

# The Sexual Assault Legal Institute (SALI)

provides legal advice, representation and referrals for survivors of sexual assault.

SALI is committed to survivor-centered advocacy and respect for client decision-making.

SALI also provides legal education, technical assistance and information for professionals, student advocates, rape crisis and recovery center staff, and others working with survivors.

For more information, contact:

**SALI**

**P.O. Box 8782**

**Silver Spring, MD 20907**

**301-565-2277**

**FAX: 301-565-3619**

**TOLL-FREE: 877-496-SALI**

*Services for sexual assault survivors are still available during this next phase of the COVID-19 pandemic. SALI is open - we are here for you.*

**YOUR SCHOOL MAY ALSO HAVE ITS OWN RESOURCES**

Citations to the laws, cases, and other materials referred to are available at [www.mcasa.org](http://www.mcasa.org).

Preparation of this document was supported by grant number 2005-WL-AX-0091, awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, and conclusions expressed in this document are those of the author(s) and do not necessarily represent the official position of policies of the U.S. Department of Justice. The Governor's Office of Crime Control and Prevention funded the reprinting and updating of this publication under grant #VOCA-2019-0096. All points of view in this document are those of the author and do not necessarily represent the official position of any State or Federal agency.

8/2023



## Students & Sexual Assault Legal & Practical Issues



The American Association of Universities reports that one in eight college students are sexually assaulted while in college.

Ninety percent of campus sexual assaults were found by the National Institute of Justice to be committed by someone the survivor knows, while less than ten percent of college survivors report their assault to law enforcement or any office on campus.

The CDC's Youth Risk Behavior Survey found that eight percent of high school students had been physically forced to have sexual intercourse when they did not want to. Nearly twenty percent of female students experienced sexual violence.

Some of these young survivors are sexually assaulted at school. The perpetrator may be another student, a faculty or staff member, or an outside professional who works at the school.

This booklet is designed to provide an overview of legal issues that students who have been sexually assaulted may face. The laws, cases, and other materials referred to are available at [www.mcasa.org](http://www.mcasa.org).

Legal concerns and issues related to an educational setting may be addressed by school administrative processes, criminal law, protective or peace orders, civil law, or a combination of remedies. State and federal laws can be used to help respond to sexual violence.

Attorneys at the Sexual Assault Legal Institute (SALI) are able to assist student victims with these and other legal issues. For help, call 301-565-2277 or 1-877-496-SALI (7254).



## ASSAULTS AGAINST STUDENTS

### Privacy

Survivors generally do not need to reveal confidential information in order to go to court or press criminal charges against the perpetrator. Remember, prosecutors represent the State of Maryland, not the victim. Survivors should consult an attorney about protecting their privacy and find a lawyer immediately if their private records are subpoenaed. All students, including survivors and perpetrators, have additional privacy protections for their educational records.

The Family Educational Rights and Privacy Act (FERPA) bans colleges from disclosing students' education and disciplinary records without consent in most situations. For students under 18, consent may be given by the student's parent or guardian. For formal Title IX investigations done by the school, however, the school cannot limit either party's right to access and review evidence related to the allegations, with the exception of mental health records or records protected by a legally recognized privilege. In addition, a sexual assault victim must be informed of the final results of a disciplinary action against a perpetrator and cannot be required to sign a non-disclosure agreement in order to receive the results.

Parents and guardians may see their children's school records for students under 18.



## LEGAL RESPONSES TO SEXUAL

### *Safety and Criminal Cases*

Defendants in criminal cases are often released on bail until trial. Perpetrators of sexual assault should be ordered to stay away from victims as a condition of release. Victims should talk to the prosecutors about this. If a victim would be in danger if the defendant knew their address, the address can usually be kept confidential. For Maryland elementary and secondary schools, if a student is convicted of or adjudicated delinquent for a sex crime through the criminal justice system, the perpetrator may not attend the same school or ride the same bus as the victim. In addition, the superintendent and school principal must consider removing the perpetrator from the victim's school or bus after the arrest if it is necessary or appropriate to protect the victim's well-being.

