

Title IX: What You Need to Know

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Goals

- In this session we will discuss the pertinent laws and protocols involving gender based violence, specifically involving college students.
- We will inform you of the criminal, civil and administrative options for the survivor in the aftermath of the assault.
- We will give you useful information when representing student survivors and help you best serve and advocate for your clients.

What is Title IX?

- Title IX is a federal law that prohibits discrimination on the basis of sex at any education program or activity that receives federal funding.

Who does Title IX protect?

- Title IX protects victims of all types of gender based violence
 - Rape
 - Sexual Assault
 - Dating and domestic violence
 - Stalking
 - Harassment
 - Sexual Battery
 - Sexual Coercion

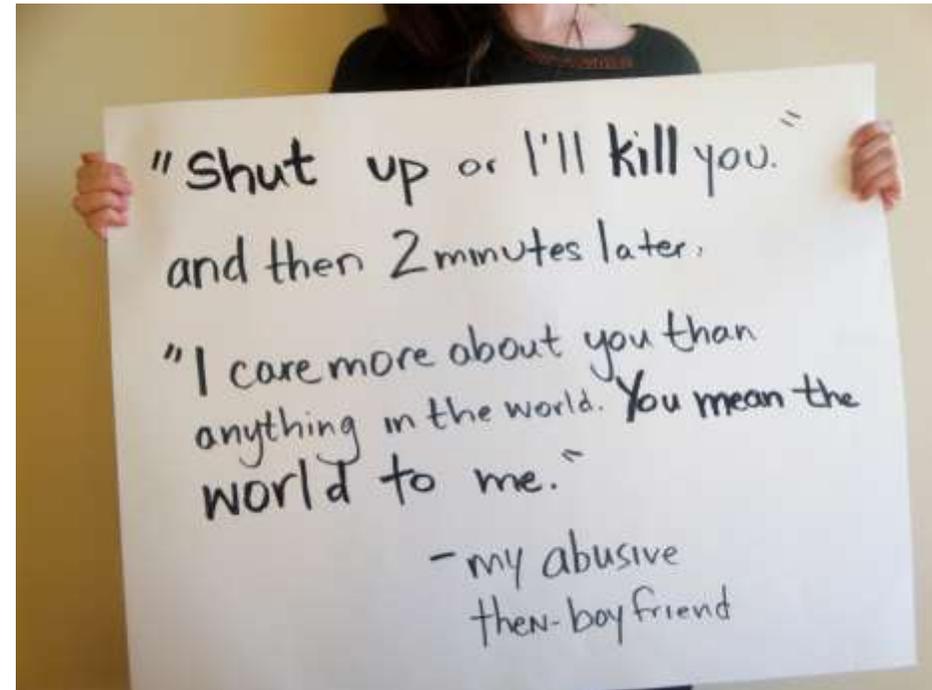


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How does Title IX apply to student-on-student sexual violence?

- Under Title IX, schools that receive federal funding must ensure that all students are not denied or limited in their ability to participate in and benefit from the school's educational programs or activities.
- A school violates a student's rights under Title IX when:
 - The alleged conduct limits or denies a student the ability to participate (i.e. creates a hostile environment) and
 - The school, upon notice of said conduct, fails to take effective and prompt steps to end the violence, eliminate the hostile environment, prevent its recurrence, and remedy its effects.

9 THINGS TO KNOW ABOUT TITLE IX

1. Title IX is a landmark federal civil right that prohibits sex discrimination in education.

2. Title IX does not apply to female students only.

3. Schools must be proactive in ensuring that your campus is free of sex discrimination.

4. Schools must have an established procedure for handling complaints of sexual discrimination, harassment, or violence.

5. Schools should ensure that a victim doesn't have to share spaces, such as dorms, classes and campus jobs, with his or her assailant

6. Schools may not retaliate against someone filing a complaint and must keep a complainant-victim safe from other retaliatory harassment or behavior.

7. Schools can issue a no-contact directive under Title IX to prevent the accused student from approaching or interacting with you.

8. In cases of sexual violence, schools are prohibited from encouraging or allowing mediation (rather than a formal hearing) of the complaint.

9. Schools cannot discourage you from continuing your education.

www.knowyourIX.com



What is the Clery Act?

- Federal law that requires that all incidents of crime that occur “on campus” be reported in a timely manner.
- Timely Warnings must be issued for crimes that represent a threat to the safety of students and/or employees.

Clery Act Requirements

- The Clery Act Reporting requires:
 - Statistics about certain offenses be included in the University's annual security report and provided to the U.S. Dept. of Education in a manner that does not include any personally identifying information about those involved
 - Timely warnings be issued to the University community about certain crimes that have been reported and may continue to pose a serious or continual threat to Students and Employees.
 - Such warnings do not include names and other identifying information of the Complainants

What are the Clery Act implications?

