

**SUNY Policies on Sexual Violence Prevention and Response  
December 1, 2014, Redlined Against New York State  
Legislation, June 2015**

For the SUNY Board of Trustees' resolution calling for the establishment of these policies, visit: <http://www.suny.edu/media/suny/content-assets/documents/boardoftrustees/memos/Sexual-Assault-Response-Prevention-REVISED.pdf>

The State legislation can be viewed here: <http://open.nysenate.gov/legislation/api/1.0/pdf/bill/S5965-2015>

## Initial Guidance

This guidance document is prepared for use by State University of New York State-operated and community colleges only and is meant to assist SUNY college professionals in quickly and efficiently bringing policies into compliance with 2015 New York State law. The guidance is prepared by Joseph Storch and Andrea Stagg, Associate Counsel, Office of General Counsel, State University of New York and redlines the legislative language against current SUNY policy (as of December 1, 2014). The legislation was based, in large part, on the SUNY Sexual Violence<sup>1</sup> Prevention policies, and so the reader can see there are very few changes for SUNY colleges to make. In addition to redlining newly required changes, in the spirit of keeping this to one single document, we are including additional detailed guidance in footnotes.

Importantly, the legislation was changed to avoid requiring action by Boards or Councils. The legislation specifically requires the “institution” to adopt the changes, not the Board or Governing Body. This means that institutions *do not* have to get approval from any Board to institute the changes, and can institute them quickly within existing campus policymaking processes. The legislation provides that institutions must be fully in compliance within 90 days,<sup>2</sup> but it need not take that long for SUNY colleges, since the December 1, 2014 policies brought our campuses ninety percent of the way towards compliance with this legislation. The date that the Governor will receive the legislation from the Senate and the date of signature have not yet been set, however, the Governor will certainly sign this bill.

Note that while most of the policies mirror SUNY’s December 1, 2014 policies, the legislation does not include certain requirements that SUNY policies include (for example, mandatory suspension or dismissal for sexual assault, certain protections when participating in the student conduct process). For institutions whose Boards or Councils have not yet adopted that specific language, they must still do so to comply with the Board of Trustees October Resolution. Specific questions regarding these distinctions may be addressed to Andrea Stagg or Joseph Storch.

Where the legislation places text in quotes, it must be adopted using that language. Other than quoted passages, the legislation requires conceptual elements, but does not require any specific word or sentence. We have advised that SUNY campuses that use slightly different words with the same substantive meaning may use the term consistent with their other policies, even in quoted sentences.<sup>3</sup> Further, the legislation requires that each concept be included in policy, but

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<sup>1</sup> Sexual violence, as that term is used in this document and prior U.S. Office for Civil Rights guidance, refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent (as defined by the affirmative consent policy included herein). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by other students, college employees, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX.

<sup>2</sup> With the exception of reporting to the State Department of Education and climate surveys, which require compliance within one year of enactment.

<sup>3</sup> For instance, if an institution refers to permanent removal of a student as “dismissal,” it need not change that to “expulsion” to comply with the legislative requirement of a transcript notation for cases of expulsion.

does not require that the elements be in any specific order. While a college *may* have a single policy incorporating all elements within the Code of Conduct, in discussions with campus representatives, we have found the best practice is to take each paragraph and incorporate it into the section of the Code where it belongs, so students do not have to hunt around in different sections and cross-compare in order to make sense of the policies.

While most of the legislation matches the SUNY policies, there are several small policies or procedures that must be created. We include a list of those policies on a new page following the end of the redlined SUNY policies as well as a list of definitions from the legislation.

### **Compliance with the Legislation:**

As with compliance with Article 129-a of the Education Law, each college and university shall have to certify compliance with these requirements to the New York State Department of Education annually on or before July 1, beginning in 2016. The legislation also tracks Article 129-a, as institutions will have to file with the Department of Education a copy of all written rules and policies on July 1, 2016 and once every ten years thereafter.<sup>4</sup> After the first filing, for efficiency, the full filing will follow the same decennial cycle as 129-a.

Institutions must also provide a copy of the rules and policies required by the legislation to each student “using a method and manner appropriate to its institutional culture.”<sup>5</sup> This provides significant flexibility to our colleges who should use good faith to provide these policies in a manner aimed to educate, not to check a compliance box. The policies should also be posted on the web. As discussed earlier, they can be compiled together or placed in the appropriate sections of the Code of Conduct, which is available on the web.

There is no private right of action for violations of these statutory requirements.<sup>6</sup> This means that no individual may sue a college or university for violating the terms of this legislation. Other previously existing actions are still available. The State Department of Education may enforce the legislation and may audit compliance.

When a respondent does bring an action (often under Article 78, but potentially under other laws), the name and biographical information of any participating student is presumed confidential and they shall be listed as numbered witnesses.<sup>7</sup>

### **Equal Treatment:**

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<sup>4</sup> Section 6440.

<sup>5</sup> Section 6440 (4)

<sup>6</sup> Section 6440 (c) (9).

<sup>7</sup> Section 6448 and Section 2 of the legislation.

