per the type of act, without ever using the word consent. Louisiana added some statutes in 2015 to look into and provide more support to sexual assault victims on campuses, however the results are inconclusive. Louisiana does have a Crime Victim Bill of Rights to protect, which does give it a “leg up” compared to its southern neighbors.

Statutes

There is no particular definition of consent; it is loosely defined in each specific offense.

Specific Offenses

- 14:42 Aggravated Rape, when oral, anal, or vaginal sex is had without the victim's consent and two or more defendants participate, the defendant is armed with a weapon, the victim is threatened with greater bodily harm, or the victim's resistance is overcome by force, felony, death or life in prison without parole.
- 14:42.1 Forcible rape, engaging in oral, anal, or vaginal sex where the victim is prevented from resisting by threats of violence, or is unable to understand the act due to a controlled substance administered without the victim's knowledge, felony, 5-40 years in prison with hard labor, minimum 2 years without probation/parole
- 14:43.3 Oral sexual battery, victim is incapable through unsoundness of mind and the offender knew of the victim's incapacity, felony, up to 10 years in prison without parole/probation
- 14:43.1 sexual battery, a person touches a victim sexually or makes the victim touch the defendant sexually, felony, up to 10 years in prison without probation/parole
- 14:43.2 sexual battery, second degree. Sexual battery committed upon someone incapable of resisting, in reference to mental capability or physical ableness. felony up to 15 years in prison, without parole/probation

Miscellaneous Statutes

- Act 152, The Council on Peace Officer Standards and Trainings is to develop an awareness program that discusses the neurobiology of sexual assault, the responses possible to sexual assault, the victim's rights.
- Act 229, requires a coroner to examine victims of sexually-oriented criminal offenses and provides for more confidentiality and protection provisions for victims and their rape kits.
- HB 489, anyone who shares nude or partially nude images of another person without permission face two years in prison and up to 10k fine.

Legislative Agenda

The big year for legislative agendas was 2015 —three statutes were signed into law by the governor and are listed above.

Sexual Assault and Education

Act no 172, 2015. Signed by Governor in 2015. Higher education institutions mandated to conduct voluntary sexual assault surveys every three years and to provide the reports to the Louisiana government. Creation of law protocols for investigation, notification, and evidence preservation as well as trainings on how to deal with sexual assaults. Encourages for the law agencies in the parish of the school to sign a non-binding contract of sharing information on sexual assaults and policies. Provides amnesty for students who may get in trouble otherwise. Requires schools to designate “confidential advisors” who are liaisons for the students and are required to inform the student of all of the options available for them. Requires coordination between law enforcement officers and campus investigators.

Senate Resolution 31, 2015, signed by the President of the Senate and sent to Sec of State. Creates task force to study college and university disciplinary process for campus rape and sexual assaults

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

Act 152, 2015, full-time employees of higher education places must complete a sexual assault awareness training provided by the Council on Peace Officer Standards and Trainings.

Regulations, Pre-College Education, and Campus Resources

- The survey required by Act 172 had so low a participation level that the results are not able to be conclusive.

MAINE

Summary

Despite the national attention that Maine received during the St. Paul's private school rape trial in 2015, the state has not made sexual assault prevention a priority in its state laws. The law outlines and defines different forms of sexual violence, but does not put an emphasis on affirmative consent or campus sexual violence. The University of Maine Board of Trustees enacted a new policy in 2014 that puts an emphasis on affirmative consent and preventing campus sexual violence. This policy, while not a state law, was a huge step for Maine as it set an expectation for other universities to follow.

Statutes

Title 17-A: Maine Criminal Code, Part 2: Substantive Offenses, Chapter 11: Sex Assaults

- Definitions
 - Sexual Act- between 2 persons, physical contact with genitals using mouth, anus, or a foreign object. May be proved without allegation or proof of penetration.
 - Sexual Contact- means any touching of the genitals or anus other than as would constitute a sexual act, for the purpose of sexual desire or causing bodily injury or offensive physical contact.
 - Compulsion- the use of physical force, coercion, or threat. Compulsion as defined places no duty upon the victim to resist the actor.
 - Safe children zone-means on or within 1,000 feet of a public or private elementary or secondary school or on or within 1,000 feet of a daycare center.
 - Sexual Touching- means any touching of the breasts, buttocks, groin or inner thigh, directly or through clothing, for the purpose of arousing or gratifying sexual desire.
 - **Note: no definition for affirmative consent*
- Gross Sexual Assault
 - Class A crime
 - The actor engages in a sexual act with another person and the other person submits as a result of compulsion.
 - The other person is not yet 14.
 - Class B crime
 - The actor has substantially impaired the other person's power to appraise or control the other person's sexual acts (using drugs or intoxicants).
 - The actor compels or induces the other person to engage in the sexual act by any threat.
 - The other person suffers from mental disability that is reasonably apparent or known to the actor, and which in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the person has the right to deny or withdraw consent.
 - The other person is unconscious or otherwise physically incapable of resisting
 - Defense for Prosecution of Gross Sexual Assault
 - It is a defense to a prosecution under subsection 2, paragraph A that the other person voluntarily consumed or allowed administration of the substance with knowledge of its nature, except that it is no defense when: 1) The other person is a patient of the actor and has a reasonable belief that the actor is administering the substance for medical or dental examination or treatment; or 2) The other person is in fact 14 or 15 years of age.
 - Sentencing
 - Previous violations of this nature will serve as aggravating sentencing factors:
 - Previous Class A crimes: extra 4 years of imprisonment
 - Previous Class B crimes: extra 2 years of imprisonment
 - Previous Class C crimes: extra 1 year or imprisonment
 - A violation in a safe children zone is classified as an aggravating sentencing factor
- Unlawful Sexual Contact

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

- A person is guilty of unlawful sexual contact if the actor intentionally subjects another person to any sexual contact and:
 - The other person has not expressly or impliedly acquiesced in the sexual contact (Class D crime)
 - The other person has not expressly or impliedly acquiesced in the sexual contact and the sexual contact includes penetration (Class C crime)
 - The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual contact. (Class D crime)
 - The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual contact and the sexual contact includes penetration (Class C crime)
 - The other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 3 years older (Class C crime)
 - The other person, not the actor's spouse, is in fact less than 12 years of age and the actor is at least 3 years older (Class B Crime)
- Predicting High Risk Offenders for Sentencing
 - In assessing for sentencing purposes the risk of repeat offenses by a person convicted of a crime under chapter 11, a court shall treat each of the following factors, if present, as increasing that risk:
 - The victim of the crime is prepubescent
 - The victim of the crime is the same gender as the offender
 - The victim of the crime is a total stranger to the offender
 - The offender has been previously convicted of a crime under chapter 11 or previously convicted in another jurisdiction for conduct substantially similar to that contained in chapter 11.
- Unlawful Sexual Touching
 - A person is guilty of unlawful sexual touching if the actor intentionally subjects another person to any sexual touching and:
 - The other person has not expressly or impliedly acquiesced in the sexual touching. (Class D crime)
 - The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual touching. (Class D crime)
 - The other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 5 years older. (Class D crime)
 - The other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person substantially incapable of appraising the nature of the touching involved or of understanding that the other person has the right to deny or withdraw consent. (Class D crime)

Legislative Agenda

- H.P. 640 - L.D. 921 ACTPUB
 - An Act To Strengthen the Right of a Victim of Sexual Assault or Domestic Violence To Take Necessary Leave from Employment and To Promote Employee Social Media Privacy
 - Signed into law 7/12/15

Sexual Assault and Education

- University of Maine Board of Trustees
 - Change in sexual assault policies adopted November 2014
 - Defines affirmative consent
 - “Consent is clear, knowing and voluntary. Consent is active, not passive. Consent may be withdrawn at any time.”

Regulations, Pre-College Education, and Campus Resources

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

- Young Adult Abuse Prevention Program (YAAPP)
 - delivers education, services, and advocacy that enable youth to make choices within their dating relationships that are safe, healthy, and informed.
 - YAAPP works with schools and community groups to educate youth using interactive presentations that focus on dating violence and that provide youth with the information and skills they need to think critically about relationships.
- Maine Coalition Against Sexual Assault (MECASA)
 - Organization to end sexual violence in Maine and to support high quality sexual violence prevention and response within Maine communities.
- The Backbone Zone
 - Teaches students about bystander intervention and sexual harassment prevention.
- Maine Boys to Men (MBTM)
 - Empowers boys and men to stand up as allies with girls and women in support of gender justice and to end gender based violence.

MARYLAND

Summary

Maryland has a very detailed Criminal Code regarding rape and sexual offenses, yet does not define consent in any instance other than mental incapacitation. Sexual assault is a topic widely addressed in current bills and legislature, with most good pieces being passed by the legislators. Written policies for sexual assault are required by higher education institutions as of 2015, amending the vague mandate from 1993. If Erin's Law for pre-college education passes the Senate, Maryland will remain on the forefront of states that are addressing this issue effectively.

Statutes

Consent is only defined in terms of mental incapacitation

Specific Offenses

Code of Maryland, Title 3. Other Crimes Against The Person, Subtitle 3 - Sexual Crimes

- 3-303 Rape in the First Degree (3-309 for attempted)
- 3-304 Rape in the Second Degree (3-310 for attempted)
- 3-305 Sexual Offense in the First Degree (3-311 for attempted)
- 3-306 Sexual Offense in the Second Degree (3-312 for attempted)
- 3-307 Sexual Offense in the Third Degree
- 3-308 Sexual Offense in the Fourth Degree
- *For all offenses, there is a higher sentence for acts on a kidnapped child under 16, or if the defendant is over 18 and the victim was under 13, or if the defendant has previously been convicted of other sex crimes*

Legislative Agenda

- HB571 - Require all higher education institutions to have a specified sexual assault policy
- *SA Prevention – Elementary & Secondary Schools – HB72 – Support – Passed*
 - “Erin’s Law,” mandates age-appropriate sexual assault information in elementary and secondary schools in Maryland
 - Targeted to help prevent college sexual assault by giving younger students an understanding of healthy relationships before attending college
 - Taken up in the Senate too late, so it will be officially introduced in the next session
- *Rape Survivor Family Protection Act – HB646/SB593 – Support – Passed House, Not Senate*
 - If passed, would permit rape survivors to file a complaint in family court
 - Judge is required to hold a trial and promptly make a decision
 - Overturn current law that gives rapists who impregnate the victim to have the same rights as other biological parents
 - Overturn current law that if the rapist-parent cannot be located, the victim’s name is published in the newspaper
 - Previously failed evidence bill (SB235) was attached to this bill to help kill it in the Senate
- *Perjury – Prohibition on Testimony – SB150/HB237, SB82 – Support – Passed*
 - Current law prohibits a convicted perjurer from testifying, which prevented sexual assault prosecution where the victim has previously been convicted of perjury
 - This bill allows the jury to be aware of a witness’s perjury conviction, but the witness will be permitted to testify
- *S.L.A.P. Suits – HB263 – Passed House, Unfavorable Report by Senate Committee*
 - SLAP Suits: Strategic Lawsuits Against Public Participation
 - These suits are often a result of survivors exercising their rights in college sexual misconduct proceedings and related Title IX actions
 - Not all of these actions result in suits, but this bill would help to discourage this type of litigation abuse
- *College Policies – Affirmative Consent – HB1142 – Support with Amendments – No Vote in Committee*

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

- In addressing sexual assault policies at institutions of higher learning, this bill did not have an effective approach or proper language

Other issue areas

- Stalking, Harassment, Peace/Protective Orders
 - *SB278/HB155* Passed to revise criminal stalking laws
 - *SB346/HB314* Passed to expand access to peace orders to encompass different types of harassment
 - *SB924/HB534* Passed to remove sunset provision providing petitioners of protective orders with notice that a respondent has been served

Sexual Assault and Education

Maryland General Assembly, MD Code, Education, §11–601

- Article - Education
 - Higher education institutions must submit sexual assault policies by August 1st, 1993
- Written Policies of Sexual Assaults Required
 - Product of HB571; effective July 1, 2015

No mention of rape/campus sexual assault in “University System of Maryland Board of Regents Bylaws, Policies & Procedures”

Regulations, Pre-College Education, and Campus Resources

- “Erin’s Law,” passed by the House and making it to the Senate floor next session, mandates age-appropriate sexual assault information in elementary and secondary schools in Maryland

MASSACHUSETTS

Summary

The Commonwealth of Massachusetts has no overarching state policies regarding sexual assault on campuses. Massachusetts has codified almost nothing concerning campus sexual assault. There does not even seem to be a legislative agenda in Massachusetts to deal with campus assault. To the state's credit, they do have several offices in their executive branch dedicated to combatting this issue, and those offices have persisted for decades. However, the lack of codified law supporting their mission remains a problem. Most glaringly, "consent" is undefined in the law, and left to the interpretation of the courts.

Statutes

Definition of Consent

- No statutory definition of consent.

Specific Offenses

§ 265-22(b) Forcible rape: up to 20 years in prison

Also: use of a deadly weapon imposes mandatory minimum of 10 years.

§ 265-22(a) Rape inflicting serious bodily harm, or multiple assailants: up to life in prison

§ 265-22A Rape of a child: up to life in prison

§ 265-24 Assault with attempt to rape: up to 20 years in prison

Also: use of a deadly weapon imposes mandatory minimum of 5 years.

Sexual Assault and Education

The Massachusetts Department of Higher Education has promulgated regulations and commissioned reports to improve the state of campus safety. Their recommendations have not yet been enacted into law.

MICHIGAN

Summary

Michigan has been almost adamant in its refusal to create significant policies to unite state collegiate institutions' sexual assault policies. They firmly leave it up to the schools, expecting them to act within federal guidelines. This inaction is in no small part due to public universities claiming the Michigan state constitution gives them broad authority to act outside of any legislative oversight. However the specific offenses put out by the government are fairly all-encompassing and informative—they just do not appear to reach college campuses.

