

TRAUMA-INFORMED  
SEXUAL ASSAULT INVESTIGATION  
AND ADJUDICATION INSTITUTE

NORTH DAKOTA STATE COLLEGE OF SCIENCE  
MAY 16–19, 2017

# TRAUMA-INFORMED SEXUAL ASSAULT INVESTIGATION AND ADJUDICATION INSTITUTE

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# PART I: INSTITUTE MATERIALS

## Agenda and Curriculum Overview

*TRAUMA-INFORMED SEXUAL ASSAULT INVESTIGATION AND ADJUDICATION INSTITUTE*

### **DAY 1 (8:30 A.M. – 5:00 P.M.)**

Module 1: Welcome

Module 2: Overview of Title IX and Clery Act and Institutional Obligations

Module 3: Community Coordination

Module 4: The Culture in Which We Live: Understanding the Rape Narrative

Module 5: Impact of Language

### **DAY 2 (8:30 A.M. – 5:00 P.M.)**

Module 6: Understanding the Effects of Trauma

Module 7: Sexual Assault First Response: First Impressions Matter

Module 8: Interviewing the Complainant

Module 9: Overcoming the Complexities of Sexual Violence: Offender Realities

### **DAY 3 (8:30 A.M. – 5:00 P.M.)**

Module 10: Interviewing the Respondent

Module 11: Sexual Assault: Investigative Strategies

Module 12: Report Writing and Assessment

### **DAY 4 (8:30 A.M. – 5:00 P.M.)**

Module 13: Adjudication: Protecting Complainants, Promoting Accountability, Respecting Rights

Module 14: Adjudication: Appeals and Logistics

Module 15: Mandatory Training to Comply with OCR Guidance and the Clery Act

Module 16: Institutional Support and Self Care: Taking Care of Yourself So You Can Take Care of Others

Module 17: Program Close

Optional Q&A Session (4:00 p.m. – 5:00 p.m.)

# Institute Purpose and Objectives

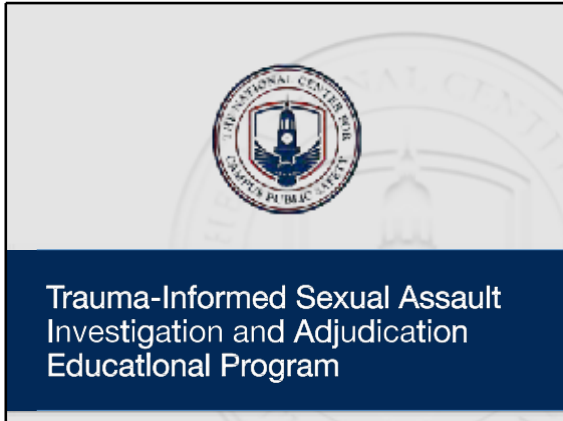
To provide college and university administrators involved in investigating and adjudicating sexual misconduct cases information and resources necessary to conduct trauma-informed investigations in line with evolving practices.

NCCPS Institute objectives include:

- Training administrators how to conduct fair and balanced Title IX investigation and adjudication processes for all parties;
- Explaining the intricacies and crossovers of Title IX, the Clery Act, criminal investigations, and institutional obligations;
- Identifying the effects of trauma and how trauma impacts victims and others involved in investigations; and
- Identifying and applying industry evolving practices to conduct a trauma-informed Title IX investigation from disclosure and first response to adjudication.

# Institute PowerPoint Slides

## I. WELCOME



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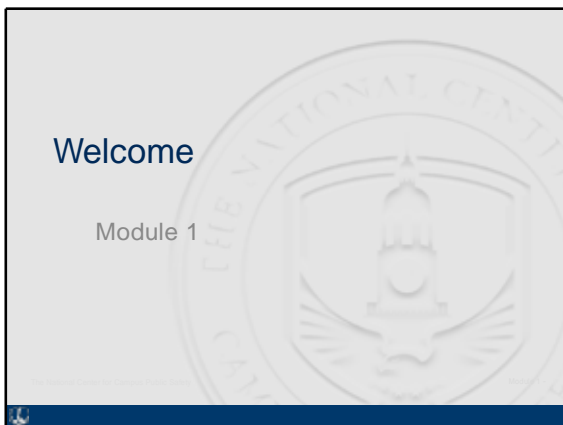
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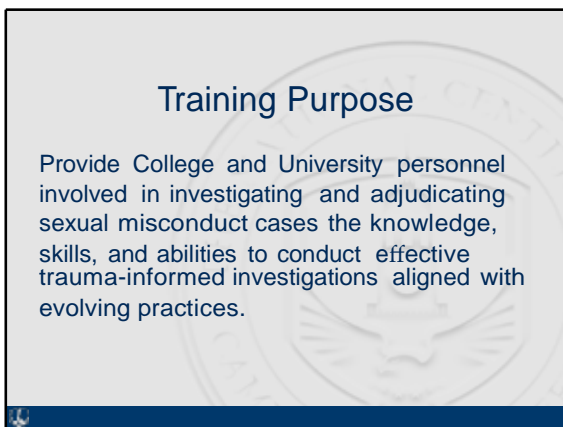
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### Key Topics

Think about the last few investigations and/or adjudications you participated in or led. Think about the things that you felt went well that you observed others doing. Remember the things that made you cringe or wish you had the ability to 'do over.'

What would you like to learn from this class to prepare you for your next investigation or adjudication?

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### Training Overview

- Broad approach, think comprehensively
- Challenge you with new information and ideas
- Emphasis on multi-disciplinary approach to sexual and gender-based violence incidents
- Key is your participation – share collective experience and knowledge – learn from

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### Reminder

This curriculum was designed by a multidisciplinary team to reflect current legal requirements, official guidance, and examples of promising practices and alternative approaches. It is not intended, however, to constitute legal advice, or to create a legal standard of care.

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### Training Philosophy

- Effective organizations look for ways to improve
- Training is an investment
- Opportunity to offer innovative thinking, promising practices, and latest information, research, and material

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### Training Philosophy

- Acknowledge that discussing sexual and gender-based violence can be difficult
- Offer an interactive curriculum
- Develop a foundation and provide direction for strengthening response to, and investigations of, sexual and gender-based violence

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### Background

- National Center for Campus Public Safety
- White House Task Force to Protect Students from Sexual Assault
- Trauma-Informed?

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## Trauma-Informed Care

Strengths-based service delivery grounded in responsiveness to the impact of trauma, emphasizing physical, psychological, and emotional safety for survivors and providers, and promoting survivor empowerment.

Reference: Hopper, E.K., Bassuk, E.L., Ollivet, J. (2010). Shelter from the Storm: Trauma-Informed Care in Homelessness Services Settings. *The Open Health Services and Policy Journal*, 3, 80-100.

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## Terminology

- Title IX terminology
- Complainant
  - Victim/Survivor/Reporting Party/Accuser (Clery)
- Respondent
  - Offender/Suspect/Reported Party/Accused (Clery)
- LGBTQ

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## Course Learning Outcomes

- Identify, acquire and apply resources and tools for conducting trauma-informed response, investigations and adjudications, in a manner which protects complainants, respects respondent's rights, and is consistent with legal requirements and current peer-reviewed, evidence based, best practices in trauma-informed response.
- Evaluate and apply relevant sections of the OCR guidance, statutory and regulatory requirements to

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## Course Learning Outcomes

- Create community, personal and organizational partnerships for an efficient and effective trauma-informed response.
- Choose appropriate and effective terminology for trauma-informed response, by developing a thorough knowledge and understanding of the impact of language.
- Understand the realities and impacts of rape myths and rape culture on sexual assault disclosure and reporting, as well as on trauma-informed response, investigation and adjudication.

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## Course Learning Outcomes

- Incorporate knowledge of how trauma affects human cognition and emotional functioning in trauma-informed response, investigation and adjudication.
- Write, evaluate and analyze reports, ensuring relevant information, details of institutional actions, and explanations of the decision making process are included.
- Apply foundational knowledge of self-care methods to foster improved individual and organizational well-being.

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## Day 1 Agenda

- Welcome
- Overview of Title IX, Clery Act, and Institutional Obligations
- Community Coordination
- The Culture in Which We Live: Understanding the Rape Narrative
- Impact of Language

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## Day 2 Agenda

- Understanding the Effect of Trauma
- Sexual Assault First Response – First Impressions Matter
- Interviewing the Complainant
- Considerations Regarding Criminal Sexual Offenders

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## Day 3 Agenda

- Interviewing the Respondent
- Investigative Strategies
- Report Writing and Appropriate Documentation

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## Day 4 Agenda

- Adjudications: Protecting Complainants, Promoting Accountability, Respecting Rights
- Adjudication: Appeals and Logistics; Mandatory Training
- Institutional Support and Self Care
- Program Close; Optional Q&A

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## Agenda Overview

- 2 - Overview of Title IX, Clery Act, and Institutional Obligations
- 3 - Community Coordination
- 4 - Culture: Rape Narrative
- 5 - Impact of Language
- 6 - Effects of Trauma
- 7 - First Impressions Matter
- 8 - Interviewing the Complainant
- 9 - Criminal Offenders
- 10 - Interviewing the Respondent
- 11 - Investigative Strategies
- 12 - Report Writing
- 14 - Adjudication: Respecting Rights
- 14 - Adjudication: Appeals
- 15 - Mandatory Training
- 16 - Institutional Support and Self Care

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## Introduction

- Microphones
- Please share
  - Name
  - Affiliation
  - Position

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## Your materials

- Folder
- Electronic Guidebook
  - Slides
  - Reference Materials
- Pre-Session Survey
- Evaluations

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## Evaluations

- Please complete evaluations
  - Honest feedback
  - If you rank less than satisfactory, please indicate what we can do to improve
  - Let us know what you liked

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## Logistics

- Restrooms
- Lunch
- Emergency Exits

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[www.bja.gov](http://www.bja.gov)

[www.nccpsafety.org](http://www.nccpsafety.org)  
[info@nccpsafety.org](mailto:info@nccpsafety.org)  
1 866 817 5917

[www.margolishealy.com](http://www.margolishealy.com)

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## II. OVERVIEW OF TITLE IX AND CLERY ACT AND INSTITUTIONAL OBLIGATIONS



**Trauma-Informed Sexual Assault Investigation and Adjudication Educational Program**

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**Overview of Title IX, Clery Act, and Institutional Obligations**

Module 2

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**Module Objectives**

- As a result of this module, participants will be able to:
  - Correctly apply the statutory and regulatory requirements and OCR guidance of most relevance to investigation/adjudication processes
  - Describe the scope of Title IX and Clery Act coverage
  - Define sexual harassment, sexual assault, domestic violence, dating violence and stalking
  - Explain other pertinent institutional obligations

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Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq., prohibits discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance

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### Other Federal Laws of Interest

- Title IX was modeled after Title VI of Civil Rights Act of 1964, which prohibits discrimination on basis of race, color or national origin in programs or activities that receive federal funds
- Title IV of Civil Rights Act of 1964 prohibits discrimination on basis of sex, among other things, at public colleges, universities and schools
- Laws that allow DOJ to take action based upon discriminatory law enforcement practices
  - Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141
  - Omnibus Crime Control and Safe Streets Act of 1968

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### Title IX Regulations - 34 C.F.R. Part 106

§ 106.4: Assurance of compliance required of recipients of federal financial assistance

§ 106.8: Designation of Title IX Coordinator and adoption of grievance procedure

§ 106.9: Notification of Title IX nondiscrimination obligations in education programs and activities

§ 106.31: "no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity . . ."

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### OCR Guidance

- OCR 2001 Revised Sexual Harassment Guidance:
  - [www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf](http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf)
- 2010 Dear Colleague letter on Harassment and Bullying:
  - [www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf)
- April 2013 OCR Dear Colleague Letter on Retaliation:
  - <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201304.html>

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### OCR Guidance

- April 2011 OCR Dear Colleague Letter on Sexual Violence
  - [www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf)
- April 2014 OCR Q&A on Title IX and Sexual Violence
  - <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

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### White House Task Force Publications

- April 2014 White House Task Force Report: Not Alone
  - <https://www.notalone.gov/assets/report.pdf>
- April 2014 Sample Reporting/Confidentiality Policy, Sexual Misconduct Policy Checklist
  - <https://www.notalone.gov/schools/>
- September 2014 Statements re Role of Title IX Coordinator, Interim and Supportive Measures, and Definitions of Prohibited Conduct
  - <https://www.notalone.gov/schools/>

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### Sexual Harassment Definition

- Sexual harassment is unwelcome conduct of a sexual nature:
  - includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, Student-to-student harassment
  - creates hostile environment if conduct is sufficiently severe or pervasive that it interferes with or limits a student’s ability to participate in or benefit from institution’s program
- Schools should investigate all reports of unwelcome conduct of a sexual nature to determine if conduct is sufficiently severe or pervasive to create hostile environment (e.g.: Montana)

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### Sexual Violence Definition

- Sexual violence is a form of sexual harassment covered by Title IX.
  - Sexual violence refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol
  - An individual also may be unable to give consent due to an intellectual or other disability
  - A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion.

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### Scope of Coverage

- Title IX protects students from sexual harassment in an institution’s education programs and activities, including:
  - All academic, educational, extracurricular, athletic, and other programs of the institution
  - On-campus, off-campus, on a school bus or shuttle, at a class or training program sponsored at another location, etc.

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### Scope of Coverage

- In addition to student-on-student sexual harassment, Title IX prohibits:
  - Student-on-employee sexual harassment,
  - Employee-on-employee sexual harassment
    - (Title VII standards are applied in practice), and
  - Employee-on-student sexual harassment (see 2001 Revised Sexual Harassment Guidance)

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### Scope of Coverage

- Institutions may have obligation to respond to covered sexual harassment that initially occurred off campus and outside institution's education program or activity
  - If student files a complaint re off-campus conduct, institution "must process the complaint in accordance with its established procedures."
  - Investigation may demonstrate that misconduct started or continued on campus
  - If there are continuing effects on campus of off-campus sexual harassment that are creating or contributing to hostile environment (e.g., taunting/harassment by alleged perpetrator or friends), institution must address hostile environment the same way it would address hostile environment created by on-campus sexual harassment

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### Scope of Coverage

- Title IX protects third parties from sexual harassment or violence in an institution's education programs and activities
  - E.g.: Title IX protects a high school student participating in a college's recruitment program, a visiting student athlete, and a visitor in an institution's on-campus residence hall
- Title IX protects students from sexual harassment by institutional employees (faculty/staff), other students, or third parties

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### Scope of Coverage

- Title IX also prohibits gender-based harassment. Gender-based harassment is:
  - Nonsexual, unwelcome conduct based on the student’s actual or perceived sex, including harassment based on gender identity, gender expression, and nonconformity with gender stereotypes

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### Scope of Coverage

- Title IX protects all students from sexual harassment:
  - Male and female students
  - LGBTQ students
  - Students with and without disabilities
  - International students
  - Students of different races and national origins, including international and undocumented students
- Be aware of special issues (see OCR Q&A, pages 5-8, Questions B-2 to B-4)

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### Clery Act Definitions

- For Clery Act crime statistics reporting purposes, “domestic violence” means crime of violence committed by spouse, cohabitant, parent of victim’s child, or similarly situated person
  - as relationships/protections are defined under state domestic or family violence laws
- ASR must include statement that institution prohibits domestic violence as defined in the Clery Act

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### Clery Act Definitions

- For Clery Act crime statistics reporting purposes, "dating violence" means violence (including sexual or physical abuse or the threat of such abuse) committed by a person:
  - Who is or has been in a social relationship of a romantic or intimate nature with the victim
  - The existence of such relationship is determined based on the reporting party's statement and consideration of:
    - Length and type of relationship and
    - Frequency of interaction between persons involved
- Again, ASR must state that such conduct as defined in the Clery Act is prohibited

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### Clery Act Definitions

- For Clery Act crime statistics reporting purposes, "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person (under similar circumstances and with similar identities) to:
  - Fear for his or her safety or the safety of others; or
  - Suffer substantial emotional distress (meaning significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling)
- Again, ASR must state that institution prohibits stalking as so defined

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### Summary of Title IX Obligations

- When institution knows or reasonably should know of possible sexual harassment, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. If investigation reveals that sexual harassment created hostile environment, Title IX requires institution to take prompt and effective steps reasonably calculated to:
  - End sexual harassment and eliminate hostile environment;
  - Prevent its recurrence; and
  - As appropriate, remedy its effects.
- Institution should not wait until hostile environment has been created to take steps to protect its students

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### Summary of Title IX Obligations

- Designate your “responsible employees”
- Train them to report harassment to appropriate institutional officials
- Train employees with authority to address harassment, or who are likely to witness it or receive reports, how to respond properly (more on this later in program)

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### Summary of Title IX Obligations

- Institutions must investigate complaints adequately, reliably, and impartially
- Institutions must adopt and publish grievance procedures that provide for a prompt and equitable resolution of complaints
- Institutions should undertake education and prevention efforts aimed at students

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### Points of Focus

- Interim measures
  - Allow complainant to avoid contact with respondent (change academic, extracurricular activities and living, transportation, dining and working situation)
  - Offer interim measures and support services, and increase monitoring, etc., even if institution can respect complainant's request for confidentiality
  - In general, when taking interim measures, institutions should minimize the burden on the complainant
  - Similar responsibilities in domestic violence, dating violence, SA and stalking cases under Clery as amended by VAWA

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### Points of Focus

- Standard of Proof – preponderance of the evidence
- The Clery Act requires institutions to specify the standard of proof used in disciplinary proceedings for domestic violence, dating violence, sexual assault and stalking cases
- Title IX requires institutions to use the preponderance standard in cases alleging sex discrimination, including sexual harassment/violence
  - More likely than not

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### Points of Focus

- Who is a “responsible employee”?
  - Has authority to take action to redress sexual harassment/violence, or
  - Has been given duty to report sexual violence or other misconduct under Title IX, or
  - Whom a student could reasonably believe has this authority or duty
    - [OCR Q&A, Page 15, Question D-2](#)

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### Points of Focus

- Reluctant complainant – In balancing institutional need for safety with requests for confidentiality, should consider, e.g.:
  - Circumstances suggesting increased risk of alleged perpetrator committing additional acts of violence
  - Circumstances suggesting increased risk of future acts of violence under similar circumstances
  - Presence of weapon
  - Whether institution possesses other means to obtain relevant evidence
  - [OCR Q&A, pp. 18-24, Section E](#)

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### Points of Focus

- Addressing reluctant complainant's concerns:
  - That others will know?
    - Discuss the level of confidentiality you can offer
  - Retaliation by respondent or others?
    - Discuss your institutional response to retaliation
  - That a criminal investigation will ensue?
    - Discuss complainant's options regarding involvement in a criminal process (be careful not to make statements that dissuade)
- Be clear that the request for confidentiality may limit the institution's ability to respond

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### Points of Focus

- Encouraging complaints by extending amnesty re other code violations
  - Do disciplinary policies have a chilling effect on victims' or other students' reporting of sexual violence offenses?
  - OCR recommends that institutions inform students:
    - primary concern is student safety
    - any other rules violations will be addressed separately from the sexual violence allegation, and
    - use of alcohol or drugs never makes the complainant at fault for sexual violence

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### Points of Focus

- Throughout the investigation, including any hearing (if applicable):
  - The parties must have an equal opportunity to present witnesses and other evidence
  - The parties must have similar and timely access to any information that will be used at the hearing, including similar access to pre-hearing meetings and similar opportunities to present character witnesses and third-party expert testimony
  - If an institution allows one party to be present for the entirety of a hearing, it must do so equally for both parties
  - If an institution provides for an appeal, it must do so equally for both
  - Institutions must allow both parties to have an advisor of their choice present for any meeting or hearing

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### Points of Focus

- The 60 day timeframe
  - The 60 day timeframe is based on OCR's experience in typical cases and is not required. OCR evaluates on a case-by-case basis whether resolution of complaints is prompt and equitable.
  - Includes fact-finding (investigation) and decision-making process
  - Parallel criminal investigation, school breaks, etc. may justify longer timeframe
  - Does not include appeals (but shouldn't have unduly long appeals process) (OCR Q&A F-3, p. 28)
  - Should update parties on timing of process

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### Points of Focus

- Concurrent criminal and institutional investigations
  - Cannot wait for conclusion of criminal investigation to begin institutional investigation
  - May need to delay fact-finding temporarily while police are gathering evidence
  - Must take interim measures even during such delay
  - OCR Q&A: recognizes that police department information gathering "often takes more than ten days;" and will vary depending on circumstances

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### Points of Focus

- Conflict of interest language in new Clery regulations requires that:
  - Officials involved in disciplinary proceedings
  - Have no bias for or against the accuser or the accused

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### “Unfounding” Reported Clery Crimes

- New Clery regulations provide that all reported Clery crimes must be recorded in ASR crime statistics unless they are “unfounded”
- “Unfounding” under regulations requires:
  - A formal determination by a sworn or commissioned law enforcement officer
  - After full investigation
  - That the crime report is false and baseless (meaning that it did not occur and was never attempted)

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### “Unfounding” Reported Clery Crimes

- Determinations by other officials (e.g., prosecutors, coroners, non-sworn public safety) do not qualify
- If investigation merely fails to prove that reported crime occurred, that is an inconclusive/unsubstantiated investigation, not an “unfounded” reported crime
- Accurate documentation re reported crime and basis for unfounding it must be maintained

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### “Unfounding” Reported Clery Crimes

- New reporting/DoED monitoring obligation:
  - Must report to DoED and include in ASR total number of unfounded reports during each of three most recent calendar years
- Can withhold or subsequently remove “unfounded” reports from ASR, but should not alter daily crime log reference to such reports

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## Module 2 End

- Proceedings should be trauma-informed, while preserving the due process rights of respondents (see 2011 DCL page 12; 2001 Guidance page 22)
- Move to gain an understanding of the culture and myths that contribute to sexual and gender-based violence
- That understanding will help prepare campus officials for conducting trauma-informed investigations and adjudications

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Module 2 - 37

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**BJA**  
Bureau of Justice Assistance  
U.S. Department of Justice

**THE NATIONAL CENTER FOR CAMPUS PUBLIC SAFETY**

**MARGOLIS HEALY**

[www.bja.gov](http://www.bja.gov)      [www.nccpsafety.org](http://www.nccpsafety.org)      [www.margolishealy.com](http://www.margolishealy.com)  
info@nccpsafety.org  
1-866-817-5817

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### III. COMMUNITY COORDINATION



Trauma-Informed Sexual Assault Investigation and Adjudication Educational Program

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Community Coordination

Module 3

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Module 3 - 2

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Last Person Standing

Consider all of the people, agencies or offices that are involved in your sexual assault investigation and/or adjudication efforts on your campus. Think about the people you talk with, meet with, request resources from or who request information or resources from you, both on campus and off campus. Who are the partners in your investigation and/or efforts?

