

WHEN YOUR DAUGHTER IS RAPED ON CAMPUS, EYES WIDE OPEN IS RULE NUMBER ONE

When parents send their kids off to college they have a right to assume, at a minimum, that their children will be safe. At fifty thousand dollars a year, many schools promise both a stellar education and safety for their students, but the truth is not so rosy -- especially for young women who are more likely to be sexually assaulted if they attend college than if they stay home or even join the military.

Schools do not like telling parents that 20-25% of young women will be sexually victimized during their time in college, and that almost no sanctions will be imposed on offenders -- because it could affect their reputation and lead to a loss of tuition dollars.

But parents and students have a right and need to know the truth because more awareness will lead to better enforcement of victims civil rights, more effective redress of harms, and less gender-based violence.

THE UGLY TRUTH

Most school-based programs related to sexual assault do nothing more than teach students the definitions of sexual assault and other criminal offenses, while urging "bystanders" to help, and women to "be careful." Even seemingly independent advocacy groups mislead victims, usually because they are under contract with schools to provide services that silence victims.

Parents and students have a right to ask why only women are being told to be "careful." Why are students from other protected class categories, such as race and religion, not advised to "be careful?" Why are only women warned about being harmed on campus if, as most schools claim in advertisements and annual Clery Act crime reports, college is a perfectly safe environment for women.

The reality is that most college campuses are not safe for females, but schools hide the truth by keeping incidence rates artificially low. They do this by encouraging victims to file "informal" reports (which are not counted), and discouraging victims from reporting sexual assaults and other forms of gender-based violence to police and prosecutors.

School officials sometimes deter victims from filing formal reports by misleading them to believe that sexual assault is difficult to prove, especially on the issue of consent. This is false. Sexual assault is exceedingly easy to prove in most cases, especially if the victim takes steps to ensure that her report is handled strictly, under civil rights laws, rather than less protective sexual misconduct

policies. Civil rights laws offer victims gold standard rights and redress opportunities. Sexual misconduct policies do not.

School officials not only mislead victims into filing only “informal” reports, they also fail to provide information on several key issues, including:

1. **All violence against women, including sexual assault, must be addressed under civil rights laws on campus**, such as Title IV of the Civil Rights Act of 1964 (applies to all public schools) and Title IX (applies to public and private schools that receive federal funds).
2. **All violence against women, including sexual assault, must be treated exactly the same as violence and assault “based on” race, national origin, etc.** “Sex” is listed as a protected class category alongside “race,” and “national origin,” in civil rights laws, and the Department of Justice has for many years made clear to schools that they cannot subject victimized women to different treatment.
3. **All violence against women, including sexual assault, is both a civil rights issue on campus, and a criminal offense in the “real world,”** which is why all offenses should **formally** be reported, in writing, to both systems at the same time. Reports should be made to multiple campus officials (not just the Title IX coordinator) simultaneously. Reports should also be filed with school-based **and** external law enforcement officials, including police and prosecutors. This is critically important because matters not deemed “formally reported” are not counted for statistical Clery Act purposes, and are not handled on campus under gold standard civil rights laws. Civil rights laws are considered the “gold standard” because they are much easier to prove than student “sexual misconduct” offenses. Civil rights laws require **equitable** treatment for women, on par with the treatment afforded students from other protected class categories, such as race and national origin. Many schools try to convince victims to file “informal” reports so they can avoid compliance with civil rights laws, and subject victims to **inequitable** hearings, and weaker legal protections.

This primer is intended to provide students and parents with a simple description of what to do – and what not to do – when sexual assault (or any other form of sex-based harm, such as dating abuse and stalking) happens.

First things first:

1. Many victims are sexually assaulted as freshmen, and more often than not they are secretly drugged, usually after drinking only a small or moderate amount of alcohol such that their capacity to pay attention to their drink is diminished. Because most victims don't know what being drugged feels like, they assume they drank too much and they do not report the incident because

they blame themselves. Then they read the student handbook, which usually says something vague about how an offender cannot be held accountable if he “reasonably believes” a victim was not “too intoxicated” to consent. These “reasonable mistake” policies are common on many college campuses, even though they violate civil rights laws because an offender’s “mistaken belief” about whether a person **wanted** to endure a civil rights offense under Title IV and Title IX is irrelevant. Even the words “consent” and “non-consent” are irrelevant under civil rights laws because they apply only in criminal cases in “real world” courts. Civil rights laws ask only whether a victim “welcomed” or “wanted” the conduct, which is much easier to prove than “non-consent” or even “affirmative consent.”