Statutes

Sexual assault or rape is Criminal Sexual Conduct (CSC). Mental incapacitation has a victim unable to control or appraise their conduct due to a narcotic, anesthetic, or other substance administered without their consent. Physically helpless means the victim is unconscious, asleep, or physically unable to communicate consent. Sexual contact is the intentional touching of the victim's or actor's intimate parts either for sexual gratification or for the purposes of revenge, humiliation, or out of anger.

Specific Offenses

- MCL 750.520b CSC first degree (felony), sexual penetration that is defined as everything from fellatio to the intrusion of an object into genital or anal openings, where force, victim's incapacity, weapons, or injury is involved. Life in prison without parole or with a minimum 25 years before parole.
- MCL 750.520c CSC second degree (felony), sexual contact with any of the circumstances of CSC 1, 15 years in state prison, possible lifetime GPS tether.
- MCL 750.520d, CSC third degree, penetration as defined in CSC 1 with victim incapacity or coercion, fifteen years state prison.
- MCL 750.520e, CSC fourth degree, sexual contact involving victim in capacity or coercion, two years in state prison and/or \$500.00 fine.
- MCL 750.520g, assault with intent to commit CSC involving penetration, 5 years in state prison.
- MCL 750.520g, assault with intent to commit CSC in the second degree, 5 years in state prison.

Miscellaneous Statutes

- MCL 750.520i the victim need not resist the actor under for any of the offenses listed above.
- MCL 750.520j, the victim's sexual conduct, reputation, or evidence of either will not be admitted unless the judge see either evidence of past conduct with the actor/defendant or there is evidence of specific instances of sexual activity showing the origin of semen, pregnancy, or disease.
- MCL 750.520k, the names of the victim, the actor, and the details of the offense will be suppressed until the victim is arraigned, the charge dismissed, or the case is otherwise concluded.

Sexual Assault and Education

There is not an overarching sexual assault policy, for either reporting or investigations, across Michigan campuses. Some colleges have required accused students to write 500-word essays and others are reportedly expelling students before the conclusion of the investigation.

Sue Snyder Campus Sexual Assault Grant Program provides funding to help college institute programs to train bystanders and other education programs.

MINNESOTA

Summary

Minnesota has a clear statute designed to ensure that postsecondary education institutions are establishing good practices in regards to sexual assault prevention and awareness. Most notably, Minnesota state law demands that all institutions of higher learning provide an online service for reporting incidents of sexual assault and violence. This online service allows victims to access information and to report the incident anonymously, if the victim wishes to do so. The online reporting site provides the school with more accurate statistics in combination with official reports. This data must be reported to the public.

Statutes

- Minnesota state code defines criminal sexual conduct in the first degree as the act of sexual penetration if,
 - the other person is under fear or threat of imminent bodily harm to themselves or another;
 - the offender is armed with a dangerous weapon;
 - the offender causes injury to the victim by using force to accomplish penetration;
 - the victim is mentally impaired, incapacitated, or physically helpless; or
 - there are one or more offenders or accomplices.
- Offenders may not be excused for mistaking a victim's age (under age 13) or whether or not the victim consented. The minimum sentence for this crime is 12 years, but may be no longer than 30 years.¹³³ Sexual assault is defined as criminal sexual conduct in the first, second, third, and fourth degree. Victims of sexual assault may be male or female.¹³⁴
- A victim who arrives at a Minnesota hospital seeking treatment following a sexual assault will receive a written notice regarding his or her rights and resources available to them. This notice must state that it is the duty of the county to pay for a sexual assault examination, but the victim may incur costs for treatment of injuries. The notice will inform victims of their right to report to law enforcement, information on applying for reparations, and how to obtain a restraining or protection order.¹³⁵
- If a prosecutor chooses not to try the defendant in a sexual assault, stalking, or domestic assault case, the victim will be notified before the defendant is released from custody (if he or she is still in custody), and the victim will have the opportunity and information regarding an order for protection or restraining order without fee.¹³⁶

Sexual Assault and Education

- Postsecondary education institutions sexual harassment and sexual violence policies modification bill has been introduced to the 89th Legislative Session. This bill expands the policy to cover students or employees of a postsecondary institution who are participating in any activity, program, or event sponsored by the institution, not just on property owned by the institution.¹³⁷

Regulations, Pre-College Education, and Campus Resources

- The commissioner of public safety will award grants to sexual assault victim programs for the purpose of technical assistance, training, and developing and implementing education programs for public awareness on sexual assault. Any public or private nonprofit agency may apply for these grants, this includes institutions of higher learning.¹³⁸
- Institutions that are within the jurisdiction of the Board of Trustees of the Minnesota State Colleges and Universities and private postsecondary institutions and institutions governed by the Board of Regents of the University of Minnesota must develop a written policy on sexual harassment and violence. This policy

¹³³ Minnesota State Code § 609.342

¹³⁴ Minnesota State Code § 145.4711

¹³⁵ Minnesota State Code § 144.6586

¹³⁶ Minnesota State Code § 611A.0315

¹³⁷ 2015 MN HB 742

¹³⁸ Minnesota State Code § 611A.211

must educate victims on their duties and rights, such as assistance provided by the Crime Victims Reparations Board and commissioner of public safety. The policies must list reporting procedures and disciplinary actions that will be taken against those who commit sexual assault. This information will be distributed upon a student's induction into the institution and post around the school's grounds. Victims will be provided with,

- timely assistance from campus police or safety officers;
- the opportunity to decide whether or not to report the incident;
- dignified treatment;
- health care, counseling services, or referrals;
- campus authority assistance that will not suggest that the victim is somehow at fault;
- privacy;
- an investigation and resolution;
- the right to participate in and be accompanied by a support person in any meeting regarding the incident
- the right to determine when he or she is willing to discuss the incident;
- information regarding availability of local services for sexual assault victims;
- the outcome of any disciplinary proceeding concerning defendant;
- protection against unwanted contact with alleged offender, such as alternative housing or classes
- forbiddance of retaliation by assailant or other students/employees;
- information regarding the sexual assault policies at the school of which the victim may wish to transfer to following an attack; and
- access to the victim's description of incident as it was reported.
- A postsecondary institution must establish a MOU with the local law enforcement authorities surrounding the campus. The MOU must be in place by January 1, 2017. Every two years the MOU will be reviewed and updated. This MOU will require information sharing between the two entities and detail protocols for investigations. Higher education institutions must establish a method for students and employees to report incidents of sexual harassment online for both anonymous and known victims. Institutions must publish annual statistics regarding sexual assault that is collected through this online service. This data will be posted to the institution's website.
- Higher education institutions will provide training for campus safety officers and administrators on preventing and responding to sexual assault. The training should include,
 - information on sexual assault,
 - neurobiological responses to trauma, and
 - best practices.
- All students who are pursuing a degree or certificate at these institutions of higher learning will attend one or more courses on campus regarding sexual assault training. Individuals who are responsible for responding to cases of sexual assault must be trained annually and there must be at least one designated staff member within an institution's health or counseling services who will serve as a confidential resources to meet with victims of sexual assault.¹³⁹

¹³⁹ Minnesota State Code § 135A.15

MISSISSIPPI

Summary

Mississippi law has some severe deficiencies.

- Only females can be raped, and they must have had chaste character prior to their assault.
- Sexual battery, which includes anal and oral penetration, carries lesser punishments.
- Spousal rape is permissible under certain circumstances.
- A victim's reputation and prior sexual behavior is admissible as evidence under certain circumstances.
- The state's required education for K-12 students focuses on sexual abuse and abstinence rather than healthy relationships.
- There are no requirements placed on institutions of higher education.

However, Mississippi has installed a constitutional amendment declaring victim's constitutional rights. The language does leave much to be desired, especially with the second clause as it more acts as means to cover the state from wrongdoing rather than the victim.

Statutes

Miss. Code Ann. § 97-3-71. Rape; assault with intent to ravish

- "Every person who shall be convicted of an assault with intent to forcibly ravish any female of previous chaste character shall be punished by imprisonment in the penitentiary for life, or for such shorter time as may be fixed by the jury, or by the court upon the entry of a plea of guilty."

Miss. Code Ann. § 97-3-69. Rape; "chaste character" presumed; uncorroborated testimony of victim insufficient

- "In the trial of all cases under the last preceding section, it shall be presumed that the female was previously of chaste character, and the burden shall be upon the defendant to show that she was not; but no person shall be convicted upon the uncorroborated testimony of the injured female."

Miss. Code Ann. § 97-3-95. Sexual battery

- "A person is guilty of sexual battery if he or she engages in sexual penetration with:
 - (a) Another person without his or her consent;
 - (b) A mentally defective, mentally incapacitated or physically helpless person..."

Miss. Code Ann. § 97-3-97. Sexual battery; definitions

"(a) "Sexual penetration" includes cunnilingus, fellatio, buggery or pederasty, any penetration of the genital or anal openings of another person's body by any part of a person's body, and insertion of any object into the genital or anal openings of another person's body.

(b) A "mentally defective person" is one who suffers from a mental disease, defect or condition which renders that person temporarily or permanently incapable of knowing the nature and quality of his or her conduct.

(c) A "mentally incapacitated person" is one rendered incapable of knowing or controlling his or her conduct, or incapable of resisting an act due to the influence of any drug, narcotic, anesthetic, or other substance administered to that person without his or her consent.

(d) A "physically helpless person" is one who is unconscious or one who for any other reason is physically incapable of communicating an unwillingness to engage in an act."

Miss. Code Ann. § 97-3-99: Sexual battery; defense

- "A person is not guilty of any offense under Sections 97-3-95 through 97-3-103 if the alleged victim is that person's legal spouse and at the time of the alleged offense such person and the alleged victim are not separated and living apart; provided, however, that the legal spouse of the alleged victim may be found

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

guilty of sexual battery if the legal spouse engaged in forcible sexual penetration without the consent of the alleged victim.”

Miss. Code Ann. § 37-3-83: School Safety Grant Program; implementation of "Erin's Law Awareness" policy addressing sexual abuse of children

- This is insufficient, but Mississippi does mandate that schools teach an “age-appropriate curriculum” on the sexual abuse of children for students in the fifth grade and younger. This likely does not cover needed topics on sexual assault.

Miss Code Ann. § 37-13-171. Implementation of abstinence-only or abstinence-plus education

- As part of Mississippi’s mandated abstinence-only sex-related education curriculum, students are to be taught about the laws related to sexual assault and rape. It also “teaches that unwanted sexual advances are irresponsible and teaches how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances.”

MISSOURI

Summary

Missouri's state code states that consent cannot be given if a person is under the influence of a substance that is administered to the victim without their consent. This seems to imply that consent can be given if a person is intoxicated, if he or she consented to ingesting a certain substance. This detail, along with others listed in the fact sheet below, should be clarified by the state.

Statutes

Missouri defines rape in the first degree as sexual intercourse with another person without his or her consent. Consent cannot be given if a person is incapacitated or coerced into sexual activity by the use of an administered substance without his or her consent causing physical or mental impairment. The authorized sentence for rape in the first degree ranges from 5 years to life. If the offense is identified as an aggravated sexual offense, the minimum sentence is fifteen years.¹⁴⁰ The statutory definition of sexual assault includes first and second degree rape, forcible rape, rape, sexual assault, sodomy, deviate sexual assault, sexual misconduct, sexual abuse, or attempts to commit any of these acts.¹⁴¹

Missouri's department of public safety is required to establish the "State Center for the Prevention of Sexual Assault". The director of the department of public safety is responsible for a continuing study of sexual assault that measures,

- the effectiveness of existing state and local laws;
- the legal and social attitudes towards sexual roles;
- the treatment of victims by law enforcement, hospitals, prosecutors and courts;
- the causes of sexual assault, such as the social environment that may encourage sexual assault;
- the impact of sexual assault on the victim and family;
- the actual incidence of sexual assault compared to the reported incidence, and reasons for the difference; and
- the effectiveness of existing educational, counseling, and other support programs.

The study should be analyzed and published with recommendations for the governor, chief justice of the supreme court and members of the general assembly.¹⁴² Law enforcement must apply the same standard of response for an incident involving alleged sexual assault or domestic violence as they would to any other offense.¹⁴³

Legislative Agenda

House Bill No. 2204, introduced the Enough is Enough Act regarding college sexual assault policies. The act would require institutions of higher education to,

- adopt policies derived from evidence-based and peer-reviewed research,
- Publish these policies on the institution's website,
- distribute written copies of these policies to all students enrolled at the institution,
- define affirmative consent and use this standard for determining consent of both parties,
- protect students acting in good faith from discipline or other consequences for engaging in drug or alcohol use if they are reporting an incident of sexual assault, and
- establish one full-time Title IX coordinator.

Sexual Assault and Education

Beginning in elementary and secondary education, the department of education must institute guidelines for sexual assault prevention education and counseling techniques. The programs shall be age-appropriate and must be placed

¹⁴⁰ Missouri State Code § 566.030

¹⁴¹ Missouri State Code § 589.015

¹⁴² Missouri State Code § 589.030

¹⁴³ Missouri State Code § 455.080

during an appropriate place in the curriculum. No program is mandated and no child is required to attend these programs.¹⁴⁴

Each governing body of Missouri's public institutions of higher education must communicate with local law enforcement agencies and enter into an MOU regarding sexual assault, domestic violence, dating violence, and stalking involving students on and off campus. The MOU will include sexual assault policies that align with current best practices and professional standards.¹⁴⁵

¹⁴⁴ Missouri State Code § 589.020

¹⁴⁵ Missouri State Code § 173.2050

MONTANA

Summary

Current Montana Sexual Assault legislation is relatively outdated and non-inclusive of many types of relationship violence. However, as a result of a study conducted over the last year several changes to the state bylaws on sexual violence and assault have been proposed. The Montana legislature seems to be making steps towards updating their sexual assault policies to include a definition of affirmative consent and a broader interpretation of how the law defines sexual assault. Hopefully these changes will make the law inclusive of typical situations of sexual violence on college campuses.