### *Safety Planning*

Survivors should:

- Make a plan about what to do if the perpetrator approaches them.
- Carry a charged cell phone.
- Tell people where they will be.
- Call their local rape crisis and recovery center for more help with safety planning.
- A more detailed safety plan can be found at [www.mcasa.org](http://www.mcasa.org).

## LEGAL RESPONSES TO SEXUAL ASSAULTS AGAINST STUDENTS

### **Gender, Sexual Orientation, and Sexual Assault**

Although most sexual assault victims are women, men and people outside of the gender binary can also be assaulted. And while most perpetrators are male, females are also abusers. Sexual assault includes assaults by men against women, men against men, women against women, women against men, and assaults by and against people outside the gender binary. The law protects sexual assault victims regardless of gender, gender identity and expression, or sexual orientation.

### **Different Paths to Justice**

Students may pursue various legal options, such as criminal charges, school disciplinary proceedings, civil proceedings, or all three. In some cases, an assault may violate a student code of conduct but fail to be classified as a crime in Maryland. In other situations, the different standards of proof in criminal cases (beyond a reasonable doubt) and school disciplinary proceedings (usually preponderance of evidence) may lead a prosecutor to drop a case that is dismissed by a school in a disciplinary hearing.



## Preserving Evidence After A Sexual Assault

If the victim decides to seek legal remedies after a sexual assault, an important issue will be the available evidence. Although the victim's testimony is evidence, having other types of evidence can strengthen the case and may give the survivor more options.

- Sexual Assault Forensic Exams (SAFEs) are designed to collect evidence of a sex crime and to provide important medical care to a survivor. In Maryland, forensic nurse examiners are able to collect evidence up to 15 days after an assault. However, "date rape" drugs, such as GHB, often leave the body rapidly, so victims who are interested in laboratory services designed to detect drugs in one's system should try to have an exam as soon as possible.
- SAFE exams are not yet available at every hospital, and survivors must go to SAFE hospitals for exams. To find a SAFE hospital near you go to [www.mcasa.org/survivors/getting-medical-attention](http://www.mcasa.org/survivors/getting-medical-attention) or the National Sexual Assault Hotline, 1-800-656-HOPE.
- A survivor does not have to have a SAFE exam to have medical treatment, medication to prevent sexually transmitted infection, or emergency contraception.
- If possible, the victim should *not* wash, go to the bathroom, douche, brush their teeth, smoke, or drink anything before a SAFE exam. They should try not to change clothes. All of these things can destroy evidence of an assault.



## Safety

### *Peace and Protective Orders*

Depending on the facts of the case, a student victim may be eligible for either a peace or a protective order.

A peace order can be issued against an individual the petitioner is dating, a neighbor, a roommate, a co-worker, an acquaintance, or a stranger. From the time stalking, harassment, or other specified act of abuse occurred, victims have 30 days to seek a peace order. It can be valid up to six months.

Protective orders are generally designed for family members, although certain relationships and types of sexual violence also qualify for protective orders. Typically it is good for one year, but can be extended to two years if the order is violated. Additionally, a protective order can be made permanent if the respondent/perpetrator is convicted and sentenced to at least 5 years for the abuse that gave rise to the protective order. Students seeking protective orders often fall into one of the following categories of relationships with a perpetrator: lived together for 90 days in the past year in a sexual relationship; related through marriage, adoption, or blood; or have had a sexual relationship with their perpetrator within the previous year. In addition, the law was recently changed to specify that a person who suffered physical sexual assault by their perpetrator within the last six months qualifies for a protective order, regardless of the relationship between the parties. This law took effect on October 1, 2020.

An attorney can help a student decide if a peace order or protective order is more appropriate. Peace orders can only be issued by the District Court; however, a victim can apply for a protective order from the Circuit or District Court. When courts are closed, a Commissioner can issue interim orders.

