



Recommended Policy for Higher Education Institutions: Guidelines for First Disclosure Recipients

This position paper on first disclosure recipients reflects the views of the Campus Committee of the Attorney General's Sexual Assault Task Force (Task Force) and was approved by the membership of the Task Force on Thursday, May 24, 2007.

Sexual Assault is the most common violent crime perpetrated on American college campuses¹. One in five women will be victims of sexual assault over a typical five-year college career². Yet sexual assault on campuses is grossly underreported. Although approximately two thirds of sexual assault survivors tell someone, usually a friend or other support person, fewer than five percent of college women report their assault to law enforcement³. With the majority of survivors reporting to non-professionals there is a risk that they will receive incomplete information and inadequate support. In responding to incidents of sexual assault, the goals of all institutions of higher education include encouraging victim disclosure for the purpose of providing information and resources, as well as, supporting survivors' choices to engage specific responses or services.

The Task Force shares with responders in Oregon's Higher Education community the goal of ensuring that victims of sexual assault receive optimum support, and continues to strongly encourage all responders and first contacts to work collaboratively while supporting a survivor's right to privacy. A campus policy that 1) defines confidentiality, 2) identifies sexual assault specialists on campus or in the community, and 3) directs sexual assault victims and those that they initially contact (first responders) to trained specialists for support will promote this goal.

Privilege, Confidentiality and Privacy

Campus policies should clearly identify which campus entities and individuals can offer privileged communication, or confidentiality, to survivors. While all faculty and staff are restricted in the information that they are able to share under the Family Educational Rights and Privacy Act (FERPA) and other campus policies, requirements to keep certain information *private* should not be confused with legal privilege that enables some individuals to keep all communication with survivors *confidential*. Entities with privilege are those that are unable to share any information about their client or patient without that person's written or other explicit permission. Only offices and individuals with legal privilege should describe themselves as being able to offer confidentiality to survivors. In the campus setting the professionals who can usually offer confidentiality include Counseling Services, Health Services, Legal Services, and the Chaplain's office.

On the other hand, some campus offices and individuals who cannot offer survivors confidential communication may be able to offer survivors reasonable privacy – the expectation that their name, or other identifying information, and the details of their disclosure, will not be forwarded to other offices or individuals, or otherwise made public.

The distinction between confidential communication and privacy is important because survivors may not wish to initiate a particular campus response when they disclose. It is therefore critical for survivors to be informed of who can offer them what, in terms of confidentiality and privacy, so that they can make an informed decision.

Campus Policies

In the state of Oregon the reporting of a sexual assault to law enforcement is not mandatory if victims are at least eighteen years old. For a variety of reasons, however, many campuses have policies that require employees to relay reports of sexual assault to administrators. For example, Residence Life staff are often required to document and report disclosures to their supervisors. In these situations the disclosure recipients may not be able to offer privacy to survivors anymore than they can offer confidentiality. Staff and faculty who are expected to share identifying information or the details of an assault with administrators should notify survivors of their obligation to forward information so that they can choose whether or not they want to continue making the disclosure or report. Moreover, campuses will want to make trained professionals available to survivors who can at a minimum provide reasonable privacy.

Trained Sexual Assault Specialists

Institutions should designate trained specialists on campus or in the local community to whom staff and students can go for assistance regarding sexual assault. These specialists may include both confidential and non-confidential professionals and departments and should minimally provide reasonable privacy to survivors. Additionally, departments and professionals who routinely serve as first responders, such as Women's Centers, Health and Counseling Centers, Campus Safety and Residence Life should have appropriate and ongoing training⁴. Having a campus policy that directs sexual assault survivors and first responders to trained specialists will both increase the likelihood of appropriate support to survivors and reduce institutional liability.

First Responders

Given that the majority of disclosures are made to a friend or other support person, policies should outline a process for non-specialist first responders. Such a process might outline the following:

- The first responder should notify the survivor whether they have privileged communication, and if not, should provide a referral to a confidential entity if requested by the survivor.
- The first responder should listen to the survivor and provide them with information

and resources for support and reporting options.

- The first responder should document what was heard and said.
- The first responder should forward non-identifying, situational information to a designated specialist who can provide consultation regarding the best response and resources for the survivor and on issues related to institutional liability.
- The first responder should always let the survivor know in advance when they need to share the survivor's name or identifying information. *Advising the survivor when information is going to be shared is important. It is both respectful and it promotes the student's self determination and informed decision-making.*
- Additionally, first responders should seek out support and resources for themselves.

By having a policy which clearly 1) defines confidentiality, 2) identifies sexual assault specialists on campus or in the community, and 3) directs sexual assault victims and those that they initially contact to trained specialists for support, institutions will ensure that survivors receive appropriate information and support and mitigate their risk of liability.

¹ Finn, Peter. *Preventing Alcohol-Related Problems on Campus: Acquaintance Rape*. Newton, MA: The Higher Education Center for Alcohol and Other Drug Prevention, 1997.

² Bonnie S. Fisher, Francis T. Cullen and Michael G. Turner. *The Sexual Victimization of College Women*. Washington, DC: U.S. Department of Justice Office of Justice Programs, 2000.

³ Sampson, Rana. *Acquaintance Rape of College Students*. Washington, DC: Office of Community Oriented Policing Services, U.S. Department of Justice, 2003.

⁴ "Recommended Guidelines for Comprehensive Sexual Assault Response and Prevention on Campus", Oregon Attorney General's Sexual Assault Taskforce, 2006 [www.oregonsatf.org]

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