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Module 3 - 3

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## Module Objectives

- As a result of this module, participants will be able to:
  - Identify potential campus and community partners
  - Understand why partnerships are critical
  - Understand the roles and responsibilities of partners

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Nothing related to the proper handling of sexual violence by an institution happens in a vacuum.

Nothing.

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## Quick Check

- How many of these individuals/ offices have you spoken to and/or met in person?
- How familiar are your campus and local/ community partners with what you do and the policies and processes you follow?
- Use a scale of 1 (not at all) to 10 (better than me)

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### Quick Check, continued

- Who isn't on your list of campus or local partners that you think should be there or wish was there?

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### Campus Partners

- Title IX Coordinator
- Police/Public Safety
- Dean of Students
- Student Conduct
- Residence Life
- Registrar
- General Counsel
- Human Resources
- Health Services
- Advocates
- Violence Prevention Specialist
- Counseling Center
- Pastoral Counselors
- LGBTQ Office
- Athletics, Greek Life, ROTC, etc.
- International Center

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### Local/Community Partners

- Local Police
- Prosecutor
- Local Advocates
- County-wide Task Force
- Local Health Services (e.g., hospitals that provide SANE exams)
- Local Attorneys (not exactly partners, but if they understand your process it can help)

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### Should Be, But Might Not Be (Yet)

- Dean's Council
- Faculty Senate
- Executive Officers
- Board of Trustees/Regents/Visitors
- Communications

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### When Should You Start Developing Your Collaborative Partnerships?

Before it's needed.

FYI, it's needed now.

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### The Importance of Shared Knowledge and Collaboration With Institutional Partners

The National Center for Campus Public Safety Module 3 - 12

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### Serving The Parties Well

- Campus units should work in a coordinated manner to:
  - Communicate with the Complainant and Respondent,
  - Share information (as appropriate) about potential and actual cases, and
  - Coordinate services for the Complainant and Respondent
- This isn't easy, especially at the outset

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### Serving Complainants Well

- All potential first points of contact know about and trust your policies/processes, including:
  - Title IX Coordinator
  - Advocates
  - Health Services
  - Counseling Center and Pastoral Counselors
  - Residence Life (especially Hall Directors and RAs)
  - Dean of Students
  - Campus Police/Public Safety

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### Serving Complainants Well

- Each unit's role should be clearly understood:
  - Who ensures the Complainant is aware of all options and resources?
  - Who decides whether/which interim measures are appropriate?
  - Who coordinates the interim measures/advocacy and support services?
  - Who notifies/seeks info from other units that may be affected (academic units, HR, Greek Life, Athletics, ROTC, etc.)

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### Serving Complainants Well

- Each unit's role should be clearly understood:
  - Who monitors the interim measures for continued effectiveness?
  - Who seeks/conveys information from/to the Complainant? Does that role shift at any point?
  - Who is responsible for the overall coordination of this effort?
  - Who keeps record of the institution's efforts?
- This behind the scenes work should not be obvious to Complainants

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### Serving Respondents Well

- Each unit's role should be clearly understood:
  - Who notifies the Respondent of the complaint?
  - Who decides whether/which requests for accommodations are appropriate?
  - Who coordinates the interim measures/advocacy and support services?
  - Who notifies/seeks info from other units that may be affected (academic units, HR, Greek Life, Athletics, ROTC, etc.)

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### Serving Respondents Well

- Each unit's role should be clearly understood:
  - Who monitors the support services for continued effectiveness?
  - Who seeks/conveys information from/to the Respondent? Does that role shift at any point?
  - Who is responsible for overall coordination of this effort?
  - Who keeps a record of the institution's efforts?
- This behind the scenes work should not be obvious to Respondents

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### Effective Strategies

- Flexibility – which unit does what task may depend on various factors (e.g., whether there is also a criminal investigation)
- Back Up Plan – who does what during vacations, illness, weekends, off hours, etc.?
- Case Management Team - regular meetings and meaningful information sharing
- Constant check backs within the team to seek efficiencies and improvement

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### Effective Strategies, cont.

- Actively seeking constructive feedback (advocates and counselors can be extremely helpful here)
- Climate Surveys
- Inviting Complainant and Respondent feedback

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### Effective Strategies, cont.

- What has worked for you?

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## The Importance of Shared Knowledge and Collaboration With Local Partners

The National Center for Campus Public Safety

Module 3 - 22

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## Local Advocates

- Should have an understanding of your policies and procedures
- Should know what the institution can do (services, interim measures, etc.)
- Should know who your advocates are and recommend their services
- Should be asked for any helpful feedback as to improvements/how to increase reporting
- And, you should likewise know what services they offer

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## Local Hospital

- Same as with local advocates. In addition:
  - Determine what services local hospitals provide and how they collect evidence,
  - Ensure they know that the institution can and does use medical examination results in its investigation/adjudication process, when authorized

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### Local Hospital

- Same as with local advocates. In addition:
  - Understand what the hospital will need from you to release results (and how to most efficiently get what you need from them – e.g., who to contact),
  - Understand how the collection process works (e.g., meet a SANE examiner),
  - Develop potential witnesses and expert witnesses if you can (e.g., the SANE examiner, the Director of the SANE program, etc.)

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### Local Attorneys

- Help them understand your policies and processes
- May help avoid unnecessary delays/legal challenges. Or not...
- Use OGC as your ally/partner in this effort

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**When the underlying incident is also being investigated by law enforcement or being prosecuted**

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This is not easy but this is possible. This can be done well but this takes patience, understanding, effort and trust.

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### Be Proactive

- First, determine as an institution (remember, collaboration is key) how you will respond to possible conflicts between your internal investigation and a criminal investigation. For example:
  - Will you delay your investigation to allow police to gather evidence? How long? 10 days per the DCL. What if it takes 60+ days? 90 days? 120 days? Longer?
    - ! OCR permits temporary delays during the evidence gathering stage of the criminal investigation. Note that the delay cannot extend through the entire criminal process. See Q&A, F-3.
  - What if you need to take interim measures and the police have asked you not to communicate with the Respondent until they have made first contact? What if first contact is delayed?

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### Be Proactive

- Understand the various jurisdictions on/around your campus
- Meet with these law enforcement units and:
  - Acknowledge that you essentially want the same thing, but serve different communities and work within different systems
  - Ensure they understand that you know your role, and you respect their role
  - Ensure they understand what you do, how you do it and why, including your obligations under federal law

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### Be Proactive

- Meet with these law enforcement units and:
  - Develop a mutual understanding of timing of investigation/ adjudication within your respective systems
  - Discuss issues your institution is wrestling with (delays caused by criminal investigation, timing of interim measures, etc.) and ask for their thoughts and suggestions
  - Discuss how you will share information
  - Help law enforcement understand that the institution can move forward on cases where prosecution may not be possible. Their good work will still be helpful in cases that won't lead to prosecution

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### Be Proactive

- Meet with these law enforcement units and:
  - Invite your campus law enforcement to these meetings
  - Ask local law enforcement to always inform Complainants from the campus community about and encourage them to use:
    - the institution's resources/advocacy;
    - interim measures; and
    - your internal complainant process (provide written resources that they can hand out)

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### Be Proactive

- Meet with these law enforcement units:
  - Offer to share resources (e.g., trauma informed investigation training)
  - Discuss and develop a Memorandum of Understanding
  - Keep meeting. Keep seeking feedback. Keep building trust.
  - Stay in touch with law enforcement when there is a concurrent criminal/institutional investigation. If you don't communicate, how can you work in partnership?
  - If there is a personality conflict, address it. Do not let institutional efforts fail due to resolvable issues.

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### Interactions with Local Law Enforcement

- What have been your challenges?
- Where do you see opportunities?
- What have been your successes and how did you achieve them?

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### A Note About Police Investigations

- They are not determinative of whether the conduct violates your policy
- They do not relieve an institution of its Title IX obligations to resolve sexual violence complaints promptly and equitably
- You CANNOT wait for the conclusion of a criminal investigation or criminal proceeding to begin your Title IX investigation and, if needed, must take immediate steps to protect the student in the educational setting
- Police reports can yield extremely helpful information to an internal investigator/adjudication

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### What does success look like?

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- What are your thoughts about your work going forward?
- Who do you need to create/strengthen partnerships with? On campus? Off campus?
- How could this make your work more effective/efficient?

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### Resources

- <http://www.nccpsafety.org/resources/library/building-partnerships-with-local-rape-crisis-centers-developing-a-memorandu/>
- <http://www.nccpsafety.org/resources/library/building-partnerships-among-law-enforcement-agencies-colleges-and-universit/>

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## IV. THE CULTURE IN WHICH WE LIVE: UNDERSTANDING THE RAPE NARRATIVE



**Trauma-Informed Sexual Assault Investigation and Adjudication Educational Program**

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**The Culture in Which We Live:  
Impact of Rape Myths & Popular Rape Narratives**

Module 4

The National Center for Campus Public Safety | Module 4 - 2

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**Module Objectives**

- As a result of this module, participants will be able to:
  - Define Rape Myths and Rape Culture
  - Notice how the broader social context – including sexism, racism and homophobia – shapes the lens of sexual and gender-based investigations and adjudication
  - Analyze the impact of rape myths and rape culture on college campuses' responses to sexual and gender-based violence
  - Discuss how to apply this knowledge to the work of colleges and universities

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### Connection Between a Trauma-informed Approach and Acknowledging Rape Myths

- If we accept a narrative that blames victims and sexualizes violence, we cannot be trauma-informed.
- Sexual and gender-based violence are types of oppression.
- The trauma of sexual violence can be further worsened by other forms of oppression.
- Institutions of Higher Education's failure to prevent sexual assault or respond supportively – also called institutional betrayal - can exacerbate post-traumatic distress.

(The Journal of Trauma Stress, 2013)

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### Take a moment to consider...

What would make an "ideal" complainant?  
 What would make an "ideal" case?

Consider the popular narrative behind  
 sexual and gender-based violence

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### Questions to consider

When you think of rape culture what comes to  
 mind?

What are some rape myths/victim blaming  
 statements that you've heard?

What is the impact of rape myths & rape culture  
 on your work?

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### Rape Myth Beliefs

Researchers asked:

What are the causes & beliefs that sustain sexually aggressive behaviors and what structures support these beliefs?

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### Rape Myths are...

- Defined as false beliefs about rape shaped by sexism and other prejudices individuals hold
- Beliefs that serve to deny, downplay or justify sexual violence
- Perpetuate the belief that victims have contributed to their own victimization and are responsible

(Burt, 1980, Lonsway & Fitzgerald, 1994, Gerger, Kley, Bohner 2007, McMahon & Farmer 2011)

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### Rape Culture... a culture in which

- Sexual & gender-based violence is pervasive and normalized due to societal attitudes about gender, sex and sexuality
- Systems of discrimination/bias are allowed to flourish
- Myths about sexual assault, relationship/domestic violence & stalking are sustained
- Rape is used as a weapon, a tool of war and genocide
- Sexuality and violence are merged, and affirmed through the media and other male dominated institutions
- Physical and emotional violence against women, men and trans-identified folks is acceptable

<http://www.wa.gov.ca/what-is-rape-culture/>

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### Sexual Assault Myths & Facts

- MYTH: Victims routinely lie about rape. **FACT: Methodologically rigorous research estimates that the percentage of false reports begin to converge around 2-8%. This is no higher than false reports for any other crime.**
- MYTH: Men can't be raped. **FACT: Men can be and are sexually assaulted. Men in same-sex relationships often face the most stigma and prejudice. Gender roles dictate that males are expected to be strong, self-reliant and able to "fend" off an assault.**

<http://www.evawintl.org/mad.aspx>  
<https://rainn.org/get-information/types-of-sexual-assault/male-sexual-assault>

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### Domestic/Relationship Violence Myths & Facts

- MYTH: Domestic violence usually only happens in married couples. **FACT: 1/3 of all high school and college-aged people experience violence in an intimate or dating relationship.**
- MYTH: People abuse their partners because they can't control their anger. **FACT: People who abuse their partners do it to gain power & control over the other person (threats, intimidation, psychological abuse, isolation).**

<http://www.dvsas.org>  
<http://wpva.rutgers.edu/dating-or-domestic-violence-in-the-lgbt-community/>  
<http://www.ncifrights.org/sexual-assault-in-the-lgbt-community/>

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### Domestic/Relationship Violence Myths & Facts

- MYTH: Most people will end a relationship if their partner hits them. **FACT: Nearly 80% of girls who have been physically abused in their intimate relationships continue to date their abuser.**
- MYTH: Dynamics of dating violence in gay and lesbian relationships are similar to heterosexual relationships. **FACT: Some dynamics in gay and lesbian relationships differ. An abusive partner may use threats of "outing" partner to family, friends and coworkers.**

<http://www.dvsas.org>  
<http://wpva.rutgers.edu/dating-or-domestic-violence-in-the-lgbt-community/>

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### Stalking Myths & Facts

- MYTH: Stalking is limited to following someone in person. **FACT: 1 in 4 vic;ms report being stalked through some form of technology, while 10% report to being monitored through GPS, video or digital cameras, and/or listening devices.**
- MYTH: Stalking isn't a big deal. **FACT: Stalking may cause anxiety, insomnia and severe depression, can lead to significant missed time at work. Vic;ms may move as a result of their vic;miza;on. In extreme cases, stalking may result in homicide.**
- MYTH: You can't be stalked by someone you're dating. **FACT: If your "friend" tracks your every move in a way that causes you fear, that is stalking.**

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Module 4 - 13

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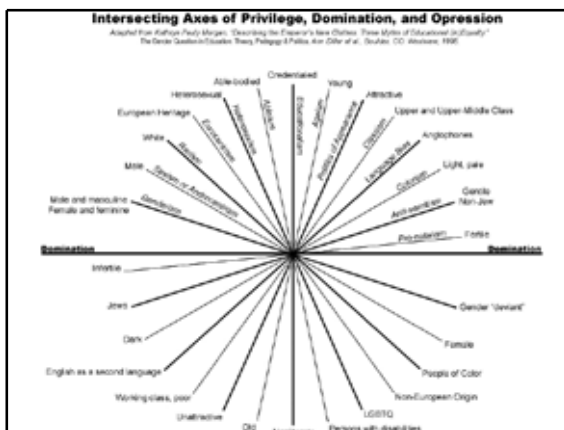
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### What Does Intersectionality Look Like in Your Life?

1. Write down some of the social identities in your own life (race, gender, class, ability, sexual orientation, etc.).
2. Which identities are most significant to you?
3. Are there identities that matter more to other people?
4. What privileges and penalties do these identities hold?

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Module 4 - 13

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### Questions to Consider

- Take a moment to think about the students who are disclosing and reporting on your campus.
- Healing takes place within a specific survivor’s cultural context, i.e., it may be difficult for victims to separate their own social identities from their experience.
- Are our services at least working towards a cultural competency, and providing a coordinated community response that supports all victims?

Module 4 - 17

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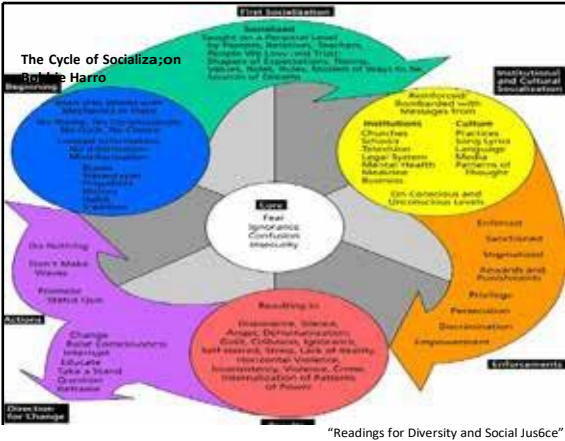
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## Rape Culture and Patriarchy

Violence against women & communities is not the root problem, but that violence occurs because other forms of discrimination are allowed to flourish within a patriarchal system.

**Patriarchy is:**

- **About social relations** between people. It is a system for maintaining class, gender, racial and heterosexual privilege & status quo of power.
- **A structural force** that influences power relations whether abusive or not.
- **Is not static.** Its manifestation on an army base differs from that in a campus fraternity.
- **Has played an integral role** in shaping rigid gender roles and binary.

The Gender Knot: Unraveling Our Patriarchal Legacy, Allan G. Johnson

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## Rape Culture and Homophobia

The silence that exists around sexual violence in the Lesbian, Gay, Bisexual, Transgender community

“Whether because of fears of being “outed,” concerns about physical retaliation or the perceived humiliation of reporting an attack, LGBT sexual assaults have not been accurately documented.”

CDC's 2010 Nat'l Survey on Victimization by Sexual Orientation  
<http://america.aljazeera.com/articles/2013/10/30/sexual-assault-ahiddenissueamonglgbtcommunity.html>

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## Rape Culture and Racism

Popular media in this country continues to perpetuate racial stereotypes about women of color. Portraying them as willing participants in their own victimization or perpetuating the notion that they are “sexually available.”

“Portraying men of color as hyper-masculine, aggressive & criminals, reinforces a cultural obsession with black-on-white stranger rape, at the expense of the vastly more common intra-racial acquaintance rape.”

