

## Overview

This brief describes the federal and state laws governing sexual violence on college campuses, including recent changes to sexual violence policies enacted in Minnesota and other states.

## Federal Laws on Campus Sexual Violence

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act regulates the security policies of higher education institutions participating in federal student aid programs.<sup>1</sup> The Clery Act contains a number of provisions governing campus sexual violence, and the Violence Against Women Reauthorization Act of 2013 expanded upon the Clery Act's existing requirements.<sup>2</sup> Under current federal law:

- campuses must report the number of incidents reported to the institution of forcible sex offenses, nonforcible sex offenses, domestic violence, dating violence, and stalking;<sup>3</sup> and
- campuses must develop policies and procedures to prevent and respond to incidents of domestic violence, dating violence, sexual assault, and stalking. These policies must include procedures for institutional disciplinary action.<sup>4</sup>

Title IX of the Education Amendments of 1972 prohibits postsecondary institutions that receive federal funds from discriminating on the basis of sex. It is well established in case law and administrative guidance from the U.S. Department of Education Office for Civil Rights (OCR) that a postsecondary institution can create a discriminatory, hostile environment by failing to adequately address and respond to sexual harassment and sexual misconduct, including sexual violence. Accordingly, Title IX requires postsecondary institutions to adopt procedures to provide prompt and equitable resolution of complaints of sex discrimination.<sup>5</sup>

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<sup>1</sup> 20 U.S. Code § 1092 (f).

<sup>2</sup> Pub. L. No. 113-4.

<sup>3</sup> 20 U.S. Code § 1092 (f), para. (1), subpara. (F).

<sup>4</sup> 20 U.S. Code § 1092 (f), para. (8).

<sup>5</sup> See Office for Civil Rights, U.S. Dep't of Educ., "Q&A on Campus Sexual Misconduct," September 2017, <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>.

In recent years, OCR guidance on how institutions must enforce Title IX has shifted with changing administrations.<sup>6</sup> Nevertheless, the general trend has been towards requiring institutions to conduct their own investigations and adjudications of sexual misconduct allegations, subject to OCR guidance and oversight. In May 2020, the Department of Education finalized and adopted new formal regulations (first proposed in November 2018) for Title IX investigations and adjudications.<sup>7</sup> Colleges and universities will be required to comply with the new regulations by August 14, 2020.

## Minnesota Law on Campus Sexual Violence: Section 135A.15

Minnesota's laws governing campus sexual violence are codified in [Minnesota Statutes, section 135A.15](#).

The legislature has substantially amended the state's campus sexual violence laws three times—in 1989, 1992, and 2015.<sup>8</sup> In 1989, the legislature required postsecondary institutions and systems to have a written policy on sexual harassment and violence.<sup>9</sup> In 1992, the legislature required institutions to include in their policies a list of sexual assault victims' rights.<sup>10</sup> These rights include the following:

- Campus authorities must assist a victim of sexual assault in notifying law enforcement, if the victim wishes to do so.

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<sup>6</sup> Official regulations on Title IX are contained at [Code of Federal Regulations, title 34](#), part 106. OCR can also promulgate interpretative rules or guidance, which differ from rulemaking. Until the new regulations were finalized in 2020, guidance was the primary way OCR had addressed Title IX's effect on sexual harassment and sexual misconduct at colleges and universities. See Office for Civil Rights, U.S. Dep't of Educ., *Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, 62 Fed. Reg. 12,034 (Mar. 13, 1997); Office for Civil Rights, U.S. Dep't of Educ., *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (January 2001), <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>; Letter from Russlynn Ali, Assistant Sec'y, Office for Civil Rights, U.S. Dep't of Educ., to Colleague (Apr. 4, 2011), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf> (the "2011 Dear Colleague Letter"); Office for Civil Rights, U.S. Dep't Of Educ., *Questions and Answers on Title IX and Sexual Violence* (April 29, 2014), <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>; Letter from Candice Jackson, Acting Assistant Sec'y, Office for Civil Rights, U.S. Dep't of Educ., to Colleague (Sept. 22, 2017), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf> (withdrawing the 2011 Dear Colleague Letter and 2014 guidance); Office for Civil Rights, U.S. Dep't of Educ., "Q&A on Campus Sexual Misconduct," September 2017, <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>.