The legislation is clear, just as with the Violence Against Women Act, equality in rights and opportunities must be given to Reporting Individuals and Accused/Respondents.<sup>8</sup>

The protections of the legislation “apply regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction.”<sup>9</sup>

The legislation applies regardless of whether the Reporting Individual and/or Accused/Respondent is on campus, off campus, or studying abroad.<sup>10</sup>

### **Working Together:**

The legislation acknowledges that violence often involves parties from more than one institution. When it does, colleges are encouraged to work collaboratively, mindful of the requirements of the Family Education Rights and Privacy Act (FERPA).<sup>11</sup>

The legislation further requires that colleges that lack appropriate on-campus resources or services shall, to the extent practicable, enter into MOUs, agreements, or partnerships with community-based organizations, including rape-crisis centers and domestic violence shelters and assistance organizations.<sup>12</sup> The legislation also calls for colleges giving students access, to the extent practicable, to a sexual assault forensic examination either by an employee on campus in the health center or by entering into an MOU or agreement with at least one local health care facility.<sup>13</sup> If requested, the Office of General Counsel can work with State-wide organizations and coalitions to develop model policy language where appropriate and share existing agreements between SUNY campuses and community organizations.

### **Additional Training:**

The legislation establishes a special unit within the State Police to assist in complying with this law including providing forensic support services to University Police, Campus Security and local law enforcement and providing training to college campuses, and appropriates 4.5 million dollars to the State Police. Another 4.5 million dollars is appropriated through the Office of Victim Services and Department of Health towards prevention, education and victim services of rape crisis centers. Finally, one million dollars is appropriated to colleges and universities for training.

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<sup>8</sup> Section 6440 (2).

<sup>9</sup> Section 6440 (5).

<sup>10</sup> Section 6440 (6).

<sup>11</sup> Section 6440 (2).

<sup>12</sup> Section 6444 (7).

<sup>13</sup> Section 6444 (8).

The Office of General Counsel will continue to provide training and technical assistance in complying with this legislation. If there are sample policies or documents or specific training topics you would like us to cover in a training or a webinar, please reach out to Andrea Stagg or Joseph Storch. We look forward to continuing to work with you on these important issues.

## **SUNY Policies on Sexual Violence<sup>14</sup> Prevention and Response**

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## Definition of Affirmative Consent

Affirmative consent is a knowing<sup>14</sup> and 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.<sup>15</sup> The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression.<sup>16</sup>

### New Definition Without Redline:

#### Verbatim Language:

“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 the 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.”

#### Additional Mandatory Language That May Be Worded as Appropriate for Each Institution:

- a) Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- b) Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- c) Consent may be initially given but withdrawn at any time.
- d) Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- e) Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- f) When consent is withdrawn or can no longer be given, sexual activity must stop.

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<sup>14</sup> An example of consent that would not be knowing is if student 1 is dating student A, a twin. Twin student B comes in her residence hall room at night and, thinking it was student A, she has what would seem to be active consensual sex with student B. When the lights come up, she realizes it is student B. Student 1 did not give knowing consent.

<sup>15</sup> There is no requirement that there be “verbal” consent or a specific statement of yes. To require such a verbal statement would be to exclude hearing and speaking impaired students from consenting to sexual activity. Consent can be given through words or actions.

<sup>15</sup> As in the footnote above, this is not to say that silence is the opposite of verbalization. The legislation matches the SUNY policies, but to clarify adds the phrase “in and of itself” to make clear that it is not a defense to a charge of sexual activity without consent that the other person was silent and didn't say no, and so therefore they must have consented. Silence, in and of itself, is not proof of consent (a departure from New York State Penal Law).

<sup>16</sup> The sentences that were excluded in the bill but original to the SUNY policies may be useful in training for students, because they are descriptive.

## Policy for Alcohol and/or Drug Use Amnesty in Sexual and Interpersonal Violence Cases<sup>17</sup>

The health and safety of every student at the State University of New York and its State-operated and community colleges is of utmost importance. Ulster County Community College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence,<sup>18</sup> including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Ulster County Community College strongly encourages students to report incidents of domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to Ulster County Community College officials or law enforcement will not be subject to Ulster County Community College's code of conduct action<sup>19</sup> for violations of alcohol and/or drug use<sup>20</sup> policies occurring at or near the time<sup>21</sup> of the commission of the domestic violence, dating violence, stalking or sexual assault.

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<sup>17</sup> The main changer here is including the other VAWA crimes.

<sup>18</sup> Legislators were clear in negotiations that they did not want to limit amnesty to sexual and interpersonal violence. This is consistent with the Good Samaritan 911 Law of 2011. There was general agreement that amnesty for drug and alcohol use violations was a wise policy anytime that we seek to have a student report that they were the victim of or witness to violence.

<sup>19</sup> This amnesty specifically covers judicial or conduct actions of a disciplinary nature. It does not limit a college from seeking help for a student who is struggling with drug or alcohol addiction or is otherwise in danger. Further, for those in a clinical or similar setting wherein external laws, policies, or accreditation requirements require removal or restrictions for those using drugs or alcohol, this policy does not specifically limit those actions. Colleges should take care that, while individuals may be restricted from these clinical and similar experiences, they must not be disciplined beyond what those neutral restrictions require.

<sup>20</sup> Note that the legislation and the policies cover personal drug use whether intentional or accidental. There is not amnesty for drug sale, distribution, or for drugging another individual.

<sup>21</sup> At or near the time is not defined, and should be implemented reasonably and in good faith by institutions.