<http://endsexualviolence.org/where-we-stand/racism-and-rape>  
[http://www.nytimes.com/2012/05/23/us/native-americans-struggle-with-high-rate-of-rape.html?\\_r=1](http://www.nytimes.com/2012/05/23/us/native-americans-struggle-with-high-rate-of-rape.html?_r=1)

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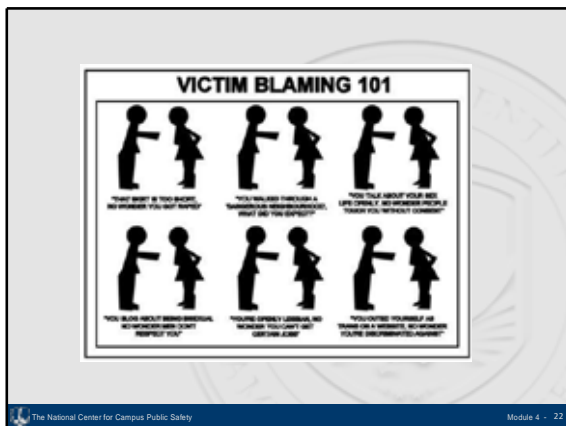
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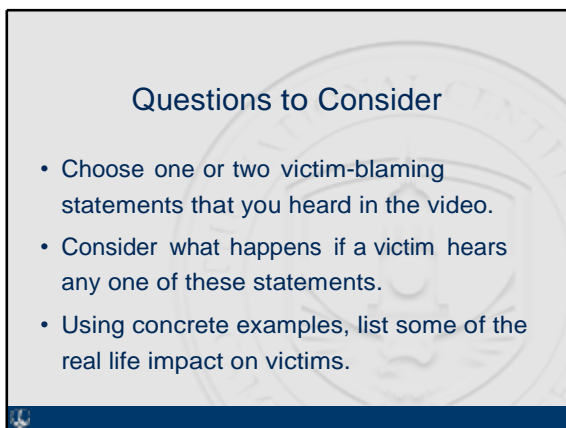
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### Questions to Consider

- Choose one or two victim-blaming statements that you heard in the video.
- Consider what happens if a victim hears any one of these statements.
- Using concrete examples, list some of the real life impact on victims.

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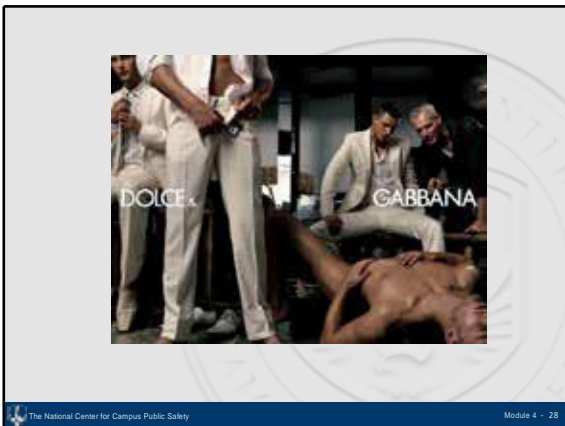
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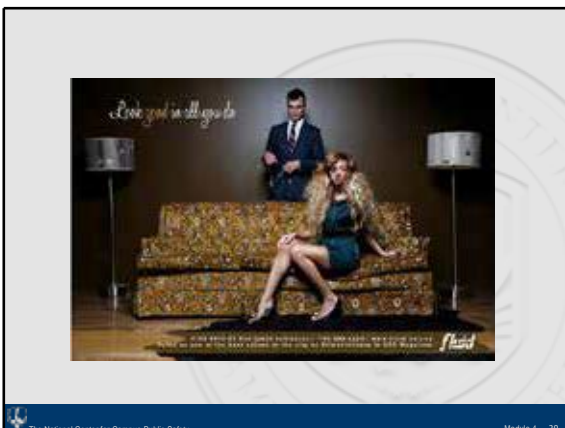
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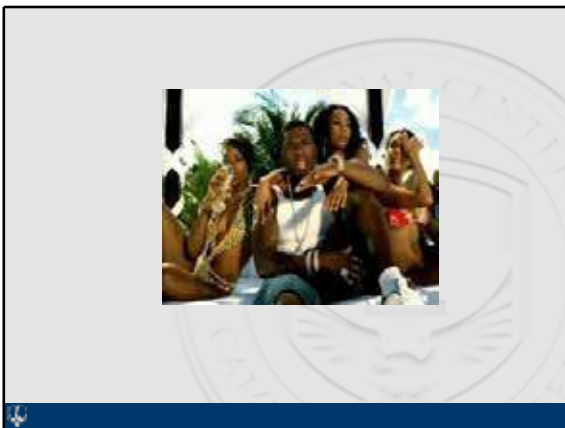
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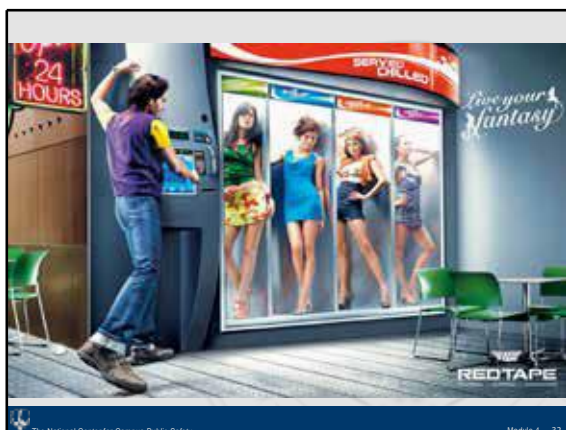
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## Secondary Victimization

- Victims may experience attitudes, beliefs and behaviors by service personnel that are victim blaming.
- Secondary victimization can increase the severity of trauma. It makes victims feel like what they're experiencing is a second rape — hence the term "secondary victimization."

"Talking About Sexual Assault: Society's Response to Survivors, S. E. Ullman, 2010"

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## Victim Blaming Statements

- I was strongly encouraged not to file a police report as "this family provides a lot of support" to college.
- The panel of students and professors found that it was a "misunderstanding."
- "I could tell they didn't believe that my girlfriend was capable of violence."
- I was told the perpetrator "didn't seem like the type of person who would do something like that."
- "It's hard to believe it was really assault, you don't have any bruises."

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## Questions to Consider

- Identify how rape culture and myths played out in this scenario.
- Brainstorm how campuses can disrupt these elements of rape culture and myths.

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### Penn State Fraternity Suspended...

for what it was allegedly doing on a private Facebook  
for what it was allegedly doing on a private Facebook ,  
Venita, thank you.

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### Questions to Consider

- Identify how rape culture and myths played out in this scenario.
- Brainstorm how campuses can disrupt these elements of rape culture and myths.

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### The Cost of Campus Rape

**WARNING - THE FOLLOWING VIDEO CONTAINS  
CONTENT RELATED TO SEXUAL ASSAULT**

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## Changing the Process

How might an intersectional approach affect your efforts towards supporting victims?

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## What Can You Do?

- Examine which aspects of your own beliefs, attitudes, and behaviors need to be challenged
- Reach out! - Speak out - Name injustices
- Build community with “people like us,” and “people different from us”
- Be a role model & ally – Move into action
- Transform systems using your sphere of influence
- Take care of self and others

The Cycle of Liberation, Bobbi Harro

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## V. IMPACT OF LANGUAGE



**Trauma-Informed Sexual Assault Investigation and Adjudication Educational Program**

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**Impact of Language**

Module 5

Credit: International Association of Chiefs of Police National Leadership Institute on Violence Against Women

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**Module Objectives**

- As a result of this module, participants will be able to:
  - Explain how discussing intimate partner violence, stalking, and sexual assault is difficult
  - Articulate and examine the impact that language can have on complainants
  - Identify and avoid language that objectifies complainants or blames them for the violence
  - Identify and avoid language of consensual sex to describe non-consensual acts
  - Utilize accurate language that can help dispel the myths and misconceptions about sexual assault

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## Every Day Communications

The words with which we speak are the words with which we think.

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Module 5 - 4

## Use of Language in our Response

- Sexual and gender-based violence is not easy to talk about...
- Sexual and gender-based violence is not easy to write about...
- The power of language in defining and influencing our thoughts and actions concerning sexual and gender-based violence
- A complainant may be highly sensitive to what you say and how you say it... we need to speak accurately

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## What is our Message? It's on Us

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Module 5 - 6

### Impact of Language

- The terms and language we use can further the myths and misconceptions about sexual and gender-based violence. They can also:
  - ignore/minimize danger
  - make light of the violence
  - imply shared responsibility or consent
  - dehumanize / discriminates victims

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### Is this a “Prank”?




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### Impact of Language

- “Had sex with” vs. what the behavior was
- Avoid consensual language
  - Sexual intercourse, oral sex, fellatio, and cunnilingus
- Avoid terms of affection/eroticized words
  - Fondling, caressing, kissed, and hugged
- Avoid words that imply mutual participation
  - Performed, engaged in, fighting, violent relationship, and disagreement

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### Impact of Language

Examples of evolving language:

- private family matter.....domestic violence
- primary aggressor.....predominant aggressor
- “peeping tom”.....predator, voyeur, stalker
- intimate partner violence.....dating violence

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### Impact of Language: Stalking




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### Impact of Language

- Examples of “evolving language”
- Rape, sexual assault, sexual misconduct
- Date rape, acquaintance rape...non-stranger sexual assault

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### Impact of Language

"Date Rape" = Non-Stranger Sexual Assault



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**Its no big deal, we are only joking...**

**Boys will be boys!**



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### Impact of Language

- Qualifiers characterize and convey a message:
  - violent rape
  - technical rape, real rape, legitimate rape
  - innocent victim
  - alleged victim
- Words carry connotations:
  - Complainant's story vs. account or report
  - consented vs. submitted
  - accuser vs. complainant, victim or survivor
  - uncooperative victim vs. reluctant victim

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### Impact of Language

- Domestic/Sexual violence prevention efforts:
  - Often focus on risk reduction for women:
    - Do this. Don't do that.
    - Psst, maybe you brought it on yourself...

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### Impact of Language

- Domestic/Sexual violence prevention efforts:
  - Often focus on risk reduction for women:
    - Do this. Don't do that.
    - Psst, maybe you brought it on yourself...
  - Limited education or prevention for men
    - Create awareness & change behaviors
  - Discounts male victims/survivors

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### A quote from 23 years ago




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## Impact of Language

- Awareness, education, prevention
- Explore institutional climate and culture
- Are you ensuring accurate communication in your efforts, policy, and timely warnings?
- Is the impact of language and accurate communication included in your bystander intervention training?

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## VI. UNDERSTANDING THE EFFECTS OF TRAUMA



**Trauma-Informed Sexual Assault Investigation and Adjudication Educational Program**

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**Understanding the Effects of Trauma**  
Justice Starts with a Trauma-Informed Approach

Module 6

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**Module Objectives**

- As a result of this module, participants will be able to:
  - Explain how trauma affects people and why some victims may respond the way that they do
  - Develop and apply techniques to gather the most accurate information through a trauma-informed response
  - Apply a trauma-informed response to further increase complainants' likelihood of reporting to formal support systems such as:
    - Title IX coordinator, Campus Public Safety, and Institutional Leadership
    - Other campus support systems including confidential sources

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### Process

- Define and delineate different forms of sexual violence and the trauma response
- Learn about the neurobiology of trauma and how it may impact victims
- Learn how to create a trauma-informed environment to enhance your interview and obtain accurate data
- Become important figures in mitigating secondary trauma, and fostering the healing process

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### Trauma

- Any event that is experienced as terrifying, horrifying or threatening AND
- The individual experiences a lack of control or a perceived lack of control
- The meaning of the event may be as important as the actual physical act/ experience

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### The Culture in Which We Live

- Many researchers posit that we live in a culture where there is an epidemic of interpersonal violence, trauma, and sexual assault (Harrell et.al., 2009)
- Our communities are affected by this
- Universities and colleges are affected by this
- Your investigation is affected by this

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### Trauma in the Community

- 70% of all adults in the U.S. have experienced a traumatic event of some sort at least once in their lives. That's 223 million people.
- In the U.S., a woman is beaten every 15 seconds. A woman experiences rape every 2 minutes.
- 1 in 6 American women has been the victim of an attempted or completed rape in her lifetime. 1 in 33 men have been victims of an attempted or completed rape.
- 15% of sexual assault and rape victims are under age 12.

[www.rainn.org](http://www.rainn.org)

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### Sexual Assault on College Campuses

- One study shows that 18-20% of females experience sexual assault each academic quarter, with 7% experiencing rape
- Another study showed that 18-21% of females reported sexual assault in a two-month period (Harrell et.al., 2009)

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### Reporting Rates

- Nationally, 60% of sexual assaults go unreported
- On campuses, less than 5% of completed or attempted rapes are reported to law enforcement
- 2/3 of rapes or attempted rapes are reported to a friend or acquaintance

(Fisher et.al. 2000)

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### Types of Interpersonal Violence

- Stranger sexual assault
- Non-stranger sexual assault
- Partner sexual assault
- Relationship violence
- Stalking

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### Sexual Trauma

Any lingering physical, emotional, or psychological symptoms resulting from a physical assault of a sexual nature, or battery of a sexual nature

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### Relationship Violence

- Physical, sexual, and/or psychological harm caused by a partner
- Violence can occur between opposite or same sex couples

(Centers for Disease Control)

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### Coercive Controlling Violence

- A pattern of controlling and abusive behavior that is constantly shifting
- Intent to oppress one's intimate partner
- Coercive, psychologically manipulative, with intention to get one's needs met while ignoring the needs of the other

(Johnson, 1995)

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### Controlling behavior

- What may not look "abusive or controlling" may be due to the history of abuse in the relationship
- Controlling behavior can be subtle, such as a facial expression or tone that the victim has been conditioned to respond to

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### Not a cycle, a constant

- The now outdated "cycle of abuse" misrepresented the control present even in an apology
- There is no "cycle" of control, it's constant
- This is what it means to "walk on eggshells"

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Duluth power model

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### Stalking

- A pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear

(Department of Justice)

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### Stalking

- 18-24 year-olds have the highest rates of stalking victimization in the country
- 13.1% of college women were stalked during one semester of college
- 81% of stalking victims who were stalked by an intimate partner reported that they had also been physically assaulted by that partner
- 31% were also sexually assaulted by that partner

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There must be two documented incidents to constitute stalking in ND

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### What Can You Do?

Given the prevalence of the multiple types of sexual violence, what can campuses do to create an atmosphere that elicits trust and conveys a sense of understanding to victims?

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### The Lens From Which Sexual Violence is Investigated...

- There are three types of bias
  - Anchor
  - Confirmation
  - Availability
- How do these types of bias affect your investigation?

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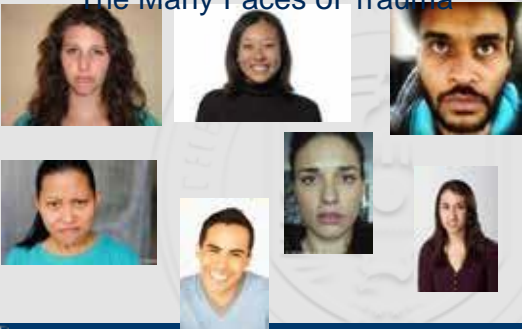
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### The Many Faces of Trauma



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### What Happens in the Brain When a Traumatic Event Occurs

- Trauma physically changes our brain...
- Trauma triggers chemicals...
- Chemicals impact brain structure and...
- Influence perception, reaction, and memory...
- Memory is fragmented and stored in the wrong places which impacts recollection.
- We do not control how the brain and body responds to trauma...

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Remember recall is fragmented...these are not lies

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### Neuroanatomical Structures

- **Amygdala:** Brain's fear center, decodes emotions, determines possible threat, involved in fear memories
- **Hippocampus:** Encodes/consolidates conscious memories
- **Hypothalamus:** Activates response – sympathetic nervous system – adrenal system – “flee or fight”
- **Pituitary Gland:** Controls the release of hormones
- **Prefrontal Cortex:** Logical decision maker; involved in integration of memory

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### Neurochemicals Involved in Trauma

Reactions: Stress Chemicals

#### MAIN STRESS CHEMICALS RELEASED

1. Catecholamines (Natural Adrenaline)
2. Corticosteroids (Energy)
3. Opioids (Natural Morphine)
4. Oxytocin (Good Feelings)

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### The Nervous System

- The Autonomic Nervous system
  - Sympathetic:
    - Flee and fight
    - Pupils dilate, blood vessels constrict, activates sweat secretion
    - Ready for action
  - Parasympathetic:
    - Freeze/assess response
    - Immobility response
    - Salivation, resting, digesting, sexual arousal

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## Components of Traumatic Reaction

- During and after trauma, a person may experience the following to some degree:
  - Hyperarousal -- increased physiological responsiveness
  - Constriction -- perceptual awareness focused on possible threat in the environment
  - Dissociation -- disconnection from body, distortion of time and perception
  - Immobility -- associated with the feeling of helplessness

- Levine, 1997

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## The Body Responds: FREEZE / ASSESS



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## Freeze / Assess

- Body becomes still but able to move
- Camouflage
- Focus
- Ready to respond



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## The Body Responds: FLEE



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## The Body Responds... FLEE!

- Preparing to “flee”
  - Hormones surge — increased heart rate & blood pressure, hyper ventilation, glucose to major muscles
  - Digestive and immune systems shutdown to conserve energy for fight or flight
  - Rational thought impaired
- Sensory details, especially olfactory, more prominent
- Focus on “survival” rather than remembering “what happened”
- Opioids released – numbing, spacey effect

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## The Body Responds...Immobility



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### The Body Responds...Immobility

- Occurs when a sense of "no escape" occurs in humans and animals
- Parasympathetic nervous system is activated
  - "Playing dead"
  - Unable to speak
  - Muscles relax
  - Endorphins released to numb pain, decrease panic, and increase chances of survival

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### The Body Responds...Immobility

- Parasympathetic nervous system is activated
  - Orientation towards fear with no outward sign of stress; glazed look, appears conscious but far away
  - Numbness or coldness experienced in limbs
  - Sense of heaviness
  - Feeling stuck in some part of the body
  - Dissociated from emotions, rational thought is decreased

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Reality....altered

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### Differences in brain function

<p><b>Non-trauma brain</b></p> <ul style="list-style-type: none"> <li>• Higher-level functions of the brain activated</li> <li>• Focus on the present moment rather than the past</li> <li>• Brain can filter out what is important to the present moment</li> <li>• Self-sensing system is active and can notice nuance</li> </ul>	<p><b>“Traumatized” brain</b></p> <ul style="list-style-type: none"> <li>• Fear-driven brain</li> <li>• Higher-level functions are shut down or “go offline”</li> <li>• Self-sensing system is blunted so ability to feel is affected</li> <li>• Ability to integrate memory and created narrative likely impaired</li> </ul>
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### Memory

<p><b>Explicit = Declarative</b></p> <ul style="list-style-type: none"> <li>• Hippocampus</li> <li>• Conscious</li> <li>• Verbal, facts, cognitive</li> <li>• Constructs narrative</li> <li>• Sensory based memory</li> </ul>	<p><b>Implicit = Nondeclarative</b></p> <ul style="list-style-type: none"> <li>• Amygdala</li> <li>• Unconscious</li> <li>• Non-verbal, sensory, emotional</li> <li>• Memory connected to body movement</li> </ul>
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### Memory

<p><b>Traumatic Event</b></p> <ul style="list-style-type: none"> <li>• Non-linear recall of events</li> <li>• Details can be intense for part of experience and fuzzy for other parts</li> <li>• Focus is on survival</li> <li>• Memory will mostly include aspects of survival, which may not include 5W &amp; H</li> </ul>	<p><b>Non-Traumatic Event</b></p> <ul style="list-style-type: none"> <li>• Linear recall of events, with specific detail</li> <li>• “Significant details” such as who, what, where, when, why, how are more likely encoded</li> </ul>
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### Signs of Trauma Reactions in Individuals

<p><b>Physical</b></p> <ul style="list-style-type: none"> <li>- Aches and pains such as backaches, headaches, stomach pain</li> <li>- Sudden sweating or heart palpitations</li> <li>- Insomnia or hypersomnia</li> <li>- Startle response</li> <li>- "Sensory memory"</li> </ul>	<p><b>Behavioral</b></p> <ul style="list-style-type: none"> <li>- Numbness, flat speech</li> <li>- Irritability, moodiness</li> <li>- Mood swings from very happy to tearful</li> <li>- Intrusive thoughts about trauma</li> <li>- No memory of the trauma</li> <li>- Excessive worry that is difficult to control; fears of safety</li> <li>- Nightmares, flashbacks</li> <li>- Inability concentrating</li> <li>- Poor memory, choppy</li> </ul>
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### Victim/Survivor Trauma

- "Not exactly sure what happened"
- "I don't really know how long it lasted"
- "I just blanked out / I just went somewhere else"
- "I remember thinking about my dog a lot"
- "I just smelled hamburger grease"
- "I have no idea"