- Timely Warning notices are being sent to all enrolled students at the University immediately following the University's receipt of a report.
- Survivors are not always being notified that a timely notice is going to be sent out in their case.
- Notices are not necessarily accurate and may represent incorrect facts as well as incorrect information regarding University responses to the report.

Legal Options for a Sexual Violence Survivor

- Criminal Charges
- Civil Protective Order
- Administrative Complaint Through University



Civil Options

Protective Orders

Protective Orders

§ 19.2-152.10. Protective order.

- A. The court may issue a protective order pursuant to this chapter to protect the health and safety of the petitioner and family or household members of a petitioner upon (i) the issuance of a petition or warrant for, or a conviction of, any criminal offense resulting from the commission of an act of violence, force, or threat or (ii) a hearing held pursuant to subsection D of § 19.2-152.9. A protective order issued under this section may include any one or more of the following conditions to be imposed on the respondent:
 1. Prohibiting acts of violence, force, or threat or criminal offenses that may result in injury to person or property;
 2. Prohibiting such contacts by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons;
 3. Any other relief necessary to prevent (i) acts of violence, force, or threat, (ii) criminal offenses that may result in injury to person or property, or (iii) communication or other contact of any kind by the respondent; and
 4. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such petitioner meets the definition of owner in § 3.2-6500.
- B. The protective order may be issued for a specified period of time up to a maximum of two years. The protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Prior to the expiration of the protective order, a petitioner may file a written motion requesting a hearing to extend the order. Proceedings to extend a protective order shall be given precedence on the docket of the court. The court may extend the protective order for a period not longer than two years to protect the health and safety of the petitioner or persons who are family or household members of the petitioner at the time the request for an extension is made. The extension of the protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Nothing herein shall limit the number of extensions that may be requested or issued.

C. A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. (cont.)

D. Except as otherwise provided, a violation of a protective order issued under this section shall constitute contempt of court.

E. The court may assess costs and attorneys' fees against either party regardless of whether an order of protection has been issued as a result of a full hearing.

F. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A, shall be accorded full faith and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such person's due process rights and consistent with federal law. A person entitled to protection under such a foreign order may file the order in any appropriate district court by filing with the court, an attested or exemplified copy of the order. Upon such a filing, the clerk shall forthwith forward an attested copy of the order to the primary law-enforcement agency responsible for service and entry of protective orders which shall, upon receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network.

Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy available of any foreign order filed with that court. A law-enforcement officer may, in the performance of his duties, rely upon a copy of a foreign protective order or other suitable evidence which has been provided to him by any source and may also rely upon the statement of any person protected by the order that the order remains in effect.

G. Either party may at any time file a written motion with the court requesting a hearing to dissolve or modify the order. Proceedings to modify or dissolve a protective order shall be given precedence on the docket of the court.

H. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

I. No fees shall be charged for filing or serving petitions pursuant to this section.

Protective Orders

§ 16.1-253.1 : Family Abuse Protective Orders

- Preliminary protective orders in cases of family abuse; confidentiality.
- A. Upon the filing of a petition alleging that the petitioner is or has been, within a reasonable period of time, subjected to family abuse, the court may issue a preliminary protective order against an allegedly abusing person in order to protect the health and safety of the petitioner or any family or household member of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. Immediate and present danger of family abuse or evidence sufficient to establish probable cause that family abuse has recently occurred shall constitute good cause. Evidence that the petitioner has been subjected to family abuse within a reasonable time and evidence of immediate and present danger of family abuse may be established by a showing that (i) the allegedly abusing person is incarcerated and is to be released from incarceration within 30 days following the petition or has been released from incarceration within 30 days prior to the petition, (ii) the crime for which the allegedly abusing person was convicted and incarcerated involved family abuse against the petitioner, and (iii) the allegedly abusing person has made threatening contact with the petitioner while he was incarcerated, exhibiting a renewed threat to the petitioner of family abuse.