## Campus Climate Assessment Policy

Climate assessments afford institutions the opportunity to better understand their campus and to make informed decisions when it comes to providing a safe educational environment. Beginning in the 2015-2016 academic year,<sup>22</sup> each State University of New York State-operated and community college will conduct a uniform climate survey that ascertains student experience with and knowledge of reporting and college adjudicatory processes for sexual harassment, including sexual violence, and other related crimes.

The survey will address at least the following:

- Student and employee knowledge about:
  - The Title IX Coordinator's role;
  - Campus policies and procedures addressing sexual assault;
  - How and where to report sexual violence as a victim/survivor or witness;
  - The availability of resources on and off campus, such as counseling, health, academic assistance;
  - The prevalence of victimization and perpetration of sexual assault, domestic violence, dating violence, and stalking on and off campus during a set time period (for example, the last two years);
  - Bystander attitudes and behavior;
  - Whether victims/survivors reported to the College/University and/or police, and reasons why they did or did not report.
  - The general awareness of the difference, if any, between the institution's policies and the penal law;
  - The general awareness of the definition of affirmative consent.

Every institution shall take steps to ensure that answers remain anonymous and that no individual is identified.<sup>23</sup> Results will be published on the campus website providing no personally identifiable information shall be shared.

Beginning in the spring semester of 2015, the Chancellor or designee will convene a group of scholars and practitioners to review methods of assessing campus climate, specific questions asked in past surveys, relevant data on responses and response rates, issues and problems encountered in survey implementation, and lessons learned from past surveys. The Chancellor or designee will gather this data and seek to develop a standardized survey, with the advice of relevant members of the SUNY community and knowledgeable outside entities, that uses established measurement tools, to be implemented every two years by all SUNY State-operated and community colleges beginning in the 2015-2016 academic year. This policy may be changed by the Chancellor or designee should federal and/or State legislation require a different process or duplicate efforts to assess campus climate via survey.

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<sup>22</sup> It should be noted that the statutory requirement would become effective one year after enactment of the law.

<sup>23</sup> Section 6445 (4) of the legislation states that “[i]nformation discovered or produced as a result of complying with this section shall not be subject to discovery or admitted into evidence in any federal or state court proceeding or considered for other purposes in any action for damages brought by a private party against an Institution, unless, in the discretion of the court, any such information is deemed to be material to the underlying claim or defense.”



## Student's Bill of Rights<sup>24</sup>

The State University of New York and Ulster County Community College are committed to providing options, support and assistance to victims/survivors of sexual assault, domestic violence, dating violence, and/or stalking to ensure that they can continue to participate in College/University-wide and campus programs, activities, and employment. All victims/survivors of these crimes and violations, regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction, have the following rights, regardless of whether the crime or violation occurs on campus, off campus, or while studying abroad:

All students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure from the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institutional representatives as practicable and not to be required to unnecessarily repeat a description of the incident.
8. Be free from retaliation by the institution, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination<sup>25</sup>;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process;<sup>26</sup>
11. Exercise civil rights and practice of religion<sup>27</sup> without interference by the investigative, criminal justice, or judicial or conduct process of the College.

### Options in Brief:

Victims/survivors have many options that can be pursued simultaneously, including one or more of the following:

- Receive resources, such as counseling and medical attention;
- Confidentially or anonymously disclose a crime or violation (for detailed information on confidentiality and privacy, visit [ [http://people.sunyulster.edu/Portal/Report\\_Something/form\\_p.asp?param=public](http://people.sunyulster.edu/Portal/Report_Something/form_p.asp?param=public) ]).
- Make a report to:
  - An employee with the authority to address complaints, including the Title IX Coordinator, a Student Conduct employee, or a Human Resources employee;
  - Ulster Community College Public Safety;

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<sup>24</sup> Section 6444 (2)

<sup>25</sup> Appeal must be considered by a panel—not one person. The panel may include one or more students.

<sup>26</sup> Campuses still can limit the participation of the advisor, and should describe those parameters in policy.

<sup>27</sup> This means that we will not schedule meetings or hearings on days of religious observance (for instance, holding a hearing on a Friday night when the reporting individual or respondent is a religious Jewish person), require a student to undergo medical procedures that they say are forbidden by their religion, or otherwise require a reporting individual to have to choose between their religion or belief system and reporting to the institution.

- Local law enforcement; and/or
- Family Court or Civil Court.

Copies of this Bill of Rights shall be distributed annually to students, made available on every college's website, and posted in each campus residence hall, dining hall, and student union or campus center and shall include links or information to access the Sexual Violence Response Policy below and the Options for Confidentially Disclosing Sexual Violence.

## Sexual Violence Response Policy

In accordance with the Student's Bill of Rights, reporting individuals shall have the right to pursue more than one of the options below at the same time, or to choose not to participate in any of the options below:

### I- Reporting:<sup>28</sup>

- To disclose *anonymously and* incident to one of the following college officials, who by law may maintain confidentiality, and can assist in obtaining services (more information on confidential reporting is available in the Options for Confidentially Disclosing Sexual Violence Policy
  - Click: [http://people.sunyulster.edu/Portal/Report\\_Something/form\\_p.asp?param=public](http://people.sunyulster.edu/Portal/Report_Something/form_p.asp?param=public)
  - Call to report anonymously: 845-688-6060
  - Counselor, Linda Farina VAN 119F 845-687-5192
- To disclose *confidentially* the incident and obtain services from the New York State, New York City or county hotlines: <http://www.opdv.ny.gov/help/dvhotlines.html>. Additional disclosure and assistance options are catalogued by the Office for the Prevention of Domestic Violence and presented in several languages: <http://www.opdv.ny.gov/help/index.html> (or by calling 1-800-942-6906), and assistance can also be obtained through:
  - SurvJustice: <http://survjustice.org/our-services/civil-rights-complaints/>;
  - Legal Momentum: <https://www.legalmomentum.org/>;
  - NYSCASA: <http://nyscasa.org/responding>;
  - NYSCADV: <http://www.nyscadv.org/>;
  - Pandora's Project: <http://www.pandys.org/lgbtsurvivors.html>;
  - GLBTQ Domestic Violence Project: <http://www.glbtqdv.org/>; and
  - RAINN: <https://www.rainn.org/get-help>.
  - Safe Horizons: <http://www.safehorizon.org/>.(note that these hotlines are for crisis intervention, resources, and referrals, and are not reporting mechanisms, meaning that disclosure on a call to a hotline does not provide any information to the campus. Reporting individuals are encouraged to additionally contact a campus confidential or private resource so that the campus can take appropriate action in these cases).
- To disclose the incident to one of the following college officials who can offer *privacy* and can provide information about remedies, accommodations, evidence preservation, and how to obtain resources. Those officials will also provide the information contained in the Students' Bill of Rights, including the right to choose when and where to report, to be protected by the institution from retaliation, and to receive assistance and resources from the institution. These college officials will disclose that they are private and not confidential resources, and they may still be required by law and college policy to inform one or more college officials about the incident, including but not limited to the Title IX Coordinator. They will notify reporting individuals that the criminal just process uses different standards of proof and evidence than internal procedures, and questions about the penal law or the criminal process should be directed to law enforcement or district attorney,:

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<sup>28</sup> The purpose of this policy is to provide clear information to students. Colleges should fill in the brackets with one or more relevant links. If a college does not have a certain resource (such as a counseling center), compliance does not require a wasted sentence saying "Counseling Center: No Counseling Center available." That line should be skipped when providing resource information.

<b>On-Campus</b>
Counselors, Linda Farina VAN 119F 845-687-5192
Public Safety 845-687-5221 – available 24 hours/day; 7 days/week
Health Services 845-687-5246
Assistant Dean of Students, Matthew Brennie 845-688-6068
Title IX Coordinator, Ann Marrott 845-687-5070

- To file a criminal complaint with Campus Public Safety and/or with local law enforcement and/or state police:
  - [College or Public Safety Office, ext. 5221, HAS 134]

<b>Off-Campus</b>
Ulster County Sheriff 845-338-3640
State Police 845-338-1702
Family of Woodstock 845-679-2485/845-338-2370
Crime Victims Assistance 845-340-3443
State Police 24-hour hotline to report sexual assault on NY college campus: 1-844-845-7269

- To receive assistance by in initiating legal proceedings in family court or civil court.
- To file a report of sexual assault, domestic violence, dating violence, and/or stalking, and/or talk to the Title IX Coordinator, Ann Marrott (845-687-5070) for information and assistance. Reports will be investigated in accordance with Ulster County Community College policy and the reporting individual’s identity shall remain private at all times if said reporting individual wishes to maintain privacy. If a reporting individual wishes to keep his/her identity anonymous, he or she may report anonymously via an internet reporting system by clicking [here](http://people.sunyulster.edu/Portal/Report_Something/form_p.asp?param=public): ([http://people.sunyulster.edu/Portal/Report\\_Something/form\\_p.asp?param=public](http://people.sunyulster.edu/Portal/Report_Something/form_p.asp?param=public) ) or telephone a report anonymously by calling 845-688-6060 to discuss the situation and available options (see policy [here](http://people.sunyulster.edu/portal/title_ix_policies.htm): [http://people.sunyulster.edu/portal/title\\_ix\\_policies.htm](http://people.sunyulster.edu/portal/title_ix_policies.htm) ):
  - Title IX Coordinator, Ann Marrott, VAN 119B, 845-687-5070, [marrotta@sunyulster.edu](mailto:marrotta@sunyulster.edu).
- When the accused is an employee, a reporting individual may also report the incident to the Office of Human Resources or may request that one of the above referenced confidential or private employees assist in reporting to Employee Relations or Human Resources. Disciplinary proceedings will be conducted in accordance with applicable collective bargaining agreements. When the accused is an employee of an affiliated entity or vendor of the college, college officials will, at the request of the reporting individual, assist in reporting to the appropriate office of the vendor or affiliated entity and, if the response of the vendor or affiliated entity is not sufficient, assist in obtaining a persona non grata letter, subject to legal requirements and college policy.
- You may withdraw your complaint or involvement from the Ulster County Community College process at any time.

**Coordinator of Personnel Services, Debbie Delaney 845-687-5088, CLI 212**

II- Every college shall ensure that, at a minimum, at the first instance of disclosure by a reporting individual to a college representative, the following information shall be presented to the reporting individual: “You have the right to make a report to University Police or Campus Security, local law enforcement, and/or State Police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution.”<sup>29</sup>

**III- Resources:**

- To obtain effective intervention services.
  - Title IX Coordinator, Ann Marrott, VAN 250, 845-687-5070
  - Linda Farina, VAN 119F, 845-687-5192, These are offered free of charge.
  - Testing for STIs and emergency contraception is available at Health Services, SEN 139, 845-687-5246. These are offered free of charge. Sexual contact can transmit Sexually Transmitted Infections (STI) and may result in pregnancy.