## ASSAULTS AGAINST STUDENTS

### *Criminal Injuries Compensation*

A victim may be eligible to have expenses and lost wages paid by the Maryland Criminal Injuries Compensation Board (CICB) if they:

- Report the crime to authorities (either to authorities or by obtaining a forensic exam at the hospital) and
- Have incurred at least \$100 in reimbursable expenses or lost wages
  - Reimbursable expenses include:
    - Medical expenses for physical injury and psychological injury
    - Loss of earnings which are directly related to the victim's inability to work following the crime
    - Bereavement leave up to 2 weeks of average weekly wages, or \$2,000

The CICB laws state that crimes must be reported within 48 hours and claims must be filed within three years to qualify for compensation. However, the law was recently updated to clarify that the time limit requirements can be waived for victims of sexual assault provided they show good cause for a delay in reporting or filing.

For claim forms call 888-679-9347 or go to:

<https://www.dpscs.state.md.us/victimservs/cicb/index.shtml>



## ASSAULTS AGAINST STUDENTS

- The victim should put sheets, used condoms, undergarments, or anything else that may have evidence on it in a separate *paper bag* (not plastic) and take it with them if the victim goes to the hospital or police station.
- Injuries should be photographed. Some bruises or other marks may not appear until several days after an assault.
- If the victim is under 18, they can consent to treatment of injuries caused by a sexual assault or to a SAFE exam without a parent's permission. The treatment provider may, however, decide to inform the parents or guardian about what happened.
- If the minor victim informs their elementary or secondary school about what happened, many schools have policies that allow them to tell the victim's parents.
- Evidence of a sexual assault may be at the location of the crime as well as on the victim's body. Survivors should consult with police, an investigator, or a lawyer about having evidence collected from the location of the crime.
- Victims should keep records of any communications from the perpetrator (text messages, emails, letters, etc.).
- If the victim thinks they want to make a police report or prosecute, the sooner they talk to the police, the better.

## LEGAL RESPONSES TO SEXUAL

### Sex Crimes in Maryland

In Maryland, sex crimes are categorized as 1st degree rape, 2nd degree rape, 3rd degree sexual offense, or 4th degree sexual offense. The distinctions between the different degrees of sex crimes are complicated. Charges are based on a number of factors including ages of victim and perpetrator (statutory rape), use of or threat of force, lack of consent, and incapacitation of victim (including incapacitation due to intoxication). A victim is never required to physically resist a sexual assault in order to get a conviction.

More information, including statutes and charts, is at [www.mcasa.org](http://www.mcasa.org).



## ASSAULTS AGAINST STUDENTS

### Financial Issues

#### *Student Loans and Financial Aid*

Sexual assault can impact a student's ability to stay in school or maintain the academic performance needed for financial aid. An advocate or attorney may be helpful in negotiating loan deferrals or other arrangements following an assault.

#### *Suing the Perpetrator*

In a civil tort lawsuit, a victim hires an attorney to sue someone for damages (money) for the physical and/or emotional harm inflicted or damage done to a person or property. Tort claims can be filed against a perpetrator regardless of whether there was a successful or unsuccessful criminal case, or no criminal prosecution at all. A victim of sexual assault may be able to sue either the perpetrator or a third party (e.g., the perpetrator's employer, the victim's landlord, or the victim's university). There are deadlines called statutes of limitations that limit how long a victim has to file a tort suit. Survivors should talk with an attorney as soon as possible if they have questions about this type of case. Civil rights laws can also be a source of compensation in some cases (see Civil Rights and Sexual Assault).

#### *Restitution as Part of a Criminal Case*

If the perpetrator is prosecuted and convicted, they can be ordered to pay for a survivor's expenses as part of the criminal sentence. A victim should consult their own attorney or talk to the prosecutor about this before the trial ends or before the guilty plea is entered.

## LEGAL RESPONSES TO SEXUAL

### Civil Rights and Sexual Assault

Both state and federal civil rights laws address sexual assault. Under these laws, sexual assault is viewed as an extreme form of sexual harassment and gender discrimination. Civil rights laws prohibit this conduct and allow complaints about violations to the U.S. Departments of Education or Justice, the State or local governments and, in limited cases, to sue for damages and attorneys' fees. Title IX of the Education Amendments of 1972 prohibits gender discrimination at schools receiving federal funding. This includes most universities, public and private colleges, and public elementary and secondary schools. Title IX also creates an obligation for schools to address sexual assault and retaliation.