Statutes

Montana Code, 45-5-502. Sexual assault

- Sexual Intercourse without Consent- sexual intercourse with another person without that person’s consent
 - vaginal, anal, or oral penetration by the penis and also, vaginal or anal penetration by any other body part or an object
- Sexual Assault- A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.
 - First conviction; fine up to \$500 or jail up to 6 months
 - Second conviction; fine up to \$1,000 or jail up to 1 year
 - Third conviction; fine up to \$10,000 or up to 5 years
- If the victim is less than 16 years old and the offender is 3 or more years older
 - the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years
 - however the judge can make a written finding that there is good cause to impose a term of less than 4 years or more than 100 years and may be fined not more than \$50,000.
- An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight after the attempt or commission.
- Consent is ineffective under this section if the victim is:
 - incarcerated in an adult or juvenile correctional, unless the act is part of a lawful search;
 - less than 14 years old and the offender is 3 or more years older than the victim
- Sexual contact- defined as touching of sexual or other intimate body parts to bodily injure, harass, or degrade another or to arouse or gratify the sexual response of either.
- Provisions generally applicable to sexual crimes
 - When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that the offender reasonably believed the child to be above that age. The belief may not be considered reasonable if the child is less than 14 years old.
 - Evidence concerning the sexual conduct of the victim is inadmissible in prosecutions under this part except evidence of the victim’s past sexual conduct with the offender or evidence of specific instances of the victim’s sexual activity to show the origin of semen, pregnancy, or disease that is at issue in the prosecution.
 - If the defendant proposes for any purpose to offer evidence described in (the section above), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible.
 - Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.
 - Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent.
- An “incapacitated” person cannot give valid consent and without consent, sexual contact is sexual assault or rape, if there is penetration.
- Montana law considers three major issues in judging whether a sexual act is consensual:
 - Was the victim old enough (16) to consent to sexual intercourse?

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

- Did the victim have the legal capacity (in addition to age) to consent?
- Did each partner agree to the sexual contact performed? If there is no valid consent the sexual act is a crime.
- Consent as a defense
 - The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense.
 - Consent is ineffective if:
 - it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense;
 - it is given by a person who by reason of youth, mental disease or defect, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense;
 - it is induced by force, duress, or deception;
 - it is against public policy to permit the conduct or the resulting harm, even though consented to.

Legislative Agenda

LC2246: Interim study on sexual assault

- Sponsored by Sen. Diane Sands
- Designs a committee to create a study on sexual assault in Montana
- The study considers:
 - current sexual assault criminal statutes
 - current policies and practices of local, state, and public university law enforcement entities and the county attorney's' offices concerning investigating and prosecuting sexual assault crimes
 - societal attitudes and myths surrounding sexual assault and ways to better educate the public and potential jurors to overcome improper societal attitudes, improve victim experience, and promote a corresponding rise in convictions
 - whether and to what extent best-practices training is available to responding agencies, including but not limited to law enforcement, prosecution, corrections, judicial, and victim advocate agencies
 - current jurisdictional factors in the system's response to sexual assault in state educational institutions, including an examination of how the requirements of Title IX
- Signed into law 4-27-2015

SJ 24: Study of Sexual Assault in Montana: Draft Study Plan

- Outline on Sexual Assault study in Montana
- Study aims to identify:
 - current laws, policies, procedures, and best practices related to investigation and prosecution of sexual assault crimes
 - jurisdictional issues that hinder investigation and prosecution of these crimes
 - data-collection and information-sharing challenges
 - laws, policies, procedures, and best practices related to treatment of victims, treatment of offenders, and community education measures (including societal attitudes and myths surrounding sexual assault)
- Proposed June 25, 2015
 - Scheduled to be completed by September 15, 2016

Law and Justice Interim Committee Actions and Proposals;

- September 2015-August 2016
- Proposed legislation from the Committee (Approved bill drafts)
 - Revise Sexual Assault Laws and Definitions (Link to full proposed revisions)
 - Revising language of the law to include a definition for affirmative consent (Link to proposed language changes)
 - Steps to prohibit the sharing of sexual images against the subject's will
 - Revise statute of limitations for sex crimes perpetrated against victims under the age of 18 (Link)

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

- Revise juvenile sex offender registry requirements (Link)
- Revise sexual assault laws and parental rights (Link)
- Revise Incest Laws (Link)
- Link to committee page on Montana Legislature Website
 - Contains presentation materials for each month of investigation, numbers found in research, and research methods

Sexual Assault and Education

No specific State Laws regarding campus sexual assault. Major universities (MSU, UMT, Carroll College, etc.) have standard Title IX coordinators, no specific alliance between institutions to tackle sexual assault. For proposed state laws that would directly affect campus sexual assault, see below.

University of Montana

- SARC- Student Advocacy Research Center
 - “The Student Advocacy Resource Center celebrates diversity, supports the right of all students to pursue success in our academic community, openly respects and cares for everyone, and is committed to a campus free from discrimination and unwelcome physical, sexual, emotional or social coercion.”
- PESTA- Personal Empowerment Through Self Awareness
 - Mandatory online training for incoming freshmen that “features videos that deal frankly with sexual assault and rape. They are designed to be informative and educational. The videos emerged out of a multidisciplinary team effort at The University of Montana, comprised of faculty, staff and students, and are based on rape and sexual assault reduction and prevention data.”
- MOST- Men of Strength
 - The Men Of Strength group, or MOST, at the University of Montana is a student organization dedicated to preventing men's violence against women and promoting healthy masculinity through discussion, awareness raising, and men's activism. MOST strives to connect students, staff, faculty, administration, and the greater Missoula community in an effort to increase men's participation in primary prevention of violence against women.

Montana State University

- MSU VOICE
 - VOICE is a sexual assault hotline run by staff and trained advocates.
 - VOICE Center Advocates can talk to you, either on the phone or in person, about your relationship and concerns you may have; reporting options; temporary orders of protection; support groups; counseling, and medical resources available to you.

NEBRASKA

Summary

Nebraska defines sexual assault as committed by either sex, but its definition of consent is limited to being compelled by force, deception, and resisting sexual contact. It does not include being mentally incapacitated or intoxicated. There were no statutes pertaining to sexual assault policies on campus, but there was proposed legislation to create a Campus Sexual Assault Prevention Grant Program. For pre-college education, students will face expulsion or long-term suspension for committing sexual assault on or off school grounds.

Statutes

Nebraska defines sexual assault in the first degree as sexual penetration without consent when the offender should have known that the victim was incapable of giving consent. *State v. Willis* established that first-degree sexual assault can be committed by either males or females and victim can be both a male or a female.¹⁴⁶ Sexual assault in the second or third degree is defined as sexual contact without consent or by an offender who should have known that the victim was incapable of resisting or consenting to the contact. If the offender caused serious physical injury, the offense is in the second degree.¹⁴⁷

Nebraska explains “without consent” to mean,

- a situation in which a, “victim was compelled to submit due to the use of force or coercion, or the victim expressed a lack of consent through words”;
- a situation in which consent was only given because the victim was deceived; or
- a situation in which a victim resists, verbally or physically.

The expense of any forensic medical examination of a sexual assault victim will be covered by the Sexual Assault Payment Program Cash Fund.¹⁴⁸

Legislative Agenda

2015 Nebraska Legislative Bill No. 1027, Create and provide funding for the Campus Sexual Assault Prevention Grant Program and provide duties for the Attorney General, was introduced in the Senate on January 19, 2016. The act would create a Campus Sexual Assault Prevention Grant Program to provide grants for funding programs that would combat college campus sexual assault.

Sexual Assault and Education

If a student within any Nebraska school district sexual assaults or attempts to sexually assault any person on or off school grounds, the student will be constituted to long-term suspension, expulsion, or mandatory reassignment.¹⁴⁹

¹⁴⁶ Nebraska State Code § 28-319

¹⁴⁷ Nebraska State Code § 28-320

¹⁴⁸ Nebraska State Code § 81-1429.03

¹⁴⁹ Nebraska State Code § 79-267

NEVADA

Summary

Nevada defines sexual assault and sexual abuse, but there is no statute discussing sexual assault policies at institutes of higher learning. Nevada does include an explicit prohibition of bestiality within its state code, but overall, the state code is very sparse in regards to sexual assault.

Statutes

Nevada defines sexual assault as sexual penetration by force or on a beast, against the will of the victim or if the offender should know that the person is unable to consent. If significant bodily harm occurs the offender will be subjected to life without parole or parole after 15 years.¹⁵⁰ “Sexual penetration” is defined as oral, anal, or any intrusion, however slight, of any part of a person’s body with another body part or object (§ 200.364). Sexual abuse is defined as sado-masochistic abuse, sexual assault, statutory sexual seduction, open or gross lewdness.¹⁵¹

Instructions given in a Nevada court regarding the prosecution for sexual assault require that the term “unchaste character” not be used in reference to the victim when communicating with the jury.¹⁵²

Legislative Agenda

2015 Nevada Assembly Bill No. 212, Increases the statute of limitations for sexual assault, proposes prosecution for sexual assault may begin within 20 years of the offense instead of four years which is the present requirement.

¹⁵⁰ Nevada State Code § 200.366

¹⁵¹ Nevada State Code § 432B.100

¹⁵² Nevada State Code § 175.186

NEW HAMPSHIRE

Summary

New Hampshire's legislative body has not proposed or discussed much regarding campus sexual assault, or even sexual assault in general. The State Code does a decent job of defining sexual assault (and related offenses), and defines consent on the terms of "no means no." The University of New Hampshire and other schools are taking the issue into their own hands, so maybe state officials will look to their policies to inform new laws.

Statutes

Definition of Consent

- Indirectly defines consent within the body of the Code, "When at the time of the sexual assault, the victim indicates by speech or conduct that there is not freely given consent"

Specific Offenses

- Chapter 632 - Rape of Criminal Code repealed in 2015
- Chapter 632A - Sexual Assault and Related Offenses
 - Aggravated felonious sexual assault
 - Felonious sexual assault
 - Sexual assault
 - HIV testing mandated for persons convicted of any offense under this chapter

Sexual Assault and Education

No mention on sexual assault in Chapter 187A "State College and University System" in the Education Title

Regulations, Pre-College Education, and Campus Resources

- UNH Code of Conduct defines consent as "mutual agreement based on a shared desire for specific sexual activities"
- uSafeNH app launched by Prevention Innovations Research Center (PIRC) at UNH, available to college students all over New Hampshire
- New Hampshire Bar Association proposed preventative high school training through their "A Lawyer in Every School" project, mainly regarding gender based discrimination and sexual harassment

NEW JERSEY

Summary

New Jersey has made several positive steps towards adopting comprehensive policies on campus sexual assault prevention. One of the most important pieces of legislation was the “Campus Sexual Assault Victim's Bill of Rights” passed in 2013. Since then, there have been several failed attempts to pass additional legislation on affirmative consent, more in depth on campus resources, and expanding the meaning of “sexual misconduct” to include dating violence and stalking. However, following the protests of Princeton university’s handling of sexual assaults there has been an effort to unite higher education programs on sexual assault prevention. The New Jersey Coalition Against Sexual Assault connects institutions to community resources for survivors in an effort to emphasize a common cause to end sexual violence.

Statutes

Title 2C - The New Jersey Code of Criminal Justice

- Section 2C:14-2 - Sexual assault.
 - 2C:14-2. Aggravated Sexual assault (crime in the 1st degree)
 - The victim is one whom the actor knew or should have known was physically helpless, mentally incapacitated, or had a mental disease or defect which rendered the victim temporarily or permanently incapable of understanding the nature of his conduct, including, but not limited to, being incapable of providing consent.
 - Sexual Assault (crime in the 2nd degree)
 - An actor is guilty of sexual assault if he commits an act of sexual contact with a victim who is less than 13 years old and the actor is at least four years older than the victim.
 - The actor uses physical force or coercion, but the victim does not sustain severe personal injury.
- Section 2C:14-2.1 - Victim of sexual assault may consult with prosecutor on plea negotiations
 - Victim Counsel
 - Whenever there is a prosecution for a (sexual assault) the victim of the sexual assault shall be provided an opportunity to consult with the prosecuting authority prior to the conclusion of any plea negotiations.
- Section 2C:14-3 - Aggravated criminal sexual contact; criminal sexual contact
 - Aggravated Sexual Contact (crime in 3rd degree)
 - An actor is guilty of aggravated criminal sexual contact if he commits an act of sexual contact (violence that does not include intercourse) with the victim under any of the circumstances that define “Aggravated Sexual Assault.”
 - Criminal Sexual Contact (crime in 4th degree)
 - An actor is guilty of criminal sexual contact if he commits an act of sexual contact (violence that does not include intercourse) with the victim under any of the circumstances that define “Sexual Assault”
- Section 2C:14-7 Victim's previous sexual conduct; manner of dress.
 - Admissibility of evidence
 - The victim’s previous sexual conduct or manner of dress is not considered admissible evidence except:
 - it is material to proving the source of semen, pregnancy or disease.
 - if it is probative of whether a reasonable person, knowing what the defendant knew at the time of the alleged offense, would have believed that the alleged victim freely and affirmatively permitted the sexual behavior complained of.
 - If the court determines such evidence admissible in the interest of justice.
 - "sexual conduct" means previous or subsequent sexual experiences, use of contraceptives, sexual activities reflected in gynecological records, living arrangement and lifestyle.