Protective Orders

§ 16.1-253.1 : Family Abuse Protective Orders

- A preliminary protective order may include any one or more of the following conditions to be imposed on the allegedly abusing person:
 - 1. Prohibiting acts of family abuse or criminal offenses that result in injury to person or property.
 - 2. Prohibiting such contacts by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons.
 - 3. Granting the petitioner possession of the premises occupied by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession shall affect title to any real or personal property.
 - 4. Enjoining the respondent from terminating any necessary utility service to a premises that the petitioner has been granted possession of pursuant to subdivision 3 or, where appropriate, ordering the respondent to restore utility services to such premises.
 - 5. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner alone or jointly owned by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession or use shall affect title to the vehicle.
 - 6. Requiring that the allegedly abusing person provide suitable alternative housing for the petitioner and any other family or household member and, where appropriate, requiring the respondent to pay deposits to connect or restore necessary utility services in the alternative housing provided.
 - 7. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner.
- B. The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court. A copy of a preliminary protective order containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. (cont.)
- C. The preliminary order is effective upon personal service on the allegedly abusing person. Except as otherwise provided in § 16.1-253.2, a violation of the order shall constitute contempt of court.
- D. At a full hearing on the petition, the court may issue a protective order pursuant to § 16.1-279.1 if the court finds that the petitioner has proven the allegation of family abuse by a preponderance of the evidence.
- E. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.
- F. As used in this section, "copy" includes a facsimile copy.
- G. No fee shall be charged for filing or serving any petition or order pursuant to this section.

Family or Household Member:

"Family or household member" means:

- (i) the person's spouse, whether or not he or she resides in the same home with the person,
- (ii) the person's former spouse, whether or not he or she resides in the same home with the person,
- (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the person,
- (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person,
- (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or
- (vi) any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person.



Civil Options: Thoughts and Recommendations

- If possible, try to help the complainant obtain legal representation for both the PPO as well as PO hearing
- Liaise with either legal representative or local victim witness advocate to assist complainant in accurately and briefly completing petition paperwork
- Make use of the I-CAN system to complete paperwork if possible

Criminal Options

Relevant Statutes

Rape

§ 18.2-61. Rape.

- A. If any person has sexual intercourse with a complaining witness, whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness's mental incapacity or physical helplessness; or (iii) with a child under age 13 as the victim, he or she shall be guilty of rape.

- B. A violation of this section shall be punishable, in the discretion of the court or jury, by confinement in a state correctional facility for life or for any term not less than five years; and in addition:
 - 1. For a violation of clause (iii) of subsection A where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a mandatory minimum term of confinement of 25 years; or

 - 2. For a violation of clause (iii) of subsection A where it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense, the punishment shall include a mandatory minimum term of confinement for life.

Forcible Sodomy

§ 18.2-67.1. Forcible sodomy.

- A. An accused shall be guilty of forcible sodomy if he or she engages in cunnilingus, fellatio, anilingus, or anal intercourse with a complaining witness whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in such acts with any other person, and
 - 1. The complaining witness is less than 13 years of age; or
 - 2. The act is accomplished against the will of the complaining witness, by force, threat or intimidation of or against the complaining witness or another person, or through the use of the complaining witness's mental incapacity or physical helplessness.
- B. Forcible sodomy is a felony punishable by confinement in a state correctional facility for life or for any term not less than five years; and in addition:
 - 1. For a violation of subdivision A 1, where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § [18.2-47](#) or § [18.2-48](#), (ii) § [18.2-89](#), [18.2-90](#), or [18.2-91](#), or (iii) § [18.2-51.2](#), the punishment shall include a mandatory minimum term of confinement of 25 years; or
 - 2. For a violation of subdivision A 1 where it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense, the punishment shall include a mandatory minimum term of confinement for life.

Aggravated Sexual Battery

§ 18.2-67.3. Aggravated sexual battery; penalty.

- A. An accused shall be guilty of aggravated sexual battery if he or she sexually abuses the complaining witness, and
 - 1. The complaining witness is less than 13 years of age, or
 - 2. The act is accomplished through the use of the complaining witness's mental incapacity or physical helplessness, or
 - 3. The offense is committed by a parent, step-parent, grandparent, or step-grandparent and the complaining witness is at least 13 but less than 18 years of age, or
 - 4. The act is accomplished against the will of the complaining witness by force, threat or intimidation, and
 - a. The complaining witness is at least 13 but less than 15 years of age, or
 - b. The accused causes serious bodily or mental injury to the complaining witness, or
 - c. The accused uses or threatens to use a dangerous weapon.
- B. Aggravated sexual battery is a felony punishable by confinement in a state correctional facility for a term of not less than one nor more than 20 years and by a fine of not more than \$100,000.

Sexual Battery

§ 18.2-67.4. Sexual battery.

