Students and Sexual Assault
Legal and Practical Issues

A program of the Maryland Coalition Against Sexual Assault

Post Office Box 8782
Silver Spring, MD 20907
(301) 565-2277

One in five women is sexually assaulted while in college.¹ Almost five percent of college women are sexually victimized each year. As many as one-fifth to one-quarter of all women in higher educational institutions will become the victim of a sexual assault or an attempted sexual assault.² Of the 17.2 million high school students in the United States,³ 1.3 million have been forced to engage in sexual intercourse when they did not want to do so.⁴ Almost half of female rape victims experienced their first rape before the age of 18, and more than one-quarter of male rape victims experienced their first rape at or before the age of 10.⁵

Some of these young survivors are sexually assaulted at school. The perpetrator may be another student, a faculty or staff member, or an outside professional who works at the school.

This is an annotated copy of a booklet designed to provide an overview of legal issues that students who have been sexually assaulted may face. It includes legal citations to the laws, cases, and other materials referred to in the booklet.

¹ White House Task Force to Protect Students from Sexual Assault, Not Alone: The First Report of the White House Task Force to Protect Students From Sexual Assault, April 2014, at 2.
Legal concerns related to sexual assault in an educational setting may be addressed by school administrative processes, criminal or civil law, protective or peace orders, or a combination of remedies. State and federal laws can be used to help respond to sexual violence. Attorneys at the Sexual Assault Legal Institute (SALI) are able to assist student victims with these and other legal issues. Call 301-565-2277 or 1-877-496-SALI (7254) for help.

**GENDER, SEXUAL ORIENTATION, AND SEXUAL ASSAULT**

Although most sexual assault victims are women, men can also be assaulted. And while most perpetrators are male, some females are also abusers. Sexual assault includes assaults by men against women, men against men, women against women, and women against men. The laws protect sexual assault victims regardless of gender, gender identity and expression, or sexual orientation.

**DIFFERENT PATHS TO JUSTICE**

Students do not have to choose between criminal charges, school disciplinary proceedings, and civil proceedings. All of these legal options may be pursued. Moreover, schools are not permitted to delay internal disciplinary action because criminal charges are pending. In some cases, an assault may violate a student code of conduct but fail to be classified as a crime in Maryland. In other situations, the different standards of proof in criminal cases (beyond a reasonable doubt) and school disciplinary proceedings (preponderance of the evidence) may lead a prosecutor to drop a case that is pursued within a school.

**PRESERVING EVIDENCE AFTER A SEXUAL ASSAULT**

If a victim decides to seek legal remedies after a sexual assault, what evidence is available will be an important issue. Although the victim’s testimony is evidence, having other types of evidence can strengthen the case and may give the survivor more options.

- Sexual Assault Forensic Exams (SAFE exams) are designed to collect evidence of a sex crime and provide care to a survivor. Evidence can be collected up to 120 hours after an assault, but “date rape” drugs such as GHB often leave the body rapidly, so victims who are interested should try to have an exam as soon as possible.
- SAFE exams are not yet available at every hospital and survivors must go the specific hospitals to get an exam. A list of these hospitals in Maryland is available at www.mcasa.org or from the National Sexual Assault Hotline, 1-800-656-HOPE.

---

6 Office for Civil Rights, U.S. Dep’t of Educ., *Dear Colleague Letter*, April 4, 2011, at 9-10 [hereinafter *Dear Colleague Letter*]; Academy School Dist. No. 20, OCR Case No. 08-93-1023 (school’s response determined to be insufficient in case in which it stopped its investigation after complaint filed with police); Mills Public School Dist., OCR Case No. 01-93-1123 (not sufficient for school to wait until end of police investigation). 7 *Dear Colleague Letter, supra* note 9, at 11.
• A survivor does not have to have a SAFE exam to have medical treatment, medication to prevent sexually transmitted infection, or emergency contraception.
• If possible, the victim should not wash, go to the bathroom, douche, brush her or his teeth, smoke, or drink anything before a SAFE exam. She or he should try not to change clothes. All of these things can destroy evidence of an assault.
• The victim should put sheets, used condoms, undergarments, or anything else that may have evidence on it in a paper bag, not plastic, and take it with her or him if the victim goes to the hospital or police station.
• Injuries should be photographed. Some bruises or other marks may not appear until several days after an assault.
• If the victim is under 18, she or he can consent to treatment of injuries caused by a sexual assault or to a SAFE exam without a parent’s permission. The treatment provider may, however, decide to inform the parents or guardian about what happened.
• If the victim informs her or his school about what happened, many schools have policies that allow them to tell the victim’s parents.
• Evidence of a sexual assault may be at the location of the crime as well as on the victim’s body. Survivors should consult with police, an investigator, or a lawyer about collecting evidence from the location of the crime.
• Victims should keep records of any communications from the perpetrator (text messages, emails, letters, etc.).
• If the victim thinks she or he wants to make a police report or prosecute, the sooner she or he talks to the police, the better.

