

Campus Sexual Violence Following the Passage of 'Enough is Enough':

Recommendations from the Field

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New York State Campus Sexual Violence Working Group

List of all organizations signed on

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Contents

INTRODUCTION	3
A note on language and content.....	3
Purpose.....	4
I. A ROADMAP TO PROGRESS	5
Coordinated and Streamlined Communication to Students	5
Creation of appropriate policies with assigned personnel trained and responsible for this work	6
Use Existing Resources and Expertise.....	7
A Multidisciplinary Coordinated Approach	8
II. RECOMMENDATIONS REGARDING POLICY IMPLEMENTATION OF ‘ENOUGH IS ENOUGH’	9
Using Data to Ensure Responsive Policies.....	10
Affirmative Consent Definition.....	10
Defining Incapacitation.....	11
Revision of drug and alcohol policies	12
Student Bill of Rights.....	12
III. BEST PRACTICES IN RESPONDING TO SEXUAL VIOLENCE AND IPV	13
IV. BEST PRACTICES IN THE INVESTIGATION AND ADJUDICATION OF SEXUAL VIOLENCE INCIDENTS THROUGH THE COLLEGE DISCIPLINARY PROCESS	15
Legislatively Recommended Investigation and Adjudication Procedures	15
Acute Care.....	19
Evidence Collection and Preservation.....	20
V. BEST PRACTICES IN PRIMARY PREVENTION	21
Legislatively Recommended Prevention Activities	21
How to Pick the Right Program for your School?	22
Descriptions of the Types of Prevention Programs.....	23
Appendices.....	25
Appendix A: Some Commonly Used Terminology.....	25
Appendix B: Reviewing and Approving the Use of Sexual Violence Prevention Programs, Strategies, and Activities.....	25
Appendix C: Finding Local Resources.....	25
Appendix D: Prevention Program Chart.....	26

INTRODUCTION

The following document was created by the NY State Campus Sexual Violence Working Group (hereafter referred to as the Working Group), which consists of direct service providers and advocates in the fields of sexual and domestic violence. It is designed to assist New York State colleges and universities to implement policies and procedures mandated by the 2015 passage of Education Law Article 129-B, otherwise known as '[Enough is Enough](#).' The following are general principles that begin the process of dissecting the underlying causes of sexual violence. Included are recommendations to assist those who are affected by sexual violence and to continue to help higher education institutions create systemic foundations that support healthy interpersonal relationships that will prevent this type of violence.

This document does not represent the end of a conversation, but rather the beginning of one. The Working Group aims to bring together some 30 years of expertise and knowledge from professionals who have provided services to those affected by sexual violence and intimate partner violence (IPV) in addition to working collaboratively over many years with their local colleges and universities. These recommendations are gleaned from the literature and direct practice in intervention and prevention activities to reduce sexual violence and IPV. They include concepts of: using trauma informed practices which put victims at the center of the response to violence, using prevention practices that address the underlying causes of sexual and domestic violence, and using education and behavior change methods that address multiple levels of social structures (individual, family, community and societal). We hope to assist in creating systems that are responsive to students as well as to the colleges and universities now mandated to provide these services. We believe this document promotes an organized structure to continue these conversations going forward.

A note on language and content

The 'Enough is Enough' legislation outlines new legal requirements on campuses for addressing and responding to sexual assault, dating violence, domestic violence and stalking. This document will

focus mainly on best practices for preventing sexual violence. For the purposes of this document, we will be using the following terms:

- **Sexual violence** refers to any type of sexual contact or behavior that occurs without the explicit consent of the recipient. This definition includes forced sexual intercourse, forced anal or oral contact, child molestation, incest, fondling, and attempted rape¹
- **Intimate partner violence (IPV)** will refer to any degree of dating violence, relationship violence, and/or domestic violence which includes any actions or non-actions that hurts, humiliates, causes fear or forces someone to do something against their will²
- **Survivor/victim/reporting student:** these terms refer to the student who has experienced and/or reported an incident of sexual violence. Since each individual identifies differently at different stages of their healing, these terms may be used interchangeably throughout the document
- **Respondent** shall mean a person accused of a violation who has entered the judicial or conduct process³

Purpose

The purposes of this document are:

1. To ensure that responses to campus sexual violence and programs designed to prevent sexual violence are responsive to the needs of diverse communities of students including: diverse racial and ethnic background, socio-economic backgrounds, those that identify as lesbian, gay, bisexual, transgender, queer, questioning, intersex, asexual, and all other sexual orientations and gender identities (LGBTQIA+), residential and commuting students, rural and urban students, and students of diverse faiths.
2. To ensure that survivors/victims of sexual violence have access to immediate, appropriate and coordinated information and services at the time an incident occurs or within hours after so they can make informed, relevant, and healthy decisions about moving beyond the crisis.

¹ United States Department of Justice, "Sexual Assault," 2016, <https://www.justice.gov/ovw/sexual-assault>

² Ibid.

³ State of New York, "Education Law Article 129-B," June 2015, <http://legislation.nysenate.gov/pdf/bills/2015/S5965>

3. To provide a roadmap to developing a coordinated community response amongst the multiple disciplines involved in sexual violence on campuses so that first responders as well as prevention program professionals and outside experts on sexual violence and IPV are at the table planning and creating protocols regarding resources, prevention efforts, interventions, education, investigations, and adjudications, both criminal and disciplinary.
4. To ensure that prevention and the basic principles of healthy relationships are the anchors on which the college sexual violence strategies are based.

I. A ROADMAP TO PROGRESS

The following are general principles that the Working Group recommends as a pathway to not only complying with federal and state legal requirements but to also address the underlying causes of sexual violence and IPV as well as the needs of student survivors.