- A. An accused is guilty of sexual battery if he sexually abuses, as defined in § [18.2-67.10](#), (i) the complaining witness against the will of the complaining witness, by force, threat, intimidation, or ruse, (ii) within a two-year period, more than one complaining witness or one complaining witness on more than one occasion intentionally and without the consent of the complaining witness, (iii) an inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail, and the accused is an employee or contractual employee of, or a volunteer with, the state or local correctional facility or regional jail; is in a position of authority over the inmate; and knows that the inmate is under the jurisdiction of the state or local correctional facility or regional jail, or (iv) a probationer, parolee, or a pretrial defendant or posttrial offender under the jurisdiction of the Department of Corrections, a local community-based probation services agency, a pretrial services agency, a local or regional jail for the purposes of imprisonment, a work program or any other parole/probationary or pretrial services or agency and the accused is an employee or contractual employee of, or a volunteer with, the Department of Corrections, a local community-based probation services agency, a pretrial services agency or a local or regional jail; is in a position of authority over an offender; and knows that the offender is under the jurisdiction of the Department of Corrections, a local community-based probation services agency, a pretrial services agency or a local or regional jail.
- B. Sexual battery is a Class 1 misdemeanor.

Assault and Battery

§ 18.2-57. Assault and battery; penalty.

- A. Any person who commits a simple assault or assault and battery is guilty of a Class 1 misdemeanor, and if the person intentionally selects the person against whom a simple assault is committed because of his race, religious conviction, color or national origin, the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.
- B. However, if a person intentionally selects the person against whom an assault and battery resulting in bodily injury is committed because of his race, religious conviction, color or national origin, the person is guilty of a Class 6 felony, and the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.

Domestic Assault and Battery

§ 18.2-57.2. Assault and battery against a family or household member; penalty.

- A. Any person who commits an assault and battery against a family or household member is guilty of a Class 1 misdemeanor.
- B. Upon a conviction for assault and battery against a family or household member, where it is alleged in the warrant, petition, information, or indictment on which a person is convicted, that such person has been previously convicted of two offenses against a family or household member of (i) assault and battery against a family or household member in violation of this section, (ii) malicious wounding or unlawful wounding in violation of § [18.2-51](#), (iii) aggravated malicious wounding in violation of § [18.2-51.2](#), (iv) malicious bodily injury by means of a substance in violation of § [18.2-52](#), (v) strangulation in violation of § [18.2-51.6](#), or (vi) an offense under the law of any other jurisdiction which has the same elements of any of the above offenses, in any combination, all of which occurred within a period of 20 years, and each of which occurred on a different date, such person is guilty of a Class 6 felony.
- C. Whenever a warrant for a violation of this section is issued, the magistrate shall issue an emergency protective order as authorized by § [16.1-253.4](#), except if the defendant is a minor, an emergency protective order shall not be required.

Stalking

§ 18.2-60.3. Stalking; penalty.

- A. Any person, except a law-enforcement officer, as defined in § 9.1-101, and acting in the performance of his official duties, and a registered private investigator, as defined in § 9.1-138, who is regulated in accordance with § 9.1-139 and acting in the course of his legitimate business, who on more than one occasion engages in conduct directed at another person with the intent to place, or when he knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household member is guilty of a Class 1 misdemeanor.
- B. Any person who is convicted of a second offense of subsection A occurring within five years of a prior conviction of such an offense when the person was also convicted within the five-year period prior to the instant offense of a violation of (i) § 18.2-51, 18.2-51.2, 18.2-51.6, 18.2-52, or 18.2-57 and the victim of that crime was the same person who is the victim of the stalking activity in the instant conviction, (ii) § 18.2-57.2, or (iii) a protective order, is guilty of a Class 6 felony.
- C. Any person convicted of a third or subsequent conviction of subsection A occurring within five years of a conviction for an offense under this section or for a similar offense under the law of any other jurisdiction is guilty of a Class 6 felony.
- D. A person may be convicted under this section irrespective of the jurisdiction or jurisdictions within the Commonwealth wherein the conduct described in subsection A occurred, if the person engaged in that conduct on at least one occasion in the jurisdiction where the person is tried. Evidence of any such conduct that occurred outside the Commonwealth may be admissible, if relevant, in any prosecution under this section provided that the prosecution is based upon conduct occurring within the Commonwealth.
- E. Upon finding a person guilty under this section, the court shall, in addition to the sentence imposed, issue an order prohibiting contact between the defendant and the victim or the victim's family or household member.

Criminal Options: Thoughts and Recommendations

- Ensure that complainants have consistent support for all meetings with detectives and prosecutors; ideally this would be legal representation, but other supportive personnel familiar with the process is still helpful.
- Foster a positive and collaborative relationship with CA's office and local police departments (Through coalition meetings, open dialogue, etc.)
- If possible, ensure that complainant is able to use any pending criminal charges to assist with other relief needed.

Administrative Options Through The Office of Title IX (UMW)

University Specific

University of Mary Washington

POLICY ON SEXUAL AND GENDER-BASED HARASSMENT AND OTHER FORMS OF
INTERPERSONAL VIOLENCE

Applies to:

- Students currently enrolled in the University
- Employees
- Third Parties within the University's control