Legislative Agenda

- Assembly Bill 557- “New Jersey Sexual Assault Violence in Education Act”; requires institutions of higher education to adopt anti-sexual assault theater program, report allegations of sexual assault to county prosecutor, and provide students with information on sexual assaults.
 - Introduced - Referred to Committee; 2016-1-27
- Senate Bill 2478- Requires institutions of higher education to adopt affirmative consent standard and other policies regarding sexual assault, domestic violence, dating violence, and stalking.
 - Failed in 2014
- Senate Bill 2812- Establishes task force to study issues related to sexual assault on college campuses.
 - Failed in 2015
- Assembly Bill 3947- Requires institutions of higher education to adopt affirmative consent standard and other policies regarding sexual assault, domestic violence, dating violence, and stalking.
 - Failed in 2014

Sexual Assault and Education

Title 18A - Education, 18A:61E-2. "Campus Sexual Assault Victim's Bill of Rights" (2013)

- The Commission on Higher Education will appoint a committee to develop a “Campus Sexual Assault Victim’s Bill of Rights”
 - Will draw up a Bill of Rights that will be given to victims of assault on public or private colleges where the victim alleged perpetrator is a student. These rights include:
 - The right to have any sexual assault allegation treated seriously and with dignity.
 - The right to be notified of existing medical, counseling, mental health or student services for victims of sexual assault, both on campus and in the community whether or not the crime is reported to campus or civil authorities.
 - The right to have any allegation of sexual assault investigated and adjudicated with full support of the campus authorities.
 - The right to be free from pressure from campus personnel to refrain from reporting crimes, or to report crimes as lesser offenses than the victims perceive the crimes to be, or to report crimes if the victim does not wish to do so.
 - The right to be free from any suggestion that victims are responsible for the commission of crimes against them.
 - The same right to legal assistance, and the right to have others present, in any campus disciplinary proceeding, that the institution permits to the accused; and the right to be notified of the outcome of any disciplinary proceeding.
 - The right to full, prompt, and victim-sensitive cooperation of campus personnel in obtaining, securing, and maintaining evidence, including a medical examination if it is necessary to preserve evidence of the assault.
 - The right to be informed of, and assisted in exercising, any rights to be confidentially or anonymously tested for sexually transmitted diseases or human immunodeficiency virus; the right to be informed of, and assisted in exercising, any rights that may be provided by law to compel and disclose the results of testing of sexual assault suspects for communicable diseases.
 - The right to have access to counseling under the same terms and conditions as apply to other students seeking such counseling from appropriate campus counseling services.
 - The right to require campus personnel to take reasonable and necessary action to prevent further unwanted contact of victims with their alleged assailants, including but not limited to, notifying the victim of options for and available assistance in changing academic and living situations after an alleged sexual assault incident if requested by the victim and if they are reasonably available.

Regulations, Pre-College Education, and Campus Resources

- Incoming freshmen required to take several online courses in bystander intervention and alcohol education (UMatter, Alcohol.edu)

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

- New Jersey Coalition Against Sexual Assault- An organization that partners Rape Crisis Centers across the state with New Jersey colleges
 - Offers survivor-centered education, including compassionate treatment of survivors and sexual assault prevention policy
 - Campus Consortium- The Consortium is made up of campus professionals from colleges and universities throughout New Jersey. Its goal is to create positive change and eliminate all forms of violence. It meets quarterly to develop responses to issues impacting campus communities and identify the best practices in sexual assault response, investigation, and prevention on colleges and universities.

NEW MEXICO

Summary

The University of Mexico was issued a 37 page letter from the Justice Department earlier this year, faulting its sexual assault policies and the Office of Equal Opportunity for not being in compliance with federal law. State laws could be much better improved to address these issues as well, as campus sexual assault is not on the legislative radar. Consent is also not defined, and is not mentioned as a factor (besides age) in criminal sexual penetration charges.

Statutes

Definition of Consent

- Consent is not defined, only mentioned in regard to contact

Specific Offenses

- Chapter 30 Criminal Offenses, Section 9 Sexual Offenses
 - Criminal sexual penetration - unlawful and intentional causing of a person to engage in sexual intercourse etc
 - Criminal sexual contact - unlawful and intentional touching of or application of force, without consent, to the unclothed intimate parts of another

Sexual Assault and Education

New Mexico Coalition of Sexual Assault Programs released a Statewide Primary Prevention Strategic Plan in 2015, meant to be used by universities (and others).

Legislative Agenda

2015 - 2016 Highlights

- SB 125 Sexual Assault Prevention & Training - appropriate money to fund sexual assault prevention and sexual assault services - *postponed indefinitely*

NEW YORK

Summary

New York has some of the best laws and policies against sexual assault in the United States. State law features a complete definition of “consent,” comprehensive statutes defining sex crimes, and recently authorized millions more for sexual assault prevention education and enforcement. New York is firmly in the running to be the best state in the union for sexual assault policy.

Statutes

Definition of Consent

- Lack of consent results from:
 - Forcible compulsion; or
 - Incapacity to consent; or
 - Where the offense charged is sexual abuse or forcible touching, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct; or
 - Where the offense charged is rape in the third degree as defined in subdivision three of §130.25, or criminal sexual act in the third degree as defined in subdivision III of §130.40

Specific Offenses

- §130.10: If the victim is mentally deficient, mentally incapacitated, or physically helpless (to include unconsciousness or excessive inebriation), the defendant must mount an affirmative defense proving that he did not have the reasonable ability to know they couldn't consent.
- §130.25: Rape in the 3rd degree results from intercourse with an inability to consent or with someone less than 17 years old (offender being at least 21). Class E felony.
- §130.30: Rape in the 2nd degree results from intercourse with someone less than 15 (offender being at least 18) or with someone mentally disabled or mentally incapacitated. Class D felony.
- §130.35: Rape in the 1st degree results from having intercourse through forcible compulsion, because of physical helplessness, with someone less than 11, with someone less than 13 (offender being at least 18). Class B felony.
- §130.40-50: “Criminal sexual acts” punish the same things in the same way as the rape statutes, but “rape” deals only with vaginal intercourse.
- §130.20: “Sexual misconduct” constitutes a Class A misdemeanor and encapsulates all non-consensual sexual contact, including with animals and dead bodies.
- §130.52: “Forcible touching” includes all forms of sexual assault, Class A misdemeanor.
- §130.55: Sexual abuse in the 3rd degree results from any kind of sexual contact without consent. Affirmative defense for “age appropriateness.” Class B misdemeanor.
- §130.60: Sexual abuse in the 2nd degree: incapable of consent, younger than 14. Class A misd.
- §130.65: Sexual abuse in the 1st degree: same as rape in 1st and CSA in 1st. Class D felony.
- §130.90: Facilitating a sexual offense with a controlled substance. Class D felony.

Miscellaneous Statutes

- §130.16: The defendant cannot be convicted on the uncorroborated testimony of the victim.
- §130.91: Sexually motivated felony (intended to rape, CSA, or sexually abuse, didn't, but did commit a felony [usually assault] in the process). Extra sentencing.
- §130.95: Predatory sexual assault occurs when someone commits a sex crime as described above and causes serious physical injury, uses or threatens use of a violent instrument, has raped (etc.) before, or has previously been convicted of certain other offenses. Class A-II felony.

Legislative Agenda

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

- A.4558A/S.61A - Gender Expression Non-Discrimination Act (GENDA) - extends civil rights protections to transgender individuals - passed Assembly, introduced in Senate.
- S.5965 - “Enough is Enough” Act - allocates additional \$6.4 million for sexual assault prevention education and enforcement in New York colleges and universities.

Sexual Assault and Education

- Title VII Article 129-B §6441 defines affirmative consent and mandates that all college policies reflect that affirmative consent is necessary for consensual sex to occur.
- §6442 Affords medical amnesty to survivors of sexual assault and witnesses of the same.
- §6443 Mandates that all students be informed of their “Students Bill of Rights” by their university, and that this bill of rights includes the right to report, to have a fair process, to be free from victim-blaming, to be free from retaliation, to at least one appeal, and to a trained advisor.
- §6444 Provides protection and due process to those who report.
- §6445 Establishes annual campus climate assessments, in which universities determine the student body’s level of knowledge of and access to the provisions of this statute
- §6446 Affords the option of confidential disclosure of incidents.
- §6447 Mandates that institutions educate students about sexual assault prevention and recourse measures when students join the institution, as well as ongoing education during their tenure.
- §6449 Mandates that institutions report assault data to the New York Department of Education.

Regulations, Pre-College Education, and Campus Resources

- The “Enough is Enough” Act provided \$4.5 million to universities to enforce sexual assault prevention legislation, \$1 million to the New York Department of Health to fund measures like PERKs (Physical Evidence Recovery Kits) and SANEs (Sexual Assault Nurse Examiners), and \$0.9 million to the New York Office of Victim Services.
- All entering college freshmen are required to undergo sexual assault prevention training, and students are required to complete ongoing education throughout their time in school.

NORTH CAROLINA

Summary

North Carolina appears to lack specific requirements of institutions of higher education when it comes to sexual assault. It also has problematic language around the definition of “mentally incapacitated” and “physically helpless.” Nevertheless, it also requires schools to teach about sexual assault and healthy relationships.

Statutes

N.C. Gen. Stat. § 14-27.20: Definitions

- “Mentally incapacitated” means means a victim who due to any act committed upon the victim is rendered substantially incapable of either appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act.
- “Physically helpless” means (i) a victim who is unconscious; or (ii) a victim who is physically unable to resist an act of vaginal intercourse or a sexual act or communicate unwillingness to submit to an act of vaginal intercourse or a sexual act.
- The term “sexual act” includes anal and oral intercourse, but not vaginal intercourse. It also includes penetration by an object.
- “Sexual contact” means (i) touching the sexual organ, anus, breast, groin, or buttocks of any person, (ii) a person touching another person with their own sexual organ, anus, breast, groin, or buttocks, or (iii) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person.

This language is problematic. To be mentally incapacitated, a victim must have “an act committed” upon them that renders them unable their situation, but to be physically helpless requires a lack of consciousness or an inability to resist. Intoxicated victims may not fall into either category.

N.C. Gen. Stat. § 14-27.21: First-degree forcible rape

- This is vaginal intercourse by force and against the will of the victim using
 - a dangerous or deadly weapon,
 - serious personal injury, or
 - the aid of another assailant.

N.C. Gen. Stat. § 14-27.22: Second-degree forcible rape

- This is vaginal intercourse by force and against the will of the victim or with a victim who is mentally disabled, mentally incapacitated, or physically helpless and the assailant knows this.

N.C. Gen. Stat. § 14-27.26: First-degree forcible sexual offense

- This is a sexual act by force and against the will of the victim using
 - a dangerous or deadly weapon,
 - serious personal injury, or
 - the aid of another assailant.

N.C. Gen. Stat. § 14-27.27: Second-degree forcible sexual offense

- This is a sexual act by force and against the will of the victim or with a victim who is mentally disabled, mentally incapacitated, or physically helpless and the assailant knows this.

N.C. Gen. Stat. § 14-27.34: No defense that victim is spouse of person committing act

- Status as the victim’s legal spouse is not a defense for these sex crimes.

N.C. Gen. Stat. § 14-27.33: Sexual battery

- This is sexual contact by force and against the will of the victim or with a victim who is mentally disabled, mentally incapacitated, or physically helpless and the assailant knows this.

N.C. Gen. Stat. § 8C-1 Rule 412: Relevance of victim's past behavior

- Generally, the victim’s past sexual behavior is irrelevant in sexual offense cases.
- Exceptions to this rule include:
 - Was between the complainant and the defendant; or

- Is evidence of specific instances of sexual behavior offered for the purpose of showing that the act or acts charged were not committed by the defendant; or
- Is evidence of a pattern of sexual behavior so distinctive and so closely resembling the defendant's version of the alleged encounter with the complainant as to tend to prove that such complainant consented to the act or acts charged or behaved in such a manner as to lead the defendant reasonably to believe that the complainant consented; or
- Is evidence of sexual behavior offered as the basis of expert psychological or psychiatric opinion that the complainant fantasized or invented the act or acts charged.

N.C. Gen. Stat. § 143B-394.21: Sexual Assault and Rape Crisis Center Fund

- There is a fund for rape crisis centers in North Carolina.

Legislative Agenda

- 2015: HB 815 - comprehensive legislation on campus-based sexual assault - *Died in committee*
 - Would have established affirmative consent as standard on campus disciplinary hearings.
 - Mandates community colleges to create and implement a policy on sexual assault, domestic violence, dating violence, and stalking

Sexual Assault and Education

N.C. Gen. Stat. § 115C-81: Basic Education Program

- North Carolina's basic education program includes some bad policy, like abstinence-only sexual education, but it also includes the requirement below that schools include a unit that

“Teaches awareness of sexual assault, sexual abuse, and risk reduction. The instruction and materials shall:

1. Focus on healthy relationships.
2. Teach students what constitutes sexual assault and sexual abuse, the causes of those behaviors, and risk reduction.
3. Inform students about resources and reporting procedures if they experience sexual assault or sexual abuse.
4. Examine common misconceptions and stereotypes about sexual assault and sexual abuse.”

NORTH DAKOTA

Summary

While the state has outlined some rights for victims, North Dakota has a history for overlooking the issue of sexual assault. A constitutional amendment to make the victim's rights a constitutional guaranteed right will be put up to a vote this coming election day, but other than that, there is not a lot of movement nor expansion of their sexual assault policies.

Statutes

Definition of Consent

- “Coercion” means to exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance.
- Uses male pronouns in descriptions of some sexual-based crimes.

Specific Offenses

- 12.1-20-03 Gross Sexual Imposition, Class A Felony, Engages in a sexual act with another or causes another to engage in a sexual act upon a victim that is unaware that it is being committed, is impaired because of the employment of intoxicants without the victim's knowledge, or is forced by threat of death or injury. Up to 20 years in prison or maximum fine of 10,000 USD.
 - Gross Sexual Imposition, Class AA Felony, Engages in a sexual act with another or causes another to engage in a sexual act upon a victim if the engager causes wounds that leads to the victim's

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death, if the engager compels the victim by threat of death or injury, or if the engager inflicts serious bodily injury. Up to 20 years in prison or maximum fine of 10,000 USD.

- 12.1-20-07 Sexual Assault, Class B Misdemeanor, if offender has sexual contact with the victim that they have reasonable cause to believe the victim will find offensive. Up to 30 days in prison or a maximum 1000 USD fine.
 - Sexual Assault, Class C Felony, if the offender has sexual contact with the victim and the offender has reasonable cause to believe the victim has been substantially impaired by the employment of an intoxicant or substance. Up to 5 years in prison or maximum 5000 USD fine.