Coordinated and Streamlined Communication to Students

Colleges and universities need to develop and utilize a comprehensive sexual violence education curriculum that goes beyond a once per year orientation workshop.⁴ Sexual violence and IPV are rooted in the particular ways that gender roles and stereotypes influence sexual relationships. Modifying the beliefs and behaviors that underpin violence requires an ongoing education and development model that is not accomplished in a single training or single program. It is a process over time that colleges and universities need to include as part of the educational fabric of our youth. This can include education not only on sexual violence specifically, but also on healthy relationships and communication, as well as trainings on cultural sensitivity and the impact of power dynamics. The prevention literature documents the need to address the individual, interpersonal, community, and societal factors that contribute to sexual violence and IPV in order to reduce its prevalence. Therefore, it is essential that there are a variety of educational opportunities targeting these levels of intervention; this may include in-person workshops, events, published resources, school policies, participation in national events such as Sexual Assault Awareness Month and Take Back the Night rallies, online information, and support for student activities. Most importantly, students must be part of the process in determining how best to communicate these

⁴ State of New York, "Education Law Article 129-B," June 2015, S 6447

concepts. Furthermore, the messages and use of available avenues of communication must be coordinated, streamlined and targeted to a diverse population of students.

- *One Model:* One NYS university houses a peer support center which educates the student population on sexual violence and IPV. The peer educators are trained by the local Rape Crisis Center's education team.

Creation of appropriate policies with assigned personnel trained and responsible for this work

- Colleges and universities must develop and introduce mandatory education and awareness curriculums designed to inform college personnel of their responsibility to students who are victims of sexual violence on campus. For example, this may include trauma-informed trainings, in-depth explanations of administrator reporting procedures, as well as a thorough discussion of the Student's Bill of Rights and the other mandates in 'Enough is Enough' law. The mandatory reporter designations must be clearly understood by all students, staff, and faculty so that individuals can make informed decisions about disclosure and seeking out resources.
- Colleges and universities are required to adopt the affirmative consent policy stipulated in the 'Enough is Enough' legislation. Additionally, universities must publicly post the policy language in an easily accessible location on their websites, as well as repeatedly disseminate the information to every student. Colleges and universities must also ensure that students understand what affirmative consent is.
- Colleges and universities are required to clearly distinguish the difference between privacy and confidentiality in reporting sexual violence. Confidential employees offer students the option (protected by law) to not report crimes to law enforcement or the school's administration. Other employees may be obliged to report what they hear to the school's Title IX Coordinator, but are not required to report to law enforcement. If subpoenaed during a criminal or civil process however, they may need to disclose notes or records kept as they are not protected by a privilege of confidentiality by law.⁵

⁵ Anne D. Cartwright and Katie Jo Lunningham, *What employees who can take 'confidential' reports of Title IX campus sexual violence need to know*, Higher Education Legal Insights, September 26, 2014, retrieved from

- Colleges and universities will conduct trainings to all administrative staff to ensure that every student’s privacy is maintained throughout all interactions.
- Additional assistance with these policy recommendations can be found through the State University of New York website as well as the report of the [White House Task Force to Protect Students from Sexual Assault](#).

Use Existing Resources and Expertise

Valuable resources are available to universities from their local rape crisis and domestic violence programs, collaboration with which is strongly encouraged.⁶ Two years before passage of the “Enough is Enough” legislation, 26% of the 76 rape crisis centers in the state were already working collaboratively with their local institutions of higher education.⁷ As of May 2016, each rape crisis center received additional funds specifically dedicated to this purpose, as well as additional support and technical assistance on how best to work with students and college populations. Using the existing expertise and resources available at your local rape crisis program can free up limited school resources for additional avenues of sexual violence activities or education. If, for example, instead of paying for onboarding education from a national organization, a school partners with their local rape crisis program to tailor a specific training for their campus population, the funds saved can be re-allocated – for example towards hiring a confidential campus Victim’s Advocate. Similarly, campuses can develop a direct services partnership with their local rape crisis center which, capacity and space-permitting, may be able to provide counseling services to student survivors on site. This can free up the school’s often limited resources to focus on adjudication and accommodations.⁸

- *Model Coordinated Response*; The Sexual Assault and Crime Victims Assistance Program with St. Peter’s Health Partners, in Troy, N.Y., has developed a strong relationship with its partner campuses, wherein two Samaritan Hospital staff use office space on campus at the Wellness Center to provide direct services to students who are survivors of sexual violence

<http://www.highereducationlegalinsights.com/2014/09/what-employees-who-can-take-confidential-reports-of-title-ix-campus-sexual-violence-need-to-know/>

⁶ State of New York, “Education Law Article 129-B,” June 2015, S 6444, Paragraph 7

⁷ New York City Alliance Against Sexual Assault & New York State Coalition Against Sexual Assault, 2015

⁸ You can find your closest Rape Crisis Program on the NYSCASA website: <http://nyscasa.org/get-info/>

and other victimizations. This program has developed a collaborative referral system with campus counseling services for the onsite sessions, and also provides support services for the student population during awareness events on campus to increase reach and presence.

When colleges and universities are planning their programs and revising policies and procedures, we recommend that administrators seek out ways of including local rape crisis and domestic violence programs in on-going work groups or task forces. [The White House Task Force to Protect Students from Sexual Assault](#) echoes this recommendation, citing the expertise level and ability of rape crisis program educators to share best practices. These centers are great resources for supporting the implementation of programming and policy that is culturally appropriate for a diverse student body. Partnerships with outside organizations focused on sexual violence, IPV, and other forms of violence can fill gaps in a school's services and ensure that up-to-date practices are available to their students.

