

# Mandatory Reporting: Harmful?

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## The Numbers:

- **1 in 5 women will experience a rape or attempted rape while at college**
- **Only an average of 12% will report the assault**
- **Number 1 reason to not report: “fear reprisal from assailants or others.” (40%)**

Heldman and Dirks 2014



## **New Focus on College Sexual Violence**

- White House, the Department of Education, Department of Justice
- Schools are increasing their prevention and response
- Many now have policies that match federal standards
- Many are developing training programs for students, faculty, and staff to ID, prevent, and appropriately respond
- Many are developing better ways to investigate sexual violence crimes



## **New National Focus on College Sexual Violence (continued)**

- One element of campus response that threatens to undermine these successes is the mandatory reporting requirement.
- “Faced with campus policies that require reporting by every employee, victims lack a safe space and are going to go underground.” (Sokolow ED of ATIXA 2013).

## Defining Mandatory Reporting:

An institutional policy or state statute that

- Requires all (or nearly all) employees to report harassment and assaults to campus authorities

**OR**

- Requires campus employees to report all assaults to local law enforcement

**OR**

- Requires all employees to report to a Title IX Coordinator who then, in turn, reports to local law enforcement.
- Bottom Line: they are “All Inclusive:”
  - **Most employees must report**
  - **That info MUST get to law enforcement**

## Exceptions to Mandatory Reporting

- Doctors/Nurses
- Counselors
- Priest
- Victim Advocate



## Federal Mandates for Reporting

1. Clery Act
2. Title VII
3. Title IX
4. Campus SaVe Act (VAWA Amendments 2013)
5. Dear Colleague Letter from Vice President Biden 2011



## Clery Act

- Mandates annual reporting (to feds and community) on 15 crime categories including homicide, rape, incest, domestic violence, dating violence, stalking, robbery, aggravated assault, arson, theft....
- Mandates institutions identify “**campus security authorities**” who must report crimes
- Allows colleges to “exclude some faculty some of the time and many professional staff from the obligation to report.”

ATIXA 2015



## Title VII (Civil Rights Act of 1964)

- Focuses on sexual harassment in the workplace
- Mandates “duty to report” for **supervisors**
- Some faculty and some staff would have to report

ATIXA 2015



## Title IX

- Focuses on gender based discrimination (sex offenses, domestic violence, dating violence, stalking)
- Obligates colleges to provide safe environments for the learning of all students
- Mandates “**responsible employees**” must report the discrimination/assault/harassment

ATIXA 2015



## Campus SaVE Act (VAWA amendments 2013)

- Schools must respond to and prevent sexual violence on campuses (ATIXA 2015)
- Requires updated policies and procedures (ATIXA 2015)
- The Campus SaVE Act “broadens Clery reporting requirements to mandate fuller reporting of sexual violence to include incidents of domestic violence, dating violence, and stalking.” (Know Your IX)



## Dear Colleague Letter 2011

- States that sexual harassment and violence interferes with the right to education free of discrimination.
- Colleges must take “immediate and effective steps to end harassment and violence.”
- Tell students they have a right to talk to law enforcement and file a complaint

ATIXA 2015

## Key Terms:

- Clery Act: **Campus Security Authorities**
- Title VII: **Supervisors**
- Title IX: **Responsible Employees**

## “All Inclusive” Mandatory Reporting?

*“Title IX is widely misunderstood on campuses, and in their zeal to deal with every single instance of sexual misconduct, college administrators are in danger of seeing a drop in reporting from victims.”*

Sokolow 2013

## Intent:

- Correct the failures of the past (colossal discounting of SV)
- Respond to ALL Reports
- Requires all to address and eliminate SV
- Streamlines and simplifies process
- Appeases the lawyers?

*“Faced with campus policies that require reporting by every employee, victims lack a safe space and are going to go underground.”*

Sokolow 2013

## Benefits of “All Inclusive” Mandatory Reporting Policy:

It "better ensures the involvement of an independent entity, which is beneficial for both the school and the student."  
(Bidwell 2015)

"Without a notifying policy at all, authorities are left in the dark, without the opportunity to offer support and services to complainants, or discover other evidence to prosecute the crime." (Cohen 2015)

"Facing calls for greater transparency ...colleges and universities view such one-size-fits-all policies as a way to streamline and simplify reporting processes and assure that illegal abuse comes to light." (Flaherty 2015)

## Problematic Elements of an “All Inclusive” Mandatory Reporting Policy:

1. Likely reduces reporting and silences survivors
2. Violates the trust and communication established between teacher and student
3. Effectively eliminates student rights to campus remedies
4. “Infantilizes” survivors
5. Forces schools to violate VAWA





## 1 Problem: Silencing Effect

- Virginia college students lobbied against a bill requiring mandatory reporting because they felt that “mandatory reporting would actually scare away victims who aren’t ready to take their case to the criminal justice system.” (Kingkade 2015).
- "When you have mandatory reporting, especially since we have a criminal justice system that is still not very good in dealing with survivors of sexual assault, you do absolutely run into a situation where you’re going to decrease reporting," said Lisa Maatz VP of government relations at the American Association of University Women (Bidwell 2014)



## 2 Problem: Violates Student/Teacher Trust

- Robert Milardo, a professor at Maine, says the mandated reporter policy as “basically one-sided, in that it serves the needs of the institution, the University of Maine, to report and investigate allegations of sexual assault and related issues, but it doesn’t deal effectively with student advocacy.” Students should have a “confidential source they can go to -- and that includes faculty -- to discuss things that are of concern to them,” he said. (Flaherty 2015).
- The AAUP report says that faculty members should not be mandated reporters of sexual assault, partly due to the chilling effect that status could have on communication with students. (Flaherty 2013).
- Some faculty will not comply. Is failure to comply a violation worthy of dismissal? (they can be “subject to disciplinary action” ATIXA 2015)



### **3 Problem: Limits Campus Remedies Guaranteed by Title IX**

- Prevents student from the ability to get campus Title IX recourse. (Bidwell 2015, NASPA Open Letter)
- Title IX offers interim measures that a survivor cannot access without telling the Title IX authority, but the Title IX authority is often obligated to report to law enforcement.