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### Impact of Trauma

<ul style="list-style-type: none"> <li>• Shock/denial - Irritability/anger</li> <li>• Loss of security - loss of trust in others</li> <li>• Depression - social withdrawal - suicidal ideation</li> <li>• Numbing / apathy</li> <li>• Impaired memory</li> </ul>	<ul style="list-style-type: none"> <li>• Nightmares / flashbacks - difficulty concentrating</li> <li>• Loss of self-esteem - guilt, shame, embarrassment</li> <li>• Substance Abuse</li> <li>• Psychological disorders</li> <li>• Secondary trauma</li> </ul>
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## Speech, memory, and trauma

"Even years later traumatized people often have enormous difficulty telling other people what has happened to them. Their bodies reexperience terror, rage, helplessness, as well as the impulse to fight or flee, but these feeling are almost impossible to articulate. Trauma by nature drives us to the edge of comprehension, cutting us off from language based on common experience or an imaginable past." Van der Kolk, 2014

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## Trauma Recovery

- Three stages:
  - Establishment of safety and stabilization
  - Remembrance and mourning
  - Reconnection with ordinary life
- Impacted by the presence or absence of secondary trauma and complex trauma

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## Secondary Trauma

- Can occur when a victim's need for help to address his or her trauma are met with negative, and often traumatic responses
- Victim-blaming attitudes, behaviors, and practices engaged in by his or her community which further exacerbates the traumatic event resulting in additional trauma

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## Complex Trauma

- The experience of multiple and/or chronic and prolonged traumas, often of an interpersonal nature (sexual assault/abuse, emotional abuse, war, community violence) with early life onset. (van der Kolk, 2005)
- Examples
  - Families with alcoholism
  - Children in violent neighborhoods
  - Emotional and educational neglect
  - Sexual, emotional, physical abuse and neglect
  - War trauma
  - Immigration trauma
  - Stalking

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## Trauma

- Trauma can lead to:
  - Low self-esteem, poor self-concept
  - Problems in self-regulation
  - Psychological disorders:
    - ! Anxiety, Depression, PTSD, Personality disorders
  - Physical Illness

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## Trauma

- Trauma can lead to:
  - Behavioral dysfunction:
    - ! Alcohol and other drug use
    - ! Unsafe sexual practices
    - ! Self-harm behaviors: self-mutilation, parasuicidal or suicidal threats/attempts
  - Interpersonal conflict/issues:
    - ! In the University community, friends may report constant anxiety about of this person, feel responsible for them
    - ! Multiple decanal and RA contacts

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### Stalking

- Stalking is a **chronic stressor** causing pervasive and prolonged feelings of fear and vulnerability on its victims
- High levels of psychopathology found in stalking victims:
  - Anxiety
  - Sleep disorders
  - Somatic symptoms
  - Depression
  - Social Withdrawal

Blaauw et.al. (2002)

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### Trauma and Sexual Violence Investigations

- Lack of safety, trust in the system or authority figures
- Self-blame and the inability to self advocate
- The trauma of the sexual violence can be triggered within the context of the interview
- Immobility and dissociative response
- PTSD reaction

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### Trauma-Informed Interview

- Places a **premium** on the creation of a safe space in order to build TRUST
- Places appropriate control in the hands of the complainant
- **Understands** that traumatic memory recall may have gaps and may be enhanced by sensory based questions
- **Allows for** the time it may take to gather information
- **Focus** is on the experience of the victim and the details central to the victim, not the investigator
- Is **mindful** of the impact of complex trauma histories that victims may be carrying

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### Trauma-Informed Investigation

- Utilize:
  - Victim advocates to provide support during and after the investigation
  - Expert consultation to understand the impact of traumatization on victim self-reports

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### Trauma-Informed Investigation

- Ensure:
  - Discuss the limits of confidentiality, privacy in the investigation, as well as options for more confidential resources such as University counseling
  - SAFETY! Victims feel that their world has collapsed around them, and that there is a possibility that more danger could arise. Ensure their physical safety and your desire to help.

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### Trauma-Informed Response

- Collaborate:
  - Multiple campus resources, as necessary and utilized by the victim
    - Counseling and Psychological Services
    - Campus Public Safety
    - Deans
    - Office of Disability Services
    - Sexual Harassment and Assault Office

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### Sexual Violence Investigations Require

- Compassionate, coordinated, trauma-informed response
- Victims need timely case updates and to know what will happen next
- Justice from the victim's perspective

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U.S. Department of Justice

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## VII. SEXUAL ASSAULT FIRST RESPONSE: FIRST IMPRESSIONS MATTER



**Trauma-Informed Sexual Assault Investigation and Adjudication Educational Program**

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**Sexual Assault First Response: First Impressions Matter**

Module 7

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**Module Objectives**

- As a result of this module, participants will be able to:
  - Analyze and explain the importance of preparing first point of contact for complainant disclosure
  - Examine how the complainant’s first impression can build confidence in the entire institutional response
  - Recognize the challenges and reluctance complainants face in reporting and develop strategies for institutions to encourage reporting
  - Develop effective communication skills for a trauma informed response

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### Culturally Relevant Response

- While most reports are male on female, men can be victims too. Our response must be culturally relevant and inclusive of diverse communities and identities
- **What about the silence?**
  - 1.7 million lesbian or bisexual women and more than 2 million gay or bisexual men experience sexual violence in their lifetime.

CDC's 2010 Nat'l Survey on Victimization by Sexual Orientation

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### Sexual Assault Response and Investigations

- **Coordinated** – Multi-disciplinary (Policy)
- **Compassionate** – Complainant Centered Services & Trauma Informed Approach
- **Objective** – Fair and Impartial fact finding investigation
- **Thorough** – Investigations & reports

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Remember this is not a criminal investigation – it is an investigation of violation of policy.

“This is important to us”

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### First Point of Contact: Responding to Disclosures of Sexual and Gender-Based Violence

- Identify safe & knowledgeable points of entry for anyone choosing to disclose the incident
  - Res Life staff often the first point of contact
  - Trainings must include trauma informed approach and information about how to support a complainant who discloses an assault.

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### First Point of Contact/Disclosure

- Ensure that a trauma-informed approach is provided to complainants at every level
  - Create a climate of safety and empowerment to support complainants in their process of reporting the crime and seeking further resources.
  - Provide information to complainants about their rights (Know your Rights)
  - Disseminate policies, communicate to the campus, and provide regular training clearly identifying the places where students can seek confidential support services

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### Complainant's First Impression Matters!

“The tone of the first meeting with the victim may set the tone for the rest of the investigation. By being empathetic, patient, and respectful, the officer contributes to the immediate and long term recovery of the victim and lays the foundation for mutual cooperation and respect on which a successful interview and investigation is built.”

*IACP Sexual Assault Issues and Concept Paper*

Important to share this slide with staff and faculty!!!

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### Body Language / Tone

Lessons learned: How do we occur to others?




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### Complainant's First Impression Matters

- When do you think the complainant's impression of the institution's ability to respond effectively begins?
- What messages or examples can you use to create awareness and build confidence in the institution's ability to respond effectively?

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### Website Review

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### Sexual Assault

It's not your fault...

#### UWPD Sexual Assault Response Commitment

Everyone has the right to control their own sexuality. Sexual assault, including date/acquaintance rape, is a very serious concern of this police department. The University of Washington Police Department has adopted the following commitment when responding to sexual assault. If you feel you are a victim of a sexual assault on campus, the police department will guarantee the following:



This is important on the website.

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### UW Police: Commitment / Guarantee

1. We will meet with you privately, at a time and local place of your choice, to take your report.
2. We cannot and will not notify your parents without your consent.
3. We will treat you and your particular case with courtesy, sensitivity, dignity, understanding and professionalism.
4. Our officers will not prejudice you, and you will not be blamed for what occurred.
5. We will assist you in arranging for any necessary hospital treatment or other medical needs. We will also assist in emergency housing if needed.
6. If you would feel more comfortable talking with a friend or advocate of your choice present, we will do our best to accommodate your request.
7. We will fully investigate your case and will help you to achieve the best outcome. This may involve the arrest and full prosecution of the suspect responsible. You will be kept up-to-date on the progress of the investigation and/or prosecution.
8. We will assist you in privately contacting counseling and other available resources.
9. We will continue to be available to answer your questions, to explain the system and process involved (prosecutor, courts, etc.) and to be a listening ear if you wish.
10. We will consider your case seriously regardless of your gender or the gender or status of the suspect.

<http://www.washington.edu/admin/police/preventionisnoexcuse>

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### Initial Response Priorities

- **Ensure Safety & Security** – Complainant’s needs come first, crime scene, evidence, witnesses, suspect
- **Stabilize** – build rapport with complainant, empower complainant decisions, use advocates, seek medical services, care for complainant’s needs
- **Assess** - situation, conditions, elements of offense, crime scene, evidence, witnesses, suspect identity, location
- **Liaison** – between complainant and multi-disciplinary team, assist in furthering investigation/strategy, interim actions, early warning, etc...

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### Initial Response Priorities

- Obtain a brief statement to determine appropriate course of action
- I know this must be difficult, what are you able to tell about what happened / Where would you like to start?
- Please bear with me as I ask you some initial questions to make sure I understand
- Safety: weapons involved, threats, history of violence (threat assessment) (interim measures)
- Information to assist in identity / location of respondent
- Consistently reassure complainant

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### Initial Response Priorities

- Sensitive explore medical needs and evidence preservation, avoid “victim blaming”
  - Medical exam, no bathing, douche, urination, or any activity that could result in loss of evidence
  - Suspected drug facilitated cases, urine collection
  - Determine assault location
  - Complainant’s clothing, bedding, other transfer evidence
  - Reassure complainant throughout...

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### Complainants’ Reluctance to Report

**While there is no “normal” reaction the following concerns and fears have been expressed by many complainants:**

- “No one will believe me...”
- “I can’t believe this is happening...”
- “I think I was raped...” (confusion)
- “It’s my fault...” “I’m so ashamed...”

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### Complainants’ Reluctance to Report

**While there is no “normal” reaction the following concerns and fears have been expressed by many complainants:**

- “I thought I was going to die / be killed...”
- “I’m afraid and so overwhelmed...”
- “What are people going to think...”
- “How can I trust anyone...”

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### Large Group Exercise:

Knowing what we know about complainants reluctance to report what specific things can we say to build trust, reassure, and help them feel safe?

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### Complainant Empowerment

In the spring of 2009 my eyes were opened to a harsh reality. I discovered that several women in my life had been victims of sexual assault.

and no one else was going to be in control of it for me.

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### Reassure the Complainant

- **Reassure** and **empower** the complainant with a consistent and supportive message
- **Empower Complainant** - decisions to regain control
  - “Would you like to call someone for support?”
  - “Where would you like to sit?”
  - “Is it okay if I sit here?”
  - “Can I get you something....”

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## Reassure the Complainant

**Reassure** and **empower** the complainant with a **consistent** and **supportive** message

- “Can I tell you something?”
  - “Your health and safety is our priority”
  - “We have a specially trained team...”
  - “While the institution has obligations you have some control in the process...”
  - “We will do our best to keep you informed”
  - “I suggest that we take it one step at a time”

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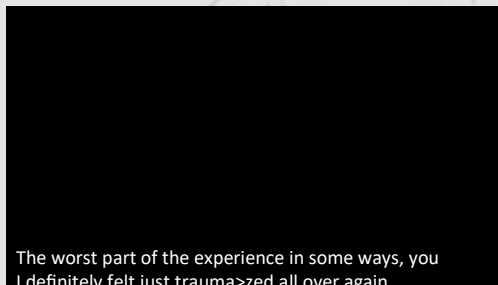
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## Reassure the Complainant




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## Reassure the Complainant

**Reassure** and **empower** the complainant with a **consistent** and **supportive** message:

- “Can I tell you something?”
  - “I’m sorry this happened to you”
  - “I commend you for reporting”
  - “These matters are a priority for our institution”

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## Reassure the Complainant

***“I don’t know what to do, will I have to go to Court/ Student Conduct Board?”***

- Would you like me to tell you what I think?
  - While it is your decision, I think reporting is the right thing to do because it keeps your options open...
  - The institution has responsibilities too...
  - You have some control over the process... and you can make a more informed decision later... right now the priorities are your health, wellness and safety...

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## Avoid “Victim Blaming”

- **Questions to avoid:**
  - Why did you...?
  - Why didn’t you...?
- We don’t need to answer these questions in the initial response. We can find another way to ask later in the investigation.

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## First Impression Matters!

- Follow your policy: Coordinated Multi-disciplinary approach
- Complainant centered services and trauma informed approach
- Build rapport through complainant empowerment
- Complainants need reassurance that they will be supported throughout the reporting process

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## VIII. INVESTIGATIVE STRATEGIES: INTERVIEWING THE COMPLAINANT



**Trauma-Informed Sexual Assault Investigation and Adjudication Educational Program**

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**Interviewing the Complainant**

Module 8

The National Center for Campus Public Safety Module 8 - 2

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**Module Objectives**

- As a result of this module, participants will be able to:
  - Recognize the impact of trauma and develop effective trauma informed interview strategies
  - Explain the impacts of fragmented memory and the value of sensory and peripheral details that can help capture the complainant's experience

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## Rotating Flip Charts

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Module 8 -

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## Module Objectives

- Describe the importance of explaining the interview process and individual questions to avoid the perception of "victim blaming"
- Recognize the potential for collecting psychological evidence of trauma following the assault, common traumatic responses, changes in routine, changes in appearance

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Module 8 - 5

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Do the best you  
can until you  
know better.  
Then when you  
know better,  
do better.  
- Maya Angelou

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Module 8 -

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## Understanding Trauma

- Trauma Informed Interview Recognizes
  - **Disclosure is a process, not an event!**
  - Delayed reporting, inability to recall details and sequence of events is common as a result of **victim trauma**
  - Complainant may remember additional details over time, keep options open for continued disclosures

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## Complainant Interview

- The interview is a way to allow the complainant to express what their **experience was** rather than just what they remember or don't remember
- Capturing the **trauma** and the **sensory and peripheral** details of the event can be **compelling evidence**

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## (FETI) Russell Strand Chief, U.S. Army M.P. School A Paradigm Shift...

**Forensic Experiential Trauma Interview**

- 1. Acknowledge their trauma/pain/difficult situation
  - What are you **able** to tell me about your **experience**?
  - Tell me more about ... or that...
- 2. What was your thought process during this experience?
- 3. What were your reactions to this experience?
  - Physically
  - Emotionally
- 4. What are you **able** to remember about... the 5 senses?
- 5. What was the most difficult part of this experience for you?
- 6. Clarify other information and details... after you facilitate all you can about the "experience"




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### Complainant Interview

- Considerations
  - Are you prepared?
  - Timing; balance complainant needs with pace of investigation
  - Location; private, comfortable
  - Advocate, and or “advisor of choice”
  - Allow for breaks and other complainant’s needs

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### Starting the Interview

- Introduce yourself and your role as a part of the multi-disciplinary team (compassionate tone and demeanor)
- Commend and Reassure for reporting
- Use victim empowerment
- Explain statement process
- Listen to and address complainant’s concerns

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Share what you can about your experience. I will remain quiet, etc.	

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### Starting the Interview

- Acknowledge difficulty of conversation
  - Establish common language
  - Amnesty policy, don’t holdback
  - Importance of being accurate / truthful
  - Introduce clarifying questions that may be asked and that you will do your best to explain questions
  - Permission to recall additional details later

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### Starting the Interview

- Avoid leading questions – use open ended questions
- Avoid blaming language and tone
- Introduce note taking or recording option (Policy)
- Encourage complainant to give statement in their own words – uninterrupted

Have the parties signed off on the summary.

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### Starting the Interview

- What are you able to tell me about your experience? / Where would you like to begin?
- Allow complainant to give uninterrupted statement (patience)
- Commend and reassure throughout

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### Seeking Details from the 5 Senses

- Following the complainant's narrative, document sensory and peripheral details:
- What are you able to tell me about...
  - What you saw...?
  - What you heard...?
  - What you tasted...?
  - What you smelled...?
  - What you touched /felt...?

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### Capturing the Experience

- Documentation of the complainant's thoughts and feelings:
  - What are you able to tell me about how that made you feel?
  - What are you able to tell me about what did you think was going to happen?
  - What are you able to tell me about what your thought process was when...?
  - Can you tell me more about...
  - What are you able to tell me about any specific moments that stand out in your mind?

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### Capturing the Experience

- What are you able to tell me about your physical reactions to this experience when it happened?
- What are you able to tell me about your emotional reactions to this experience when it happened?

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### Capturing the Experience

- What are you able to tell about your physical reactions to this experience after?
- What are you able to tell me about your emotional reactions to this experience after?
  - Are you able to tell me if anything has changed for you since this experience?
- I know this has been difficult, but what are you able to tell me about what was the most difficult part of the experience for you?

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### Capturing the Experience

- Psychological evidence of trauma for consideration:
  - Listen for and document traumatic reactions that the complainant experienced during the incident
  - Listen for and document traumatic responses that the complainant experienced following the incident; changes in routine, changes in appearance, etc...

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### Capturing the Experience

- What are you able to tell me about any images, smells, or sounds that might keep coming back?
- What are you able to tell me about any re-occurring thoughts you might have?
- What are you able to tell me about your sleep now compared to before? Eating? Drinking? Other routines?
- What are you able to tell me about that you might avoid now that you didn't before?
- Have friends / family expressed concern about you, observations, changes, etc...

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### Complainant Interview

- After collecting the complainant's experience
  - Seek clarification of facts and information to help determine elements of the offense, or other additional evidence (Who, What, Where, When, How)

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### Complainant Interview

- Seek information about the respondent's pre and post assault behavior and communication?
- What did respondent say; threats, language, tone?
- How did respondent appear; facial expressions, posture, demeanor?
- What did respondent leave behind?
- Was there communication after; calls, text, social media?

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### Complainant Interview

- Is there any evidence of previous relationship violence / conduct?
  - Controlling, threatening, frightening behavior
  - Abuse, harassment, stalking
  - Physical assault, injury, strangulation
- Respondent's conduct with other potential complainants?
- (Considerations: addressing additional disclosures and threat / risk assessment)

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### Interview for Clarification

- Some complainants may provide information that is incomplete, inconsistent, or untrue:
  - **Interview for clarification, don't interrogate**
  - What are you able to tell me about that?
  - Can you help me understand...?
  - Can you tell me what you were thinking when that happened?

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### Interview for Clarification

- Interview for clarification, don't interrogate:
  - Can you tell me what you were feeling at that point?
  - Can you tell me more about that?
  - Are there other things about that moment that stand out in your mind?
- You are doing fine... I know this is difficult...

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### Explain All Your Questions!

#### What you say...

- Are those the clothes you were wearing when this happened?
- Were you drinking or doing any drugs?
- Did he physically hurt you or threaten you with a weapon?

#### What the Victim hears...

- The investigator thinks it is my fault because of what I was wearing
- I knew this was my fault for drinking too much, the officer thinks so too!
- It must not be real rape, I knew the guy and he didn't hurt me or use a weapon

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### Micro-Corroboration of Details

- Evidence to Consider:
  - Sexual assault exam and related evidence
  - Evidence uncovered by police investigation, i.e. suspect forensic exam
    - Crime scene, crime scene photos, etc...

Easiest to get the medical records from the person themselves.	<hr/>
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### Micro-Corroboratorion of Details

- Evidence to Consider:
- Sensory and peripheral details
- Movements, timeline; security cameras, swipe cards
- Final Question: "Is there any additional information that may be important that we haven't discussed?"

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### Conclusion of Interview: Debrief with Advocate

- Managing expectations – come to Agreement with complainant
- "If you recall additional details write them down and contact"
- Safety planning / interim actions
- Next steps, manage expectations
- Exchange contact information, details
- How would you like to be kept informed, how often?
- Is it okay to leave messages?
- Work with advocate to ensure complainant understands resources and how to find support

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Module 8 - 29

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### Statement Review

- What opportunity will the complainant have to review their statement?