- *Model Coordinated Reasons:* One state university shares a Memorandum of Understanding (MOU) with a local rape crisis program that allows for a rape crisis program representative to advocate for a student before, during, and after an adjudication process. The importance of this program's expertise on issues of sexual assault is also incorporated into the university's Personal Safety Committee by permanent representation on the committee.

A Multidisciplinary Coordinated Approach

Coordinated Community Responses and Multidisciplinary approaches to addressing sexual assault have proven to be most effective in addressing survivors' needs as well as prevention efforts.⁹ In the campus context, this usually entails engaging various responders such as: counseling and wellness programs, women's centers, local rape crisis programs, Title IX Coordinators, Student Affairs, student leaders, campus security, and survivors.

⁹ Christopher Mallios & Jenifer Markowitz, "Benefits of a Coordinated Community Response to Sexual Violence," *Aequitas Strategies in Brief*, December 2011, http://www.ncdsv.org/images/AEquitas_BenefitsOfaCoordinatedCommunityResponseToSexualViolence_12-2011.pdf

Methods for incorporating this input can include: a Campus Task Force, Working Groups on specific issues, and focus groups to test policies, educational programs or surveys. It is crucial to make intentional outreach efforts to bring different stakeholders to the table, simultaneously being conscientious of the impact of power dynamics in such spaces. Be thoughtful for example, when inviting student groups to a working group that also has campus security presence, and ensure that student voices are heard and the space created is a productive one. Additionally, the process for selecting the representatives (e.g. the student representatives) must be transparent and publicized to ensure reach to historically underserved communities, such as communities of color, queer and gender-nonconforming communities, immigrant students, and low-income students. In order to ensure transparency with the student body, the activities of a Campus Task Force or Working Groups must be regularly communicated to the rest of the campus community. Additionally mechanisms for feedback must be established and made available in order to increase accountability. These feedback mechanisms can include anonymous online forms, student forums, and open office hours.

II. RECOMMENDATIONS REGARDING POLICY IMPLEMENTATION OF 'ENOUGH IS ENOUGH'

Developing and implementing comprehensive sexual violence policies is essential in meeting the legal requirements of 'Enough is Enough.' College and University policies need to be informed by the law as well as by the information collected by: the campus climate survey; evaluation assessments of the education and programming provided; best practices as informed by practitioners in the field and existing literature; Campus Task Forces and student leaders. All policies must be comprehensive and accessible to students in centralized areas of the schools' websites. Colleges and universities must also use their expertise as educators to ensure that students understand their rights, the school's policies, and how to access local resources.

The following is a short discussion of policies required by 'Enough is Enough' and some specific recommendations on how to revise existing policies.

Using Data to Ensure Responsive Policies

A campus climate survey policy will allow for administrations to bi-annually collect data on a variety of issues related to sexual violence and IPV. It should be designed carefully with attention to: the prevalence and nature of sexual violence and IPV on campus, the number of students and administrators who are familiar with the school's policies, and what education methods have been the most successful for their campus. Additionally, institutions of higher education must develop mechanisms for evaluating their prevention and awareness education programming so that it has maximum impact on each unique campus community.

- *Model Policy:* The State University of New York's [policy](#) lists the various data points their survey aims to address. SUNY's policy also takes steps to ensure that student and administrator answers to the survey remain anonymous, encouraging honest reporting and responses.

Affirmative Consent Definition

New York State colleges and universities are required to adopt the following affirmative consent definition: *"Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression."*¹⁰

There are many efforts on campuses to produce educational material on the affirmative consent standard for sexual violence and IPV in-house. In general, these efforts are utilizing campus resources provided by their Communications Departments, theater, film, & the arts programs, wellness centers, counseling programs, and student groups and clubs. The following are a few examples of innovative approaches to education on affirmative consent:

- *Model Implementation:* The State University of New York has [published](#) the language of their affirmative consent policy, as well as suggested language that can expand on the definition to meet the needs of different campus communities.

¹⁰ Education Law Article 129-B. June 2015.

- *Model Implementation:* On their website, one SUNY campus offers examples of how to receive affirmative consent during a sexual situation using conversation starters such as “You’re kind of cute, can I kiss you.” Education methods that are mindful of a student’s vocabulary and experience are more successful. (see the following additional affirmative consent resources available on line: [cup of tea](#), [NYU Video](#), [Wanna Have Sex?](#))
- *Model Implementation:* One large university is using online orientation education on sexual violence and supplementing this with required small workshops (about 30 students each) for all student leaders on affirmative consent led by their counseling program staff. Student leaders include all athletic teams, student club participants and students in Greek life. The workshops are also open to any student who would like to join.
- *Model Implementation:* SUNY Oneonta has created a Consent poster that outlines the key takeaways about consent, alongside descriptors and explanations for an engaging yet informative flyer.¹¹

Defining Incapacitation

“Incapacitation” refers to an individual’s inability to consent to sexual acts due to the influence of drugs and/or alcohol. It is important to know that the impact of alcohol and drugs differs from person to person. While this is not the penal law definition of *incapacitation*, the Working Group experts recommend the adoption of the following definitions of incapacitation:

- A student who is asleep or unconscious cannot consent
- A student who is unwillingly intoxicated cannot consent
- A student who is intoxicated, voluntarily or not, to a point where they cannot walk or stand without support, cannot articulate sentences or words clearly, or could not operate a motor vehicle safely is incapacitated and cannot consent even if there is a verbal “yes”¹²
- Other warning signs of incapacitation: slurred speech, an inability to focus, vomiting, and combativeness

¹¹ <http://www.oneonta.edu/knowviolence/images/consent%20poster%20full%20size.pdf>

¹² Education Law Article 129-B, June 2015, S 6441

Revision of drug and alcohol policies

All New York colleges and universities are required to revise their drug and alcohol policies to incorporate an amnesty policy that protects students when reporting instances of sexual violence that may have involved drugs or alcohol. It is critical that universities publish this amnesty policy consistently and widely and take measures to ensure that students are aware of it. These include posters, email blasts, and disseminating information to student groups and leaders through the Activities Office.