Unless victims expressly **choose** to be treated under civil rights laws, schools can subject victims to second-class treatment under weaker student misconduct policies. Second-class treatment means a victim will not have **equitable** redress, and will have no recourse with civil rights agencies such as the Office for Civil Rights (OCR) at the Department of Education (DOE) and/or the Department of Justice (DOJ), because only violations of civil rights laws are enforceable through such oversight agencies. For this reason, the sexual assault victim must clearly state her desire in writing to school officials that she wants redress **only** under civil rights laws, as guaranteed by Title IV and Title IX. A downloadable form that students can use to protect their civil rights can be found here: <http://www.campusaccountability.org/docs/TITLE-IX-Redress.pdf>

2. Rape drugs are cheap and easy to obtain. It is very common for offenders to use rape drugs as a tactic because they know that a drugged victim with limited or no memory is unlikely to recall the details of the incident with sufficient clarity to prove campus-based or criminal charges. Because drugs dissipate quickly in body fluids, most forensic testing is negative, which school officials often point to as “proof” that no drugging took place. Victims are not informed that reliable testing can be conducted on hair even weeks or months after an attack.

3. Victims are often told to report only to the “Title IX coordinator,” who then typically sends victims to “counselors,” “advisors” or local advocacy groups for advice. These individuals (who are almost always in place to protect the schools’ interests) then tell victims that the criminal justice process will be “difficult,” and that it is better to seek redress only on campus because the burden of proof is easier. This is a false choice. A victim is not obligated to choose between campus-based justice under civil rights laws, and criminal justice under criminal laws. All cases should be addressed on campus under civil rights laws, and off-campus in the criminal justice system, as this is the only way to ensure that officials in both venues are held accountable and perform their duties responsibly. Any case not reported to police could mean that a repeat offender is never identified, or that the police undercount actual incidence rates. Making sure police and school officials have a formal report of

every incident helps to ensure that true incidence rates are maintained, which in turn helps to ensure that proper resources are directed to the problem and offenders are held accountable.

4. Victims are not only offered the false “choice” of criminal vs. campus-based justice, but also “formal” vs. “informal” justice on campus. They are typically told that only an “informal” process will protect their confidentiality. This is not true. The “formal” option is the “gold standard” of civil rights redress, which offers victims maximum legal protection and does **not** require public disclosure of a victim’s identity or any other information. The “informal” option is the second-class generic sexual/gender misconduct process, which allows schools to be unfair to victims and avoid oversight by the OCR and the DOJ.

5. Victims are almost always told that the definition of an offense is determined by criminal law terms, such as “non-consent,” and “sexual assault.” This is incorrect. Civil rights offenses are defined by whether an incident was “severe or pervasive,” “based on sex,” and “unwelcome.” These terms are much easier to prove than criminal law terms such as “non-consent,” and “sexual assault.”

6. Victims are often offered free counseling, and encouraged to “move on,” put the matter behind them, etc., but this usually exacerbates the harm. Being heard, being respected and seeing justice done **under civil rights laws** are all critically important components of an effective school response. Naming and framing all forms of sex-based discrimination, including sexual assault, as a civil rights issue helps to engage entire campus communities in the experience of the victim’s suffering because civil rights laws, by their very creation, were designed to include whole communities as injured parties along with individual victims.

A few more tips:

- A. When sexual assault happens, victims should call 911 – even hours or days later - and state clearly that they have suffered a rape or sexual assault. They must also **immediately thereafter** call a trusted adult not affiliated in any way with the school (such as a parent). The trusted adult should immediately contact an attorney who is truly independent, who does not do criminal defense or insurance defense work, and is not affiliated with any university in connection with civil rights and student misconduct cases. Request information about independent legal advisors at info@pushforequaljustice.org
- B. The victim should not talk to campus officials, including the Title IX Coordinator or any campus-based counseling services or off-campus advocacy group, especially those recommended by the school, without first seeking the advice of independent counsel. Many of the better-known organizations are aligned with schools’ interests, are not

- independent at all, and do not advocate for equitable treatment of women, or strict enforcement of civil rights laws.
- C. Local police and local hospitals often have relationships with area colleges. Therefore, it is best to be cautious when accessing those services. Many college officials will encourage victims to seek health care and forensic examinations only at certain hospitals. Victims should not submit to a forensic examination at any hospital nearby to the school, or recommended by the school. If possible, victims should obtain independent examinations from private physicians, under the advice of an attorney. During any medical examination, whether it be forensic or private, the victim should not disclose any personal information that is not directly relevant to the incident. For example, a victim should not reveal past sexual activities, even with the offender, or information about past drug and alcohol use, or other personal information about mental health issues, family problems, HIV status, conversations with attorneys, counselors, etc. All private information not directly related to the incident should remain private. A judge in connection with a court proceeding may determine in the future that such information must be revealed, but the information should not be revealed before a court order is issued, as that could constitute a waiver of privacy rights.
 - D. It is especially important that victims put in writing on any rape kit testing consent form that they CONSENT to the “taking” of evidence, but do NOT CONSENT to the “testing” of evidence. Victims should include in writing on any rape kit form that they demand “notice and a hearing” before a judge with proper jurisdiction prior to ANY testing, consistent with due process, and to ensure that all rights are protected.
 - E. Friends are a critical part of a college student’s support system. It is essential that friends be empathetic, supportive, and trustworthy. Victims should be wary of friends who discourage reporting, are enthusiastic and protective about the college or offender, or who shame and blame the victim for somehow causing her own victimization. A woman can no more cause an offender to rape her, than can a black student cause an attacker to commit an act of racist violence. Because friends can negatively impact a victim’s perception about her experience, victims should exercise caution when talking to others, and consult with legal counsel before talking to anyone.
 - F. Victims should always insist in writing to all campus officials that **only** civil rights laws, policies, and definitions (“unwelcome” and “unwanted”) be applied, and that second-class, “informal,” and generic student misconduct policies are expressly rejected. A simple form that victims can use to select only civil rights redress can be found here: <http://www.campusaccountability.org/docs/TITLE-IX-Redress.pdf>
 - G. If school officials fail to comply with Title IV and Title IX, they can and should be sued in state and federal court, and subjected to investigation by government oversight agencies such as the Department of Justice, the