**SEX CRIMES IN MARYLAND**

In Maryland, most sex crimes are categorized as either a “rape” or a “sexual offense.” They are divided into degrees, with 1st degree rape or sexual offense being the most serious and 4th degree sexual offense being the least. The term “rape” refers to crimes involving vaginal intercourse. Other sexual assault crimes are “sexual offenses.” The distinctions between the different degrees of sex crimes are complicated. Charges can be based on a number of legal factors including ages of the victim and perpetrator (statutory rape), use of force or threat of force, lack of consent, and incapacitation of the victim (including from intoxication). More information, including statutes and charts, is available at [www.mcasa.org](http://www.mcasa.org).

**DRUG AND ALCOHOL FACILITATED SEXUAL ASSAULT**

Many sexual assaults against students involve drugs or alcohol. The victim may consume these substances voluntarily, or the perpetrator may have given it to the victim without her or his knowledge. Maryland’s criminal law imposes a high standard for prosecution of these cases. A victim must have been “rendered substantially incapable of appraising the nature of [the perpetrator’s] conduct.”

---

8 Md. Code Ann., Crim. Law § 3-301, et seq.
know or reasonably should know that the victim is incapacitated. There are additional criminal penalties for administering drugs (not including alcohol) to someone in order to commit a sexual offense (e.g. “date rape” drugs).

Individual schools may have more stringent prohibitions against drug and alcohol facilitated sexual assault, and students who are victims of these types of crime may wish to consider school disciplinary action. The school’s judicial procedure can be used whether or not the student chooses to report the incident to the police and whether or not the criminal justice system responds.

INFORMATION ABOUT SEX CRIMES AND CONVICTED OFFENDERS

The Clery Act, a federal law, requires colleges and universities to keep a record of campus crimes. It also requires these schools to publish an annual report of criminal activity, to make the criminal log sheet available to students and employees, and to alert the campus community of criminal activity.

Information about individual convicted sex offenders is available online at www.socem.info. Keep in mind that the vast majority of offenders are not on the registry. From 2006 through 2010, only 35% of all rapes and sexual assaults were even reported to the police.

SCHOOL RESPONSE TO SEXUAL ASSAULT

Schools’ Obligations

The Clery Act, strengthened by the Campus Sexual Violence Elimination Act of 2013, and Maryland state law require that colleges and universities have policies in place to address sexual assault. Higher education institutions must provide information about victims’ rights and options within both the criminal justice system and the school disciplinary process.

These schools also must provide referrals to counseling and other support services, help with notifying law enforcement if the victim chooses to do so, and assistance with transportation to the nearest hospital that provides Sexual Assault Forensic Exams (“rape kits”). Colleges and universities must inform students about procedures that victims should follow after a sexual assault, including where to report and how to preserve evidence.

Additionally, under Title IX, all schools receiving federal assistance, not just colleges and universities, must provide an appropriate response to sexual violence perpetrated against students.\(^{17}\) This obligation applies to both on-campus sexual violence and off-campus student-on-student sexual violence.\(^{18}\)

**Confidentiality**

Campus policies have to address how victim confidentiality, to the extent possible.\(^{19}\) A school should only disclose information about a sexual assault to those individuals responsible for handling the school’s response, and the school should notify the student about any necessary disclosures.\(^{20}\) Generally, survivors can talk with non-professional campus counselors and advocates in confidence without formally reporting the sexual assault to the school.\(^{21}\) If a school learns of a sexual assault but the victim wishes to remain confidential, the school should respect the student’s desire for confidentiality, as long as it does not interfere with the school’s ability to respond effectively and prevent sexual violence against other students.\(^{22}\)

**Codes of Student Conduct**

Codes of conduct vary from school to school. Most of these codes explicitly prohibit sexual offenses and often provide victims with a way to request practical help and to start disciplinary proceedings against the perpetrator. Solutions available under school codes of conduct can often be flexible but also vary widely. Some include:

- Changing class schedules;
- Moving dormitories or other housing;
- Obtaining a “no contact” requirement against the offender;
- Providing counseling for the victim;
- Requiring community service by the perpetrator (including service relevant to sexual offenses, such as research on assault).

More serious sanctions against offenders may also be imposed, such as:

- Temporary leave of absence until the victim graduates;
- Academic probation; or
- Suspension or expulsion.

---

\(^{17}\) *Dear Colleague Letter, supra* note 9, at 1 (Title IX of the Education Amendments prohibit discrimination on the basis of sex, which includes sexual violence); 20 U.S.C. § 1681.

\(^{18}\) *Dear Colleague Letter, supra* note 9, at 4.