We know that alcohol consumption does not cause sexual violence. However, there is often a relationship between sexual violence and college drinking. Students may be more willing to report an incident of sexual violence if they are guaranteed protection from disciplinary actions for underage drinking.

- *Model Policy:* The State University of New York has published their language for an [amnesty policy](#). SUNY campuses have added language to this policy, including a provision pertaining to students who may be dealing drugs. It is our recommendation that universities refrain from including any policies that may intimidate or discourage students from reporting.

Student Bill of Rights

The ‘Enough is Enough’ legislation stipulates that a college or university is required to adopt and distribute a Student Bill of Rights that specifically informs student victims of their rights and how to access resources. The Student Bill of Rights must also inform students of their right to seek help from outside law enforcement. A study completed by the advocacy group Students Active For Ending Rape (SAFER), found that students may only read their school’s sexual assault policies when they need to use them.¹³ As a result, policies should contain an easily accessible, comprehensible section specific to students who are looking for assistance. The study also found that over half of the general student population and a quarter of collegiate student sexual assault activists have never read their own school’s policies.¹⁴ As a result, the Working Group recommends wide distribution of the policy as well as frequent education focused on student rights. It is recommended that colleges and universities use existing mandatory mechanisms in place – such as academic registration. One

¹³ SAFER & V-Day. (2013). Making the Grade: Findings from the Campus Accountability Project on Sexual Assault Policies. New York: SAFER (Students Active for Ending Rape)

¹⁴ Ibid.

example is including the Student Bill of Rights alongside a check-box to indicate that you have read and understood it with online class registration forms, or requiring this check-box to proceed to mandatory class registration.

- *Model Policy:* One college sent out the Students Bill of Rights to all incoming first-years to read, sign and return before the start of their first semester. Completion rates were very high as incoming first-years are more likely to engage with materials they receive before arriving on campus and beginning orientation.
- *Model Policy:* The State University of New York offers excellent example [language](#) for a Student Bill of Rights.

III. BEST PRACTICES IN RESPONDING TO SEXUAL VIOLENCE AND IPV

The purpose of this section is to develop a working concept of how sexual violence and IPV impact individuals and to develop a shared understanding of trauma-informed intervention services that are appropriate and conducive to healing, safety, and empowerment.

Sexual violence and IPV and the resulting trauma has serious effects on victims.¹⁵ It often impacts their friendships, their academic progress, their internship/work life, and intimate relationships.¹⁶ It can also have long-lasting effects extending beyond the campus experience. Sexual trauma is a “widespread, harmful, and costly public health problem [that places a] heavy burden on individuals, families and communities and creates challenges for public institutions and service systems.”¹⁷ It is imperative that campuses and communities address the effects of trauma, which “requires a multi-pronged, multi-agency public health approach inclusive of public education and awareness, prevention and early identification, and effective trauma-specific assessment and treatment.”¹⁸

¹⁵ The Rape, Abuse, and Incest National Network [RAINN], *Effects of Sexual Violence*, 2016, <https://www.rainn.org/effects-sexual-violence>

¹⁶ The World Health Organization [WHO], *Violence Against Women: Intimate partner and sexual violence against women Fact Sheet*, January 2016. <http://www.who.int/mediacentre/factsheets/fs239/en/>

¹⁷ Substance Abuse and Mental Health Services Administration [SAMSHA], 2014

¹⁸ Ibid.

Sexual violence and IPV leaves victims/survivors questioning their sense of safety, trust, agency over self, their ability to relate to others, and their own sense of power and self-determination. Since each victim's experience is unique, the response and needs of an individual after an assault will differ from person to person. Because of these differences, this Working Group strongly recommends that services offered to victims/survivors must follow a trauma-informed approach reflected in the adherence to the following key principles:

1. **Safety:** Physical and emotional safety is a priority. Is every interaction done in a way that promotes physical and emotional safety? Services should be welcoming, private, respectful, and consistent. The survivor should be asked to repeat their story as few times as practicable, and victim-blaming rhetoric must be absent from all interactions. Additionally precautions and accommodations must be taken to ensure the survivor's sense of safety on campus is prioritized – including but not limited to an escort to class, housing accommodations, a closer parking space, and no contact orders. Accommodations should be offered even if the incident occurred off-campus or during a study abroad program as the policy is applied based on school affiliation, not campus proximity. That is to say that if one student assaulted another at an off-campus bar, or a teaching assistant assaulted a student during study abroad, accommodations should still be offered.

'Enough is Enough' provides for no contact orders to be issued by campus administration once a report of sexual assault has been made. The law clearly requires that institutions must place the responsibility to stay away and to leave common spaces on the responding student, not the protected individual (the reporting student.) The university also has the authority to issue no contact orders that apply to on and off campus spaces, as the policy's jurisdiction is over students and based on university affiliation not proximity.¹⁹

2. **Trustworthiness:** Are services being provided in a way that communicates clear and consistent expectations and interactions? Services must be mindful of individual boundaries, be delivered non-judgmentally, and respectfully.
3. **A Right to Self-Determination:** Services should be provided in ways that augment an individual's experience of personal choice and control. Service provider focus should be on

¹⁹ Education Law Article 129-B. June 2015, S. 6444, Paragraph 4

giving information, options, and partnering *with* the survivor in exercising their personal agency over what happens next.²⁰

4. **Partnership:** All interactions and services should value listening to the victim/survivor first. Agencies and service providers must approach each victim/survivor as a partner throughout the healing process. No major decisions should be made without first speaking with the victim/survivor. With the reporting individual's consent, services should also value partnership with other service providers in an effort to provide holistic and person-centered care. (See 'Use Existing Resources and Expertise' section above.)
5. **Empowerment:** Services should focus on identifying and building upon individual strengths, experiences, and uniqueness. Services can focus on skill building, hope, recovery, and fostering resiliency.