<sup>7</sup> See *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 FR 30026-01 (May 19, 2020); see also 83 FR 61462-01 (November 29, 2018).

<sup>8</sup> Amendments in 1995, 2002, 2010, 2017, and 2019 have included only minor changes to [section 135A.15](#). See [Laws 1995, ch. 212](#), art. 3, § 7; [Laws 2002, ch. 220](#), art. 7, § 8; [Laws 2010, ch. 364](#), § 1; [Laws 2017, ch. 89](#), art. 3, § 1; [Laws 2019, ch. 64](#), art. 2, § 3.

<sup>9</sup> [Laws 1989, ch. 293](#), § 15.

<sup>10</sup> [Laws 1992, ch. 571](#), art. 5, § 15.

- Campus authorities must also investigate and resolve sexual assault complaints through on-campus disciplinary procedures, and preserve evidence from the procedures.
- Campus authorities must allow a victim of sexual assault and his or her attorney to participate in campus disciplinary procedures, and must notify the victim of the outcome.
- Campus authorities must shield a victim from unwanted contact with an alleged assailant.

The 2015 omnibus higher education bill included an entire article making changes to Minnesota’s campus sexual violence policies,<sup>11</sup> and appropriated money for implementation to the Office of Higher Education and the Minnesota State Colleges and Universities (MnState). All public and many private postsecondary institutions were required to implement the new changes. The 2015 amendments constituted the last major update of the statute, and essentially brought the statute into its current form.

## **Applicability**

Subdivision 1, paragraph (a), states which postsecondary institutions are subject to this section. The section applies to all institutions within the MnState system. It also applies to any private postsecondary institution that offers in-person courses on a campus in Minnesota, provided that institutions with very small enrollment numbers (i.e., less than 100 students) are exempt from many of the section’s requirements. The University of Minnesota is only “requested” to comply with the section. This is due to the fact that the Board of Regents’ “constitutional autonomy” empowers them to manage internal affairs at the University free from control by the legislative or executive branches. Currently, University of Minnesota policies and practice conform to the section.

## **Sexual Harassment and Sexual Violence Policy Required**

Subdivision 1, paragraph (b), requires each postsecondary institution subject to this section to adopt a policy on sexual harassment and sexual violence. It also requires that the policy apply to students and employees, inform students and employees of their rights and duties, be disseminated to the campus, and include procedures for reporting incidents of sexual harassment and sexual violence. This subdivision also states that the policy must apply to “criminal incidents”<sup>12</sup> that occur on the institution’s property, or at any “activity, program,

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<sup>11</sup> [Laws 2015, ch. 69](#), art. 4.

<sup>12</sup> Not all incidents of sexual harassment or even “sexual violence” will necessarily be crimes under Minnesota law. Institutions are free to adopt policies which encompass noncriminal conduct.

organization, or event” sponsored by the institution, including a fraternity or sorority. The required scope of the policy closely tracks federal Title IX requirements.<sup>13</sup>

## Definition of Sexual Assault

Subdivision 1a defines the term “sexual assault,” which is used throughout [section 135A.15](#). Sexual assault is defined to include rape and three categories of sex offenses (fondling, incest, and statutory rape) as they are in turn defined in federal Clery Act regulations. Those federal regulations provide the following definitions:

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

**Sex Offenses:** Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

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

B. Incest – Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

C. Statutory Rape – Sexual intercourse with a person who is under the statutory age of consent.<sup>14</sup>

## Required Policy Elements

Subdivision 2 of [section 135A.15](#) requires that certain specific items be included in an institution’s mandated policy. These required provisions generally concern victims’ rights and the duties of school officials in responding to sexual assault allegations. The subdivision requires a school’s policy to include provisions for:

- 1) filing criminal charges with local law enforcement officials;

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<sup>13</sup> The U.S. Supreme Court has explained that the Title IX “confines the scope of prohibited conduct based on the recipient’s degree of control over the harasser and the environment in which the harassment occurs.” *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 644 (1999). Accordingly, OCR has informed institutions that “[a] university does not have a duty under Title IX to address an incident of alleged harassment where the incident occurs off-campus and does not involve a program or activity of the recipient.” Oklahoma State University Determination Letter at 2, OCR Complaint No. 06-03-2054 (June 10, 2004); see also University of Wisconsin-Madison Determination Letter, OCR Complaint No. 05-07-2074 (Aug. 6, 2009) (“OCR determined that the alleged assault did not occur in the context of an educational program or activity operated by the University.”).