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<sup>29</sup> It is advisable to also place this information on the college or university’s reporting web site.

Off-Campus
Domestic Violence Outreach 845-338-2370
Family of Woodstock 845-679-2485
SANE 845-340-3363
Crime Victims Assistance 845-340-3443

- ☒ Within 96 hours of an assault, you can get a Sexual Assault Forensic Examination (commonly referred to as a rape kit) at a hospital. While there should be no charge for a rape kit, there may be a charge for medical or counseling services off campus and, in some cases, insurance may be billed for services. You are encouraged to let hospital personnel know if you do not want your insurance policyholder to be notified about your access to these services. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency funds. More information may be found here: <https://www.ovs.ny.gov/sites/default/files/brochure/ovsrightsofcvbooklet.pdf>, or by calling 1-800-247-8035. Options are explained here: <https://www.ovs.ny.gov/help-crime-victims>.
- ☒ To best preserve evidence, victims/survivors should avoid showering, washing, changing clothes, combing hair, drinking, eating, or doing anything to alter physical appearance until after a physical exam has been completed.

#### IV- Protection and Accommodations:

- When the accused is a student, to have the college issue a “No Contact Order,” consistent with college policy and procedure, meaning that continuing to contact the protected individual is a violation of college policy subject to additional conduct charges; if the accused and a protected person observe each other in a public place, it is the responsibility of the accused to leave the area immediately and without directly contacting the protected person. Both the accused/respondent and reporting individual may request a prompt review of the need for and terms of a No Contact Order, consistent with Ulster Community College policy. Parties may submit evidence in support of their request.<sup>30</sup>
- To have assistance from Campus Public Safety or other college officials in initiating legal proceedings in family court or civil court, including but not limited to obtaining an Order of Protection or, if outside of New York State, an equivalent protective or restraining order.
- To receive a copy of the Order of Protection or equivalent and have an opportunity to meet or speak with a college official who can explain the order and answer questions about it,<sup>31</sup> including information from the Order about the accused’s responsibility to stay away from the protected person(s); that burden does not rest on the protected person(s).
- To an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension.
- To have assistance from Campus Public Safety in effecting an arrest when an individual violates an Order of Protection or, if outside of New York State, an equivalent protective or restraining order within the jurisdiction of Campus Public Safety or, if outside of the jurisdiction or [if Campus Security does not have arresting powers] to call on and assist local law enforcement in effecting an arrest for violating such an order.
- When the accused is a student and presents a continuing threat to the health and safety of the community, to have the accused subject to interim suspension pending the outcome of a conduct process. Parties may request a prompt review of the need for and terms of an interim suspension.<sup>32</sup>
- When the accused is not a student but is a member of the college community and presents a continuing threat to the health and safety of the community, to subject the accused to interim measures in accordance with applicable collective bargaining agreements, employee handbooks, and Ulster County

<sup>30</sup> Colleges may, but are not required to, establish a schedule for each individuals’ use of certain facilities. Section 6444 (4) (a).

<sup>31</sup> Each college should post information about personnel, likely in University Police, Campus Security, or Student Affairs, who can assist a student in understanding an Order of Protection, and a clear method for contacting that office. To comply with the VAWA requirement of even-handedness, such explanations should be available both to students who are protected by Orders of Protection and to those who are subject to Orders of Protection.

<sup>32</sup> Campuses must have a procedure by which the accused/respondent or victim/survivor can request a review of the terms of an interim suspension. The review must be prompt, although reasonable under the circumstances. The requests may be for potential modification of the suspension, and the party or parties can submit evidence in support of the request. To be consistent with Title IX and the need for equal opportunity, notify the other party the way you would when one party appeals after a hearing.

- Community College policies and rules.
- When the accused is not a member of the college community, to have assistance from Campus Public Safety or other college officials in obtaining a barring notice; subject to legal requirements and college policy.
- To obtain reasonable and available interim measures and accommodations that effect a change in academic, housing, employment, transportation or other applicable arrangements in order to ensure safety, prevent retaliation, and avoid an ongoing hostile environment. Parties may request a prompt review of the need for and terms of any interim measures and accommodations that directly affect them. While reporting individuals may request accommodations through any of the offices referenced in this policy, the following office can serve as a point to assist with these measures:

Assistant Dean of Student Services, Matthew Brennie, 845-688-6068, SEN 113

**V- Student Conduct Process:**

- To request that student conduct charges be filed against the accused. Conduct proceedings are governed by the procedures set forth in the College Catalog found at <http://catalog.sunyulster.edu/> and on the college portal at my.sunyulster.edu as well as federal and New York State law, including the due process provisions of the United States and New York State Constitutions.
- Throughout conduct proceedings, the respondent and the reporting individual will have:
  - The same opportunity to be accompanied by an advisor of their choice who may assist and advise the parties throughout the conduct process and any related hearings or meetings. Participation of the advisor in any proceeding is governed by federal law and the Student Code of Conduct;
  - The right to a prompt response to any complaint and to have their complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is “not responsible” until a finding of responsibility is made, and other issues related to sexual assault, domestic violence, dating violence, and stalking.
  - The right to an investigation and process conducted in a manner that recognizes the legal and policy requirements of due process (including fairness, impartiality, and a meaningful opportunity to be heard) and is not conducted by individuals with a conflict of interest.
  - The right to receive advance written or electronic notice of the date, time, and location of any meeting or hearing they are required to or are eligible to attend. Accused individuals will also be told the factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions.
  - The right to have a conduct process run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than 10 days except when law enforcement specifically requests and justifies a longer delay.
  - The right to offer evidence during an investigation and to review available relevant evidence in the case file (or otherwise held by Ulster County Community College).
  - The right to present evidence and testimony at a hearing, where appropriate.
  - The right to a range of options for providing testimony via alternative arrangements, including telephone/videoconferencing or testifying with a room partition.
  - The right to exclude prior sexual history with persons other than the other party in the conduct process or their own mental health diagnosis or treatment from admittance in college disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.
  - The right to ask questions of the decision maker and via the decision maker indirectly request responses from other parties and any other witnesses present.
  - The right to make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.
  - The right to simultaneous (among the parties) written or electronic notification of the outcome of a conduct proceeding, including the decision, any sanctions, and the rationale for the decision and any sanctions.
  - The right to written or electronic notice about the sanction(s) that may be imposed on the accused based upon the outcome of the conduct proceeding. For students found responsible

for sexual assault,<sup>33</sup> the available sanctions are suspension with additional requirements and expulsion/dismissal.

- Access to at least one level of appeal of a determination before a panel,<sup>34</sup> which may include one or more students, that is fair and impartial and does not include individuals with a conflict of interest.
- The right to have access to a full and fair record<sup>35</sup> of a student conduct hearing, which shall be preserved and maintained for at least five years.

**Assistant Dean of Student Services, Matthew Brennie, 845-688-6068, SEN 113**

- The right to choose whether to disclose or discuss the outcome of a conduct hearing.<sup>36</sup>
- The right to have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.<sup>37</sup>

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<sup>33</sup> Sexual assault is defined to be a Code of Conduct violation consistent with the Federal definition of rape adopted by the Department of Education in Final Regulations (<http://www.gpo.gov/fdsys/pkg/FR-2014-10-20/pdf/2014-24284.pdf>, page 62789), from the Uniform Crime Reporting system of the Federal Bureau of Investigations. “The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.” Consent for these purposes is the consent definition in these policies and the legislation.

<sup>34</sup> This is a significant change for many SUNY colleges. The legislation requires that at least one level of appeal be before a panel. Colleges are given wide discretion to determine whether there is one or more levels of appeal, who sits on such a panel, how many constitute a panel, whether there is a single panel for all cases or a group of individuals from whom a panel is chosen for each case, whether the panel includes students, whether the panel vote must be unanimous or majority, and all other decisions in this area.

<sup>35</sup> The legislation does not specify the type of record or manner of access. It can be a recording, notes, a transcript or any other reasonable type of record. Further, the legislation is careful to say “access.” This means that colleges are required to continue their practice of giving participants reasonable access during business hours and are specifically not required to provide participants with copies of the record.

<sup>36</sup> This means that students may not be required to sign a non-disclosure agreement or other document forbidding them from discussing their case. This applies to respondents and reporting individuals. Participants are not themselves barred by FERPA from sharing this information. Note, however, that this does not allow students to unreasonably share private information in a manner intended to harm or embarrass another individual, or in a manner that would recklessly do so regardless of intention. Such sharing may be retaliation which can result in separate charges under the Code of Conduct.

<sup>37</sup> Practically, the experienced reader will note that this sentence is precisely the same as the current Federal requirements where the Clery Act/VAWA meets FERPA. More information can be found in this chart, Notifications Following Student Conduct Hearings, <http://www.nacua.org/securedocuments/resourcepagedocs/CleryAct/VictimNotificationChartJuly2014.pdf>.

## Options for Confidentially Disclosing Sexual Violence<sup>38</sup>

The State University of New York and Ulster County Community College want you to get the information and support you need regardless of whether you would like to move forward with a report of sexual violence to campus officials or to police. You may want to talk with someone about something you observed or experienced, even if you are not sure that the behavior constitutes sexual violence. A conversation where questions can be answered is far superior to keeping something to yourself. Confidentiality varies, and this document is aimed at helping you understand how confidentiality applies to different resources that may be available to you.

### In this Policy:

- Privileged and Confidential Resources.
- Non-Professional Counselors and Advocates.
- Privacy versus Confidentiality.
- Requesting Confidentiality: How the College/University Will Weigh the Request and Respond.
- Public Awareness/Advocacy Events.
- Anonymous Disclosure.
- Institutional Crime Reporting.

### Privileged and Confidential Resources:

Off-campus options to disclose sexual violence *confidentially* include (note that these outside options do not provide any information to the campus):

- Off-campus counselors and advocates. Crisis services offices will generally maintain confidentiality unless you request disclosure and sign a consent or waiver form. More information on an agency's policies on confidentiality may be obtained directly from the Ulster County Crime Victims Assistance Program.