IV. BEST PRACTICES IN THE INVESTIGATION AND ADJUDICATION OF SEXUAL VIOLENCE INCIDENTS THROUGH THE COLLEGE DISCIPLINARY PROCESS

The 'Enough is Enough' legislation states that all students have the right to a prompt and thorough investigation and adjudication of their report. The report should be adjudicated in an impartial, timely and thorough manner. It is important that those conducting the investigations and hearings receive comprehensive training that includes the effects of trauma on a victim of sexual violence and/or IPV. Each school's policies and procedures must also be well publicized and readily accessible to all members of the campus community.

Legislatively Recommended Investigation and Adjudication Procedures

The following are the mandates and recommendations regarding the procedures and practices surrounding the investigation, decision-making, and sanctioning stages of a case required by the 'Enough is Enough' Legislation:

- Reporting students have the right to request that student conduct charges be filed against the respondent (but the decision on actually filing the charges lies with the institution). Reporting students can also decline to participate in the school's reporting and investigation processes. However, there may be circumstances in which the school decides

²⁰ Education Law Article 129-B, June 2015, S. 6444

there is an overarching concern about campus safety and proceeds with the investigative process without the participation of the reporting student (for example: if the respondent's name has been reported multiple times before, if a weapon was used in the assault, or if minors are involved)²¹

- There must be immediate notice of all charges filed provided to both the reporting student and the respondent,
- The process must be fair and impartial and free from conflict of interest,
- The response should be “prompt” and timely but prompt is not defined and is determined on a case by case basis,
- There must be an opportunity for both sides to offer evidence in an investigation or to present evidence and testimony at a hearing (the institution may choose whether to use the investigatory model and/or the hearing model.) Note that it is crucial to ensure the safety and wellbeing of the reporting student during proceedings – for example, interviews must be conducted separately and not back-to-back so as to avoid running into the responding student,
- Prior sexual history or mental health diagnosis of the reporting student must be excluded, unless the individual themselves choose to present evidence of their *own* past sexual history with persons other than the respondent,
- Both sides should have the opportunity to make an impact statement,
- There must be written notice provided to both sides of the final decision and any sanction as well as the rationale for the decision and sanction,
- There must be access to at least one level of appeal and appeal must be determined by a panel (not an individual),
- Both the reporting student and the respondent can be accompanied by an advisor of choice, and the advisor should regularly check-in on the student to ensure safety and wellbeing,
- The campus process can run concurrent to the criminal justice process if there is a criminal case pending,

²¹ Education Law Article 129-B, June 2015, S 6446

- For crimes of violence, including sexual violence, institutions must make a notation on the transcripts of students found responsible after a conduct process,²²
- Every reporting student must be made aware from the beginning of the NY State Student's Bill of Rights – this Bill of Rights should be incorporated into every school's policy and handbook.

Although the 'Enough is Enough' legislation has added many protections and improved processes for survivors statewide, best practices in the investigation and adjudication of these matters need to go above and beyond what is stated by the legal mandates. Here are some additional recommendations based upon the experience of those advocates currently assisting students through these proceedings.

The process needs to be explained in a clear and concise manner to both the reporting student and their chosen advisor.

When a student has made a report of sexual violence or IPV, each stage of the investigation and adjudication process should be explained from the outset of the process. There should be a meeting to initiate the investigation and explain all procedures, protections, and accommodations that are available to the reporting student.

There should be clear stages of the investigation and students should be notified at the outset and conclusion of each stage.

The stages of investigation and adjudication should include (1) the initial interview with the reporting student and any follow up interviews that are deemed necessary, (2) the investigation/hearing, (3) the finding, (4) sanctioning and (5) appeal if applicable.

- **Goal should be a prompt investigation and adjudication process.** The investigation and adjudication process should limit the number of interviews of the reporting student to as few as practicable in order to lessen the traumatic stress experienced by reporting students in sexual assault cases.

²² Complying with Education Law Article 129-B, New York State Education, 2015, pg. 35

- **Although a hearing is not required, best practices include a hearing where students are given the opportunity to be heard.** At the hearing, both the reporting student and respondent should be given the opportunity to give an impact statement and provide witnesses. The reporting student and the respondent should not be in the same room, nor should they be forced to hear each other's statements, nor those of the witnesses. It is also important to note that impact statements and witness statements should not be used as character statements.
- **Trained staff should be conducting both investigations and hearings.** All staff members who are conducting investigations and adjudication must be trained by those with legal expertise and should also obtain extensive sexual violence and IPV training regularly.²³
- **Separate and apart from the Title IX Coordinator, there should be individuals who are deemed investigators and are responsible for investigating each case.** The Title IX Coordinator should be available as a resource and to provide assistance to survivors and therefore should not be the individual investigating the cases.
- **At the conclusion of the investigation, when all evidence has been collected, a thorough report should be written and turned over to the hearing panel.** The hearing panel must be trained and impartial staff (rather than an individual) and should determine responsibility. The hearing panel should *not* include professors or deans with whom the student might associate in the future in the context of academic or extracurricular activities at the institution
- **Although all students are allowed an advisor of choice, the right to an *attorney advisor* should be explained to every student at the outset of the process.**
 - Attorney advisors have a traditional attorney-client relationship with the student and all communications with student are privileged (attorney advisors are representing the reporting student, not the university/college)
 - Colleges and universities could reach out to local attorneys who could view this as an opportunity for pro bono hours
 - Attorney advisors are often able to maximize the student's access to justice in navigating this long and arduous process. The process is often taxing, difficult and

²³ Violence Against Women Reauthorization Act of 2013, Public Law 113-4, March 7 2013

confusing for students and an attorney can effectively advocate for a reporting student in this process

- o *Model Policy:* Some schools are beginning to look at recruiting law students to act as advocates through the reporting and adjudication processes at their schools. It is important to note that law students should only be utilized if they are advised and supervised by clinical professors and/or attorneys who are knowledgeable in the field.