Miscellaneous Statutes

- NDR 142. Evidence offered to prove a victim's engagement in sexual behavior or to prove a victim's sexual predisposition is not admissible in a civil or criminal proceeding.

Legislative Agenda

Marsy's Law for North Dakota, a constitutional amendment that guarantees a victim's rights under the constitution of North Dakota. It would provide for permanent, enforceable, equal rights for victims and their families. It passed in a referendum on November 8, 2016.

SB 2150, Allowing students to have legal representation for non-academic university hearings and disciplinary proceedings.

Other

North Dakota police services operate a system called SAVIN –Statewide Automated Victim Information and Notification systems. It allows for all officials in the state to have access to information about the arrests and allows victims to access offender information.

North Dakota's Department of Health has released an Intimate Partner and Sexual Violence Prevention Plan.

OHIO

Summary

Ohio has not implemented policies on campus-based sexual assault. While there has been a new initiative to provide campuses with strategies and mechanisms for combating sexual assault, none are compulsory and there appears to be no legislation in the current year regarding any changes. Also, Ohio does not call an offense rape or sexual assault if the person is the spouse of the offender.

Statutes

Definition of Consent

- Sexual contact is the touch of an erogenous zone of another for the purpose of sexual arousal or gratification.
- Clarification of Rape — the victim is either not the spouse of the offender or can be the spouse if they are living separately.

Specific Offenses

- 2907.02 Rape, Felony of the First Degree, No person shall engage in sexual conduct with another when the offender impairs the “other person” (not referred to as victim) judgement or control by administering a drug, or by force, threat, or deception.
- 2907.03 Sexual Battery, Felony in the Third, No person shall engage in sexual conduct with another when the offender is an athletic coach, instructor, teacher, administrator, or a person of authority; when the victim submits because they mistake the offender as their spouse, when the offender knows the victim is unaware the act is committed, or the offender knows the victim’s ability to appraise the situation is substantially impaired, or if the offender coerces the victim to submit by “any means that would prevent resistance by a person of ordinary resolution” ,1 to 5 years in prison
- 2907.06 Sexual Imposition, Misdemeanor in the Third, no person shall have sexual conduct with another person when the offender knows the victim submits because they are unaware of the sexual contact, knows the victim’s ability to appraise the situation is substantially impaired, when the offender knows that the sexual contact is offensive to the victim.
 - Sexual Imposition, Misdemeanor in the First, no person shall have sexual conduct with another when the offender has been previously convicted of rape, sexual battery, unlawful sexual conduct with a minor, or gross sexual imposition. A maximum 6 months in prison.

Legislative Agenda

A Sexual Violence Prevention and Response Summit will be held in 2017 to support the “Changing Campus Culture” initiative introduced in Ohio in 2015. See above for more information on this. The goal of the summit is to incorporate more of the policies on college campuses. None of the recommendations or strategies are required by the state.

Sexual Assault and Education

The state has done nothing on campus sexual assault in particular, but an initiative was started by the Ohio Department of Higher Education in 2015 called “Changing Campus Culture: Preventing and Responding to Sexual Violence.” Written by several state officials and policymakers, it is a list of recommendations and strategies for campuses to adopt but is in no way compulsory nor required. It also included the request for campuses to participate in a survey of their campus “climate” and 100% of institutions responded.

Regulations, Pre-College Education, and Campus Resources

- Office of Campus Safety and Security assists public and private Ohio institutions of higher education in creating safety awareness, emergency response plans, and creating models for sexual violence protocols.

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

- They have a task force that does investigations and reports regarding the current prevalence of sexual assault on campuses and the responses.

OKLAHOMA

Summary

Oklahoma has made significant strides in the Legislature to amend and update sexual assault legislation. In April 2016 an Oklahoma court ruled that forcible sodomy is not a crime if the victim is unconscious at the time. This controversial decision quickly led to legislation that closed the loophole in the law.

Statutes

Title 21. Crimes and Punishments

- §21-1111. Rape defined
 - Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator
 - Where the victim is under sixteen (16) years of age
 - Where the victim is incapable through mental illness or any other unsoundness of mind, whether temporary or permanent, of giving legal consent;
 - Where force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person;
 - Where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit;
 - Where the victim is at the time unconscious of the nature of the act and this fact is known to the accused;
 - Where the victim submits to sexual intercourse under the belief that the person committing the act is a spouse, and this belief is induced by deception
 - Where the victim is under the legal custody or supervision of a state or federal entity
 - Where the victim is at least (16) years of age and is less than (20) years of age and is a student, or under the legal custody and engages in sexual intercourse with a person who is (18) years of age or older and is an employee of the same school system.
 - Rape is an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person.
 - Means that spousal rape is only a crime under section B, if there is violence or threat of violence, but not if the perpetrator drugs their spouse
 - §21-1111.1. Rape by instrumentation.
 - an act within or without the bonds of matrimony in which any inanimate object or any part of the human body, not amounting to sexual intercourse is used in the carnal knowledge of another person without his or her consent and penetration of the anus or vagina occurs to that person
 - §21-1112. Age limitation on conviction for rape.
 - No person can be convicted of rape or rape by instrumentation on account of an act of sexual intercourse with anyone over the age of fourteen (14) years, with his or her consent, unless such person was over the age of eighteen (18) years at the time of such act.
 - §21-1113. Slight penetration is sufficient to complete crime.
 - The essential guilt of rape or rape by instrumentation, except with the consent of a male or female over fourteen (14) years of age, consists in the outrage to the person and feelings of the victim. Any sexual penetration, however slight, is sufficient to complete the crime.
 - §21-1114. Rape in first degree - Second degree.
 - Rape in the first degree
 - Committed by a person over 18 upon a person under 14

- Committed upon a person incapable through mental illness or unsoundness of mind of giving legal consent.
 - Rape accomplished where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit; or
 - Rape accomplished where the victim is at the time unconscious of the nature of the act and this fact is known to the accused; or
 - Rape accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the person committing the crime; or
 - Rape by instrumentation resulting in bodily harm is rape by instrumentation in the first degree regardless of the age of the person committing the crime; or
 - Rape by instrumentation committed upon a person under fourteen (14) years of age.
 - In all other cases, rape or rape by instrumentation is rape in the second degree.
- §21-1115v1. Rape in first degree a felony.
 - Rape in the first degree is a felony punishable by death or imprisonment in the State Penitentiary, not less than five (5) years, except as provided in Section 3 of this act, in the discretion of the jury, or in case the jury fails or refuses to fix the punishment then the same shall be pronounced by the court.
- §21-1115v2. Punishment for rape in first degree.
 - Rape in the first degree is a felony punishable by death or imprisonment in the custody of the Department of Corrections, for a term of not less than five (5) years, life or life without parole
- §21-1116. Rape in second degree a felony.
 - Rape in the second degree is a felony punishable by imprisonment in the State Penitentiary not less than one (1) year nor more than fifteen (15) years.
- §21-1172. Obscene, threatening or harassing telecommunication or other electronic communications - Penalty.
 - It shall be unlawful for a person who, by means of a telecommunication or other electronic communication device, willfully either:
 - Makes any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, or indecent;
 - Makes a telecommunication or other electronic communication with intent to terrify, intimidate or harass, or threaten to inflict injury or physical harm to any person or property of that person;

Sexual Assault and Education

- Justice for J.W. Act of 2016
 - Changed the definition of sexual consent to state that consent cannot be given by a person who is asleep, physically incapacitated by drugs or alcohol, or is under duress, being threatened or being forced to perform a sexual act
 - Amends the state's forcible oral sodomy law to include instances in which the victim is unconscious or intoxicated.
 - The bill was in response to a decision by the Oklahoma Court of Criminal Appeals in a forcible sodomy case. The court did not consider forcible sodomy while the victim was unconscious to be a crime under Oklahoma law.
 - The court held that "forcible sodomy cannot occur where a victim is so intoxicated as to be completely unconscious at the time of the sexual act of oral copulation."
- State Assessment and Comprehensive Plan for Sexual Violence Prevention in Oklahoma for 2010-2015
 - Outlines policy focuses for sexual assault prevention policy
 - Outdated, but it gives good insight to the kinds of programs they were researching and exploring.
 - Outlined path to effective policy: define the problem, identify risk and protective factors, develop and test prevention strategies, and assure widespread adoption

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

- Comprehensive plan:
 - The goals of the comprehensive plan are:
 - Reduce first-time perpetration of sexual violence
 - Increase the number of non-violent relationships and interactions
 - Reduce cultural influences supporting sexual violence

Legislative Agenda

- House Bill 2527
 - To provide for funding to Legal Aid to provide legal services to victims of domestic violence
 - Vetoed by Governor 5/9/2014

Advocacy

- Oklahoma Coalition Against Domestic Violence & Sexual Assault (OCADVSA)
 - Mission: “to organize and mobilize member programs to prevent and eliminate sexual and domestic violence and stalking in the State of Oklahoma and in Indian Country.”
- The Muscogee Nation SANE Program
 - Native American College
 - National studies of sexual assault on college campuses don’t always include Native American campuses.
 - Muscogee is one of the only Oklahoma Native American colleges that has concrete sexual assault resources such as SANE. Other colleges refer students to community resources.

OREGON

Summary

Oregon addresses sexual assault by requiring the creation of a sexual assault response team, pre-college education on consent and identifying unhealthy relationships, and higher education policies regarding victims' rights. Revisions to Chapter 163 of the Oregon Criminal Code add a definition for consent, but not affirmative consent.

Statutes

- Definitions (§ 163.305)
 - Forcible compulsion - compel by physical force or or a non-physical threat
 - Mentally defective - victim suffers from a mental disease or defect that renders them unable to appraise or control the perpetrator at the time of the offense
 - Mentally incapacitated - victim is rendered incapable of appraising or controlling the perpetrator at the time of the offense
 - Physically helpless - person is unconscious or physically unable to communicate consent for an act
- Incapacity to Consent (§ 163.315)
 - Incapable of consenting to an act if the victim is under 18, mentally defective, mentally incapacitated or physically helpless
 - A lack of verbal or physical resistance does not constitute consent but may be considered evidence in a case as long as other relevant evidence is provided
- Ignorance or Mistake as a defense (§ 163.325)
 - It is no defense that the defendant did not know the child's age or that the defendant reasonably believed the child to be older than the age of 16
 - In which the victim's lack of consent is based solely upon the incapacity of the victim to consent because the victim is mentally defective, mentally incapacitated or physically helpless, it is an affirmative defense for the defendant to prove that at the time of the alleged offense the defendant did not know of the facts or conditions responsible for the victim's incapacity to consent.
- Sexual abuse in the first degree (§ 163.427)
 - sexual contact when a victim is subjected to forcible compulsion by the perpetrator or when the victim is unable to consent due to mental incapacity or physical helplessness
- Exceptions to unlawful sexual penetration prohibition (§ 163.412)
 - The penetration is part of a medically recognized treatment or diagnostic procedure
 - The penetration is accomplished by a peace officer or a corrections officer acting in official capacity, or by medical personnel at the request of such an officer, in order to search for weapons, contraband or evidence of crime
- Sexual assault response teams (§ 147.401)
 - The district attorney of each county is responsible for the creation of a sexual assault response team that will meet quarterly to develop policies addressing the response to sexual assault victims in each county
- Policies, guidelines and training requirements for providers of medical care to sexual assault patients (§ 147.403)
 - Each hospital or emergency medical service provider in the state shall adopt policies for the treatment of sexual assault patients
 - They shall also adopt the State of Oregon Medical Guideline for Sexual Assault Evaluation of Adolescent and Adult Patients (developed by the sexual assault task force)
 - Employ or contract with at least one sexual assault forensic examiner with completed training and certification by the Oregon SANE Certification Commission
- Melissa's Law
 - Each law enforcement agency is required to have policies regarding the collection and submission of sexual assault forensic evidence kits. The policies must be publically accessible. Currently,

A SURVEY OF STATE SEXUAL ASSAULT POLICIES

there is a prohibition on the submission of an anonymous kit to the department for testing. The kits must be kept for no less than 60 years after the collection of evidence (Ch. 89, § 4).

- In 2013 Oregon passed HB 2779 called the “Sexual Abuse Protective Order”. This order is a civil protective order for survivors of sexual abuse that can protect them in the absence of some other legal protective order.
- All public, private, community colleges and universities in the state of Oregon will be responsible for adopting a written policy that will allow victims of sexual assault access to services and assistance. The victim will be provided with,
 - his or her rights
 - information about legal options, civil and criminal options and campus-based disciplinary options;
 - information about campus-based services;
 - information about privacy rights, limitations of privacy if victim visits a campus health or counseling center.

Sexual Assault and Education

- Under Oregon Administrative Rule 581-022-1440, all elementary and secondary school districts will provide an age-appropriate curriculum on “human sexuality education”, HIV/AIDS and STIs and disease prevention. Each school district should also have a child sexual abuse prevention program for K-12. The plan should,
 - promote abstinence for school-age youth
 - promote mutually monogamous relationships for adults
 - assuage fears of HIV that have been scientifically disproven;
 - be medically accurate;
 - teach that sexual behavior that harms oneself or others is unacceptable
 - emphasize that it is wrong to take advantage of or exploit another person;
 - teach that consent is essential for participating in sexual activities;
 - promote positive attitudes and behaviors in relationships and sexual activities;
 - encourage bystander behavior;
 - show how to identify negative attitudes and behaviors that make promote sexual violence; and
 - include information regarding community resources within the community.

PENNSYLVANIA

Summary

Pennsylvania's laws contain some troubling provisions: primarily, that intoxicated victims of rape must be unconscious or drugged by their assailant. It does, however, require universities to provide sexual assault awareness training to new students and permits school districts to provide a similar to their K-12 students. The law is largely silent on most other topics related to campus sexual assault.