If the school ignores or seriously mishandles a student's complaint, the student may be able to hold the school accountable by filing a complaint with the Office for Civil Rights of the Department of Education.

Complaints may be filed online. For more information, visit: [www2.ed.gov/about/offices/list/ocr/docs/howto.html](http://www2.ed.gov/about/offices/list/ocr/docs/howto.html).

The student may also be able to recover monetary damages by suing their school in court. Other civil rights provisions may be available to address campus sexual assault and can be discussed with a knowledgeable attorney.

**Note:** The Department of Education has proposed new Title IX regulations that are expected to be finalized in October 2023. You should consult with an experienced attorney about your rights under Title IX.

The proposed Title IX regulations would:

- Broaden the definition "sex discrimination;"
- Require schools to provide training on reporting, both when an employee has to report, and how students can report; and
- Require the Title IX Coordinator to identify and address barriers to reporting.

## ASSAULTS AGAINST STUDENTS

### Drug and Alcohol Facilitated Sexual Assault

Many sexual assaults against students involve drugs or alcohol. The victim may consume these substances voluntarily, or the perpetrator may give them to the victim without their knowledge. Maryland's criminal law imposes a high standard for prosecution of these cases. A victim must have been "rendered substantially incapable of appraising the nature of [their] conduct; or resisting vaginal intercourse, a sexual act, or sexual conduct." In addition, the perpetrator must know or reasonably should know that the victim is incapacitated. There are additional criminal penalties for administering drugs (not including alcohol) to someone in order to commit a sex crime (e.g. "date rape" drugs).

Individual schools may have more stringent prohibitions against drug and alcohol facilitated sexual assault, and victims of this type of assault may wish to consider school disciplinary action. The school's judicial procedure can be used whether or not the student chooses to report to the police and whether or not the criminal justice system responds.

### Information About Sex Crimes and Convicted Offenders

The Clery Act, a federal law, requires colleges and universities to keep a record of campus crimes. It also requires that these schools publish an annual report of criminal activity, to make the criminal log sheet available to students and employees, and to alert the campus community of criminal activity. Information about individual convicted sex offenders who attend schools is available online at [www.socem.info](http://www.socem.info). Keep in mind that the vast majority of offenders are not on the registry. In 2019, only 34% of rape and sexual assaults were reported to the police.

## School Response to Sexual Assault

### *Schools' Obligations*

The Clery Act, strengthened by the Campus Sexual Violence Elimination Act of 2013, and Maryland state law require that colleges and universities have policies to address sexual assault. Higher education institutions must provide information about victims' rights and options within both the criminal justice system and the school disciplinary process. These schools also must provide referrals to counseling and other support services, help with notifying law enforcement if the victim chooses to do so, assistance with transportation to the nearest hospital that provides Sexual Assault Forensic Exams ("rape kits"), and have disciplinary procedures in place to follow when the sexual assault policy is violated. Colleges and universities must inform students about procedures that victims should follow after a sexual assault, including where to report and how to preserve evidence.

Additionally, under Title IX, all schools receiving federal assistance (not just colleges and universities) must provide an appropriate response to sexual violence perpetrated against students.

### *Confidentiality*

Campus policies have to address how to protect victim confidentiality, to the extent possible. A school should only disclose information about a sexual assault to those individuals responsible for the school's response, and the school should notify the student about any necessary disclosures. Generally, survivors can talk with non-professional campus counselors and advocates in confidence without formally reporting the sexual assault to the school. If a school learns of a sexual assault but the victim wishes to remain confidential, the school should respect the student's desire for confidentiality, as long as it does not interfere with the school's ability to respond effectively and prevent sexual violence against other students.

**Note:** Under proposed Title IX regulations, certain employees would be required to notify the Title IX coordinator of possible discrimination.

### *Additional Protections for Victims and Witnesses*

In most circumstances, Maryland law does not allow colleges and universities to pursue student misconduct actions for drug and alcohol consumption by a victim or witness to a sexual assault.