Off-Campus
Domestic Violence Outreach 845-338-2370
Family of Woodstock 845-679-2485
Ulster County SANE 845-340-3363
Crime Victims Assistance 845-340-3443

- Off-campus healthcare providers
  - Note that medical office and insurance billing practices may reveal information to the insurance policyholder, including medication and/or examinations paid for or administered. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency compensation. More information may be found here: [http://www.ovs.ny.gov/files/ovs\\_rights\\_of\\_cv\\_booklet.pdf](http://www.ovs.ny.gov/files/ovs_rights_of_cv_booklet.pdf), or by calling 1-800-247-8035. Options are explained here: <http://www.ovs.ny.gov/helpforcrimevictims.html>.

Note that even individuals who can typically maintain confidentiality are subject to exceptions under the law, including when an individual is a threat to him or herself or others and the mandatory reporting of child abuse.

### Non-Professional Counselors and Advocates:

Non-professional counselors and advocates can also assist you without sharing information that could identify you. At Ulster County Community College, this includes Linda Farina, College Counselor, VAN 119F, ext. 5192. These individuals will report the nature, date, time, and general location of an incident to Ulster County Community College's Title IX Coordinator, but will consult with you to ensure no personally identifying details are shared without your consent. These individuals are not considered confidential resources as discussed above.

### Privacy versus Confidentiality:

Ulster County Community College offices and employees who cannot guarantee *confidentiality* will maintain your *privacy* to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible under the law for tracking patterns and spotting systemic issues. Ulster County Community College will limit the disclosure as much as possible, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

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<sup>38</sup> The legislation makes only tiny ministerial changes to the confidentiality policy.



**Requesting Confidentiality: How Ulster County Community College Will Weigh the Request and Respond:**

If you disclose an incident to a Ulster County Community College employee who is responsible for responding to or reporting sexual violence or sexual harassment, but wish to maintain confidentiality or do not consent to the institution's request to initiate an investigation, the Title IX Coordinator must weigh your request against our obligation to provide a safe, non-discriminatory environment for all members of our community, including you.

We will assist you with academic, employment, and other reasonable and available accommodations regardless of your reporting choices. While reporting individuals may request accommodations through several college offices, the following office can serve as a primary point of contact to assist with these measures [Linda Farina, College Counselor, VAN 119F, ext. 5192]. We also may take proactive steps, such as training or awareness efforts, to combat sexual violence in a general way that does not identify you or the situation you disclosed.

We may seek consent from you prior to conducting an investigation. You may decline to consent to an investigation, and that determination will be honored unless the Ulster County Community College's failure to act does not adequately mitigate the risk of harm to you or other members of the Ulster County Community College community. Honoring your request may limit our ability to meaningfully investigate and pursue conduct action against an accused individual. If we determine that an investigation is required, we will notify you and take immediate action as necessary to protect and assist you.

When you disclose an incident to someone who is responsible for responding to or reporting sexual violence or sexual harassment, but wish to maintain confidentiality, Ulster County Community College will consider many factors to determine whether to proceed despite that request. These factors include, but are not limited to:

- Whether the accused has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation, such as a situation that previously involved sustained stalking,
- The increased risk that the accused will commit additional acts of violence;
- Whether the accused used a weapon or force;
- Whether the reporting individual is a minor; and
- Whether we possess other means to obtain evidence such as security footage, and whether the report reveals a pattern of perpetration at a given location or by a particular group.

If Ulster County Community College determines that it must move forward with an investigation, the reporting individual or victim/survivor will be notified and Ulster County Community will take immediate action as necessary to protect and assist them.

**Public Awareness/Advocacy Events:**

If you disclose a situation through a public awareness event such as "Take Back the Night," candlelight vigils, protests, [student organization or other event or forum], or other public event, Ulster County Community College is not obligated to begin an investigation. Ulster County Community College may use the information you provide to inform the need for additional education and prevention efforts.

**Anonymous Disclosure:**

To report *anonymously* an incident to one of the following college officials, who by law may maintain confidentiality, and can support and assist in obtaining services, you can use our anonymous internet reporting system by clicking [here](#), or you can telephone a report anonymously by calling [845-688-6060](tel:845-688-6060).

Ann Marrott, Title IX Coordinator, VAN 119B, 845-687-5070 or

Wayne Freer, Director of Public Safety, HAS 134, 845-687-5053.

To disclose *confidentially* an incident and obtain services, call the New York State Hotline for Sexual Assault and Domestic Violence: 1-800-942-6906.

The Hotline is for crisis intervention, resources and referrals and is **not a reporting mechanism**.

**Institutional Crime Reporting**

Reports of certain crimes occurring in certain geographic locations will be included in the Ulster County Community College Clery Act Annual Security Report in an anonymized manner that neither identifies the specifics of the crime or the identity of the reporting individual or victim/survivor.

- Ann Marrott, Title IX Coordinator, VAN 119B, 845-687-5070,
- Wayne Freer, Director of Public Safety, HAS 134, 845-687-5053.

Ulster County Community College is obligated to issue timely warnings of Clery Act crimes occurring within relevant geography that represent a serious or continuing threat to students and employees (subject to exceptions when potentially compromising law enforcement efforts and when the warning itself could potentially identify the reporting individual or victim/survivor). A reporting individual will never be identified in a timely warning.

The Family Educational Rights and Privacy Act allows institutions to share information with parents when (1) there is a health or safety emergency, or (2) when the student is a dependent on either parents' prior year federal income tax return. Generally, Ulster County Community College will not share information about a report of sexual violence with parents without the permission of the reporting individual.