Statutes

18 Pa.C.S.A. § 3101-3129 - Illicit Acts: This section defines a number of sexual offenses: rape, statutory sexual assault, involuntary deviate sexual intercourse, sexual assault, institutional sexual assault, aggravated indecent assault, indecent assault, indecent exposure, and sexual intercourse with an animal. I point out relevant aspects of these laws below.

- 18 Pa.C.S.A. § 3104 - Sexual Conduct as Evidence
 - This section does not allow a victim's sexual conduct and reputation to be admissible as evidence "except evidence of the alleged victim's past sexual conduct with the defendant where consent of the alleged victim is at issue" (assuming this evidence is otherwise admissible).
- 18 Pa.C.S.A. § 3105 - Prompt Complaint
 - This section notes that promptly filing a complaint is not necessary for a prosecution.
- 18 Pa.C.S.A. § 3107 - Resistance Not Required
 - This section notes that a victim does not need to resist the assailant.
- 18 Pa.C.S.A. § 3121 - Rape
 - This section lays out the criteria for a rape: forcible compulsion or a reasonable threat, an unconscious or unaware victim, a drugged victim, or a mentally disabled victim. It requires that an intoxicated victim be unconscious or intoxicated by the assailant.
- 18 Pa.C.S.A. § 3123 - Involuntary Deviate Sexual Intercourse
 - This section includes prohibitions on anal and oral sex.
 - It has the same requirements as rape: forcible compulsion or a reasonable threat, an unconscious or unaware victim, a drugged victim, or a mentally disabled victim.
 - It requires that an intoxicated victim be unconscious or intoxicated by the assailant.
- 18 Pa.C.S.A. § 3124.1 - Sexual Assault
 - This crime occurs when a person has sexual intercourse or deviate sexual intercourse without the other person's consent. Consent is undefined.
- 18 Pa.C.S.A. § 3125 - Aggravated Indecent Assault
 - Penetrating a person's anus or genitals with any part of the body of the assailant if there is no consent, forcible compulsion or a reasonable threat of it is used, or there is an unconscious or unaware victim, a drugged victim, or a mentally disabled victim.
 - Consent remains undefined.
- 18 Pa.C.S.A. § 3126 - Indecent Assault
 - Indecent contact is defined as "any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in any person."
 - It, or forcing a victim to come into contact with semen, urine, or feces for sexual gratification, is the crime of indecent assault if there is no consent, forcible compulsion or a reasonable threat of it is used, or there is an unconscious or unaware victim, a drugged victim, certain underaged victims, or a mentally disabled victim.
- 35 P.S. § 10172.3 - Sexual Assault Evidence Collection Program
 - This chapter establishes a statewide evidence collection system for sexual assaults.
- 35 P.S. § 10172.5 - Rights of Sexual Assault Victims
 - This section of this chapter lays out the rights of sexual assault victims. They have a right to know about the submission of evidence for forensic testing and the status of any analysis and the right to

be notified when a request for testing has been submitted, when DNA is being compared, and if there is a match.

24 P.S. § 20-2003-G - Sexual Assault Education on Campus

Independent institution of higher education (private universities), community colleges, State-related institutions, or member institutions of the State System of Higher Education must establish a sexual violence awareness education program. It must include the following:

- “(1) A discussion of sexual violence.
- (2) A discussion of consent, including an explanation that the victim is not at fault.
- (3) A discussion of drug and alcohol-facilitated sexual violence.
- (4) Information relating to risk education and personal protection.
- (5) Information on where and how to get assistance, including the importance of medical treatment and evidence collection, and how to report sexual violence to campus authorities and local law enforcement.
- (6) The possibility of pregnancy and transmission of sexual diseases.
- (7) Introduction of members of the educational community from:
 - (i) Campus police or security and local law enforcement.
 - (ii) Campus health center, women's center and rape crisis center.
 - (iii) Campus counseling service or any service responsible for psychological counseling and student affairs.
- (8) A promise of discretion and dignity.
- (9) A promise of confidentiality for victims of sexual assault.”

They must also conduct follow-up instruction for the remainder of the school year, including lecturers, institutional activities, and other educational materials. The Department of Education must ensure compliance with and assist in administering this requirement.

28 Pa. Code § 117.51 - Sexual Assault Victim Services

This section requires hospitals to provide certain services to sexual assault victims. The following are the minimum requirements, and the remainder of the chapter deals in more specifics.

- “(1) Medical examinations and laboratory or diagnostic tests required to ensure the health, safety and welfare of the victim, or which may be used as evidence in a criminal proceeding against a person accused of the sexual assault, or both. A hospital shall utilize a rape kit that complies with the minimum standard requirements developed by the Department or that is otherwise approved by the Department under the Sexual Assault Testing and Evidence Collection Act (35 P. S. §§ 10172.1--10172.4). The Department will publish a notice of minimum standard requirements for rape kits or approved rape kits in the Pennsylvania Bulletin.
- (2) Oral and written information concerning the possibility of a sexually transmitted disease and pregnancy resulting from the sexual assault.
- (3) Oral and written information concerning accepted medical procedures, medication and possible contraindications of the medication available for the prevention or treatment of infection or disease resulting from the sexual assault.
- (4) Medication as deemed appropriate by the attending physician, including HIV and sexually transmitted disease prophylaxis.
- (5) Tests and examinations as medically indicated to determine the presence or absence of a sexually transmitted disease.
- (6) Oral and written instructions advising of the need for additional blood tests at time periods after the sexual assault as medically indicated to determine the presence or absence of a sexually transmitted disease.
- (7) Information on the availability of a rape crisis center or sexual assault counselor and the telephone number of a local rape crisis center or sexual assault counselor. The hospital shall promptly contact the local rape crisis center or sexual assault counselor at the request of the victim.
- (8) The opportunity for the victim to consult with the rape crisis center or sexual assault counselor in person and in private while at the hospital.
- (9) Emergency contraception under § 117.53 (relating to emergency contraception) for a female sexual assault victim.”

24 P.S. § 15-1553 - Dating Violence Education

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Pennsylvania allows school districts to “incorporate dating violence education that is age appropriate into the annual health curriculum framework for students in grades nine (9) through twelve (12). In developing such a policy, the school district shall consult with at least one (1) domestic violence program or rape crisis program that serves the region where the school district is located.” It is not mandated that school districts incorporate this material.

RHODE ISLAND

Summary

The State of Rhode Island has no state policies addressing campus sexual assault specifically. There does not seem to be a legislative agenda in Rhode Island to make new laws combating campus assault. Rhode Island's standard of consent falls well below the "affirmative" threshold.

Statutes

Definition of Consent

- Rhode Island does not explicitly define consent. Instead of defining sexual assault as intercourse that occurs without consent, Rhode Island defines sexual assault as containing some aspect of "force, element of surprise, or coercion."
- This definition leaves numerous loopholes. Consent should be clear, active, and voluntary, not merely the absence of refusal. Under the current law of Rhode Island, survivors must prove their assailants used force, the element of surprise, or coercion.

Specific Offenses

§ 11-37-2 First degree sexual assault: sexual penetration accompanied by incapacitation, force/coercion, or surprise.

§ 11-37-4 Second degree sexual assault: victim is incapacitated, mentally disabled, or otherwise physically helpless; or the accused used force, surprise, or coercion.

§ 11-37-6 Third degree sexual assault: statutory rape.

Miscellaneous Provisions

§ 11-37-12 states that survivors need not "prove that the victim physically resisted the accused if the victim reasonably believed that resistance would be useless and might result in his or her serious bodily injury." This statute is problematic for two reasons. First, *physical* resistance should not be the only caveat. Survivors can be intimidated out of *verbal* resistance as well, and should not be left without justice for it. Second, this statute seems to imply that the survivor has an affirmative obligation to physically resist unless they fear serious bodily injury.

SOUTH CAROLINA

Summary

South Carolina's laws have some troubling qualities. Spousal rape is permissible under certain circumstances, and some evidence regarding a victim's past sexual conduct may be admissible in prosecutions. At the same time, the law does require institutions to produce a sexual assault policy that hits on key issues, including on-campus prevention education, disciplinary procedures, and victim resources and legal counsel. Many of these provisions, however, remain at the institution's discretion. The law does require school districts to provide sexual abuse and assault education.

Statutes

Jessica Horton Act

- SC Code Ann. § 59-154-10: Cooperation of campus police and State Law Enforcement Division
- This section requires campus police to report sexual assaults occurring on campus (on university-owned or university-controlled property or that owned or controlled by a recognized student organization) to the state. It requires campus police to lead an investigation and cooperate with the State Law Enforcement Division.

It is unclear if all sexual assaults that campus law enforcement are alerted to must be reported to state authorities. Campus police must provide the institution's sexual assault policy when an incident is reported, and that policy must notify the victim of the right to notify law enforcement. This suggests that a victim need not formally file an incident report to campus police (which would trigger state involvement) when alerting them of the incident initially.

This section also broadly defines the institutions covered by this chapter to include public and private institutions, junior colleges, and technical institutes.

The South Carolina Sexual Assault Information Act

- SC Code Ann. § 59-105-30: Purpose
 - This section outlines the General Assembly's goals in the Campus Sexual Assault Information Act. It wants each institution 1) to create a sexual assault policy and 2) to support victims, in part through a report to law enforcement.
- SC Code Ann. § 59-105-40: Campus sexual assault policy.
 - This section requires institutions to create a sexual assault policy that addresses the school's programs that address awareness and prevention, along with the procedures used when an incident is reported. It also requires that the policy be distributed through some campus publication (catalog, student handbook, etc) and be referenced on admissions and employment applications. Certain actors (campus law enforcement, counseling centers, etc) must provide the policy to victims when reporting an incident.
- At a minimum, these policies must address the following:
 - "education programs to promote the prevention and awareness of sexual assault;
 - possible sanctions following the final determination of an institutional disciplinary procedure regarding a sexual assault;
 - procedures a student follows if a sexual assault occurs, including the persons to be contacted, the importance of preserving evidence of the criminal sexual assault, and the authorities to whom the alleged offense must be reported;
 - procedures for institutional disciplinary action in cases of alleged sexual assault, including a clear statement that both the accuser and the accused
 - have the same opportunities to have support persons or legal counsel, if the institution's policy allows the presence of outside legal counsel, present during an institutional disciplinary proceeding; and
 - must be informed of the outcome of an institutional disciplinary proceeding brought alleging a sexual assault.

- notification to a student of the right to notify proper law enforcement authorities, including institutional and local police, and of the option to be assisted by representatives of the institution in notifying law enforcement authorities if the student chooses;
- notification of a student of existing medical, advocacy, counseling, mental health, and student services for victims of sexual assault, both on campus and in the community;
- notification of a student of options for, and available assistance in, changing academic and living situations after an alleged campus sexual assault, if requested by the victim and if the changes are reasonably available.”
- SC Code Ann. § 59-105-60: Model sexual assault policy
 - The Commission on Higher Education must create and distribute a model policy to institutions to serve as a reference.

South Carolina Campus Sex Crimes Prevention Act

- SC Code Ann. § 59-106-20: Annual security reports
- Institutions must let the campus community know where information on sex offenders may be found.

Other Statutes

- SC Code Ann. § 59-32-30: Sexual Abuse and Assault Awareness Education
 - Starting in 2015-2016 school year, districts must provide age-appropriate instruction on sexual abuse and assault awareness and prevention to students in each grade level.

SC Code Ann. § 16-3-651: Criminal sexual conduct

This section outlines the definitions used in this chapter of the criminal code. Important ones include

- 1) “Physically helpless” means that a person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.
- 2) “Mentally incapacitated” means that a person is rendered temporarily incapable of appraising or controlling his or her conduct whether this condition is produced by illness, defect, the influence of a substance or from some other cause.
- 3) “Sexual battery” means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.

SC Code Ann. § 16-3-652: Criminal sexual conduct in the first degree.

This is sexual battery where aggravated forces is used, where another severe crime (kidnapping, etc) is committed, or where the assailant causes the victim to be physically helpless or mentally incapacitated by drugging them in some manner.

SC Code Ann. § 16-3-653. Criminal sexual conduct in the second degree.

This is sexual battery achieved using aggravated coercion (or threats of violence that could reasonably be carried out).

SC Code Ann. § 16-3-654. Criminal sexual conduct in the third degree.

This is sexual battery done through coercion or force (but not aggravated force or coercion) or when the victim is known to be physically helpless or mentally incapacitated.

SC Code Ann. § 16-3-656. Criminal sexual conduct; assaults with intent to commit.

Assaults in which the assailant attempts to commit criminal sexual conduct is committed as if they had.

SC Code Ann. § 16-3-657. Criminal sexual conduct; victim testimony need not be corroborated.

The victim’s testimony does not need to be corroborated in prosecutions of the above crimes.

SC Code Ann. § 16-3-658. Criminal sexual conduct; when victim is spouse.

Apparently, spousal rape is permitted in South Carolina. A person's spouse cannot be charged with a crime of criminal sexual conduct unless they are living apart and it is in the first and second degrees. It must be reported to law enforcement within thirty days. This does not apply to marriages when a male is under age 16 or a female is under age 14.

SC Code Ann. § 16-3-659.1 Admissibility of evidence concerning victim's sexual conduct.

Generally, evidence regarding a victim's reputation and past sexual conduct is not admissible as evidence.

Exceptions

1. When "evidence of the victim's sexual conduct with the defendant or evidence of specific instances of sexual activity with persons other than the defendant introduced to show source or origin of semen, pregnancy, or disease about which evidence has been introduced previously at trial is admissible if the judge finds that such evidence is relevant to a material fact and issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value."
2. "Evidence of specific instances of sexual activity which would constitute adultery and would be admissible under rules of evidence to impeach the credibility of the witness may not be excluded."

SOUTH DAKOTA

Summary

The only statutes or regulations regarding sexual assault in South Dakota deal with criminal law or services to domestic or sexual assault victims generally. Consent is not defined in statute, but it appears that intoxication renders a person incapable of consenting. Standards for K-12 education are issued by the Board of Education, but there is no mention of sexual assault awareness and prevention education.