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### Interview: Small Group Exercise

- Team 1 – Consensual or non-consensual act? Make your case...
- Team 2 – What additional questions will you ask about consent / non-consent? How will you ask?
- Team 3 – Is there any evidence of trauma? Make your case...
- Team 4 – What additional questions will you ask regarding trauma? How will you ask?
- Team 5 – Discuss how you will end the interview with complainant

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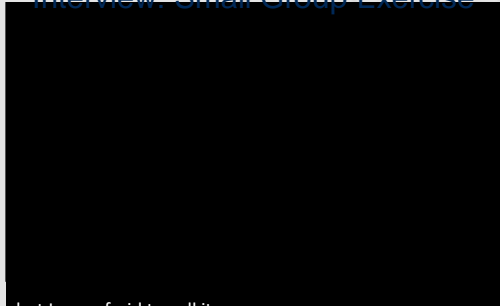
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### Interview: Small Group Exercise



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### Interview: Small Group Exercise

- Team 1 – Consensual or non-consensual act? Make your case...
- Team 2 – What additional questions will you ask about consent / non-consent? How will you ask?
- Team 3 – Is there any evidence of trauma? Make your case...
- Team 4 – What additional questions will you ask regarding trauma? How will you ask?
- Team 5 – Discuss how you will end the interview with complainant

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### Conclusion/Review

- Goal
  - To develop a trauma informed interview that will capture the victim’s experience, including trauma and the sensory and peripheral details, to help determine the elements of the offense.

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### Conclusion / Review

- First Impression Matters:
- Complainant centered trauma informed approach – compassionate and professional
- Build rapport / trust through empowerment
- Recognize complainant trauma, fragmented memory
- Traumatic memory: using sensory related questions may help some complainants recall fragmented memory
- Interview for clarification, don’t interrogate

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www.bja.gov      www.nccpsafety.org      www.margolishealy.com  
 info@nccpsafety.org  
 1.888.817.5817

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## IX. CONSIDERATIONS REGARDING CRIMINAL SEXUAL OFFENDERS



**Trauma-Informed Sexual Assault Investigation and Adjudication Educational Program**

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**Considerations Regarding Criminal Sexual Offenders**

Module 9

The National Center for Campus Public Safety | Module 9 | 2

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**Criminal Sexual Offenders**

- The term “sexual offender” as used in this presentation is a reference to offenders who have been convicted, or adjudicated, for a crime of sexual assault / rape.
- Why is important to examine sexual offender behaviors?

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## Module Objectives

- As a result of this module, participants will be able to:
  - Understand some of the criminal sexual offender behaviors
  - Recognize offender course of conduct and modus operandi
  - Explore the serial nature of sexual offenders
  - Identify investigative strategies that focus on offender behaviors and course of conduct

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## Offenders Have Taught Us...

- 16.3% chance that rapists will end up in prison (NCPA from US DOJ stats)
- In a sample of imprisoned sex offenders with fewer than 2 known victims, offenders actually disclosed an average of 110 victims
- Separate sample found that sex offenders commit sex crimes for an average of 16 years before being caught

Ahlmeyer, Heil, McKee & English 2000)

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## Refining the “Repeat Perpetrator” Hypothesis

- Primarily based on two published papers:
  - Lisak and Miller, 2002
  - McWhorter et al., 2009
- Recent study conducted by Swartout et al. (2015) challenges this hypothesis somewhat
- More research needed to clarify differences

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## One Key Difference Between Lisak and Swartout

- In one of the Swartout samples, “over twice as many men as in Lisak and Miller (2002) report perpetrating rape (6% vs. 13.2%), but the majority of them do so at only one time point.”
- This could mean that there is a substantial portion of men who commit rape who do so only once

NSVRC: “Key Findings: Rethinking Serial Perpetration”, 2015)

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## One Key Difference Between Lisak and Swartout

- This does NOT rule out the possibility that a subset of rapists fit the “repeat perpetrator” mold
- It DOES mean that exclusive focus on repeat perpetrators might obscure different kinds of perpetration

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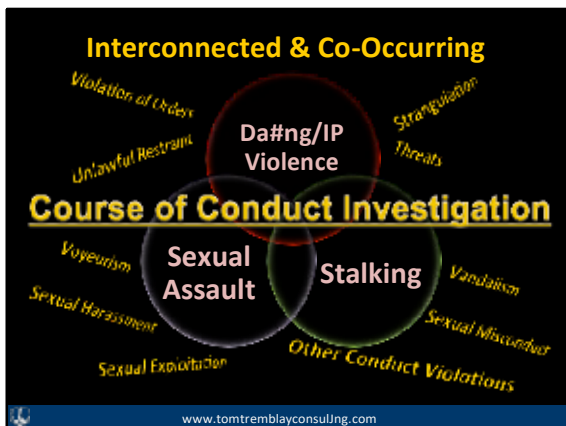
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**Myth: Who is the Sex Offender?**

Any age, race, sexual orientation, gender identity, socioeconomic class, status, religion...

Someone the victim knows and trusts

They are such a good person, they would never do anything like this

www.tomtremblayc.com/online

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**Offenders Have Taught Us...**

Before the offender blames the victim remember, Three sides to everyone's life...

PUBLIC

PRIVATE

**SECRET**

www.tomtremblayc.com/online

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**Offenders Have Taught Us...**

The Secret Side

Non-deviant  
Non-criminal

Deviant and/or criminal thought but not acted on

**Deviant and/or criminal behavior**

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### Offenders Have Taught Us...

**Sex Offender Course of Conduct:**

- Entitlement
- Power
- Control
- Manipulation

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### Sex Offender Modus Operandi

- Identify vulnerability**
- Manipulate**
- Isolate**
- Assault**

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### Offenders Have Taught Us...

- Offenders are predatory; they target and exploit victims they think are most vulnerable
- Offenders often choose victims they think are less likely to report, or to be believed...
- Offenders use alcohol/drugs and manipulate other factors to discredit the victim

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### Alcohol: Weapon & Shield



- » Alcohol is used as a WEAPON against victims to make them vulnerable and to diminish their credibility
- » Alcohol is used as a SHIELD to prevent offenders from being held accountable. We tend to blame victim behavior and excuse offender behavior when they drink
- » Anne Munch Consulting

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### Offenders Have Taught Us...

- VAW Offenders often promote societal myths about these crimes and “blame the victim”
- Entitlement: Expect some perpetrators to be unwilling to see their actions as “rape”

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### Consideration during sentencing

"I have also considered the fact that he was legally intoxicated at the time of the incident," Perskey said of Turner. "Pursuant to the evidence at trial, this does affect judgment. And as I indicated previously, it's not an – and, I think, as [the victim] wrote – it's not an excuse. But it is a factor. And I think it is a factor that, when trying to assess moral culpability in this situation, is mitigating." Judge Persky, court transcript

The National Center for Campus Public Safety      Module 9 - 19

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### Offenders Have Taught Us...

- Power – Control – Manipulation
- Offenders often plan their crimes and response to questioning
- Offenders manipulate victim, witnesses and investigator...
- Offenders want us to believe it is a "misunderstanding" or "miscommunication"
- Offenders want us to believe it is "he said, she said"

The National Center for Campus Public Safety      Module 9 - 20

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### Exercise

- Based on your experience, what are some of the common behaviors you see in respondents that have been reported to have committed sexual misconduct?
- Based on your experience, what are some of the common behaviors you see in respondents that have been found responsible for violations of sexual misconduct?

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## X. INVESTIGATIVE STRATEGIES: INTERVIEWING THE RESPONDENT



**Trauma-Informed Sexual Assault Investigation and Adjudication Educational Program**

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### Day 1

- Overview of Title IX, Clery Act, and Institutional Obligations
- Community Coordination
- The Culture in Which We Live: Understanding the Rape Narrative
- Impact of Language

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### Day 2

- Understanding the Effect of Trauma
- Sexual Assault First Response – First Impressions Matter
- Interviewing the Complainant
- Considerations Regarding Criminal Sexual Offenders

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## Day 3 Preview

- Interviewing the Respondent
- Investigative Strategies
- Report Writing and Appropriate Documentation

The National Center for Campus Public Safety      Module 1 - 4

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## Remember

- Module 9 focuses on what has been learned about the characteristics of convicted criminal sex offenders;
  - We are not suggesting that characteristics of those individuals are necessarily shared by respondents involved in on-campus investigations;
  - We should be aware of those characteristics and determine whether evidence of such behaviors is present in on-campus investigations; but
  - Every on-campus investigation must be based on the evidence presented, not on statistics and characteristics observed in other contexts.

The National Center for Campus Public Safety      Module 9 - 4

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## Pair and Share

The National Center for Campus Public Safety      Module 10 - 4

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## Interviewing the Respondent

Module 10

The National Center for Campus Public Safety Module 10 - 7

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## Module Objectives

- As a result of this module, participants will be able to:
  - Compare strategies to approach respondent for most effective interviews
  - Describe the importance of fair and balanced interviews that are also thorough
  - Apply effective approaches to confront inconsistencies and interview for clarification
  - Develop effective questions and other successful strategies for respondent interviews

The National Center for Campus Public Safety Module 10 - 8

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## Respondent Interview Training?

- What are the challenges you face with respondent interviews?
- What training have you received to help prepare you for respondent interviews?

The National Center for Campus Public Safety Module 10 - 9

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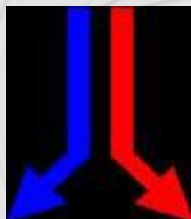
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### Approaching the Respondent

- Key: Where do the accounts diverge?
- Balancing Fair and Thorough




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### Law Enforcement Approach

- Considerations prior to approaching respondent
  - “Pretext” or “confrontation” phone call or text message (**Check w/ Legal Counsel / Prosecutor**)
  - Helpful investigative tool for cases involving people who know each other
  - Police must ensure complainant is emotionally capable of participating. Seek guidance from advocate / counselor

Don't do this yourself - it is very hard on the complainant.	
You have Options program	

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### Police: Pre-Text Call / Confrontation



that I had really done anything like that to another and also for him.

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### Develop Strategy

- Considerations prior to approaching respondent:
  - Respondent interview strategy/timing
  - Know the respondents background
  - Witnesses the respondent may know
  - Evidence in respondent's control (warrant)
  - Respondent forensic exam (warrant)

Need to tell the respondent. This is what I am investigating – anything you say that can be subpoena and used in in a criminal case

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### Develop Strategy

- Considerations prior to approaching respondent
  - Fair and balanced: We want to hear the respondent's account
  - Invite the respondent in for their statement
    - Legal considerations: Police – Custodial Interrogation, Campus – Student Policy Rights
    - Campus – "Advisors of Choice" in interview
    - Document efforts to obtain respondent statement

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### Respondent Interview

- If the Respondent agrees to provide statement:
  - Acknowledge difficulty of conversation; importance of being accurate / truthful
  - Allow Respondent to give statement in their own words, uninterrupted (patience)
  - Seek facts and information regarding possible elements of crime/student conduct violation
  - Seek exculpatory evidence, information and/or leads, other witnesses, etc...
  - Who, What, Where, When and Why?

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### Respondent Interview

- Interview for clarification: We want to get it right!
  - Seek clarification for inconsistencies and explanations that don't make sense with known evidence, information, or witness statements

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### Interview: Don't Interrogate

- Balancing a **fair** and **thorough** investigation;
- Confronting Inconsistencies Vs. Interrogation
- **Interview for clarification** can lead to:
  - Better understanding of the facts
  - Additional exculpatory evidence or information
  - Further inconsistencies, corroboration of witness and victim statements
  - Partial admissions, admissions, confessions

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### Respondent Interview

- Listen carefully to the response to your questions
  - Does it make sense?
  - Did the respondent answer or avoid the question?
  - Did the respondent shift blame or distract?
  - Did the respondent minimize?

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### Respondent Interview

- Balancing a **fair** and **thorough** investigation
- Tie in offender behavior, background, inconsistencies, evidence, facts, other potential victims
- History of sexual assault, violence, student conduct violations
- consider anti-violence prevention education, University policy, consent definition, etc...

Remind them about orientation – anti-violence


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### Respondent Interview

Seek details / evidence that respondent might have:

Pre and post assault text messages, calls, social media

- Did you Email, text message, or make phone calls about this incident?
- Did you photograph or video any part of the incident?
- Have you posted comments, photos, or videos on social media sites?
- Are you willing to allow an examination of your computer, Facebook, phone, etc...

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### Considering Trauma

- Provide opportunity for Respondent to explain evidence of trauma disclosed by complainant:
  - Use sensory and peripheral details disclosed by complainant
  - Why was complainant upset during, after?
  - Why did complainant express fear / trauma?
  - How do you explain that the complainant told (friend, family, etc...)?
  - Why has complainant behavior changed?

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### Prior to Concluding

- “Is there any additional information that may be important that we haven’t discussed?”
- Are there additional witnesses the respondent believes may be important?
- Explain next steps/Title IX process
- Exchange contact information; **get agreement** for follow-up interviews if necessary
- Ensure respondent understands rights & resources
- Remind respondent of interim actions and retaliation / interference warnings with complainant or potential witnesses

This is important.

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### Respondent Interviews: Discussion

- What respondent interview approaches have been successful for you?
- What opportunity will the respondent have to review their statement?

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## XI. SEXUAL ASSAULT: INVESTIGATIVE STRATEGIES



**Trauma-Informed Sexual Assault Investigation and Adjudication Educational Program**

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**Sexual Assault: Investigative Strategies**

Module 11

The National Center for Campus Public Safety

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**Module Objectives**

- As a result of this module, participants will be able to:
  - Identify and apply the four components of a successful investigation
  - Compare and contrast different investigative strategies based on case facts, evidence, and potential defenses
  - Define consent and incapacitation and determine investigative strategies for these elements
  - Examine alcohol and drug facilitated sexual assault and investigative strategies
  - Identify strategies to discover potential evidence

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### Sexual Assault Response and Investigations

- **Coordinated** – Multi-disciplinary (Policy)
- **Compassionate** – Trauma informed approach, victim centered services
- **Objective** – Fair and Impartial fact finding investigation
- **Thorough** – investigations & reports, determine if the facts and evidence meet the elements of the offense / code of conduct

The National Center for Campus Public Safety      Module 11 - 4

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### Develop Strategy

- Know your Student Code of Conduct / Definition of Consent / Sexual Assault Laws
- Consider nature of the assault
  - Known facts
  - Evidence
  - Timing and investigative sequence
  - Possible defenses

The National Center for Campus Public Safety      Module 11 - 5

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### Potential Respondent Defenses

- **Identity:** “It wasn’t me”
- **Denial of sexual contact:** “I didn’t do that”
- **Consent:** “it was totally consensual”
- **Intoxicated:** “can’t remember, but it wasn’t rape”
- **Impeachment:** of complainant, investigator, investigation, policy, institution...
- All of the above

The National Center for Campus Public Safety      Module 11 - 6

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### Non-Stranger Sexual Assault

- **Most assaults are preceded** by contact between the victim and the offender in a “normal social context” that the offender creates or uses to their advantage (grooming - testing)
  - Fellow student
  - Friend of a friend
  - Date
  - Brief encounter

The National Center for Campus Public Safety Module 11 - 7

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### Develop Strategy

- Non-stranger sexual assault:
  - Evidence is all about the relationship (Boundaries) and **CONSENT...**

The National Center for Campus Public Safety Module 11 - 8

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### Consent “Guidance”

- Consent must be informed, voluntary, and mutual (Boundaries)
- Consent can be withdrawn at any time
- There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used
- Position of influence over another person may be a factor in determining consent

White House Task to Protect Students from Sexual Assault October 2014

The National Center for Campus Public Safety Module 11 - 9

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### Consent “Guidance”

- Silence or absence of resistance does not imply consent
- Past consent to sexual activity with another person does not imply ongoing future consent with that person
- Consent to sexual activity with one person does not mean consent with another person

White House Task to Protect Students from Sexual Assault October 2014

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### Consent “Guidance”

- Incapacitation / Impairment
  - If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no consent;
  - This includes impairment or incapacitation due to alcohol or drug consumption that meets this standard, or being asleep or unconscious.

White House Task to Protect Students from Sexual Assault October 2014

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### Develop Strategy

- Non-stranger sexual assault:
- Investigation: focus on the respondent:
  - Investigate history, pre and post assault behavior

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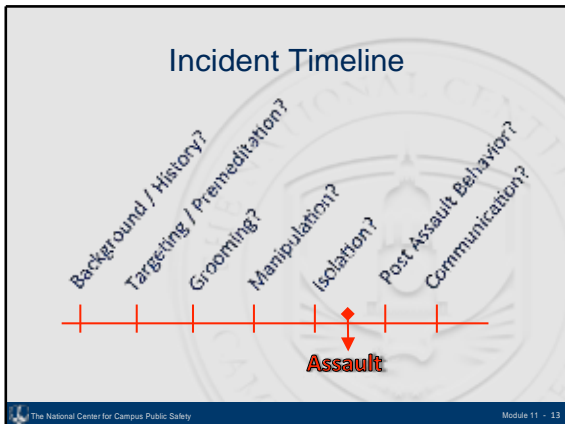
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Tell me about the day – exercise, eat, donate blood, linear –	
Grooming behavior – David Lysik video	
Using the timeline for all title IX, not just sexual assault	

### Focus on the Respondent

- Considerations in Non-stranger sexual assault:
  - How did they meet, or did respondent choose / **target** the complainant?
  - Did the respondent **manipulate** the environment and circumstances to get the complainant into a position of **vulnerability** and **isolation**

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### Focus on the Respondent

- Non-stranger sexual assault:
  - Is there history: previous assaults / abuse on complainant or others?
  - Respondent behavior, **boundaries**, what if anything changed?

The National Center for Campus Public Safety      Module 11 - 15

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### Focus on the Respondent

- Is there evidence of grooming, testing methods, contrived circumstances
- What role did drugs and alcohol play?
- Who supplied drugs / alcohol?
- Did respondent provide drugs / alcohol to others?

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### Alcohol / Drug Facilitated Sexual Assault

- Either...
  - A perpetrator deliberately tries to induce a state of intoxication and/or incapacitation by administering a substance to the victim without knowledge or consent
- Or....
  - A perpetrator who exploits voluntary intoxication or incapacitation

*Credit Anne Munch ConsulAng*

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### Drugs Used to Commit DFSA

- |                             |                                 |
|-----------------------------|---------------------------------|
| • Alcohol                   | • Antidepressants               |
| • Benzodiazepines           | • GHB - Gamma Hydroxybutyrate   |
| • Flunitrazepam (Rohypnol®) | • Ketamine                      |
| • Diazepam (Valium®)        | • Over-the-Counter or OTC drugs |
| • Alprazolam (Xanax®)       | • Antihistamines                |
| • Barbiturates              |                                 |

*Credit Anne Munch ConsulAng*

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### Alcohol / Drugs:

- Investigate the fine points...
  - How much knowledge did respondent have about complainant's drinking habits before hand?
  - Who supplied the alcohol?
  - Who was in more control of themselves?
  - Who has more experience with alcohol?
  - Women and Men can digest alcohol differently

*Credit Anne Munch ConsulAng*

The National Center for Campus Public Safety

Module 11 - 19

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### Alcohol / Drugs

- Investigate the fine points...
  - What is the size and weight difference?
  - Is respondent drinking beer and feeding complainant shots?
  - Any evidence of the complainant throwing up?
  - Any evidence of the complainant passing out?
  - Review facts with a Toxicologist / Doctor

*Credit Anne Munch ConsulAng*

The National Center for Campus Public Safety

Module 11 - 20

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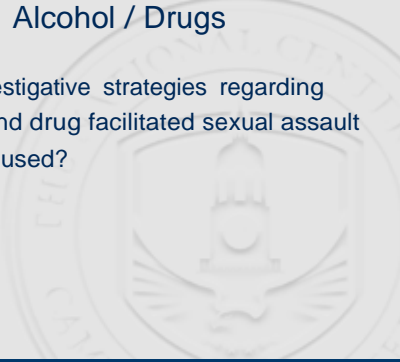
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### Alcohol / Drugs

- What investigative strategies regarding alcohol and drug facilitated sexual assault have you used?



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### What are Your Digital Forensics Capabilities?

- Computer related research by the respondent: date rape drugs, etc...
- Email, texts, snapchats, tweets, calls
  - May provide admissions, dates/times, additional witnesses
- Social media; photos, comments, information



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### Respondent's Facebook



Without her consent, 2187 calories.



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**What are Your Digital Forensics Capabilities?**

- Hidden recordings depicting nudity and sexual acts: pin cameras
- Intoxicated / Incapacitated sexual assault: cell phone photos, videos
- Distribution of photos and recordings to others on campus, and/or around the country

The National Center for Campus Public Safety Module 11 - 25

Do you have multiple accounts or Instagram? Relationships with local police to dump.