## Student Onboarding and Ongoing Education Guide<sup>39</sup>

The State University of New York and its State-operated and community colleges believe that sexual violence prevention training and education cannot be accomplished via a single day or a single method of training. To that end, SUNY campuses will continue to educate all new and current students using a variety of best practices aimed at educating the entire college community in a way that decreases violence and maintaining a culture where sexual assault and acts of violence are not tolerated.

All new first-year and transfer students will, during the course of their onboarding to a SUNY State-operated or community college, receive training on the following topics, using a method and manner appropriate to the institutional culture of each campus:

- The institution prohibits sexual harassment, including sexual violence, other violence or threats of violence, domestic violence, dating violence, stalking, other violence or threats of violence, and will offer resources to any victims/survivors of such violence while taking administrative and conduct action regarding any accused individual within the jurisdiction of the institution.
- Relevant definitions including, but not limited to, the definitions of sexual violence and consent.
- Policies apply equally to all students regardless of sexual orientation, gender identity, or gender expression.
- The role of the Title IX Coordinator, University Police/Campus Security, and other relevant offices that address violence prevention and response.<sup>40</sup>
- Awareness of violence, its impact on victims/survivors and their friends and family, and its long-term impact.
- The Student's Bill of Rights and Sexual Violence Response Policy, including:
  - How to report sexual violence and other crimes confidentially, and/or to college officials, campus law enforcement and security, and local law enforcement.
  - How to obtain services and support.
- Bystander Intervention and the importance of taking action, when one can safely do so, to prevent violence.
- The protections of the Policy for Alcohol and/or Drug Use Amnesty in Sexual and Interpersonal Violence Cases.
- Risk assessment and reduction<sup>41</sup> including, but not limited to, steps that potential victims/survivors *and* potential assailants and bystanders to violence can take to lower the incidence of sexual violence.
- Consequences and sanctions for individuals who commit these crimes.

The onboarding process is not limited to a single day of orientation, but recognizes that students enroll at different times at different SUNY campuses and gives campuses the flexibility to best educate students at a time and manner that can most effectively bring these points to light. SUNY will conduct these trainings for all new students, whether first-year or transfer, undergraduate, graduate, or professional. Each campus shall use multiple methods to educate students about sexual violence prevention. Each SUNY institution will also share information on sexual violence prevention with parents of enrolling students.

Students at SUNY State-operated and community college campuses shall be offered general and specialized training in sexual violence prevention. Each institution will conduct a campaign, compliant with the requirements of the Violence Against Women Act, to educate the student population. Further, institutions will, as appropriate, provide or expand specific training to include groups such as international students, students that are also employees of the campus, leaders and officers of registered/recognized student organizations, online and distance education students. Institutions will also provide specific training to members of groups identified as likely to engage in high-risk behavior.

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<sup>39</sup> The legislation makes only tiny ministerial changes to education and onboarding requirements.

<sup>40</sup> Sexual assault, domestic violence, dating violence, and stalking.

<sup>41</sup> May include information about alcohol and drugs. Section 6447 (2) (g) requires that colleges include information about “[r]isk assessment and reduction including, but not limited to, steps that potential victims, perpetrators, and bystanders can take to lower the incidence of violations, which may contain information about the dangers of drug and alcohol use, including underage drinking and binge drinking, involuntary consumption of incapacitating drugs and the danger of mislabeled drugs and alcohol, the importance of communication with trusted friends and family whether on campus or off campus, and the availability of institution officials who can answer general or specific questions about risk reduction.”

Beginning in the 2015-2016 academic year, SUNY State-operated and community colleges will require that student leaders and officers of registered/recognized student organizations and those seeking recognition complete training on domestic violence, dating violence, sexual assault, or stalking prevention as part of the approval process and require student-athletes to complete training in domestic violence, dating violence, sexual assault, or stalking prior to participating in intercollegiate athletics.<sup>42</sup>

Methods of training and educating students may include, but are not limited to:

- President's welcome messaging;
- Peer theater and peer educational programs;
- Online training;
- Social media outreach;
- First-year seminars and transitional courses;
- Course syllabi;
- Faculty teach-ins;
- Institution-wide reading programs;
- Posters, bulletin boards, and other targeted print and email materials;
- Programming surrounding large recurring campus events;
- Partnering with neighboring SUNY and non-SUNY colleges to offer training and education;
- Partnering with State and local community organizations that provide outreach, support, crisis intervention, counseling and other resources to victims/survivors of crimes to offer training and education. Partnerships can also be used to educate community organizations about the resources and remedies available on campus for students and employees seeking services; and
- Outreach and partnering with local business those attract students to advertise and educate about these policies.

Each SUNY campus must report back to the Chancellor on or before March 31, 2015 on their plan to comply with this policy. Each institution must engage in a regular assessment of their programming and policies to determine effectiveness. The institution may either assess its own programming or conduct a review of other campus programming and published studies to adapt its programming to ensure effectiveness and relevance to students.

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<sup>42</sup> Colleges have significant flexibility in how to offer this training. It may be a single training or series of trainings for all athletes or student leaders or it may allow such students to attend one of many trainings offered by the college over the course of the semester. Colleges should endeavor to accomplish this in good faith. The training requirement is not measured by the organization or team being trained once, but by each officer, leader, or athlete completing the training her or himself.