<sup>14</sup> See [34 C.F.R. pt. 668](#), subpt. D, app. A.

- 2) requiring campus authorities, at the request of the victim, to assist in notifying law enforcement officials and campus disciplinary authorities of a sexual assault incident;
- 3) allowing sexual assault victims to decide whether to report a case to law enforcement;
- 4) requiring campus authorities to treat sexual assault victims with dignity;
- 5) requiring campus authorities to offer sexual assault victims fair and respectful health care, counseling services, or referrals to such services;
- 6) preventing campus authorities from suggesting to a victim of sexual assault that the victim is at fault for the crimes or violations that occurred;
- 7) preventing campus authorities from suggesting to a victim of sexual assault that the victim should have acted in a different manner to avoid such a crime;
- 8) disclosing data collected under [section 135A.15](#) only to the victim, campus authorities whose work assignments reasonably require access, and—at a sexual assault victim's request—police conducting a criminal investigation;
- 9) requiring campus disciplinary authorities to investigate and resolve a sexual assault complaint;
- 10) allowing a sexual assault victim (and their attorney or other support person) to be present at any meeting with campus officials concerning the victim's sexual assault complaint or campus disciplinary proceeding concerning a sexual assault complaint;
- 11) ensuring that a sexual assault victim may decide when to repeat a description of the incident of sexual assault;
- 12) notifying a sexual assault victim of the availability of a campus or local program providing sexual assault advocacy services and information on free legal resources and services;
- 13) notifying a sexual assault victim of the outcome of any campus disciplinary proceeding concerning a sexual assault complaint, consistent with applicable privacy laws;
- 14) requiring campus authorities to assist law enforcement authorities in obtaining, securing, and maintaining evidence in connection with a sexual assault incident;
- 15) requiring campus authorities to assist a complainant or victim in preserving materials relevant to a campus disciplinary proceeding;
- 16) shielding the victim from any unwanted contact with the alleged assailant, including transfer to alternative classes or housing, if possible;
- 17) forbidding retaliation, and establishing a process for investigating complaints of retaliation by campus authorities, the accused, organizations affiliated with the accused, other students, and other employees;
- 18) for students who transfer schools, providing information about sexual assault victim resources at the receiving institution; and

- 19) providing a student who reports an incident of sexual assault with access to the student's description of the incident as it was reported to the institution.<sup>15</sup>

## **Coordination between Institutions and Law Enforcement**

Subdivision 4 requires institutions and local law enforcement agencies to enter into memoranda of understanding describing how they will cooperate in response to a report of sexual assault. The memorandum must delineate law enforcement and school responsibilities, establish protocols for communication and evidence preservation, and establish procedures for reporting crimes to law enforcement, at a victim's request.

## **Reporting Requirements**

Institutions must create an online system to receive reports of sexual harassment and violence.

Institutions must annually report data on incidents of sexual assault to the Office of Higher Education. This data must include the number of incidents reported to the university, the outcomes of campus disciplinary procedures, and the number of cases referred to law enforcement. Using these reports, the Office of Higher Education must annually publish statewide and institution-level summary data.

## **Data Privacy Protections**

Institutions must limit disclosures of data related to incidents of sexual assault to the victim, individuals whose work assignments reasonably require access, and law enforcement (at a victim's request). The law classifies data related to incidents of sexual assault as private data on individuals under the Minnesota Government Data Practices Act.

## **Training**

Institutions must train campus security officers and campus administrators on how to prevent and respond to sexual assault on campus. Students must complete a training on sexual assault no later than ten days after the start of their first semester of classes.

## **Student Health Services**

Student health service providers must screen students for incidents of sexual assault on college campus. They must also designate a staff member as a "confidential resource" that can meet with victims of sexual harassment and violence that do not wish to make a formal report to the institution.