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**Vanderbilt Case 2015**

- My immediate reaction was whoa, what happened to [Male voice] They're gonna find all the videos dude

YouTube: ABC 20/20 "The Party's Over"

The National Center for Campus Public Safety Module 11 - 26

Good video for bystander training.

YouTube: ABC 20/20 "The Party's Over"

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**Case Study Exercise: Small Group**

- Pick a spokesperson for your Team
- Review your case and discuss the key issues
- Develop an investigative strategy
- What efforts will you make to document the potential impact of trauma?
- Report out to large group

The National Center for Campus Public Safety Module 11 - 27

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## IACP Resources [theiacp.org](http://theiacp.org)



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## United Educators Checklist



Review and compare with your policy – What might be helpful?

**Checklist Caution:**  
Checklists can be helpful, but we must sensitively explain why we are asking the questions we are asking!

The National Center for Campus Public Safety Module 11 - 29

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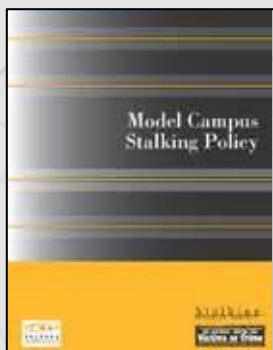
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National Stalking Resource Center



The National Center for Campus Public Safety Module 11 - 30

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### Promising Practices

- Data collection and analysis of your cases and outcomes
- Auditing cases and after action case reviews by your multi-disciplinary team – What did you do that is working – what can you do to improve?
- External case reviews by SME to provide feedback for your Title IX Coordinator and Investigators

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### Conclusion/Review

- Sexual Assault / sexual misconduct is complex. Policy should remain current and updated
- There are high stakes concerns for the complainant, the respondent, and the institution. Training is required for all personnel involved
- Investigation requires a multi-disciplinary coordinated, compassionate, objective and thorough response

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## XII. REPORT WRITING



Trauma-Informed Sexual Assault  
Investigation and Adjudication  
Educational Program

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Report Writing

Module 12

The National Center for Campus Public Safety Module 12 - 2

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Module Objectives

- As a result of this module, participants will be able to:
  - Examine the elements of an investigation report
  - Determine what information should be included in a report
  - Explain how to write a report that best represents the institution's efforts

The National Center for Campus Public Safety Module 12 - 3

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### Group Questions - Round 1

- Group 1 - Who are the potential readers of an investigation report?
- Group 2 - What are the characteristics of a well-documented witness statement?
- Group 3 - What are the characteristics of a thorough and complete investigation?
- Group 4 - Why is documentation of an investigation important (i.e., what positive impacts might good and complete documentation have and what negative impacts might bad or incomplete documentation have)?

The National Center for Campus Public Safety

Module 12 -

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### Group Questions - Round 2

- Group 1 - How do the needs or interests of the potential readers inform the work of writing the investigation report?
- Group 2 - What are steps that should be taken to ensure that witness statements have these characteristics?
- Group 3 - What kinds of questions might an investigator ask himself/herself to determine when to end the investigation?
- Group 4 - What specific aspects of the institution's response to a report of sexual harassment, sexual assault, dating violence, domestic violence or stalking report need to be documented?

The National Center for Campus Public Safety

Module 12 -

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### General Points

- Reports are in many ways driven by the policy and procedures of your institution
- Our discussion generally focuses on reports of internal investigations, but law enforcement shouldn't disengage...
- This discussion is in most ways applicable to other civil rights investigation reports

The National Center for Campus Public Safety

Module 12 -

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### Consistency, Efficiency and Documentation Across Investigations/Reports

- Basic process
  - Informed Survivor Letter (Guidebook, p 282)

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[studentname] [studentname]  
[studentaddress]

Dear [studentname] [studentname]

The University was recently informed that you may have experienced sexual misconduct by a U-M student. U-M is committed to both supporting your well-being and acting to ensure the safety of our community. This letter explains important information pertaining to the University of Michigan Policy on Sexual Misconduct by Students. The complete policy and additional resources are available at <http://studentsexualmisconductpolicy.umich.edu/>.

First, I want you to be aware that, pursuant to the enclosed procedure, the University may further review and investigate the information it received regarding the alleged misconduct. I encourage you to participate in the University's review and investigation process so that your experience of the alleged misconduct may be fully considered. However, you have the right not to participate if you do not wish to do so. [Given that you have not responded to our repeated attempts to contact you OR Given your communication to [insert name] indicating that you would not like to be involved further], it is our understanding that you do not want to participate in the University's investigation and review process. If you change your mind later, and would like to participate in the investigation and review process after all, simply notify our office by calling 734-763-0226.

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Second, I want you to know that, whether you participate in the University's review and investigation process or not, you have the right to be protected from retaliation related to the information you shared. If you believe you are experiencing retaliation in any form, please let the University know as soon as possible.

Third, I want to encourage you to consider filing a report with the University of Michigan Police Department (UMPD) or the Ann Arbor Police Department (AAPD), as appropriate. UMPD can be reached at (734) 763-1131 and AAPD can be reached at (734) 764-6900. UMPD or AAPD may conduct an investigation based on potential criminal activity related to any information you report.

Fourth, as indicated in the enclosed Survivor Handbook, it is important for you to know where to find additional sources of support and assistance should you feel it helpful or necessary to do so. You may contact the Sexual Assault Prevention and Awareness Center (SAPAC) at any time to obtain confidential, comprehensive advocacy and support. Other confidential resources available on and off campus include Counseling and Psychological Services (CAPS) and Safe-House Center. Contact information for each resource is listed below. Your personal information will not be shared by any of these resources.

Sexual Assault Prevention and Awareness Center (SAPAC)  
(734) 764-7771, 24 hr. Crisis Line: (734) 998-3333  
550 S. State St. Room 0509  
Ann Arbor, MI 48109

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3100 Michigan Union (210 F100)  
 500 S. State St.  
 Ann Arbor, MI 48109

Statehouse Center  
 24 hr. Crisis line: (734) 955-5444

The Dean of Students Office also provides various support services to students. Although they will respect your privacy to the greatest extent possible, they may need to share some of your information with others to ensure that the University responds appropriately and effectively to any concerns you share with them. They are located at 3100 Michigan Union (3rd Floor) and can be reached at (734) 764-7423.

If you need additional support in the form of counseling, alternative housing, academic accommodations, or otherwise, please contact SA/PAC, the Dean of Students Office, or my office so we can work with you in a timely way to provide assistance. If you have any questions, don't hesitate to contact us at 734-755-0295. We'd be happy to help in any way we can.

Very sincerely,  
 [staff/digital signature]

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### Consistency, Efficiency and Documentation Across Investigations/Reports

- Basic process
  - Informed Survivor Letter (Guidebook, p 282)
  - Investigation Checklist (Guidebook, p 284)

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	CASE NUMBER: _____
	RESPONDENT: _____
	OPEN DATE: _____ CLOSE DATE: _____

**PHASE I**

**Complainant Interview (DATE: \_\_\_\_\_)**

- Inquire as to union status of all involved parties (Informs GED Complainants of right to union representation)
- Hand out and review Complainant Information Sheet and applicable SPQ (DATE: \_\_\_\_\_)
- Notify Compl of right to contact UMPD (or local PD) of criminal activity, as applicable
- Strive to provide pdf draft interview notes to Complainant within 7 calendar days of interview
- Complainant has 2 business days to review their statement (DATE: \_\_\_\_\_) BY: \_\_\_\_\_

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**Interim Measures**

Yes  No

Interim measures in place: \_\_\_\_\_

**Notifications**

UMPD: Yes  No (DATE: \_\_\_\_\_)

If Yes, email to *Goemail*: \_\_\_\_\_

Applicable UIM officials: \_\_\_\_\_

Clery: Yes  No (DATE: \_\_\_\_\_)

Notification response in file

**Respondent Interview (DATE: \_\_\_\_\_)**

If Union member, inform of representation right

Hand out and review Respondent Behavior Sheet and applicable SPG (DATE: \_\_\_\_\_)

Strive to provide pdf draft interview notes to Respondent within 7 calendar days of interview

Respondent has 2 business days to review their statement (DATE SENT: \_\_\_\_\_ RCVD: \_\_\_\_\_)

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**Witness Interviews**

Review witness information re: confidentiality and retaliation

If identified, offer 2 business days to review pdf draft

Memo to file

**Other Evidence**

Retriev/access as appropriate

**PHASE III**

**Drafting**

Redact attachments as appropriate

Review by Senior Director

Senior Director Initials: \_\_\_\_\_ Date: \_\_\_\_\_

Provide Complainant and Respondent pdf draft copy with 2 business days review time

C Draft Sent: \_\_\_\_\_ C Response Rcvd: \_\_\_\_\_

R Draft Sent: \_\_\_\_\_ R Response Rcvd: \_\_\_\_\_

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**Analysis / Review**

Review all evidence

Write analysis

Provide to Senior Director for review and approval

Senior Director Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Share with other University officials as appropriate

**PHASE IV**

**Finalis Report**

Issue to relevant parties (student cases are issued to OSCR)

Contact Complainant and Respondent re: distribution

Close case in OIE Case Management database

Obtain and file letter decerning sanctions imposed, as applicable

Assemble case file for filing within 14 calendar days of case closure date

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### Consistency, Efficiency and Documentation Across Investigations/Reports

- Basic process
  - Informed Survivor Letter (Guidebook, p 282)
  - Investigation Checklist (Guidebook, p 284)
  - Complainant Information Sheet (Guidebook, p 286)

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**Information for Student Complainants – Sexual Misconduct**

**We are neutral.** The Investigator does not take sides. We are committed to providing a fair and unbiased review, and our investigations are focused on the information available. We also help Complainants and Respondents by providing information about support and advocacy services. If you have a concern that the investigator cannot conduct a fair and unbiased review (e.g., has a personal connection with one of the parties or witnesses, etc.), please contact Anthony Walsby, Title IX Coordinator, immediately. Mr. Walsby may be reached at 734-763-4235 or [institutional.equity@umich.edu](mailto:institutional.equity@umich.edu). The situation will be assessed and a determination made as to whether a different investigator should be assigned to the matter.

**Support person.** The Complainant may bring a support person with them to any meetings with the investigator. We request that the Complainant please let us know in advance if they will be doing so. Examples of a support person/advisor may include, but are not limited to: a friend, family member, SAPAC Advocate, attorney, etc. An individual who may be a witness in the investigation may not be present during the Complainant's interview.

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**Anonymity and Confidentiality.** Information provided to OIE may be shared with other University officials as necessary and appropriate. Respondents are provided enough information about the allegations to allow them a fair opportunity to respond, and the level of detail necessary to do that varies depending on the circumstances surrounding the incident and confidentiality concerns. OIE will consider requests for Complainant anonymity on a case-by-case basis, consistent with the Student Sexual Misconduct Policy.

**Interim measures and Academic Accommodations.** In many cases, interim measures may be appropriate. Such measures may include separation of the Complainant's and Respondent's academic, living, and/or dining situations, or such other measures as may be appropriate under the circumstances. OIE will ask Complainants about interim measures, although they sometimes are in place before the Complainant meets with OIE. In addition to interim measures, Complainants sometimes need academic accommodations. These accommodations are arranged by SAPAC and/or the Dean of Students, but a Complainant may also raise this need with OIE, who will inform SAPAC/Dean of Students of the requested accommodation.

**Understanding the complaint.** The first step the Investigator takes in an investigation is to gather information about the complaint. This usually involves interviewing the Complainant and gathering all information the Complainant has, including documentation and names of witnesses, if any. Complainants are strongly encouraged to share all information they have regarding the matter.

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**Interviewing the Respondent.** After the Investigator understands the nature and scope of the complaint, the Respondent is asked about the allegations and given a full and fair opportunity to respond. The Respondent is also asked to provide any documentation and identify witnesses relevant to the complaint. The Complainant is not present during the Respondent's interview and vice versa.

**Gathering other information.** The Investigator interviews witnesses and reviews all documentation deemed relevant to the situation. The Investigator may also contact the Complainant and Respondent with additional questions or to request additional information.

**Review of Investigation Summary.** If the Investigator determines that a written Investigation Report will be produced, the Complainant and Respondent, if participating in the investigation, will

typically be provided with a written summary of the statement of each person interviewed (Complainant, Respondent and other witnesses) and documentation or other information reviewed by the Investigator. To ensure accuracy, the Complainant and Respondent are given the opportunity to provide clarifying comments on the summary. The Investigator reviews the comments submitted by the parties, if any, and determines whether the report should be modified. The Investigator considers any and all comments from the parties in reaching a determination on the matter.

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All information or documentation provided by either party, or by a witness interviewed in the course of an investigation, may be included in the final Investigation Report and shared with the other party to this matter and relevant University officials.

**Decision and follow up.** After receiving the Complainant's and Respondent's comments, if any, the Investigator analyzes the information and reaches a conclusion. This conclusion is shared with the Office of Student Conflict Resolution, along with the Investigation Report if one was produced. If the investigator determines that the evidence supports a finding that the Student Sexual Misconduct Policy has been violated, the Office of Student Conflict Resolution will address the matter consistent with applicable University policies.

**Retaliation.** The University has a strong policy against retaliation. Complainants or witnesses who feel they are being subjected to retaliatory behavior are strongly encouraged to immediately contact the Investigator or OSCR.

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**Resources for support.** The University offers a variety of services to support to students, a short list of which is included below. The OIE investigator can provide additional information about the resources, as requested. If what you reported to OIE might also be a criminal offense, you may also report it to the police, either UMPD if it occurred on campus or local police if it occurred off campus. If you are concerned for your safety, call 9-1-1 immediately.

- Sexual Assault Prevention and Awareness Center 734/936-3333
- Counseling and Psychology Services 734/764-8312 or [www.umich.edu/~caps](http://www.umich.edu/~caps)
- after hours UM Psychiatrist 734/996-4747
- Dean of Students 734/764-7420
- UM Student Legal Services 734/763-9920
- Graduate Student Crisis 800/GRAD-HLP (800/472-3457)
- Crisis Line 800/273-TALK (8255)
- [www.crisischat.org](http://www.crisischat.org)
- UM Police Department 734/763-1131; Ann Arbor Police Department 734/794-6900

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More information. If you have any other questions about the investigation or investigation process, please do not hesitate to contact the staff member investigating your case at 734/763-0235.

Complainant's Name (please print) \_\_\_\_\_ Signature \_\_\_\_\_

Date \_\_\_\_\_

Revised 9/12/14

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### Consistency, Efficiency and Documentation Across Investigations/Reports

- Basic process
  - Informed Survivor Letter (Guidebook, p 282)
  - Investigation Checklist (Guidebook, p 284)
  - Complainant Information Sheet (Guidebook, p 286)
  - Respondent Information Sheet (Guidebook, p 288)

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**Information for Student Respondents – Sexual Misconduct**

**We are neutral.** The Investigator does not take sides. We are committed to providing a fair and unbiased review, and our investigations are focused on the information available. We also help Complainants and Respondents by providing information about support and advocacy services. If you have a concern that the investigator cannot conduct a fair and unbiased review (i.e., has a personal connection with one of the parties or witnesses, etc.), please contact Anthony Wadesby, Title IX Coordinator, immediately. Mr. Wadesby may be reached at 734-763-0235 or [institutionalequity@umich.edu](mailto:institutionalequity@umich.edu). The situation will be assessed and a determination made as to whether a different investigator should be assigned to the matter.

**Support persons.** The Respondent may bring a support person or advisor with them to any meetings with the Investigator. We request that the Respondent please let us know in advance if they will be doing so. Examples of a support person/advisor include, but are not limited to: a friend, family member, Dean of Students staff member, attorney, etc. An individual who may be a witness, including a character witness, may not be present during the Respondent's interview.

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**Interim measures and academic accommodations.** In many cases, interim measures may be appropriate. Such measures may include separation of the Complainant's and Respondent's academic, living, and/or dining situations, or such other measures as may be appropriate under the circumstances. In addition to interim measures, Respondents sometimes need academic accommodations. These accommodations are arranged by the Dean of Students Office and/or the Sexual Assault Prevention and Awareness Center, but a Respondent may also raise this need with OIE, who will inform the Dean of Students/SAPAC of the requested accommodation.

**Initiating an investigation.** The first step the investigator takes in an investigation is to gather information about the complaint. This usually involves interviewing the Complainant and gathering all information the Complainant has, including documentation and names of witnesses, if any. Complainants are strongly encouraged to share all information they have regarding the matter.

**Interviewing the Respondent.** After the investigator understands the nature and scope of the complaint the Respondent is asked about the allegations. Respondents are provided enough information about the allegations to allow them a fair opportunity to respond, and the level of detail necessary to do that depends on the circumstances surrounding the incident. The Respondent is also asked to provide any documentation and identify witnesses relevant to the complaint. The Complainant is not present during the Respondent's interview and vice versa.

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**Gathering other information.** The investigator interviews witnesses and reviews all documentation deemed relevant to the situation. The investigator may also contact the Complainant and Respondent with additional questions or to request additional information.

**Review of Investigation Summary.** If the investigator determines that a witness Investigation Report will be produced, the Complainant and Respondent, if participating in the investigation, will typically be provided with a written summary of the statement of each person interviewed (Complainant, Respondent and other witnesses) and document titles or other information reviewed by the investigator. To ensure accuracy, the Complainant and Respondent are given the opportunity to provide clarifying comments on

the summary. The investigator reviews the comments submitted by the parties, if any, and determines whether the report should be modified. The investigator considers any and all comments from the parties in reaching a determination on the matter.

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**All information or documentation provided by either party, or by a witness interviewed in the course of an investigation, may be included in the final Investigative Report and shared with the other party in this matter and relevant University officials.**

**Decision and follow up.** After receiving the Complainant's and Respondent's comments, if any, the investigator analyzes the information and reaches a conclusion. This conclusion is shared with the Office of Student Conflict Resolution, along with the Investigation Report if one was produced. If the investigator determines that the Student Sexual Misconduct Policy has been violated, the Office of Student Conflict Resolution will address the matter consistent with applicable University policies.

**Retaliation.** The University strongly prohibits retaliation. Complainants and Witnesses are protected from any form of retaliation for engaging and/or participating in the investigative process. As the Respondent, you are directed to ensure that your actions, either directly or indirectly, do not constitute retaliation against those who have exercised their rights under UM policy or who have participated in the investigative process.

**Resources for support.** The University offers a variety of services to support its students, a short list of which are included below. The OIE investigator can provide additional information about the resources, as requested.

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**Resources for support.** The University offers a variety of services to support to students, a short list of which are included below. The OII investigator can provide additional information about the resources, as requested.

- Dean of Students 734/764-7420
- Counseling and Psychology Services 734/764-8312 or [www.umich.edu/cap](http://www.umich.edu/cap)
- after hours UM Psychiatric 734/996-4747
- UM Student Legal Services 734/763-9920
- Graduate Student Crisis 800/GRAD-HLP (800/472-3437)
- Crisis Line 800/273-TALK (8255)
- [www.crisisline.org](http://www.crisisline.org)

**More information.** If you have any other questions about the investigation or investigation process, please do not hesitate to contact the staff member investigating your case at 734/763-0233.

Respondent's Name (please print) \_\_\_\_\_ Signature \_\_\_\_\_

Date \_\_\_\_\_

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### Consistency, Efficiency and Documentation Across Investigations/Reports

- Basic process
  - Informed Survivor Letter (Guidebook, p 282)
  - Investigation Checklist (Guidebook, p 284)
  - Complainant Information Sheet (Guidebook, p 286)
  - Respondent Information Sheet (Guidebook, p 288)
- Basic communication
  - “Canned” email

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### Consistency, Efficiency and Documentation Across Investigations/Reports

- Report format (Guidebook, p 286)
- Analysis and Finding
  - Policy citations
  - Preponderance language (Guidebook, p 290)
- How files are maintained
- Consistency = fewer “mistakes” and greater efficiency
- The less you have to focus on “checking the box” the more you can focus on “doing it well.”

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### Sample Report

- What did you like?
- What didn't you like?
- How could it be better?

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### Before You Begin Writing

- Know your policies and procedures, and write a report that is consistent with them
- Decide what terms you will use for the parties and witnesses
- If you don't identify the parties and witnesses by name, create and maintain a witness key (Guidebook, p 302)
- Use consistent terminology (for people, for things)

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### Before You Begin Writing

- Think about how you can make this understood by somebody who has never spoken with the parties or who does not understand your policies/procedures.
  - Spoon feed information
  - Explain acronyms
- Your report will stand on its own in the event of an internal/external review – don't assume the reader will have access to your file.
- If it's not in the report, will you remember it? In a year? Two years? Three?