Acute Care

If the incident has occurred within five days or less, the reporting student should be given the option to visit a hospital. If there is a question of incapacitation due to drugs or alcohol, the reporting student should receive a toxicology screening from a pre-approved and vetted lab. The student should also be informed of their right to receive a sexual assault forensic exam in order to collect evidence in the event they decide to move forward with a criminal investigation, and to receive necessary acute medical care. Reproductive health care and HIV prevention medication could also be very important.

Executive Law Section 631(13) provides for direct reimbursement by the New York State Office of Victim Services (OVS) to providers of sexual assault forensic health care examination services. Hospitals that cooperate with the New York State Office of Victims Services (OVS) can receive direct reimbursement for the exam without insurance or parental notification even if the student is a minor. Some medical services – such as sutures, CAT scan, and prophylaxis HIV prescriptions for over 7 days – are not covered by the Forensic Rape Exam reimbursement form, but can be claimed as part of an OVS compensation claim. Sexual assault victims do not have to file a report with law enforcement in order to claim reimbursement for medical services with OVS. Campuses and Universities would be advised to contact their local hospitals to see if a system of direct reimbursement has been set up with OVS and to encourage this relationship if one does not exist.²⁴

²⁴ More information about this can be found at: <https://www.ovs.ny.gov/forensic-rape-examination-free-direct-reimbursement-program>

A second consideration regarding acute care is whether the local hospital is a “Center of Excellence” for sexual assault acute care. The NYS Department of Health (DOH) certifies a health care provider that meets certain requirements in the provision of acute care. Briefly, the most important requirements are: access 24/7 to a Sexual Assault Forensic Examiner (SAFE),²⁵ access to a rape crisis program counselor, an examining room with a closing door, and access to a shower. While respecting the wishes of a victim regarding their choice of services is critical, we recommend that a survivor go off-campus to a designated Center of Excellence because it offers: trained SAFEs to sensitively and properly administer the rape kit, adherence to the requirements for evidence collection, legal chain of custody provisions, and reproductive health care tailored to the sexual violence context. Additionally, an acute care response should provide 24/7 access to an on-call rape crisis counselor or victim’s advocate. Medical examiners and Victim Advocates have distinct and necessary roles. While the SAFE can provide medical care and evidence collection, the Advocate provides support, advocacy, and crisis intervention.²⁶ The Victims Advocate is a crucial resource for the survivor, and often also facilitates access to further resources. Due to strong rape crisis counselor privilege laws in New York State, all communication between advocates and victims is protected and confidential.²⁷

Evidence Collection and Preservation

The first person (may be campus public safety, a victim’s advocate, Title IX coordinator or other official) who meets with the reporting student should advise the student to preserve all information and communications relevant to the sexual violence or IPV incident being reported. Most often, this includes electronic communications with the respondent as well as between the reporting student and friends or other witnesses. In some cases the reporting student has shared their experience or asked for help in some way via social media or text messages. In addition, the respondent has often

²⁵ Also known as a Sexual Assault Nurse Examiner (SANE) or a Sexual Assault Response Team (SART)

²⁶ Preston, L.D. (2003). The Sexual Assault Nurse Examiner and the rape crisis advocate: A necessary partnership. *Topics in emergency Medicine*, 25, 242-246

²⁷ *How SAFE is New York City? Sexual Assault Services in Emergency Departments*, A Research Report from the New York City Alliance Against Sexual Assault, April 2007. For more information about the necessary role played by Victim Advocates, please see pgs. 36-40

apologized or referred to the incident in some way via electronic communication (which can constitute an admission of responsibility). Electronic evidence may include:

- text messages
- emails
- Facebook posts or messages
- other social media (Instagram, Snapchat, WhatsApp, Kik, etc.)
- photographs on cell phone
- voicemails/call-logs
- videos

The campus first responder should also ask for the respondent's usernames on social media in order to check for posts or activity related to the incident. In addition to electronic evidence, students should be advised to photograph any injuries or other evidence of a struggle, such as property damage.

V. BEST PRACTICES IN PRIMARY PREVENTION

The 'Enough is Enough' legislation recommends the implementation of comprehensive prevention programs on NYS campuses that effectively reduce the incidence of sexual violence, either by directly targeting behavior change or by changing the culture that allows sexual violence to continue. While strong programming and policies guiding sexual violence response and reporting are highly necessary, the legislation emphasizes the need for robust campus-based prevention efforts. Incorporating an anti-sexual assault culture on campus and implementing ongoing education and awareness programs can help prevent sexual assault on your campus.