Statutes

S.D. Codified Laws §22-22-1. Rape — Penalty.

“Rape is an act of sexual penetration accomplished with any person under any of the following circumstances:

- (1) If the victim is less than thirteen years of age [first degree]; or
- (2) Through the use of force, coercion, or threats of immediate and great bodily harm against the victim or other persons within the victim’s presence, accompanied by apparent power of execution [second degree]; or
- (3) If the victim is incapable, because of physical or mental incapacity, of giving consent to such act [third degree]; or
- (4) If the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis [third degree]; or
- (5) If the victim is thirteen years of age, but less than sixteen years of age, and the perpetrator is at least three years older than the victim [fourth degree].”

Sexual penetration is defined as anal, oral, or vaginal sex, or object penetration.

Sexual contact is broader: touching a person’s genitals or anus or a female’s breasts.

S.D. Codified Laws §22-22-7.4. Sexual contact without consent — Penalty.

- “No person fifteen years of age or older may knowingly engage in sexual contact with another person other than his or her spouse who, although capable of consenting, has not consented to such contact. A violation of this section is a Class 1 misdemeanor.”

TENNESSEE

Summary

Rape and sexual battery are defined in a way that may make prosecution difficult: requiring both a lack of consent and the defendant's knowledge of the lack of consent. The state does authorize the creation of a K-12 sexual assault prevention and awareness curriculum. It requires a sexual assault prevention and awareness training for freshmen at public universities. It requires public and private university employees to refer victims to on- or off-campus resources. It requires campus law enforcement to notify local law enforcement of reported rapes.

Statutes

Tenn Code Ann. §39-13-501 - Definitions

- This section lays out the definitions used to describe prohibited actions (rape, aggravated rape, sexual battery, aggravated sexual battery). This includes the definition of sexual penetration, sexual contact, coercion, mentally incapacitated, and physically helpless. The term consent is not defined here, but is used later in the law.

Tenn Code Ann. §39-13-502-505 - Prohibited Actions

This section defines the crimes of aggravated rape, rape, aggravated sexual battery, and sexual battery.

- Aggravated rape is marked by the use of force, coercion or a weapon, bodily injury to the victim, or multiple perpetrators.
- The lesser felony of rape, however, merely requires a lack of consent from the victim AND that the defendant knows or has reason to know at the time of the contact that the victim did not consent.
- Similarly, aggravated sexual battery is sexual contact marked by the use of force, coercion or a weapon, bodily injury to the victim, or multiple perpetrators.
- The lesser crime of sexual battery merely requires that victim did not consent AND that the defendant knows or has reason to know at the time of the contact that the victim did not consent.

This section of the law has some good attributes:

- Acts of sexual penetration are treated equally.
- Spousal rape is not permitted.

Tenn Code Ann. §39-13-519 - Protocols for Collecting Rape Kits

- This section outlines the protocols for collecting and storing physical evidence in sexual assaults. It requires local law enforcement agencies (including campus security) to receive rape kits from health care providers when a police report is filed and submit them to the state for laboratory testing within a prescribed time frame.
- It also outlines requirements for health care providers to store rape kits if the victim does not want to file a police report and requires them to be kept for at least three years.
- Rape kits are collected and processed free of charge for the victim.

Tenn Code Ann. §49-1-220 - Sexual Assault Awareness and Prevention Education for K-12

- This section of the code “urges” the state department of education to develop a curriculum to be taught at least once in 7th and 8th grade and once (though preferably twice) in high school.
- It also outlines a list of topics to be included in this curriculum, though these may be problematic.
- The department is urged to implement this curriculum by the 2007-8 school year.

Tenn Code Ann. §49-7-118 - Campus Police

- This section gives some universities the power to create police forces and outlines the relationship between these officers and those of the county or city. It says nothing about sexual assaults.

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Tenn Code Ann. §49-7-122. Sexual harassment training -- Hearing process.

- Public universities are to require sexual harassment training on campus and establish a hearing process. It is not clear who must participate and what the hearing process entails.
- I suspect this is limited to employees of the universities.

Tenn Code Ann. §49-7-129 - Notification of local law enforcement

- Campus police must notify local law enforcement of a reported rape on campus.
- They must investigate jointly and the campus police force must cooperate in every respect with the local law enforcement agency.

This section of the code also requires any employee of a college or university (public or private) hearing about a rape to refer the victim to a sexual assault program or other service on campus or in the community. These programs must report the number of incidences referred to them to law enforcement annually.

Tenn Code Ann. §49-7-137. Instruction to raise awareness and prevent hate crimes and sexual offenses -- Required for freshmen.

- “Each public institution of higher education is strongly encouraged to offer instruction aimed at increasing the awareness and prevention of hate crime offenses, sexual assault, sexual battery, sexual harassment, and date rape to all students.
- Each public institution of higher education shall require all entering freshmen during orientation or introductory studies to receive instruction aimed at increasing the awareness and prevention of sexual assault, sexual battery, sexual harassment, and date rape.”

This provision only applies to public universities and it also appears to overlook transfer students.

Tenn Code Ann. §49-7-149. Kristen Azevedo Act -- Criminal history check for employees of student housing.

- Individuals on the sex offender registry are not permitted to work on campus in a capacity that gives them access to student housing.

Tenn Code Ann. §49-7-162. Prohibition against residency of registered sexual offenders -- Penalties.

- People on the sex offender registry are not permitted to live in campus housing.

TEXAS

Summary

Texas has a definition of consent and decent descriptions of specific offenses. The Texas legislature passed a measure to require campus sexual assault policies, but there are serious flaws, as described below.

Statutes

Definition of Consent

Tex Pen. Code § 22.01 defines “without consent” as

- the actor compels the other person to submit or participate by the use of physical force or violence;
- the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat;
- the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;
- the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;
- the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;
- the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge

Specific Offenses

- Texas Penal Code § 22.011 Sexual assault (penetration and contact)
- § 22.02 Aggravated assault
- § 22.06 Consent as defense to assaultive conduct

Miscellaneous Statutes

Tex Code Crim. Proc. Art § 61.051 requires sex offenders’ registration with local law enforcement

- It also requires the state to share this with campus security if the individual reports living on a campus.
 - It is unclear whether or not there is a loophole for nonresident students

Tex. Gov’t Code § 420.008

- Establishes the sexual assault program fund and dedicates several small revenue sources for the fund.
- These funds can only be appropriated for certain purposes:
 - Attorney General - for sexual violence awareness and prevention campaigns, grants for sexual assault prevention, grants for programs for human trafficking victims, for sexual assault nurse examiner programs, to increase the level of sexual assault services, for victim assistance coordinators, for tech in rape crisis centers, grants to nonprofits focused on ending sexual violence, grants to civil legal services for victims, grants for to prevent and provide services for sex trafficking victims,
 - The Dept of State Health Services - to measure sexual assault and support program assisting human trafficking victims,
 - The Institute on Domestic Violence and Sexual Assault or the Bureau of Business Research at UT-Austin for research,
 - Texas State University for training school districts on campus safety,
 - The Governor’s Office to support sexual assault and human trafficking prosecution projects,
 - The Department (I guess of Public Safety or something) to support sexual assault training for officers,
 - The comptroller’s judiciary section, for increasing the capacity of the sex offender civil commitment program,

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- The Texas Department of Criminal Justice - for pilot projects for monitoring paroled sex offenders and to increase the number of incarcerated adult sex offenders receiving treatment,
- The Texas Juvenile Justice Department to increase the number of incarcerated juvenile sex offenders receiving treatment,
- The comptroller for administering fees on sexually oriented businesses,
- The Supreme Court to provide grants for victim-related legal services,
- Any state agency for human trafficking enforcement programs,
- Any other agency for the purpose of preventing sexual assault and improving services for victims.
- Notes: These purposes seem reasonable, but it's unclear 1) how much is routinely appropriated and 2) how stable funding is for each purpose. Also, universities would likely be covered under the last category.

Campus-Based Sexual Assault

Tex Ed. Code § 51.9363

- Institutions of higher education are required to adopt a policy on campus sexual assault that
 - defines prohibited behaviors,
 - lays out sanctions for violations, and
 - Establishes protocols for reporting and responding to reported incidences.
- They also must include this policy in their student and personnel handbooks and on their websites.
- Entering students must attend an orientation to their policy during their first semester.
- It should be reviewed and revised biennially.
- These requirements only apply to public institutions (including junior colleges, technical institutes, and state colleges).

Notable omissions:

- The state does not require institutions to have MOUs with local law enforcement agencies.
- It does not require sexual assault awareness and prevention education for students, just instruction on the institution's policies.
- It does not require institutions to have a campus safety plan, nor do other sections of the code.
- It does not require institutions to maintain relationships with resource providers for victims.
- It provides little guidance on the development of campus policies.
- Texas has no requirements for private institutions.
- There is no mention of affirmative consent.

Legislative Agenda

- 2015 - HB 699 Requiring higher education institutions to enact sexual assault policies - passed, added to Code of Education (see above)
- 2015 - HB 808 Relating to the establishment of a statewide task force to address sexual assault occurring on the campuses of public and private institutions of higher education - referred to House Higher Education Committee

Sexual Assault and Education

- No pre-college education regarding sexual assault, just abstinence-only human sexuality education
- Once entering college, students are informed of the sexual assault policies but are not given any prevention education.

UTAH

Summary

Utah's laws are sparse in the area of campus sexual assault.

Statutes

Ut Code Ann. 76-5-501-502. Request for testing — Mandatory testing — Liability for costs.

- This section outlines mandatory HIV testing for alleged perpetrators of sexual assault.

Ut Code Ann. 76-5-402-407. Definitions of illicit activities

- This section defines rape, object rape, sodomy and forcible sodomy, forcible sexual abuse, and aggravated sexual assault.

Consent

- There is a lack of consent when
 - The victim expresses lack of consent,
 - The actor overcomes the victim with force, violence, concealment, or surprise,
 - The actor threatens to retaliate against the victim and the actor can execute threat,
 - The victim is unconscious, unaware, or unable to resist,
 - The actor knows that mental disease or defects prevents the victim from resisting,
 - The victim submits because they erroneously believe the actor is their spouse,
 - The actor drugs the victim,
 - The victim is under age 14,
 - The victim is under 18 and the actor is a parent or guardian or has a position of special trust,
 - The actor is more than three years older than the victim who is under age 18,
 - The actor is a health professional or religious counselor taking advantage of their position.

Rape

- Requires a lack of consent.
- Limited to “sexual intercourse” - presumably vaginal intercourse.
- Spousal rape not permitted.

Object Rape

- Punishments appear the same as those for rape.

Sodomy and Forcible Sodomy:

- Sodomy is defined as anal or oral penetration and remains a misdemeanor.
- Forcible Sodomy requires a lack of consent and the punishments appear the same as those for rape.

Forcible Sexual Abuse

- Covers acts not amounting to the above.
- Requires lack of consent.
- Penalties seem similar to the above.

Aggravated Sexual Assault

- An additional crime committed when an assailant committing or attempting to commit one of the above acts:
 - Uses or threatens to use a weapon,
 - Uses bodily injury
 - Threatens kidnaping, death, or serious bodily injury
 - Or is aided or abetted by an additional assailant.
- This crime carries a complex punishment structure.

Ut Code Ann 53B-3-104-105. Establishment of police or security departments.

This section allows universities to establish police departments and empowers them as peace officers.

VERMONT

Summary

No laws relate to campus sexual assault in Vermont's code.

Statutes

Sexual assault -

- A sexual act without the consent of another, completed by threatening another, or fearing bodily harm will be inflicted on another.
- A sexual act in which the other person has been drugged or intoxicated without their knowledge or against their will.
- A sexual act with someone under age 16 with some exceptions (when they are married, or consensual sex between 19 and 15 year olds).
- A sexual act with a child under 18 and their parent or guardian or other relative.

Aggravated Sexual Assault -

- When the actor causes bodily injury to the victim,
- When the actor uses a weapon,
- When the actor kidnaps the victim,
- When the actor has committed sexual assault before,
- When the actor forces the victim to undergo repeated sexual acts, or
- When the actor is older than 18 and the victim younger than 15.

VIRGINIA

Summary

Virginia has definitely stepped up to the plate in terms of addressing campus sexual assault, especially with the amendments of the Educational Institutions title. This issue has prominently been on the legislative agenda in the recent years, with most measures being passed. The biggest disappointment is not just the lack of a definition of consent, but the editing of a bill to not include a definition of affirmative consent.

Statutes

Definition of Consent

- Not defined in the Code of Virginia

Specific Offenses

- Virginia Code § 18.2-61 Rape
- § 18.2-67.3, -67.4, -67.4:1 Aggravated sexual battery, sexual battery, infected sexual battery

Miscellaneous Offenses

- § 18.2-62 Testing of certain persons for human immunodeficiency virus or hepatitis B or C viruses

Campus-Based Sexual Assault

- Virginia Code § 23-9.2:15-17
 - Code of Virginia, Title 23. Educational Institutions has not been fully revised since it was enacted in 1950. Consequently, a majority of the Title has been repealed, with the revised sections becoming effective 1 October 2016.
- § 23-9.2:15 | Reporting acts of sexual violence
- § 23-9.2:16 | Sexual assault; memoranda of understanding; policies
- § 23-9.2:17 | Sexual violence policy review

Legislative Agenda

2016 Highlights

- HB 659 - High school family life education curriculum, programs on prevention of dating violence - passed, approved by Governor
 - Original text included a definition of affirmative consent, but this was removed in committee.
- SB 291/HB 1160 - Physical Evidence Recovery Kits (PERK) - approved by Governor
- SB 49/HB 1391 - protective orders and possession of firearms - approved by Governor
- SB 83 - reenact and amend § 23-234 Powers and duties; jurisdiction; mutual aid agreements; memoranda of understanding - approved by Governor
- HB 1015 - Acts of Assembly Chapter 481 - cooperation between higher education institutions and local law enforcement in reporting sexual assault - approved by Governor
- HB 1016 - Acts of Assembly Chapter 550 - reconfigures list of persons invited to participate in annual sexual assault response team - approved by Governor
- HB 1321 - Acts of Assembly Chapter 513 - higher education institutions with security officers to cooperate with local law enforcement - approved by Governor

2015 Highlights

- HB 1930/SB 712 - Higher education; handling sexual assault cases - passed by House and Senate - approved by Governor as Acts of Assembly Chapter 745 to add § 23-9.2:15 through 17
- SB 1193 - Academic transcripts, suspension, personal dismissal, or withdrawal from institution - rejected by House, Senate enrolled bill and both houses signed - approved by Governor as Acts of Assembly Chapter 771 to add § 23-9.2:18

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- SB 1329 - Higher educational institutions; memorandum of understanding and policies for sexual assaults - passed by Senate, House referred to Committee on Education

Sexual Assault and Education

- HB 659 - High school family life education curriculum, programs on prevention of dating violence - passed, approved by Governor
 - Original text included a definition of affirmative consent, but this was eliminated.