Pursuant to federal law and Maryland Education Code §11-601, schools are prohibited from retaliating against a student who files a sexual assault complaint or participates as a witness in a sexual misconduct investigation. If a school knows or should have known of possible retaliation against a student, the school is obligated to take measures to protect the student and ensure their safety.

**Note:** Proposed Title IX regulations would define 'retaliation,' and 'peer retaliation.'





## LEGAL RESPONSES TO SEXUAL

### *Due Process Rights of Accused Students*

Students have rights when they are accused of offenses, including students accused of sexual offenses. Unfortunately, victims of sexual assault are also sometimes accused of violating school codes for using alcohol or other substances, or for other perceived infractions. Schools vary in their policies regarding student discipline in these circumstances, but those accused have due process protections.

Public universities are constitutionally required to provide due process, including notice and an opportunity to be heard. Private schools generally provide similar protections as a matter of school policy. Maryland secondary and elementary public school students have the following specific rights at disciplinary hearings:

- The right to notice of the alleged violation and scheduled hearings;
- The right to present evidence on their own behalf (e.g., disciplinary and academic records, witness statements, etc.);
- The right to have persons to testify on a student's behalf;
- The right to have a representative present, including an attorney.
- The right to a prompt investigation and reasonably prompt timeframe for all major stages of an investigation

## ASSAULTS AGAINST STUDENTS

### *Codes of Student Conduct*

Codes of conduct vary from school to school. Most of these codes explicitly prohibit sexual assault and often provide victims with a way to request practical help and to start disciplinary proceedings against the perpetrator. Solutions available under school codes of conduct can often be flexible but also vary widely. Some include:

- Changing class schedules;
- Moving resident halls or other housing;
- Obtaining a “no contact” requirement against the offender;
- Providing counseling for the victim;
- Requiring community service by the perpetrator (including service relevant to sexual offenses, such as research on assault).

More serious sanctions against offenders may also be imposed, such as:

- Temporary leave of absence until the victim graduates;
- Academic probation;
- Suspension or expulsion.

Universities, colleges, and local school districts publish their codes of conduct on the Internet. Disciplinary hearings held under a student code of conduct must use a preponderance of evidence (more likely than not) or clear and convincing evidence standard, rather than the higher beyond a reasonable doubt standard used in criminal cases.

**Note:** Proposed Title IX regulations would require schools to offer supportive measures to complainants and respondents, as well as provide students with information about how to seek supportive measures without making a complaint.

## LEGAL RESPONSES TO SEXUAL

### *Rights of Victims*

Under Maryland law, each college or university must include in their sexual assault policy provisions about the disciplinary procedures the school follows when their sexual assault policy is violated.

The disciplinary proceedings provisions must include a description of the rights of a student who alleges a violation of the institution's sexual assault policy, including:

- Treatment with dignity, respect, and sensitivity by officials of the institution of higher education during all phases of the disciplinary proceedings
- A fair and impartial investigation.
- Disciplinary proceedings and resolutions that are prompt and equitable and provide an opportunity for the victim to be heard.
- Timely written notice of specified matters, including the student's rights and responsibilities under the sexual assault policy, information regarding other civil and criminal options, and the range of potential sanctions associated with the alleged violation.
- Participation in the disciplinary proceedings, including access to the case file and evidence
- Assistance by a licensed attorney, an advocate supervised by an attorney, or a trained advocate throughout the disciplinary proceedings.
- The presence of two people, including a personal supporter of the student's choice, an attorney, or an advocate at any hearing, meeting, or interview during the disciplinary proceedings.

## ASSAULTS AGAINST STUDENTS

Further, under Maryland Education Code §11-601, the disciplinary proceedings provisions must authorize a current or former student who makes a complaint on which a formal Title IX investigation is initiated and who was enrolled as a student at the institution at the time of the incident that is the basis of the complaint to access counsel paid for by the Maryland Higher Education Commission (MHEC), unless the student knowingly and voluntarily chooses not to have counsel.

The disciplinary proceedings provisions must prohibit:

- The institution of higher education from using mediation to resolve an allegation of a violation of the institution's sexual assault policy, unless several specified conditions are met
- The adjudicating official or body from considering specified evidence, including a student's prior sexual history, unless certain narrow exceptions apply.