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## Before You Begin Writing

- Develop a template/format for your reports, and use it consistently across investigators
- Develop standard language for commonly cited issues (e.g., a description of the burden of proof) and use it consistently across investigators
- Think about who will read your report and how that impacts what information should be shared (e.g., FERPA, information about medical conditions, personal life, etc.)
- Have a trusted colleague to help work through matters if you get stuck

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## Report Contents

- Background
- Procedural issues (often best placed in Background)
- Statements (Complainant, Respondent, Witnesses, Experts)
- Description of Other Evidence (student conduct records, medical records, photographs, surveillance videos, swipe card records, texts, etc.)
- Analysis and Finding
- Summary
- Attachments

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## Background

- Orient the reader so they can best follow your report
- Explain how the complaint got to your office and the nature of the concern
- Explain why an investigation ensued and what policy and procedure applies
- Explain when the investigation began
- Introduce the parties and their association with the institution
- Explain any factors that will help the reader better

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## Procedural Issues

- Explain any relevant procedural issues, such as:
  - Whether there was a concomitant criminal investigation, particularly if it affected the timing of the internal investigation. If it did, explain what the institution did to provide for the Complainant's and campus community's safety during any "delay."
  - Any other delays (e.g., relevant witness out of the country, semester break, etc.)
  - Any other factors impacting the investigation (e.g., Complainant's request for no institutional action, including how the request was assessed/what determination was made)

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## Procedural Issues

- Explain any factors relevant to handling the complaint, such as:
  - All interim measures. Be specific – what Complainant requested, what was done and when, whether the interim measures were modified during the investigation, etc.)
  - If a witness was not interviewed, explain. This is particularly important when the witness was identified by one of the parties.
  - Same with other forms of evidence (e.g., polygraph results).
- Be a good documentarian – don't just say what was done. Explain why it was done and when (e.g., that it was timely or, if not, why not).

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## Statements

- State when you interviewed the individual
- Indicate whether another person was present during the interview (e.g., support person, trainee, etc.)
- Explain who the interviewee is and how they is connected to the institution and to the investigation
- Describe any unusual aspects of the interview or timing of the interview (e.g., conducted with law enforcement)

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## Statements

- In general, write about the incident in chronological fashion
  - Help make the person's account understandable by lumping together statements made over the course of the interview.
  - If a party's statement is internally inconsistent, note it in a nonjudgmental way (e.g., When asked X, Witness 1 said Y. Later in the interview, Witness 1 stated Z.)
    - The time to discuss this discrepancy, if relevant, is in your analysis.
    - Be very mindful of the impact of trauma on memory. Is it an inconsistency or inability to recall information?
      - Was it behavior that was denied or simply not mentioned?

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## Statements

- You do not have to include everything the person said. It is okay to only include relevant information and exclude the rest.
- Use quotes strategically (slang, admissions, relevant descriptions, etc.)
- Always write to the "test" you will be applying
  - What type of case is it? Sexual harassment? Retaliation?, etc.
  - What aspect of the case is at issue?
  - Make sure you have included the relevant evidence that will allow you to write an analysis based on the "test" at issue

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## Statements

- Be accurate. Describe the parts of the body and the physical acts that occurred.
- Describe the tools, objects, or weapons that were used and how they were used.
- Have detailed (**relevant**) information: location, injuries, acts committed, any elements of force, coercion, threat, etc.
- Don't use slang, unless you're quoting a party/witness, and then explain the slang.

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## Statements

- Be objective – do not insert judgmental statements or opinions
- If a party/witness uses a vague quantitative word (a lot, many, some, etc.), seek more detail
- Avoid victim blaming statements (unless it's relevant, such as quoting a Respondent who is offering a defense)
- If a party/witness uses subjective terms (acted strange, seemed upset, was being creepy, etc.), seek more detail

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## Review of Statements

- Consider allowing the parties to review their statements. This can help avoid concerns about inaccuracy (and sometimes provides useful evidence)
- If you do this, it is NOT an invitation for the parties to rewrite their statements (although some will)
- You do not have to make every change requested by a party, but do include information that is relevant or clarifying

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## Review of Statements

- Note in the report any relevant discrepancies between what the person told you when interviewed and what they say in any subsequent communication
- Retain a copy of all changes requested
- Consider having witnesses review their statements, too
- Consider allowing the parties to see everybody's statement and other evidence
- Conduct additional investigation, if warranted based on comments/information submitted by a party

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### Statements from Experts

- Do you have evidence that you are not qualified to assess?
- Where do you find an expert?
- Be sure to explain the expert's credentials
- Do you allow them to review their statement to ensure accuracy?
- What do you do when a party offers their own "expert" in response?

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### Other Evidence

- This may be provided by a party, a witness or something you develop during your investigation
- Describe what it is; summarize relevant portions and attach it as appropriate
- If it is something that is not appropriate to disclose in your report (e.g., a polygraph result, party's disability, etc.), disclose what is relevant and note that the underlying documentation is maintained in your file

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### Attachments

- Decide what will be attached to the report (e.g., Facebook/text messages, Snapchats, photos, police report, etc.)
- Redact as appropriate (keep unredacted originals in your file)
  - Be mindful of FERPA
  - Be mindful of your audience. What is relevant and appropriate to share?
- If the material is attached, explain the attachment and also refer to it in your report. **It is your job to report and synthesize the evidence, not the reader's.**

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As a reader, which is more impactful?

This:

Complainant stated that Respondent subsequently texted her stating he was sorry for hitting her and apologized when she told him he had raped her. See Attachment 1.

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This?

Complainant stated that Respondent subsequently texted him about what had happened. Complainant provided the texts, which read as follows:

Complainant: I don't care what u say. U know I didn't want it and you did it anyway.  
Respondent: I'm sorry I hurt u. You know I don't hit. I was so drunk. IDK what to say to make it better. Can I see u?  
Complainant: What could you say? U raped me, asshole.  
Respondent: I'm sorry. I'm so sorry. I luv u u know that. I don't know why I did what I did

See Attachment 1.

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Or This?

Complainant stated that Respondent subsequently texted him about what had happened.

Complainant provided the texts, which read as follows:

See Attachment 1.



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### Don't Assume...

- The reader knows your policy, process or culture
- The reader will read the attachments
- The reader understands Title IX or the obligations it places on the institution
- The reader understands about the impact of trauma on those who experience sexual assault
- The reader doesn't believe rape myths

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### Analysis and Finding

- If you have consistently kept the “test” you will be applying in mind, this section will be easier to write, because you will have developed the evidence you need to assess the issue
- If you don't have the information you need, go back and do more investigation (and learn for the future)

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### Analysis and Finding

- State the relevant section of your policy and the “test” you will apply
- State the burden of proof you will be applying
- Apply the test, using the relevant portions of evidence

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## Analysis and Finding

- Your analysis should make it clear to the reader what your finding is and how you got there
  - If you simply summarize the evidence and state “I find by a preponderance of the evidence that Respondent violated University policy,” it says nothing about how you reached your decision
  - Discuss the relevant portions of the evidence as it relates to the test you are applying
- If you explain it in your report, it will be easier to explain your reasoning in the event of external review/litigation

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## Standard of Proof

- Three standards in the US:
  - Beyond a reasonable doubt
  - Clear and convincing evidence
  - ***Preponderance of the evidence***

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## If You Are Struggling to Reach a Finding

- Talk it out
- Write it both ways
- Is there a credibility concern?

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## Analysis and Finding

- If you find that the preponderance of the evidence does not support the conclusion that Respondent violated University policy:
  - If accurate, note that this does not mean the events did not occur as reported by Complainant
  - If appropriate, note the ways in which the Complainant's report is accurate and supported by the evidence (e.g., the events occurred as reported, but a reasonable person in Respondent's situation would not understand that Complainant did not consent to the conduct of a sexual nature at issue)

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## Important Things to Remember

- You do not have to be right, you have to act in good faith
- The preponderance of the evidence standard does not give you the luxury of feeling as though you are right
- You should feel confident that the evidence that was available to you supports or does not support a finding that your institution's policy was violated
- Avoid making findings as to whether Title IX was violated, but instead determine if institution's policy was violated  
Remember: institutions must comply with Title IX, not individual students

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## The Final Product

- Your report should be:
  - Easy to read (e.g., use the active voice, good grammar, etc)
  - Use consistent terminology
  - Look professional (e.g., professional font, formatting, etc.)
  - Consistent with other reports issued by your office
  - Able to stand on its own as a full description of how the matter was brought to the institution and what was done to address the concerns to the point your investigation reached its conclusion
- The final determination should be yours if your name is on the report

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## Final Notes About Report Writing

Be kind to yourself.

This work is hard, and it's harder to explain in writing.

Grow, but also give yourself credit for good work done.

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- Questions?

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## References

- Informed Survivor Letter (Guidebook, p 282)
- Investigation Checklist (Guidebook, p 284)
- Complainant Information Sheet (Guidebook, p 286)
- Respondent Information Sheet (Guidebook, p 288)
- Sample report format (Guidebook, p 286)
- Sample report (Guidebook, p 288)
- Sample "preponderance" language (Guidebook, p 286)
- Witness key (Guidebook, p 298)

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**BJA**  
Bureau of Justice Assistance  
U.S. Department of Justice

**THE NATIONAL CENTER FOR CAMPUS PUBLIC SAFETY**

**MARGOLIS HEALY**

[www.bja.gov](http://www.bja.gov)      [www.nccpsafety.org](http://www.nccpsafety.org)      [www.margolishealy.com](http://www.margolishealy.com)  
[info@nccpsafety.org](mailto:info@nccpsafety.org)  
 1.866.817.5817

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# XIII. ADJUDICATION: PROTECTING COMPLAINANTS, PROMOTING ACCOUNTABILITY, RESPECTING RIGHTS



**Trauma-Informed Sexual Assault Investigation and Adjudication Educational Program**

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### Day 1 & 2

- Welcome
- Overview of Title IX, Clery Act, and Institutional Obligations
- Community Coordination
- The Culture in Which We Live: Understanding the Rape Narrative
- Impact of Language
- Understanding the Effect of Trauma
- Sexual Assault First Response – First Impressions Matter
- Interviewing the Complainant
- Considerations Regarding Criminal Sexual Offenders

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### Day 3

- Interviewing the Respondent
- Investigative Strategies
- Report Writing and Appropriate Documentation

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## Day 4 Agenda

- Adjudications: Protecting Complainants, Promoting Accountability, Respecting Rights
- Adjudication: Appeals and Logistics; Mandatory Training
- Institutional Support and Self Care
- Program Close; Optional Q&A

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## Adjudication: Protecting Complainants, Promoting Accountability, Respecting Rights

Module 13

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## Module Objectives

- As a result of this module, participants will be able to:
  - Explain due process in the context of sexual assault investigations and adjudications
  - Compare the benefits and challenges of various adjudication models
  - Explain the legal standards that would be applied in cases filed by complainants and respondents

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## Make Your Case

### Alternative Adjudication Models

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## Clery Language on Process

- Per the Clery Act, annual training for campus officials must include information on:
  - “how to conduct [a] . . . hearing process that protects the safety of victims and promotes accountability.”

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## Sources of Rights

- Contractual/student handbook rights (rights granted by your institution)
- Constitutional Due Process (public institutions only)
- Rights granted by state constitution (publics)
- Rights granted by federal or state law (e.g., Title IX, Clery Act, FERPA, state nondiscrimination statutes)

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### Student Handbook/Contract Rights

- Courts routinely find student handbook procedures to be enforceable as contracts
- Concept applies to private and public institutions
- Since institutions wrote and can change procedures, courts usually:
  - Apply them strictly as written
  - Construe any ambiguities in favor of students

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### What is Constitutional Due Process?

- 14th Amendment
- Government cannot deprive you of a liberty or property interest without "due process"
- No right to go to college, but once attending, the right to remain a student is "an interest of extremely great value"
- Two types: procedural (what process is due) and substantive (action won't be arbitrary or capricious)

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### What Constitutional Process is Due in a Student Disciplinary Hearing?

Balance between

- The (responding) student's interest
- The institution's interest, including the burden of additional procedural requirements
- The risk of erroneous deprivation versus the burden of additional procedural requirements

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### Minimum Due Process Required When Student Could Face Expulsion

- Notice (statement of specific charge)
- An opportunity to defend oneself, including providing own witnesses and other evidence

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### Minimum Due Process Required When Student Could Face Expulsion

- An impartial decision maker
- A report of the findings
- Double check that more isn't owed by state constitution/law

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### Due Process and Title IX

- Per OCR: "Public . . . Schools must provide due process to the alleged perpetrator. However, schools should ensure that steps taken to accord due process rights to the alleged perpetrator do not restrict or unnecessarily delay the Title IX protections for the complainant."
- Should focus on rights of both complainant and respondent
- What one party gets, so does the other

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## “Prompt, Equitable” Procedures under Title IX

- In general, institutions must provide:
  - Notice of sexual harassment/violence grievance procedures and where complaints may be filed
  - Adequate, reliable and impartial review, including opportunity of complainant and respondent to present witnesses and other evidence
  - Designated and reasonably prompt time frames
  - Notice of the outcome of the complaint
  - Assurance that institution will take steps to prevent recurrence of harassment/violence and will correct its discriminatory effects

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## Informal Resolution

- OCR states that mediation is never appropriate for cases involving sexual assault
- OCR states that mediation may be used for other forms of sexual harassment
- Non-mediation-based informal resolution used in sexual assault cases must be voluntary and complainant must be able to request that informal process end and formal process begin at any time
- A neutral third party should be present (not just complainant and respondent)

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## Informal Resolution

- The institution should reserve the right to end mediation or other informal process and move to formal process as it determines appropriate
- Regardless of what the parties may agree to, the institution should be certain that the resolution meets its needs to ensure the behavior is not repeated toward complainant or others

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### Alternative Adjudication Models

- Structure of procedures is not mandated by law
  - Choices could include, e.g.:
    - Stand-alone sexual misconduct investigation/hearing procedures
    - Stand-alone SM/DV/DV/Stalking investigation/hearing procedures
    - General investigation/hearing procedures that apply special Title IX/Clery-compliant features only in SM/DV/DV/Stalking cases

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### Alternative Adjudication Models, cont.

- Structure of procedures is not mandated by law – Choices could include, e.g.:
  - “Single investigator” models in which well trained, experienced investigators:
    - Make findings, assess credibility, and make **recommendation** as to whether policy was violated
    - Make findings, assess credibility, and make

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### Alternative Adjudication Models, cont.

- Sanctioning alternatives in “single investigator” models:
  - Specially-trained panel (with or without option for parties to address panel)
  - Specially-trained administrator(s)
    - Could have one administrator do all sanctioning, or
    - Could have different administrators for different respondents (students, faculty, staff)

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### Individual Disciplinary Proceedings

- Individual cases are not about statistics
- Decision in every case must be based on preponderance of evidence presented
- Cannot fill in evidentiary gaps with statistics, advocacy or personal beliefs
- Process must be fair and impartial to each party

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### Individual Disciplinary Proceedings

- No Contact Orders for both parties are commonplace; should be given no weight
- Exclusion of respondent from campus is interim precaution; should be given no weight
- College may proceed without active involvement of complainant; absence should be given no weight
- Base conclusions on impartial view of evidence presented

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### Civil Case Examples

- Cases brought by complainants
- Cases brought by respondents
- Common pitfalls, themes and lessons learned

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## XIV. ADJUDICATION: APPEALS AND LOGISTICS



Trauma-Informed Sexual Assault Investigation and Adjudication Educational Program

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Adjudication:  
Appeals and Logistics

Module 14

The National Center for Campus Public Safety

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Module Objectives

- As a result of this module, participants will be able to:
  - Explain logistical considerations for hearings and related meetings
  - Describe the requirements associated with an appeals process

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### “Advisor of Choice” Issues

- Clery: accused and accuser are entitled to same opportunities to have others present at disciplinary proceeding, including opportunity to be accompanied to any meeting or proceeding by an advisor of their choice
- “Advisor of choice” could include legal counsel
  - Consider victims’ rights groups as resources for complainants
- “any meeting” includes all related meetings
- Regulations: “may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties”

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### Title IX Minimum Procedural Requirements

- Both parties must be afforded similar and timely access to any information that will be used at a hearing, similar pre-hearing meetings, ability to present character witnesses, review statements, etc.

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### Title IX Minimum Procedural Requirements

- Standard of Proof:
  - Clery Act requires that institutions state what standard will be used (without specifying what it must be)
  - OCR requires that institutions use preponderance of the evidence standard in sexual violence and sexual harassment cases
  - Preponderance of evidence standard means “more likely than not”
- Contrast with higher standards

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### Title IX Minimum Procedural Requirements

- Per OCR, no separate procedures for student athletes
- OCR recommends policy statement to effect that:
  - Institution’s primary concern is student safety
  - Other rules violations will be addressed separately from a sexual violence allegation, and
  - Drug/alcohol use never makes complainant at fault for sexual violence

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### Title IX Minimum Procedural Requirements

- Policies must specify time frames in which:
  - Major events in investigations/hearings will occur
  - School will conduct investigation and adjudication
    - In OCR experience, a typical investigation takes 60 days, excluding appeals, absent extenuating circumstances
    - Note that OCR does not require investigations to be completed within 60 days
  - Parties will be notified regarding outcome of complaint
  - Parties may file an appeal, if applicable

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### Impartiality

- Impartial fact finder/decision-maker
  - No malice, no bias, no conflict of interest
  - Consider giving the parties an opportunity to object to the decision-maker on the basis of lack of impartiality
  - No legal constraints on who may be decision-maker, but ensure you can act throughout the

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### Decision-maker Qualifications

- Impartial fact finder/decision-maker
  - Per Clery regulations, involved officials must have no conflict of interest or bias for or against the accuser or the accused
  - Per OCR, fact finder/decision-maker should have adequate training or knowledge regarding sexual violence
  - Per Clery, must have annual training re: domestic violence, dating violence, SA and stalking

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### Hearing Logistics

- Discussion:
  - What works?
  - What doesn't?

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### Hearing Logistics

- Open or closed hearing?
  - Suggest closed, even if open for other matters
  - Never let this decision rest with respondent
- Timing
  - It will be an emotional situation for both parties. Be certain to allow time for breaks, and take them as scheduled (and as appropriate when requested)

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### Hearing Logistics

- Physical layout
  - If complainant and respondent will be in the same room, allow for physical separation
  - Consider visual separation, such as a screen

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### Hearing Logistics

- If institution allows one party to be present for entire hearing, it must do so equally for both
- Use neutral terminology (e.g., complainant and respondent, not victim or alleged perpetrator)

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### Hearing Logistics

- Evidence
  - Do not allow information regarding extraneous matters, such as complainant's past sexual history with others, sexual reputation, etc.
  - If forensic evidence is offered, have an impartial trained forensic examiner available to interpret the information
  - Background information gathered about respondents
- Per OCR, must maintain documentation of hearing (written findings of fact, transcripts or audio recordings)

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### Hearing Logistics

- Testimony
  - Consider allowing complainant to testify outside of the presence of respondent, but in a manner that still allows respondent to hear complainant, such as via telephone or behind a screen
- Cross-Examination
  - OCR discourages direct cross-examination
  - Have parties submit questions to the hearing officer/panel, which determines which questions to ask (e.g., removing questions about past sexual history, etc.)

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### Assessing Credibility

- Affect, demeanor
  - Separate nerves from evasiveness, untruthfulness
- Does who, what, why, when, where compare well with other witnesses?

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### Assessing Credibility

- Is chronology:
  - Internally consistent?
  - Consistent with other witnesses?
- Corroboration of documents, emails, texts, social media postings, photos/ video, receipts, etc.