Tool: *For a list of commonly used prevention terminology, please see Appendix A*

Legislatively Recommended Prevention Activities

To reduce first time perpetration as well as ensure compliance, institutions of higher education are expected to implement a series of prevention activities, preferably along the *primary* prevention continuum, ranging from basic awareness efforts to approaches that changes attitudes, behaviors

and beliefs that perpetuate sexual violence and harassment. The legislatively approved primary prevention activities include the following:²⁸

- Training and/or awareness efforts designed to provide general information on confidentiality, privacy, consent, bystander intervention, IPV, stalking, sexual violence and the role of campus offices that address these issues
- Comprehensive student onboarding and ongoing education
- Training for all new and transfer students, campus personnel, student employees and leaders
- Specific training efforts to increase awareness of sexual violence among traditionally underserved communities including high-risk populations and international students
- Use of multiple prevention methods to educate students about prevention
- Share information on sexual violence, IPV, and stalking prevention with parents of enrolling students

How to Pick the Right Program for your School

While awareness events, single session online modules, and prevention workshops during orientation are all important ways of reaching the general student body with facts about sexual violence prevention and harm reduction; in and of themselves, these efforts will not be effective at reducing sexual violence perpetration behavior. Shifting social norms or producing behavior change is possible only when prevention strategies are comprehensive, ongoing, and align with the following principles of prevention:²⁹

- Designed to provide **interactive** instruction, such as role-play rather than just presenting information in a lecture format or in other forms of passive instruction
- Include **multiple components** such as curriculum-based education, social-media campaigns, awareness sessions, peer-education, etc.
- Tailored to be **inclusive of under-served populations on campus**, such as communities of color, LGBTQIA+ communities, immigrant communities, students with disabilities, etc.

²⁸ Education Law Article 129-B, Sections: 5965, 6446, 6447, June 2015

²⁹ Maury Nation, Abraham Wandersman & David DuBois, *Applying the Principles of Prevention: What Do Prevention Practitioners Need to Know About What Works?* May 12, 2005, http://www.mentoring.org/downloads/mentoring_4.pdf

- **Appropriately timed**, i.e., focused on addressing the risk factors and/or behaviors before they develop, rather than intervening after the problem behavior has developed
- Structured to **engage participants sufficiently** for the program to have a meaningful effect
- Provides opportunities for the participant to **foster positive relationships** (e.g., peer relationships to support disclosure)
- Able to **articulate** how the program or activity is likely to produce the intended **behavior-changes** (this factor enhances buy-in or credibility in the program success)

Tool: *For your convenience a template for Reviewing and Approving the Use of Sexual Violence Prevention Programs, Strategies, and Activities has been included in the Appendix B*

- It is also important to **understand your needs** and know your population. The results of your climate survey should provide you with that information and help you determine what specific kinds of education and prevention efforts are needed at your institution. Consider for example, whether your campus has a strong Greek or sports culture – in communities such as these, training student leaders and ambassadors can be the most effective approach.
- **Take a look at your budget!** Some of these programs and educational efforts can be expensive. Partner with your local rape crisis and sexual violence program to request trainings, and/or find which prevention program may be suitable for your population. Your local rape crisis center may also have access to programs and curricula that are being utilized by other New York schools. You may find that a combination of on-the-shelf and homegrown programs may be the best option for your institution.

Descriptions of the Types of Prevention Programs

Tool: *To find out about specific programs, and intended audience please see the 'Prevention Program Chart' (Appendix D).³⁰ For more information about programs targeted towards campus communities, please visit the 'Prevention Programming Matrix' developed by Culture of Respect, which includes one-page overviews of over 30 programs.³¹*

³⁰ Please note that not all curricula listed in Appendix D are strictly for college campuses.

³¹ <http://cultureofrespect.org/colleges-universities/programs/>

The field of primary prevention in sexual violence is still relatively new. If implemented well, an effective prevention program may take at least a few years to show demonstrable social norms change. Although slow, this change is necessary and investing in strong prevention education is crucial. At the collegiate level for example, some prevention strategies have shown promising evidence. Bystander intervention programs, such as Bringing in the Bystander and Green Dot, have been shown to produce increases in positive bystander attitudes, intentions, and behavior.³² Social marketing campaigns that use posters, social media and other materials to promote social norms like positive bystander intervention also show promising evidence of effectiveness.³³ Prevention programs specifically targeting men, such as Coaching Boys into Men, are also promising.³⁴ While the evidence base for primary prevention is still limited, bystander intervention, social norms marketing approaches, and engaging men appear to be the most promising approaches to campus sexual violence prevention. While utilizing evaluation tools throughout programming is important, it is necessary to note that it can take several years to see the effect of primary prevention programming.

Finally, using **Homegrown Prevention Programs** such as 20:1, Say So!, and the “I Have the Right” campaign can also go a long way in engaging your campus in some fun prevention activities.³⁵

³² Banyard, V. L., Moynihan, M. M., & Plante, E. G. (2007). Sexual violence prevention through bystander education: An experimental evaluation. *Journal of Community Psychology*, 35(4), 463–481.

Coker, A. L., Cook-Craig, P. G., Williams, C. M., Fisher, B. S., Clear, E. R., Garcia, L. S., & Hegge, L. M. (2011). Evaluation of Green Dot: An active bystander intervention to reduce sexual violence on college campuses. *Violence Against Women*, 17, 777-796.

³³ Potter S. J. and Stapleton J. G. (2013). Assessing the efficacy of a bystander social marketing campaign four weeks following the campaign administration. *Sexual Assault Report*. 16, 65-80.

³⁴ Miller, E., Tancredi, D. J., McCauley, H. L., Decker, M. R., Virata, M. C. D., Anderson, H. A., ... Silverman, J. G. (2012). “Coaching Boys into Men”: A Cluster-Randomized Controlled Trial of a Dating Violence Prevention Program. *Journal of Adolescent Health*, 51(5), 431–438.