\(^{19}\) 20 U.S.C. § 1092(f)(8).

\(^{20}\) Office for Civil Rights, U.S. Dep’t of Educ., *Questions and Answers on Title IX and Sexual Violence*, April 29, 2014, at 19 [hereinafter *Questions and Answers*].

\(^{21}\) White House Task Force to Protect Students from Sexual Assault, Not Alone: The First Report of the White House Task Force to Protect Students From Sexual Assault, April 2014, at 18.

Many universities, colleges, and local school districts publish their codes of conduct on the Internet. Disciplinary hearings held under a student code of conduct must use a preponderance of evidence standard (more likely than not) rather than the higher beyond a reasonable doubt standard used in criminal cases.  

*Rights of Victims*

In a disciplinary proceeding, schools must treat the complaining student and the accused student equally. For example, if the perpetrator is permitted to present witnesses and evidence, to read the victim’s written statement, to bring a lawyer to a hearing, or to appeal the outcome, the complainant must be permitted to do the same. Both the complainant and the accused must be informed at the same time, in writing, of the outcome of a disciplinary proceeding and of any appeal.

Even before the school completes its investigation and makes a determination regarding what happened, it should allow a victim to change classes; extracurricular activities; dorms; or transportation, dining, and working arrangements as appropriate in order to avoid contact with the perpetrator. In implementing such interim safety measures, the school should take care to minimize the burden on the victim. Victims also should be offered other accommodations in order to ensure safety or address academic effects, such as providing an escort between classes or withdrawing from a course without penalty.

*Due Process Rights of Accused Students*

Students have rights when they are accused of an offense. This includes students accused of sexual offenses. Unfortunately, victims of sexual assault are also sometimes accused of violating school codes for consuming alcohol or other substances or for other perceived infractions. Schools vary in their policies regarding student discipline in these types of circumstances, but those accused have due process protections.

Public universities are constitutionally required to provide due process, including notice and an opportunity to be heard. Private schools generally provide similar protections as a matter of school policy. Maryland secondary and elementary public school students have the following specific rights at disciplinary hearings:

- The right to notice of the alleged violation and scheduled hearings;
- The right to present evidence on their own behalf (e.g., disciplinary and academic records, witness statements, etc.);
- The right to have persons to testify on a student’s behalf;
- The right to have a representative present, including an attorney.

---

23 Dear Colleague Letter, supra note 9, at 10.
26 Questions and Answers, supra note 20, at 32.
27 Dear Colleague Letter, supra note 9, at 15.
28 Id. at 16-17.
29 Md. Code Ann., Educ. § 7-30
**CIVIL RIGHTS AND SEXUAL Assault**

Both state and federal civil rights laws address sexual assault. Under these laws, sexual assault is viewed as an extreme form of sexual harassment and gender discrimination. Civil rights laws both prohibit this type of conduct and give survivors the ability to complain to the U.S. Departments of Education or Justice, State or local governments and, in limited cases, to sue for damages and attorneys’ fees.

Title IX of the Education Amendments of 1972\(^\text{30}\) prohibits gender discrimination, including sexual harassment and sexual assault, at institutions receiving federal funding. This includes most universities, public and private colleges, and public elementary and secondary schools. Title IX also protects students during school-sponsored programs,\(^\text{31}\) and it creates an obligation for schools to address retaliation.\(^\text{32}\) To complain to the federal government about a Title IX violation, a victim must show that: (1) school officials knew or should have known about the sexual harassment or assault and (2) the school failed to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.\(^\text{33}\)

To sue under Title IX for monetary damages, the victim must show that: (1) the school knew about the sexual assault, (2) the school did not respond to the sexual assault, and (3) the assault significantly interfered with the student’s education.\(^\text{34}\)

Other civil rights provisions may be available to address sexual assault and can be discussed with a knowledgeable attorney.\(^\text{35}\)

**FINANCIAL ISSUES**

*Student Loans and Financial Aid*
Sexual assault can impact a student’s ability to stay in school or maintain the academic performance needed for financial aid. An advocate or attorney may be helpful in negotiating loan deferrals or other arrangements following an assault.

*Suing the Perpetrator*
In a civil tort lawsuit, a victim hires an attorney to sue someone for damages (money) for the physical and/or emotional harm inflicted or damage done to a person or property. A victim of sexual assault may be able to sue either the perpetrator or a third party (e.g., the perpetrator’s employer, the victim’s landlord, the university, etc.). There are deadlines called statutes of limitation that limit how long a victim has to file a tort suit. Survivors should talk with an attorney as soon as possible if they have questions about this type of

---


\(^{31}\) Dear Colleague Letter, *supra* note 9, at 3-4.

\(^{32}\) *Id.* at 4, 16.

\(^{32}\) *Id.* at 4; 2001 Guidance, *supra* note 22, at 12-13.