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## Trauma-Informed Questioning

- Keep effects of trauma in mind when framing questions
- Do not engage in "victim-blaming"
- Do not assume that complainant is not credible simply due to memory gaps, timing of reporting, other potential trauma-related issue are present
- However: cannot automatically assume credibility where trauma may be present; decision must be based on reasonable weighing of preponderance of evidence

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## Closing a Hearing

- Remind parties of institution's prohibition on retaliation (direct or indirect) and how to report any suspected retaliation
- Inform parties of what to expect in terms of timing and notification of decision
- Remind parties of available support resources

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## Sanctioning

- Per OCR, if respondent is found to have violated policy, sanctions must be aimed at eliminating hostile environment, preventing its recurrence and addressing its effects
  - Impact on the complainant should be minimized
  - Consider consulting with Title IX coordinator regarding appropriate sanctions and to ensure consistency
  - Consider how to address the effects of the harassing behavior on complainant (see p. 16 of 2011 DCL for suggestions from OCR)
  - Consider whether broader actions, such as policy revisions or campus-wide education, are appropriate

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### Notice of Outcome

- Per the Clery Act, both the accused and accuser shall be **simultaneously** informed in writing of:
  - The outcome of disciplinary proceeding arising from DV, DV, SA, or stalking

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### Notice of Outcome

- Notification of sanctions is required under the Clery Act and permitted under FERPA when the matter involves sexual violence
- In cases that involve sexual harassment, but not sexual violence, the complainant can only be informed of those sanctions directly related to the complainant, such as an instruction to the respondent not to have any contact with complainant

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### Appeals

- Not required by Title IX or Due Process
- Recommended by OCR
- If available, must be available to both parties

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### Appeals

- Common bases
  - Newly acquired evidence
  - Prejudicial error
  - Abuse of discretion (decision was arbitrary and capricious)
  - Sanction was disproportionate to offense

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### Appeals

- Per the Clery Act, both the accused and accuser shall be simultaneously informed in writing of, among other things
  - The procedures for appealing result
  - Any change to the result prior to it being finalized
  - When the result become final

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## XV. TRAINING TO COMPLY WITH OCR TITLE IX GUIDANCE AND THE CLERY ACT



**Trauma-Informed Sexual Assault Investigation and Adjudication Educational Program**

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**Mandatory Training to Comply with OCR Guidance and the Clery Act**

Module 15

The National Center for Campus Public Safety | Module 15 | 2

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**Module Objectives**

- As a result of this module, participants will be able to:
  - Identify OCR guidance, Clery Act requirements and best practices for training
  - Identify target audiences for training
  - Identify components of training requirements
  - Develop a training strategic plan

The National Center for Campus Public Safety | Module 15 | 3

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“Combined with **education and training programs**, these measures can help ensure that all students and employees recognize the nature of sexual harassment and violence, and understand that the school will not tolerate such conduct...**Training** for administrators, teachers, staff, and students also can help ensure that they understand what types of conduct constitute sexual harassment or violence, can identify warning signals that may need attention, and know how to respond.” (Page 5 – 6, DCL)

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### Specific Recommendations from DCL

- Training for administrators, teachers, staff, and students can help ensure they understand sexual harassment and violence; (Page 6, DCL)
- Title IX coordinators must have adequate training; (Page 7, DCL)
- Law enforcement unit employees should receive training; (Page 7, DCL)
- Those involved in implementing Title IX grievance procedures must have training or experience in handling complaints (Page 12, DCL)

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### Title IX Coordinators

- Title IX coordinators should receive training on the following:
  - What constitutes sexual harassment, including sexual violence;
  - Institution’s obligations to address allegations and its grievance procedures;
  - How to conduct Title IX investigations; and,
  - Link between alcohol and drugs and sexual harassment and violence
    - Best practices to address the link

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### Others Involved

- Anyone involved in processing, investigating, or resolving complaints must have training **or experience**:
  - Institution’s obligations to address allegations;
  - What constitutes sexual harassment, including sexual violence;
  - The institution’s grievance procedures;
  - How to conduct Title IX investigations; and,
  - Link between alcohol and drugs and sexual harassment and violence
    - Best practices to address the link
  - Should include applicable confidentiality requirements
  - Should be targeted, comprehensive training program

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### Investigators & Hearing Officers

In sexual violence cases, fact-finder and decision-maker should have adequate training or knowledge regarding sexual violence. (Page 12, DCL)

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### Campus Public Safety

Because sexual violence complaints often are filed with the school’s law enforcement unit, all school law enforcement unit employees should receive training on the school’s Title IX grievance procedures and any other procedures used for investigating reports of sexual violence. In addition, these employees should receive copies of the school’s Title IX policies. (DCL, pg. 8)

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### From Univ. of Montana

- Sexual Assault response requires specialized training and knowledge
- **First Response** is different than **Investigation**
- "Victim-Centered" is the focus of First Response
- Documentation Is Key
- An effective campus police department does not operate in a vacuum

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### From Univ. of Montana

- Consistent and on-going training
  - taking statements from individuals reporting sexual assault;
  - impact of officers' and detectives' attitudes toward victims on investigative outcomes;
  - impact of bias in law enforcement agencies' response to sexual assault and training to ensure bias does not undermine investigations, damage rapport with victims, or re-traumatize victims;
  - presentations by victims of sexual assault or presentations that otherwise adequately convey victims' experiences.

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### From Univ. of Montana

- Consistent and on-going training
  - effective law enforcement response to non-stranger assault, drug- and alcohol-facilitated assault, and sexual assault where the victim is incapacitated or otherwise unwilling or unable to clearly describe the assault;
  - core scientific concepts related to sexual assault including counterintuitive behavior, tonic immobility, and the effects of trauma on memory;

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### From Univ. of Montana

- Additionally, detectives who conduct sexual assault investigations must have additional in-depth training in sexual assault investigations;
- Supervisors must receive specialized training on how to review sexual assault responses and investigations for comprehensiveness and to detect

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### Who Will Help Me?

From the "National Domestic Violence Hotline, *Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses*. Washington, DC (2015)

- Law enforcement responses to survivors must be based on the following principles:
  - Treating survivors with dignity and respect
  - Giving survivors their "voice" during encounters
  - Being neutral and transparent in their actions

<http://www.thehotline.org/resources/law-enforcement-responses>

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### From UNM

- Where a college or university has its own LEA, sexual violence complaints are often filed with the school's law enforcement unit.
- Therefore, **all** school law enforcement unit employees should receive training on the school's Title IX grievance procedures in addition to training on the law enforcement response to and investigation of sexual assault.

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### From UNM

- A criminal complaint should not be unfounded following an initial complainant interview or perceived complainant reaction to the sexual assault...
  - Complainants of sexual assault may recant or decline prosecution for various reasons:
    - fear of retaliation by the offender;
    - concern about not being believed;
    - hesitancy regarding the criminal justice system;
    - loss of privacy.
- Reluctance is neither indicative of a false report nor reason to forego a strong, evidence-based investigation

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### From UNM

- To reduce potential gender bias, law enforcement agencies should have:
  - clear, unequivocal policies about the proper handling of sexual assault crimes
  - Training about these policies and about effective responses to sexual assault crimes more generally; and
  - supervision protocols and systems of accountability to ensure that officers responding to sexual assault crimes act in accordance with these policies and trainings.

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### Responsible Employees

- Employees who regularly interact with students (those likely to witness or receive reports of sexual harassment and violence) including teachers, school law enforcement unit employees, school administrators, school counselors, general counsels, health personnel, and resident advisors.
  - How to recognize and appropriately address

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### Other Employees

- Other employees should know how to recognize sexual harassment or violence, can identify warning signs, and know how to respond. (Page 6, DCL)
  - This would be general awareness training

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### Clery Act Required Training

- (668.46(k))...As required by paragraph (b)(11)(vi) of this section, an institution must include in its annual security report a clear statement of policy that addresses the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking and that -
  - Provides that the proceedings will- (668.46(k)(2) )
    - Be conducted by officials who at a minimum receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability; (668.46(k)(2)(ii))

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### Training Requirements

- Law Enforcement Personnel – focus on the impact of trauma, notifying students of their rights/campus resources, reporting to Title IX Coordinators, the institution’s grievance procedures
- Investigators and Adjudicators – focus on grievance procedures, confidentiality, conflicts of interest, “preponderance of the evidence” standard, consent in the context of drug and alcohol use, the impact of trauma
- Health and Counseling Staff – special focus on survivors’ services and the institution’s internal grievance procedures

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## What To Do

- Determine who needs training
- Develop a training plan
- Prioritize the various groups based on role in process
- Determine what specific training each group needs

Beyond Checking the Box... Effective Sexual Harassment/Assault Training, Education and Prevention Efforts, Pamela Healy, J.D., Senior Associate Director & Deputy Title IX Coordinator, Office for Institutional Equity, University of Michigan

The National Center for Campus Public Safety

Module 15 - 25

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## XVI. INSTITUTIONAL SUPPORT AND SELF CARE



**Trauma-Informed Sexual Assault Investigation and Adjudication Educational Program**

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**Institutional Support and Self Care:**  
Taking Care of Yourself So You Can Take Care of Others

Module 16

The National Center for Campus Public Safety      Module 16 - 2

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**Module Objectives**

- As a result of this module, participants will be able to:
  - Identify the signs of burnout
  - Recognize the importance of organizational support in doing trauma-based work
  - Describe what organizations can do to support staff
  - Build a coping tool box to prevent burnout

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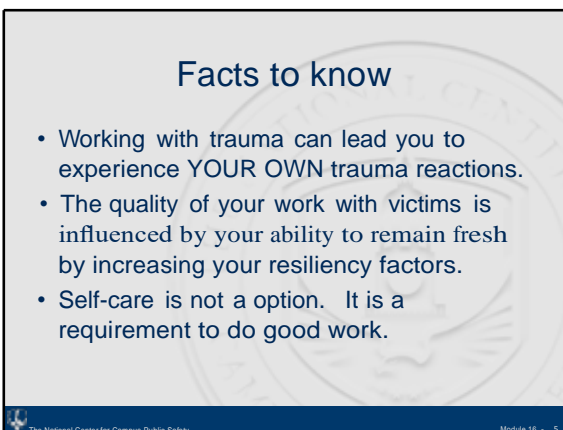
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### Facts to know

- Working with trauma can lead you to experience YOUR OWN trauma reactions.
- The quality of your work with victims is influenced by your ability to remain fresh by increasing your resiliency factors.
- Self-care is not a option. It is a requirement to do good work.



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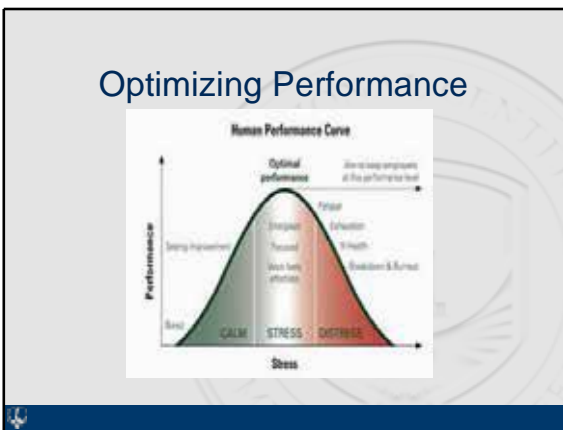
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### Optimizing Performance



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## Burnout

- State of physical, emotional, psychological, and spiritual exhaustion resulting from chronic exposure to (or practice with) populations that are vulnerable or suffering. (Pines and Aronson, 1998)
- Cumulative and progressive over time
- Human service work is at HIGH RISK for burnout

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## Signs of Burnout

- Emotional exhaustion: When a professional's emotional resources are depleted due to the chronic and constant needs, demands, and expectations of clients, supervisors, and organization.
  - Negative emotions
  - Lack of motivation
  - Hyperalertness or slowed responsiveness

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## Signs of Burnout

- Behavioral:
  - Sleep disturbance
  - Substance use and/or dependence
  - More than normal resistance to checking email, calling the office, daily work-related tasks
  - Uncharacteristic interpersonal problems with family, friends, co-workers
  - Social withdrawal and eating issues

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### Signs of Burnout

- Depersonalization: Change in interpersonal thoughts, feelings, and behavior towards clients and peers. Detached response to work, overly cynical attitude
  - Difficulty seeing the work for what it is, apart from other cases you've been involved in
  - Your thoughts veer towards "always," "never," "seen it all before and I know how this ends"

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### Signs of Burnout

- Reduction in one's sense of personal accomplishments
  - Chronic inability to see accomplishments, feel empowered, competent
  - Chronic hopelessness about work and the ability to overcome injustice
- Grandiosity
  - Sense of omnipotence about one's work leading to an inability to listen to others & see the work for what it is

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### What Leads to Burnout

- Vicarious traumatization: Process of cognitive change that stems from chronic engagement with traumatized individuals
- Secondary traumatic stress: Natural and consequential behaviors resulting from helping or wanting to help a traumatized individual(s)
- Compassion Fatigue: Emotional and physical fatigue resulting from the use of chronic empathy with traumatized individuals

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### Individual Risk Factors

- Lack of experience combined with high caseload
- Lack of appropriate formal supervision
- Caseload weighted most towards extreme cases
- Own trauma history
- Pre-existing mood disorders or anxiety
- Maladaptive coping skills in response to trauma work

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### Risk Factors: The Organization

- Not enough staff
- Inadequate supervision
- Lack of resources
- Lack of support from professional colleagues
- Organizational culture can work against the mission of its staff:
  - Denial about the impact of vicarious traumatization, secondary traumatic stress, and compassion fatigue
  - Competing commitments to ending sexual violence on-campus

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### Small group activity

- In your work, what makes it difficult to take the time to “re-energize?”
- What do you notice in yourself: emotional, behavioral, cognitive?

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## Optimizing Performance




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## Increasing Resilience

- Organizational responsibility:
  - Adequate staff/FTE's
  - Competent supervisors and mentors: A network of healing
  - Increase collaboration with other departments and community partners
  - Know about burnout and do everything you can to prevent and/or remediate it

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## Increasing Resilience

- Organizational responsibility:
  - Know about burnout and do everything you can to prevent and/or remediate it
  - Consistent training and supervision of staff and supervisors
  - Work on staff dynamics to increase cohesion
  - Practice what you preach: incorporate self-care into your organizational practices

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## Increasing Resilience

- Organizational responsibility:
  - Creating voluntary “time out” for workers from stressful work
  - Organizational flexibility:
    - awareness of individual differences in workers and capitalizing on worker strengths
    - Providing variety in workload
  - Positive work conditions:
    - Comfortable physical work environments
    - Ergonomic office furniture

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## Increasing Resilience

- Strategies for individuals:
  - Current research demonstrates the power of mindfulness-type activities on increasing overall resilience to difficult situations
  - Activates brain to increase concentration, relaxation response
  - Moves the information you are receiving from your mind through your body and OUT

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## Increasing Resilience

- Self-care
  - Extending care to the various domains of oneself including the physical, emotional, mental, and creative.
  - Ideally, should have little or no negative side-effects
  - A process that never ends. One must practice self-care continuously

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## Increasing Resilience

- Self-care at work:
  - Stay organized: keep on top your emails, deadlines; make checklists to decrease nightly “ruminations”
  - Know your limits: know when you can’t make a deadline and make others aware you need support
  - Take breaks with others and talk about something else

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## Types of Self-Care

- Social support
  - Professional network
  - Peers: quality not quantity
  - Family
  - Social activities
    - Gym
    - Community events
    - Peer networks
    - Coffee or tea with friends/colleagues

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## Types of Self-Care

- Cognitive Strategies
  - Altering one’s perceptions:
    - Journaling: Gratitude practice, Positive affirmations
    - Mindfulness
    - Radical acceptance
  - Healthy distancing:
    - Maintaining sensitivity and care while employing a healthy detachment from the situation

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## Mindfulness

- Paying attention in a particular way: on purpose, in the present moment, and non-judgmentally. (Kabat-Zinn)
- May lead to relaxation, but not always.
- Aids in processing traumatic reactions to complainants accounts out of your mind and body.

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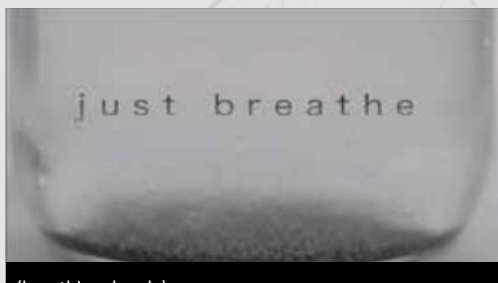
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## “Just Breathe”




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## Opening Up the Mind

- “Words stake out territory in your brain just as people and objects do.”
- Surviving Survival: The Art and Science of Resilience by Laurence Gonzales

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### Writing Exercise: Getting a different perspective

- Think about something that you've been struggling with, or something that has been disturbing you in recent times. Bring it and its details to mind.
- Write about it in third person.
- What advice would you give this person?
- Write down what you learned about yourself through this exercise.

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### Types of Self-Care

- Awareness
  - Remember how difficult this work is, whether you are a veteran or starting fresh
  - Acknowledge if you are having a difficult time
  - Be aware of other stressful events in your life
  - Know your limits!

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### Types of Self-Care

- Awareness vs Avoidance
- Studies show that awareness of your current emotional experience leads to resilience, with a decrease in later psychopathology.
- Avoidance where you “shut away” experience may lead to immediate relief, but causes later distress

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## Types of Self-Care

### Awareness

- A daily activity
- For overall health and resilience

### Avoidance

- For crisis situations
- To manage distress in the moment

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## Types of Self-Care

- Behavioral
  - Exercise or other body-oriented activities
  - Hobbies
  - Doing OTHER WORK
  - Focusing on the mundane in your personal life
    - Walk the dog, clean your house, do the dishes
  - Use other parts of your brain: journal writing, art, puzzles
  - Humor
  - Rest AND Vacation
  - Self-help books
    - Tapping In by Laurel Parnell

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## Types of Self-Care

- Professional:
  - Personal therapy: Perhaps trauma-oriented?
  - Massage or other bodywork
  - Support groups

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## WHAT WILL YOU PUT IN YOUR COPING TOOL BOX?

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## KEEP YOURSELF STRONG SO YOU CAN STRENGTHEN OTHERS

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[www.bja.gov](http://www.bja.gov)

[www.nccpsafety.org](http://www.nccpsafety.org)  
[info@nccpsafety.org](mailto:info@nccpsafety.org)  
1.888.817.5817

[www.margolishealy.com](http://www.margolishealy.com)

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## XVII. PROGRAM CLOSE



**Trauma-Informed Sexual Assault Investigation and Adjudication Educational Program**

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**Trauma-Informed Sexual Assault Investigation and Adjudication**

Program Close

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**Wrap Up**

- Review course goals
- Review key topics
- Complete evaluations and survey

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### Training Purpose

To provide College and University administrators involved in investigating and adjudicating sexual misconduct cases information and resources necessary to conduct trauma-informed investigations in line with evolving practices.

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### Agenda Overview

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|--|--|
| 2 - Overview of Title IX, Clery Act, and Institutional Obligations | 9 - Criminal Offenders                   |
| 3 - Community Coordination   | 10 - Interviewing the Respondent         |
| 4 - Culture: Rape Narrative  | 11 - Investigative Strategies            |
| 5 - Impact of Language   | 12 - Report Writing                      |
| 6 - Effects of Trauma  | 14 - Adjudication: Respecting Rights     |
| 7 - First Impressions Matter                                       | 14 - Adjudication: Appeals               |
| 8 - Interviewing the Complainant                                   | 15 - Mandatory Training                  |
|  | 16 - Institutional Support and Self Care |

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### Course Goals

- Identify and acquire resources and tools to conduct trauma-informed response, investigations and adjudications in a manner that protects complainants, respects the rights of respondents and is consistent with legal requirements and promising trauma-informed practices.
- Understand and correctly apply the statutory and regulatory requirements and OCR guidance of most relevance to investigations/adjudication processes.

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### Course Goals

- Identify and understand how to create partnerships that allow efficient and effective trauma-informed response.
- Understand the impact of language as part of an effective trauma-informed response and on campus culture.

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### Course Goals

- Understand the realities and impacts of rape myths and rape culture on sexual assault disclosure and reporting, as well as on trauma-informed response, investigation and adjudication.
- Understand the neurobiology of trauma and how the impact of trauma on the brain affects reporting, memory and getting support.

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### Course Goals

- Understand how to write reports that contain relevant information, reflect the effort of the institution and explain how decisions were reached. Identify techniques to assess and improve report writing.
- Understand the importance of taking care of yourself (individually and institutionally), so you can take care of others.

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### Key Topics

- Review identified participant key topics
  - If we covered the topics, what information can you share?
  - If not, do we need to cover them?
    - Do we need to cover them now?

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### Evaluations/Post Session Survey

- Please complete evaluations
  - Honest feedback
  - If you rank less than satisfactory, please indicate what we can do to improve
  - Let us know what you liked

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Thank you

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