³⁵ For information about 20:1 see: <https://www.binghamton.edu/counseling/services/sexual-assault-peer-education/about.html> For SAYSO! See: http://www.svfreenyc.org/programs_prevention_saam_about1.html For “I Have the Right “ campaign see: <http://ihavetheright.org/about/>

Appendices

Appendix A: Some Commonly Used Terminology

- *Evidence-based practice (EBP)*: Practices that conscientiously uses the current best evidence, based on documented scientific studies
- *Evidence-informed practice (EIP)*: Using the best available knowledge to guide program design and implementation
- *“Homegrown” practice*: “Homegrown” refers to programs that have been designed and used within specific settings (i.e. a school). It is neither EBP or EIP, but is a program that may work for specific populations or cultures
- *Primary Prevention*: Efforts that take place before sexual violence has occurred to prevent it from happening in the first instance
- *Secondary Prevention*: Immediate responses after the sexual violence has occurred to address short-term consequences and harm caused
- *Tertiary Prevention*: Efforts that address longer-term, lasting consequences of sexual violence and aim to reduce the harmful/negative consequences

<http://wiki.preventconnect.org/Primary%2C+Secondary%2C+Tertiary+Prevention>

Appendix B: Reviewing and Approving the Use of Sexual Violence Prevention Programs, Strategies, and Activities

<http://wpadmin.nyscasa.org/wp-content/uploads/2015/03/Prev-Prog-Approval-Criteria-Revised-2-6-14-2.pdf>

Appendix C: Finding Local Resources

- To find local rape crisis programs, we recommend going to the New York State Coalition Against Sexual Violence (NYSCASA) website where you can find crisis centers by county: <http://nyscasa.org/get-help/crisis-centers-by-county/>
- Also note there are many other organizations that do work with colleges and universities around sexual violence prevention that can be helpful resources
 - i.e. The New York Asian Women’s Center, SAKHI for South Asian Women, Black Women’s Blueprint, and many more.

Appendix D: Prevention Program Chart

Program Name	Primary Audience	Format	Brief Description	Level of Prevention	Contact Information
BYSTANDER AND PREVENTION					
Green Dot	Anyone--community members, students, etc.	In-Person	Content is developed from the latest research across disciplines that then translates into trainings for bystander intervention skills. Ultimate goal: "to prepare organizations and communities to implement a strategy of violence prevention that consistently, measurable reduces power-based personal violence"	Primary, Secondary	https://www.livethegreendot.com/train_instruct.html#training
Bringing in the Bystander	College students, college faculty/staff	In-Person	Identify violent behaviors (at all levels), cultivate empathy, practice safe intervention skills, and commit to a responsibility to intervene when witnessing a potentially violent situation. One can also purchase the materials online and use them to train your own Bystanders.	Primary, Secondary	http://cola.unh.edu/prevention-innovations-research-center/bringing-bystander%20AE-person-prevention-program
Mentors in Violence Prevention (MVP)	All students-but specifically male students and male athletes	In-Person	Mission Statement: "MVP provides the leadership necessary, within sport and beyond, to address the global issues of sexism – especially men’s violence against women. In our advocacy efforts and training programs, we educate, inspire and empower men & women to prevent, interrupt and respond to sexist abuse."	Primary, Secondary	http://www.mvpnational.org/contact-us/
ENGAGING MEN					
Men Can Stop Rape	Men	In-Person	Mission To mobilize men to use their strength for creating cultures free from violence, especially men's violence against women. Vision To institutionalize primary prevention of men’s violence against women through sustained initiatives that generate positive, measurable outcomes in populations throughout the world.	Primary, Secondary	http://www.mencanstoprape.org/Training-Technical-Assistance/

RealConsent	Male Students	Online	6 online modules that male college students complete online to learn more about consent, bystander models, and intervention in public settings. Very promising outcomes with participants being more likely to intervene. They also had higher levels of knowledge about sexual assault than the control groups.	Primary	http://www.jmir.org/2014/9/e203/
20:1	Male Student and Fraternity brothers	In person and in class	A campaign launched through Binghamton University. Young men would volunteer to educate their fellow fraternity members and other men's groups on campus on sexual assault prevention. It consists of two main parts—Sexual Assault Prevention and Bystander Intervention. It is offered as a credit-bearing class currently.	Primary Secondary	https://www.binghamton.edu/counseling/services/sexual-assault-peer-education/about.html
HOMEGROWN PROGRAMS					
"Seeing Rape" & "Staging Rape" (John Jay College)	Undergrad students	Class + Play	"Seeing Rape" is an upper division Anthropology course at John Jay College of Criminal Justice. "In this course we will examine rape as both an idea and an act. Specifically, we will consider rape and sexual violence as it is represented in law, media, film, theater, literature, performance art, and pop music." At the end of the semester, students will submit a short play they wrote on the topic of rape, interpersonal violence, and sexual violence. The best are selected to be performed the following semester in a short play called "Staging Rape" where faculty and students alike attend.	Primary	NA
#JustAsk (SUNY Albany)	Undergrad students	Social Media Movement	#JustAsk is an anti-violence social media movement at SUNY Albany. It is a cross-departmental collaborative effort to implement the #JustAsk campaign to change campus culture	Primary	NA
Brooklyn SAYSO (Sexual Assault Yearly Speak Out)	All students	Awareness Event	A collaborative event hosted by Safe Horizon in NYC that opens up a space where survivors of sexual violence can come and enjoy healing practices like dance and yoga, participate in art projects, and speak out about their experiences. SAYSO also has information fairs and invites other rape crisis programs to take part in the event and	NA	NA

			pass out information about their organization's services.		
I Have the Right	All people	Awareness	A campaign through Project Envision NYC and La Casa Mandarinina. The campaign focuses on ending rape culture and change the social norms around gender-based and sexual violence. It has now spread to several countries and the organization has been putting together activities at the grassroots level.	Primary	https://ihavetheright.org/about/