- Office for Civil Rights at the Department of Education, and the Office for Civil Rights at the Department of Health and Human Services, as well as the United States Commission on Civil Rights.
- H. Because sexual assault like all forms of violence against women is a civil rights issue on campus, it must be subjected to **exactly the same** policies and procedures as the redress of violence on the basis of race, national origin, etc. If violence against women is separated out for different treatment in a school's policy handbook, a victim can file a discrimination lawsuit in state and federal court, and can seek redress with state and federal oversight agencies.
 - I. Women's full equality and protection from discrimination in education has been guaranteed since 1972 when Title IX was enacted, and "sex" was added as a protected class category to Title IV. Unfortunately, after 1972, Title IX was misframed and propagandized in society as a sports equity rule for girls. It was not until a landmark civil rights case was filed against Harvard in 2002 that people started paying attention to the issue. Before that time, even groups such as the National Organization for Women, the National Women's Law Center and the American Association of University Women kept silent about the relationship between civil rights laws and violence against women. Even Ms. Magazine failed women. Imagine the public outrage if rather than protecting black children from racist violence and harassment in education during the civil rights era, school officials simply gave black children more soccer balls.
 - J. The first law review article explaining how and why Title IX clearly applies to violence against women was published in 2006. Other landmark cases against Harvard Law and Princeton in 2010 led to the well-known April, 2011 "Dear Colleague Letter," (DCL) which spells out the standards schools must apply when enforcing women's civil rights on campus.
 - K. The DCL made clear that schools must treat women as fully equal campus citizens, but schools did not like the DCL. Hence, two weeks after the DCL was released, Congress took up a bill (The Campus SaVE Act) to weaken Title IX and subject women to second-class treatment on campus.
 - L. The SaVE Act was a bipartisan initiative because Claire McCaskill, Patrick Leahy, Chuck Grassley and Bob Casey worked together, across party lines, to get the bill quickly through Congress. Enacted in March 2013, SaVE took effect one year later, in March 2014.
 - M. SaVE caused schools nationwide to adopt boondoggle second-class treatment policies for victimized women. All other protected class students continued to receive **only** gold standard civil rights redress. A federal lawsuit was filed with the help of Dr. Bernice Sandler (The "Godmother of Title IX") to stop SaVE from being enforced on any campus. The lawsuit ended with the federal court ruling that the SaVE Act would have "no effect" on Title IX. The lawsuit can be found here.

<http://wendymurphy.com/sample-lawsuit-to-hold-schools-accountable-for-sexual-assault/>

- N. Immediately after the lawsuit was filed to stop the SaVE Act, another terrible bill was filed by Congress to further weaken Title IX. Known as the Campus Accountability and Safety Act (CASA), the bill, if enacted, will exacerbate SaVE's problems and make it virtually impossible for any woman at any school to enforce her civil rights to prompt, equitable and effective justice on campus. A critique of CASA can be found here: <http://www.pushforequaljustice.org/wp-content/uploads/2016/10/CONGRESS-STOP-SaVE-ING-US.pdf>

What Can Parents do?

Parents and students can make a difference by helping other parents understand the importance of this issue, for our daughters and our sons. Parents and students can and should publicly shame schools that subject victimized women to second-class treatment; and celebrate schools that treat women as fully equal campus citizens. It is particularly important that parents and alumni express their concerns through donation and tuition dollars.

We can all help by refusing to vote for members of Congress and state legislatures who support and sponsor laws such as SaVE and CASA. The 1972 amendment of Title IV, and simultaneous enactment of Title IX, guaranteed women and girls' safety and equality in education. Decades later, it is unconscionable that America has become a nation where girls and women are safer not becoming educated.

Last but not least, please help PUSH gather signatures to protest the American Bar Association's endorsement of the weakening of Title IX, and the second-class treatment of victimized women on college campuses. [CLICK HERE FOR MORE INFORMATION, AND TO HELP REPEAL THE ABA'S POLICY](#)