WASHINGTON

Summary

The State of Washington has state policies designed to monitor campus sexual assault. There does not seem to be a legislative agenda in Washington to make new laws combating campus assault. Survivors have the option to confidentially report, and the state's definition of consent meets the criteria for affirmative consent, with an important exception noted below.

Statutes

Definition of Consent

- §9A.44.010 "Consent" means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.
- While this definition of consent is affirmative, certain specific offenses contain troubling provisions to the contrary, such as mandating that "[the] lack of consent was clearly expressed by the victim's words or conduct." This seems to put the burden of refusal back on the survivor in those cases.

Specific Offenses

- § 9A.44.040 Rape in the first degree, must be forcible and the assailant must use a deadly weapon, kidnap the victim, inflict serious injury, or break into their home. Class A felony.
- § 9A.44.050 Rape in the second degree, must be forcible or unable to consent. Class A felony.
- § 9A.44.060 Rape in the third degree, must occur without consent. Class C felony.

Miscellaneous Offenses

- § 9A.44.115 Voyeurism, any production or viewing of pornographic or explicit materials without the consent of the person whose body is pictured. Class C felony.

Legislative Agenda

No current legislative agenda seems to be in motion, other than maintaining and expanding current sexual assault prevention programs.

Sexual Assault and Education

- § 28B.112.005 Establishes campus climate surveys for four-year institutions
- § 28B.112.010 Prohibits special processes for fraternity members or athletes accused of assault
- § 28B.112.020 Mandates the school public relevant information and allow confidential reporting
- No pre-college education seems to be required.

WEST VIRGINIA

Summary

West Virginia State Code discusses the incapacity to consent, but does not yet have a definition of affirmative consent. House Bill 2690 has discussed including “affirmative consent” as well as other victim-centered policies in the state law, but the proposal has not come to a vote. West Virginia University does have a very innovative program intended at sexual assault prevention and awareness.

Statutes

West Virginia Code, Chapter 61 Crimes and Their Punishment, Article 8B Sexual Offenses

- §618B1. Definition of terms:
 - Defines forcible compulsion, mentally incapacitated, physically helpless, sexual intercourse/intrusion, etc. for purposes of the bill.
- §618B2. Lack of consent
 - Caused by forcible compulsion or incapacity to consent. Person is deemed unable to consent when less than 16 years old, mentally defective/incapacitated, physically helpless, or incarcerated

Sexual Assault

- §618B3. Sexual assault in the first degree
 - Sexual intercourse or sexual intrusion with another person who did not not consent, use of a deadly weapon or causing bodily injury in the process
 - Felony, sentence 1535 years in prison
 - No statute of limitations
- §618B4. Sexual assault in the second degree
 - Sexual intercourse or sexual intrusion with another person without the person's consent, results from forcible compulsion or attack of someone who is physically helpless
 - Felony, 1025 years in prison
 - No statute of limitations
- §618B5. Sexual assault in the third degree
 - Sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated
 - Felony, 15 years in prison
 - No statute of limitations

Sexual Abuse

- §618B7. Sexual abuse in the first degree
 - Subjecting another person to sexual contact without their consent, and the lack of consent results from forcible compulsion, a “physically helpless” victim, or victim is younger than 12
 - Felony, 15 years in prison
 - No statute of limitations
- §618B9. Sexual abuse in the second degree
 - Subjecting another person to sexual contact who is mentally defective or mentally incapacitated
 - Misdemeanor, county jail not more than twelve months and/or fined no more than \$500
 - Statute of limitations within 1 year after the commission of the offense
- §618B9. Sexual abuse in the third degree
 - Subjects another person to sexual contact without the latter's consent, when such lack of consent is due to the victim's incapacity to consent by reason of being less than sixteen years old
 - Misdemeanor, county jail not more than ninety days and/or fined no more than \$500
 - Statute of limitations within 1 year after the commission of the offense

§618B11. Sexual offenses; evidence

- “...opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct shall not be admissible. In any other prosecution under this article, evidence of specific instances of the victim's prior sexual conduct with the defendant shall be admissible on the issue of consent: Provided, That such evidence heard first out of the presence of the jury is found by the judge to be relevant.”

§618B12. Same Defense

- It is affirmative defense for a defendant to say that they did not know of the facts or conditions responsible for such incapacity to consent (e.g. did not know the victim was drunk), unless the defendant is reckless in failing to know such facts or conditions.

§618B13. Payment of treatment cost for victim

- The court may order a convicted rapist to pay their victim's medical bills

§618B16. Payment for costs of forensic medical examination

- Establishes a Forensic Medical Examination Fund that uses state funds to cover the costs of collecting forensic evidence (see "Rape Kits in West Virginia" below)

West Virginia University Policies

- Largest public university in the state
- Board of Governors Policy 44 Policy regarding discrimination, harassment, sexual harassment, sexual & domestic misconduct, stalking, and retaliation
- Outlines how the university will handle cases of sexual assault and violence in the context of diversity, inclusion, and equality
- Date effective, 12/18/2015
- Prohibited Conduct Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation
- States that those in "supervisory positions" must discourage and properly report these instances
- Prohibits sexbased harassment ("sexbased harassment includes sexual harassment and nonsexual harassment based on stereotypical notions of what is female/feminine versus male/masculine or a failure to conform to those gender stereotypes")
- The University President will designate a Coordinator to handle reports of prohibited conduct

Prevention Programs

- WVU Peer Advocates
 - Title IX trained students to help students file complaints, lead sessions on sexual assault prevention on campus, and accompany students through the reporting process
 - Other "prevention programs" include information sections on the website on how to prevent sexual assault on campus and how to support peers that have been sexually assaulted

Legislative Agenda

- H. B. 2690 Affirmative Consent and Victim Centered Policies Referred to House Committee 2/11/15 (No Vote)
 - A Bill to amend the WV criminal code, adding section §18B45b
 - Would require colleges to adopt victim centered sexual assault policies and protocols
 - Defines consent as "freely and affirmatively communicated willingness to participate in particular sexual activity or behavior, expressed either by words or clear, unambiguous actions. It is the responsibility of the person who wants to engage in the sexual activity to ensure that he or she has the consent of the other person to engage in the sexual activity."
 - Requires colleges to establish MOUs with on campus and community based organizations, including rape crisis centers
 - Never passed in House, referred to committee over a year ago
- S. B. 144 Requiring DNA Collection From Arrested Suspects in Felony Cases - Failed 2016
 - "The purpose of this bill is to allow law enforcement to obtain DNA samples from arrestees for certain criminal offenses, to expand DNA sample collection to all those convicted of a felony offense, and to increase the preservation, submission and testing of certain DNA evidence."
- Rape Kits in West Virginia
 - Bureau of Justice Assistance National Sexual Assault Kit Initiative (SAKI)
 - WV given \$13.6 million for testing a 16 year backlog of 2,500 untested rape kits
 - There are currently no Bills in the WV legislature addressing rape kit testing

WISCONSIN

Summary

Wisconsin's criminal statutes appear to be in good order and there are some limited requirements surrounding sexual assault awareness in both K-12 schools and university orientations. There are limited rights for victims spelled out in regulations regarding disciplinary procedures. Requirements for institutions are all limited to the University of Wisconsin system and do not apply to private institutions or community colleges.

Statutes

Wis. Stat. §940.225. Sexual assault.

- First degree sexual assault - sexual contact or intercourse without consent that results in pregnancy or physical bodily harm, is carried out with a weapon, or with multiple assailants using violence or the threat of violence.
- Second degree sexual assault - sexual contact or intercourse without consent that is achieved through violence, threat of violence, or multiple assailants; causes illness, disease or mental anguish requiring psychological treatment; is done with a mentally ill, mentally deficient, intoxicated, or unconscious victim; or in other specific circumstances involving institutional settings.
- Third degree sexual assault - sexual intercourse without consent of the victim.
- Fourth degree sexual assault - sexual contact without consent of the victim.

“Sexual intercourse” is defined as vaginal, anal, or oral sex.

“Sexual contact” includes a broad array of activities - see statute for more detail.

“Consent” is defined as “words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact...The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence, subject to the provisions of s. 972.11 (2):

(b) A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct.

(c) A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.”

A lack of consent is not required for mentally ill, mentally deficient, intoxicated, or unconscious victims, as well as in some institutional settings where the assailant has a position of power or authority. Spousal rape is not permissible.

Wis. Stat. §36.11. Powers and duties of the board of regents.

The Board of Regents of the University of Wisconsin system, which oversees all four-year public institutions in Wisconsin must provide sexual assault awareness training during new students' orientations that includes information on the legality of sexual assault, statistics on sexual assault, the rights of victims and campus services for victims, and “protective behaviors.” Campus employees must report sexual assaults to the dean of students, who must compile statistics and report them to the state and the legislature. The exact language for this section is below:

“(a) The board shall direct each institution and college campus to:

1. Incorporate in its orientation program for newly entering students oral and written or electronic information on sexual assault and sexual harassment, as defined in s. 111.32 (13), including information on sexual assault by acquaintances of the victims and on all of the following:

a. The Statutes of, and penalties for, sexual assault under ss. 940.225, 948.02 and 948.025, sexual exploitation by a therapist under s. 940.22 and harassment under s. 947.013.

b. Generally available national and state statistics, and campus statistics as compiled under par.

(c) and as reported under par. (d), on sexual assaults and on sexual assaults by acquaintances of the victims.

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c. The rights of victims under ch. 950 and the services available at the institution or college campus and in the community to assist a student who is the victim of sexual assault or sexual harassment.

d. Protective behaviors, including methods of recognizing and avoiding sexual assault and sexual harassment and locations in the community where courses on protective behaviors are provided.

2. Annually supply to all students enrolled in the institution or college campus printed or electronic material that includes all of the information under par. (a).

(b) Annually, the board shall submit a report to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3). The report shall indicate the methods each institution and college campus have used to comply with par. (a).

(c) Any person employed at an institution who witnesses a sexual assault on campus or receives a report from a student enrolled in the institution that the student has been sexually assaulted shall report to the dean of students of the institution. The dean of students shall compile reports for the purpose of disseminating statistical information under par. (a) 1. b.

(d) Annually, each institution shall report to the department of justice statistics on sexual assaults and on sexual assaults by acquaintances of the victims that occurred on each campus of the institution in the previous year. The department of justice shall include the statistics in appropriate crime reports published by the department.”

Wis. Admin. Code UWS §17. Student Nonacademic Disciplinary Procedures

The Board of Regents have issues regulations on student conduct that contains special provisions in cases of sexual assault or harassment.

- Survivors must receive notification is an alleged assailant’s emergency suspension, applies to be readmitted, appeals to the Board of Regents or to the chancellor
- Survivors may appeal decisions made by the investigative officer regarding their alleged assailant’s outcome.
- These cases also must use the “preponderance of the evidence” as the standard of evidence.
- Readmission decisions must be made with the consultation of the Title IX coordinator.

Sexual Assault Education

Wis. Stat. §118.019. Human growth and development instruction.

As part of Wisconsin’s basic education curriculum (which includes abstinence-only education), students must receive instruction to

- “(c) Address self-esteem and personal responsibility, positive interpersonal skills, and healthy relationships.
- “(d) Identify counseling, medical, and legal resources for survivors of sexual abuse and assault, including resources for escaping violent relationships.”

WYOMING

Summary

It looks like Wyoming does not address sexual assault on campuses in any way. The extent of what I have found is limited to the criminal code. Most of the major provisions of this law appears generally reasonable. The only obviously concerning piece involves the admission of evidence related to the victim's prior sexual conduct. It's not clear if intoxication would necessarily render a victim "physically helpless."

Statutes

Wyo. Stat. § 6-2-3. Sexual Assault

- Sexual assault in the first degree - sexual intrusion through physical force or forcible confinement; threat of death, serious bodily injury, extreme physical pain or kidnapping; a physically helpless victim; or a victim with a mental illness, mental deficiency or developmental disability is incapable of appraising the nature of the victim's conduct.
- Sexual assault in the second degree - sexual intrusion by threats to retaliate in the future against the victim or the victim's spouse, parents, brothers, sisters or children; preventing resistance; drugging the victim with any substance which substantially impairs the victim's power to appraise or control his conduct; spousal impersonation; misusing a position of authority (like a medical professional or correctional officer).
- Sexual assault in the third degree - sexual contact (but not sexual intrusion) under any of the circumstances listed in the description of first and second degree sexual assault.

The law does not permit spousal rape, but it does allow the admission of evidence relating to a victim's prior sexual conduct at trial.

"Sexual intrusion" is defined as anal, oral, or vaginal sex or object rape.

"Sexual contact" is a broader term.

"Consent" is not defined in statute.

"Physically helpless" is defined as "unconscious, asleep or otherwise physically unable to communicate unwillingness to act."

Legislative Agenda

No legislation even slightly related to campus sexual assault has been proposed since 2004.