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<sup>15</sup> See [Minn. Stat. 135A.15](#), subd. 2. These items are enumerated as in the statute, but are not verbatim from the statute.

## Related Appropriations

In the 2015 higher education omnibus act that contained the most recent overhaul of [section 135.15](#), the legislature dedicated \$40,000 annually from MnState’s “operations and maintenance” appropriation to enacting the new sexual assault requirements over fiscal years 2016 and 2017. In that same act, the legislature appropriated an additional \$25,000 per year to MnState to implement the online reporting system required by subdivision 5. That \$25,000 annual appropriation has also been included in subsequent higher education omnibus acts.

Beginning in the 2017 higher education omnibus act, the legislature also appropriated \$150,000 per year to the Office of Higher Education to fund a “campus sexual violence prevention and response coordinator” position. This appropriation states that the coordinator will “serve as a statewide resource providing professional development and guidance on best practices for postsecondary institutions.” \$50,000 each year from this appropriation are dedicated to trainings and provide materials to postsecondary institutions.

## Laws in Other States

Since 2014, 17 states in addition to Minnesota enacted new laws relating to campus sexual violence. Many of these recently enacted laws contain similar provisions, including changes to campus disciplinary procedures, data privacy protections, sexual assault prevention strategies, reporting, and increased cooperation with law enforcement and victims groups. Table 1 on the following pages contains a detailed list of the policies recently enacted in other states.

**Table 1: Significant Campus Sexual Violence Laws Passed since 2014<sup>16</sup>**

Policy	CA	CO	CT	DE	HI	IL	LA	MD	MN	NY	ND	OR	PA	TX	VA	WI	WV	WA
Changes to campus disciplinary procedures to protect victims of sexual violence or the accused	X								X	X	X							X
Communications between a victim of sexual assault and victims' service providers is classified as confidential									X			X						
Faster reporting to Title IX coordinator required															X			
Institutions must adopt an "Affirmative Consent" policy	X									X								
Institutions must engage in sexual assault prevention, awareness, or outreach	X								X	X				X				
Institutions must enter into partnerships or memoranda of understanding with local law enforcement					X		X	X	X						X			X

<sup>16</sup> See California SB-967 (2014); Colorado HB 15-1220 (2015), SB 19-007 (2019); Connecticut HB 5029 (2014); Hawaii SB 387 (2015), Act 208 (2016); Louisiana SB 255 (2015); Maryland HB 571 (2015); New York A 8244 (2015); North Dakota SB 2150 (2015); Oregon HB 3476 (2015); Texas HB 699 (2015), HB 1735 (2019), SB 212 (2019), HB 449 (2019); Virginia SB 712, HB 1785, and SB 1193 (2015); Washington SB 5518 and SB 5719 (2015); West Virginia HCR 139 (2015); Delaware Laws Chapter 294 (2016); Illinois Public Act 099-0426 (2015); Pennsylvania Act 16 (2019); Wisconsin Act 279 (2015).

Policy	CA	CO	CT	DE	HI	IL	LA	MD	MN	NY	ND	OR	PA	TX	VA	WI	WV	WA
Institutions must enter into partnerships or memoranda of understanding with organizations serving victims of sexual assault	X	X	X					X		X					X			
Institutions must have a campus policy on sexual assault		X				X							X	X				
Institutions must establish online reporting system							X		X				X					
Institutions must note on a student's transcript if the student is expelled or suspended due to an incident of sexual violence										X				X	X			X
Institutions must monitor the campus sexual assault "climate" through a survey or task force			X				X	X		X								
Institutions must offer "confidential resources" to receive reports of sexual violence				X	X	X	X		X	X				X				
Institutions must permit anonymous reports of sexual violence			X						X	X			X					

Policy	CA	CO	CT	DE	HI	IL	LA	MD	MN	NY	ND	OR	PA	TX	VA	WI	WV	WA
Institutions must report aggregate data on sexual assault incidents			X	X		X			X	X								
Establishes a task force or working group on sexual violence					X	X								X			X	X
Sexual assault victims unit established in the state police department										X								
Students who report sexual violence have amnesty from campus discipline for drug/alcohol use		X					X	X	X	X			X			X		
Training and education requirements for students or employees		X	X	X	X	X	X		X	X				X				



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