### **4 Problem: Reduces Victims to status of Children**

- Many feel that these efforts [mandated reporting] would single out adults [survivors], ...and treat them "legally as children."
- "The fact that those infantilized in this manner are mainly women and girls makes these bills particularly contrary to Title IX's purposes," (An Open Letter, Bidwell 2015).

## 5 Problem: Forces Schools to Violate VAWA 2013

Conflicts with VAWA which states that colleges must “tell victims of sexual assault (as well as dating violence, domestic violence and stalking) that they have the right to decline to notify law enforcement.

Mandating the reporting of incidents to law enforcement, then, “would negate the student’s right to decline to notify law enforcement of their report”

Bidwell 2015

## BIGGEST Problem: Not Survivor Centered/ Trauma Informed

“Although the intent is to help make this a safer campus and to be sure we are being responsive to a victim's needs, some students may feel they cannot talk about an incident for fear of losing control.” Flaherty 2015

“Any policy or procedure that compromises, or worse, eliminates the student’s ability to make his/her own informed choices about proceeding through the reporting and adjudication process—such as mandatory reporting requirements--...not only reduces reporting rates but may be counter-productive to the victim’s healing process.” ACHA Campus Violence White Paper.

For victims, “justice means more than punishment of the perpetrator, which is the primary—often only—remedy that they criminal justice system can provide.” (NASPA Open Letter)

## National Agencies Concerned about Mandatory Reporting Requirements

- American Association of University Professors
- American Associate of University Women
- American College Health Association
- Association of Student Conduct Administrators
- Casa de Esperanza: National Latin Network
- Clery Center for Security On Campus
- Domestic Violence Legal Empowerment and Appeals Project
- Education Law Association
- Futures without Violence
- International Association of Campus Law Enforcement Administrators
- Jewish Women International
- Know Your IX
- National Alliance to End Sexual Violence
- National Coalition Against Domestic Violence
- National Council of Jewish Women
- National Domestic Violence Hotline
- National Organization of Sisters of Color Ending Sexual Violence
- Student Affairs Administrators in Higher Education
- Victim Rights Law Center

## How do Survivors feel about Mandatory Reporting?

- NO: Of 358 abused women (domestic violence) 68% did not prefer a mandatory reporting. “Women who had been abused in the past year were more likely to oppose mandatory reporting....and younger women were more likely than older women to oppose mandatory reporting requirements.” (Rodriguez et.al. 2002).
- YES: Researchers found that only 12 % of hospital patients (not necessarily victims) would be less likely to seek medical care for DV because of a mandatory reporting law. “Only rarely did mandatory reporting laws appear to adversely affect a patient’s decision to seek medical care.” (Houry et.al.) (N=577)
- YES and NO: In a phone survey, women overwhelming supported mandatory reporting (72%) while only 59% of abused women supported it because they felt that “victims would be less likely to disclose abuse, would resent someone else having control, and that reporting would increase the risk of perpetrator retaliation.” (Sachs, et. Al. 2002). (N=845)

## Solutions 1: Offer Semi-Anonymous Reporting

AIXA suggested policy: “Supervisors must report all incidents, with full detail, to the Title IX Coordinator. **Non-supervisory employees** (this would include RAs...) are required to report but are empowered to make what we call Jane or John Doe reports, at least initially. Jane/John Doe reports include all the details of the incident except for anything that would personally identify those who were involved. These reports are also to be passed on to the Title IX Coordinator.”

“This approach is an effective compromise, allowing all employees to report but enabling some to withhold full information when a victim wishes them to or their confidential position requires it. With this approach, the coordinator follows up to investigate those claims that victims want investigated, without disempowering victims who may want resources and services rather than formal institutional action. Finally, this approach can be readily taught to employees without overcomplicating the legal duties.” (Sokolow 2013).

## Solutions 2: Allow for Third Party Reporting

Callisto Project: victims choose when to report assaults and who receives it. Created by Sexual Health Innovations, they developed the system to keep the survivors needs in at the forefront. (Kingkade 2014).

<https://www.projectcallisto.org/>

## Solution 3: Expand Number of Non-Mandatory Reporters

- Anita Levy, Associate Secretary of the American Association of University Professors (AAUP) “recommend[s] that faculty members be made mandated reporters only if they’re serving in some kind of legally mandated reporter role, such as a study-abroad advisor or something like that.” (Flaherty 2015).
- As a campus, make conscious decisions on who will be mandatory reporters
- Train more people on campus to be victim advocates

## Solution 4: Become Survivor Centered/Trauma Informed

- What do crime survivors need?
  - Empowerment: ability to make choices for themselves
  - Control: ability to control who gets what information
  - Voice: ability to tell their stories themselves
  - Safety: ability to determine what that means?
- What do schools need to support the victim?
- What does the school need to protect the community?
- What does the school need to protect itself legally?



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