\(^{35}\) These include 42 U.S.C. § 1983; Maryland Declaration of Rights, Articles 23 and 24; and 42 U.S.C. § 1985(3).
Civil rights laws can also be a source of compensation in some cases (see Civil Rights and Sexual Assault).

**Criminal Injuries Compensation**
A victim may be eligible to have expenses and lost wages paid by the Maryland Criminal Injuries Compensation Board (CICB) if she or he:

- Reported the sexual assault to law enforcement;
- Had to spend at least $100 of her or his own money on assault related expenses or lost at least 2 continuous weeks of wages; and
- Filed a claim with CICB within 3 years of the assault.\(^{36}\)

For claim forms, call 888-679-9347 or go to http://www.dpscs.state.md.us/victimservs/commitment/main_pages/vs-cicb.shtml.

**Restitution as Part of a Criminal Case**
If the perpetrator is prosecuted and convicted, she or he can be ordered to pay for a survivor’s expenses as a part of the criminal sentence.\(^{37}\) A victim should consult her or his own attorney or talk to the prosecutor about this before the trial ends or before the guilty plea is entered.

**SAFETY**

**Peace and Protective Orders**
Student victims can petition Maryland courts for a peace order or protective order to keep the perpetrator away and for other relief. Peace orders\(^{38}\) are designed for non-family members and are often the option available to students.

A peace order can be issued against an individual the petitioner is dating, a neighbor, a roommate, a co-worker, an acquaintance, or a stranger. From the time a sexual assault, harassment, or other specified act of abuse occurred, victims have 30 days to seek a peace order.

Protective orders\(^{39}\) are generally designed for family members. Students seeking protective orders often fall into one of the following relationship categories with their perpetrators: lived together for 90 days in the past year in a sexual relationship, married, divorced, or have a child in common.

Peace orders can only be issued by the District Court; however, a survivor can apply for a protective order from the circuit or District Court. When the courts are closed, a Commissioner can issue temporary orders.


These orders are good options for many victims, but have risks and benefits that should be weighed before going to court. In particular, students considering pressing criminal charges should consult with an attorney prior to petitioning for a peace order.

**Safety Planning**
Survivors should:
- Make a plan about what to do if the perpetrator approaches them.
- Carry a charged cell phone.
- Tell people where they will be.
- Call their local rape crisis and recovery center for more help with safety planning.
- A more detailed safety plan can be found at mcasa.org

**Safety and Criminal Cases**
Defendants in criminal cases are often released on bail until the trial. Perpetrators of sexual assault should be ordered to stay away from victims as a condition of release. Survivors should talk to the prosecutor’s office about this. If the victim would be in danger if the defendant knew his or her address, the address can usually be kept confidential. For Maryland elementary and secondary schools, if a student is convicted of or adjudicated delinquent for a sex crime through the criminal justice system, the perpetrator may not attend the same school or ride the same school bus as the victim. In addition, the superintendent and school principal must consider removing the perpetrator from the victim’s school or bus after the arrest if it is necessary or appropriate to protect the victim’s well-being.\(^{40}\)

**PRIVACY**
Survivors generally do not need to reveal confidential information in order to go to court or press criminal charges against the perpetrator. Remember, prosecutors represent the State of Maryland, not the victim. Survivors should consult an attorney about protecting their privacy and find a lawyer immediately if the survivor’s private records are subpoenaed.

All students, including both survivors and perpetrators, have additional privacy protections for their educational records. The Family Educational Rights and Privacy Act (FERPA)\(^ {41}\) bans colleges from disclosing students’ education and disciplinary records without consent. However, a sexual assault victim may be informed of the final results of a disciplinary action against a perpetrator\(^ {42}\) and may not be required to sign a non-disclosure agreement.\(^ {43}\) Parents may see their children’s school records for students who are under 18.

---

\(^{41}\) 20 U.S.C. § 1232(g).
\(^{43}\) Dear Colleague Letter, supra note 9, at 14.
SEXUAL ASSAULT LEGAL INSTITUTE

The Sexual Assault Legal Institute (SALI) provides legal advice, representation, and referrals for survivors of sexual assault. SALI is committed to survivor-centered advocacy and respect for client decision-making. SALI also provides legal education, technical assistance, and information for professionals, student advocates, rape crisis and recovery center staff, and others working with survivors.

For more information, or for copies of the booklet this document is based on, contact:

SALI
P. O. Box 8782
Silver Spring, MD 20907
301-565-2277
FAX: 301-565-3619
TOLL FREE: 877-496-SALI
A Program of MCASA – the Maryland Coalition Against Sexual Assault

Your School May Also Have Its Own Resources

Preparation of this document was supported by grant number 2005-WL-AX-0091, awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, and conclusions expressed in this document are those of the author(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice.