

**Sexual Harassment and Sexual Violence on California's College Campuses**  
*Protecting Students at the University of California and California State University*

A Joint Oversight Hearing of the Joint Legislative Audit Committee, the Assembly Committee  
on Higher Education, and the Assembly Select Committee on Campus Climate  
Thursday, September 24, 2015

**INTRODUCTION**

It is estimated that as many as one in four women<sup>i</sup> and one in 16 men<sup>ii</sup> are the victims of attempted or completed sexual assault while in college. Less than 10 percent of students who are sexually assaulted, men and women, report the incident to the college or police<sup>iii</sup>. In response to a series of high profile incidents sweeping across the nation, the federal government and the California State Legislature has made it a priority to ensure that postsecondary institutions understand their responsibilities and have the tools to prevent, respond to, and resolve sexual harassment and assault on college campuses.

This hearing aims to update the Legislature on recent progress by California's public universities to implement prevention education programs and improve the investigation and adjudication of sexual harassment and sexual assault complaints. The goal of the hearing is to evaluate the degree to which the University of California (UC) and the California State University (CSU) have improved their approaches and to identify whether additional statutory changes are necessary to ensure students are protected.

Despite federal and state laws that establish specific requirements for prevention and response to sexual assault, campus officials are facing critical questions about whether they are doing enough to protect students. In addition to working to respond to policy changes implemented at both the state and federal levels, institutional leaders are working with stakeholders to identify ways to educate students and to improve response activities. One example, Callisto, a website designed by Sexual Health Innovations which allows sexual assault survivors to fill out a record of their assault online and save it as a time-stamped document, is currently being piloted at two California private colleges and is anticipated to increase the number of sexual assault survivors who are willing to come forward to report these crimes.

Now, more than ever, agencies and institutions are working together to ensure that students across the state are engaged in a safe learning environment. Representatives from the California State Auditor (CSA), UC Office of the President, UC Task Force on Preventing & Responding to Sexual Violence and Assault, CSU, the California State Student Association and the UC Student Association, the Office of the California Attorney General, and survivor advocates will be in attendance to discuss progress to improve sexual assault prevention, as well as efforts to address concerns about the complaint process and disciplinary proceedings.

## BACKGROUND

### Legislative Oversight

Following the June 2014 release of the California State Auditor's 2013-124 report, entitled, *Sexual Harassment and Sexual Violence: California Universities Must Better Protect Students by Doing More to Prevent, Respond to, and Resolve Incidents*<sup>iv</sup>, the Joint Legislative Audit Committee and the Assembly Higher Education Committee convened a joint oversight hearing to discuss the audit's findings and the policies, procedures, and best practices offered by California's university systems. Speakers included representatives from UC Berkeley, CSU, University of the Pacific, and the Butte-Glenn Community College District.

The Chair of the Assembly Higher Education Committee hosted three roundtable hearings to examine efforts being made by UC campuses to strengthen education and prevention programs, to improve the handling of sexual assault complaints, and to expand resources for survivors. The hearings were held at UC Berkeley on September 24, 2014, at UC Santa Barbara on November 12, 2014, and at UCLA on December 15, 2014<sup>v</sup>.

### Audits

CSA audit report number 2013-124 concluded that California's educational institutions were not properly educating students and training faculty and staff sufficiently on response and reporting of incidents on campus as mandated by Title IX of the Federal Higher Education Act of 1965 (Title IX) and the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). Accordingly, the auditor made a series of recommendations to include the expansion of staff training, the improvement of access and content for student education, the enhancement of communication with students, and the evaluation of summary data collected in order to better identify trends and inform strategies to address incidents on campus.

Earlier this year, the CSA released audit report number 2015-032, entitled *California's Post-Secondary Educational Institutions: More Guidance is Needed to Increase Compliance with Federal Crime Reporting Requirements*<sup>vi</sup>. The audit reviewed California's compliance with reporting campus crime statistics, as mandated by the Clery Act. The auditors found that none of the six California institutions reviewed were in complete compliance with all of the federal reporting requirements. This audit was conducted pursuant to Education Code §67382, which requires the CSA to audit every three years a sample of no less than six postsecondary institutions, including California community colleges, that receive federal aid.

### Campus Updates

Over the past year, California's postsecondary education institutions report that they have taken steps to address the concerns raised in the audit reports and to respond to statutory changes and regulatory guidance by improving processes and outcomes on their campuses. Both the UC and CSU have updated their sexual harassment and assault policies<sup>vii</sup>, initiated mandatory prevention and response trainings for all students and employees, and established confidential victim advocate offices on every campus. The CSU and UC have appointed systemwide officers

charged with ensuring Title IX compliance. The California Community Colleges Chancellor's Office has reported advising districts on how to comply with new state and federal mandates.

In June of 2014, UC President Janet Napolitano formed the UC President's Task Force on Preventing and Responding to Sexual Violence and Sexual Assault (Task Force). The Task Force was charged with ensuring UC maintained a fair, consistent, and effective approach to addressing sexual assault. The Task Force included participation from over UC 100 faculty, staff, and students.

In September of 2014, the Task Force issued the following recommendations:

- 1) Create a consistent “response team” model at all campuses by January 2015;
- 2) Adopt systemwide investigation and adjudication standards by July 2015;
- 3) Develop a comprehensive training and education plan with implementation timelines from fall 2014 to fall 2015;
- 4) Implement a comprehensive communication strategy to educate the community and raise awareness about UC programs by January 2015;
- 5) Establish an independent “confidential advocacy office” for sexual violence and sexual assault on each campus by January 2015;
- 6) Establish a comprehensive systemwide website with campus customization capabilities by January 2015; and,
- 7) Implement a standard data set systemwide by July 2015.

In January of 2015, an update to UC's progress implementing Task Force recommendations was issued, which noted that UC had established a “CARE: Advocate Office for Sexual and Gender-Based Violence and Sexual Misconduct” at every campus to provide confidential crisis intervention to survivors and help them access other campus resources such as psychological counseling, emergency housing and academic accommodations.

Additionally, UC implemented a standardized two-team response model at all UC campuses for addressing sexual violence: A case management team to review all current sexual misconduct reports to ensure that institutional responses are timely and appropriate and that those who file complaints and those who respond to allegations receive fair, objective and equal consideration; the second team focuses on policies, community relations, prevention and intervention using a campus collaborative approach.

UC reported launching a new systemwide website designed to serve as a user-friendly, one-stop portal for quick access to campus resources and important information<sup>viii</sup>. Additionally, key information, such as how to get help, helping someone and reporting options, is being standardized across all primary campus sexual violence websites.

In June of 2015, CSU revised its policies and procedures and reports having adopted an "innovative investigative and adjudicative system designed to encourage reporting, bolster trust in the process, and safeguard rights to notice and to be heard<sup>ix</sup>." According to CSU, the new policy creates a new category of misconduct: "Engaging in any sexual activity without first obtaining affirmative consent to the specific activity constitutes sexual misconduct and is a violation of the policy whether or not the conduct violates any civil or criminal law." The policy prohibits more than rape or sexual assault; any sexual conduct without affirmative consent to the specific activity is a violation.

CSU also notes that campuses have established cross-disciplinary collaborations involving Title IX offices, student conduct administrators, campus police, and victim advocates to improve effectiveness in addressing sexual violence. Beginning next fall, campuses will be required to post on line, in a way that protects confidentiality, the numbers of misconduct reports received, investigated, and resolved along with the nature of any resolutions and resulting sanctions, the findings of any investigations, and the sanctions imposed after investigation.

Beginning in October of 2015, the CSU Chancellor's Office reports that it will conduct routine Title IX reviews of each campus to ensure that they are complying with Title IX's requirements.

CSU reports having created the first of its kind Systemwide Title IX Compliance Officer to ensure system policies and procedures are implemented consistently and effectively. The Officer's duties include oversight, assistance, leadership, and guidance over compliance with CSU's obligations to prevent and eliminate sex discrimination, sexual violence, and other sexual misconduct. The Officer works in concert with all 23 campus Title IX Coordinators and teams to oversee and guide efforts to prevent, address and eliminate sexual harassment and violence.

### Existing California Law

As further outlined below, in California, several existing laws provide for prevention education and guidance regarding adjudication of complaints and resources for victims.

- Existing Law requires the governing board of public, private, and independent postsecondary educational institutions that receive public funds for student financial assistance to compile records of crimes on campus, make crime records available upon request, and to disclose a reported Part 1 violent crime, sexual assault, or hate crime, to the local law enforcement agency where the campus is located (Education Code §67380, 67383).
- Under the Kristen Smart Campus Safety Act, UC, CSU, community colleges, and some independent colleges are required to enter into written agreements with local law enforcement agencies delineating the coordination and responsibilities for investigating Part 1 violent crimes (willful homicide, forcible rape, robbery, and aggravated assault, as defined in the Uniform Crime Reporting Handbook of the Federal Bureau of Investigation) which occur on campus (EDC §67381).
- Current law requires public postsecondary institutions to adopt and implement a written procedure to ensure that students, faculty and staff who are victims of sexual assault

committed on grounds maintained by the institution or affiliated student organizations, receive treatment and information (EDC §67385.)

- Public postsecondary institutions are also required, in collaboration with campus- and community-based victim advocacy organizations, to provide as part of campus orientations, educational and preventive information about sexual violence and to develop policies to encourage students to report any campus crimes involving sexual violence (EDC §67385.7.)
- In 2014, with the passage of SB 967 (de León), California became the first state in the country to adopt a "yes means yes" standard of consent. Under SB 967, public and independent postsecondary institutions are required, as a condition of receipt of student aid funds, to adopt a policy that includes, among other specified components, an "affirmative consent" standard for determining whether consent was given by both parties to sexual activity. SB 967 also established a preponderance of evidence (more likely than not) as the evidentiary standard for determining whether sexual violence occurred (EDC §67386).

### 2015 Legislative Updates

In 2015, a number of bills were introduced following concerns raised during Legislative oversight activities. These bills are all currently pending approval by the Governor.

- AB 636 (Medina) would authorize, if an institution determines that an alleged assailant represents a serious or ongoing threat to the safety of the campus and the immediate assistance of police is necessary to contact or detain the assailant, the institution to disclose the identity of the alleged assailant to local law enforcement.
- AB 913 (Santiago) would require written agreements between campus law enforcement and local law enforcement to designate the agency responsible for investigation of sexual assaults and hate crimes. California law requires written agreements between local law enforcement and campuses regarding investigations of Part 1 violent crimes. However, existing California law does not require these agreements clarify responsibilities on non-Part 1 sexual assault or hate crimes.
- AB 967 (Williams) would require public and independent postsecondary institutions to adopt uniform processes for sexual assault disciplinary proceedings and would establish Legislative intent that, for the most egregious violations of the institution's sexual assault policies, the discipline imposed provide for a minimum suspension of at least two years up to, and including, expulsion. AB 967 would also require institutions to report annually specified crime and discipline statistics to the public.
- AB 968 (Williams) would require California public and private educational institutions to indicate on student transcripts when a student has been suspended or expelled. A standard notation on a student's transcript will notify the university to perform a background check on the potential transfer student so they can best determine whether they should enroll the student into their university.

- SB 186 (Jackson) would clarify current law regarding a community college's options to remove a student from campus. According to some community college representatives, current law (EDC §76034) has been interpreted to prohibit a community college from taking action to suspend or expel a student found to have violated a campus misconduct policy, even in cases of rape, unless the misconduct occurred on the college campus. This bill would authorize, under specified circumstances, a community college to remove, suspend, or expel a student for sexual assault that occurred on or off campus.
- Additionally, two bills pending the Governor's approval would update K-12 sexual education programs. AB 329 (Weber) would make instruction in sexual health education mandatory, revise HIV prevention education content, expand topics covered in sexual health education, and require instruction to be inclusive of different sexual orientations. SB 695 (de León) would require the Instructional Quality Commission to consider adding content to the health curriculum framework for grades 9-12 on sexual harassment and violence, including the affirmative consent standard.

### Existing Federal Law

As further outlined below, Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in federally funded education programs and activities. Discrimination prohibited by Title IX includes sexual harassment and sexual assault. All institutions receiving federal financial aid are required to comply with Title IX. The Office for Civil Rights (OCR), within the U.S. Department of Education (USDE), is responsible for enforcement of Title IX. OCR is currently investigating more than 120 colleges across the country, and a dozen in California, for how they have handled sexual assault complaints. Some of the California colleges under investigation include UC Berkeley, UCLA, Stanford University and the University of Southern California.

In addition to federal efforts to issue new regulatory guidance and congressional efforts to enact new laws regarding campus sexual assault, President Obama recently launched the “It’s on Us” education campaign geared toward encouraging individuals, schools, law enforcement, religious organizations, athletic organizations and others to “discourage harmful behaviors and establish new conversations on healthy relationships, positive images of women, and a rejection of gender inequality.” The campaign offers resources to help end campus sexual assault including guidance on legal obligations and best practices to prevent and respond to assault. Prior to the launch of the campaign, President Obama issued a memorandum establishing a White House Task Force to Protect Students from Sexual Assault (Task Force) and a website resource "[www.notalone.gov/](http://www.notalone.gov/)". The Task Force released its first set of recommendations in April 2014.

Major federal laws regarding campus sexual violence include:

- The Clery Act (20 U.S.C. § 1092) requires public and private postsecondary educational institutions that participate in the federal financial aid program to disclose information about crimes on and around campuses and to establish certain rights for victims of sexual assault. The Clery Act further requires institutions to collect, classify and count crime statistics, publish an annual security report with crime statistics and security policies, and report crime

statistics to the USDE. Crime reporting under the Clery Act aims to address seven major categories, with some significant sub-categories and conditions, including crimes involving forcible and non-forcible sex offenses.

Campus Sexual Assault Victims' Bill of Rights of 1992 provided an amendment to the Clery Act requiring that schools develop prevention policies and provide certain assurances to victims. The Clery Act was amended again in 1998 to expand requirements, including the crime categories that must be reported.

In 2014, reauthorization of the Violence Against Women Act (VAWA) amended the Clery Act to require institutions to address jurisdictional issues with local law enforcement; to provide data regarding incidents of sexual assault, dating violence, domestic violence, and stalking; to outline procedures for responding to the aforementioned violent acts; to require specified campus prevention programs; and, to ensure confidentiality of survivor information in complying with record-keeping requirements.

- Title IX (20 U.S.C. §1681-1688) requires public and private postsecondary educational institutions that participate in the federal financial aid program to establish certain rights for victims of sexual assault, including notification to victims of legal rights, availability of counselling, safety options for victims, and offering prevention and awareness programs.

On April 4, 2011, USDE's OCR issued a Dear Colleague Letter providing guidance regarding an institution's responsibility and clearly outlined an institution's obligations in sexual assault complaints, including: institutions are responsible to take immediate action to investigate and respond to sexual violence; institution's must take prompt and effective steps to end the sexual violence, prevent its recurrence, and address its effects, whether or not the sexual violence is the subject of a criminal investigation; institutions must protect the complainant; colleges must use the preponderance of the evidence standard to resolve complaints; and, institutions must notify both parties of the outcome of the complaint.

On April 29, 2014, OCR issued "Questions and Answers on Title IX and Sexual Violence" to provide additional guidance to institutions regarding compliance with Title IX. The document, among other clarifications, specifies: there are only limited cases in which a student's confidentiality should be overridden in order for an institution to meet its Title IX obligations; Title IX investigations are not criminal investigations and therefore the same procedural protections and legal standards are not required (complainants do not need to be present for hearings); questioning during a hearing regarding the complainant's sexual history should not be permitted; institutions are required to provide training on Title IX and sexual violence to employees so that they can appropriately respond, and schools should have methods for verifying that training is effective; and, institutions are required to provide training to students so that they understand their rights under Title IX.

### *Campus and Law Enforcement Coordination*

As previously outlined, federal and state laws establish specific protections, resolution processes, and services for campus sexual violence. However, students who are victims of sexual assault

are also entitled to the protections and services provided to victims of the general population, such as law enforcement investigations, rape crisis center services, and possible district attorney criminal prosecutions, etc. While the campus and criminal processes are separate and distinct, it is important that survivors understand all of their rights and options under both procedures.

Aimed at improving relationships between campuses, law enforcement, and district attorneys, the California Attorney General's office, in collaboration with University of California, Alameda County District Attorney's Office, San Bernardino District Attorney's Office, San Francisco Police Department and Oxnard Police Department published model Memorandums of Understanding (MOUs) for use by educational institutions<sup>x</sup>. The purpose of the model MOUs is to establish best practices to school officials and law enforcement agencies to provide clear, accurate, and supportive information to students who have been assaulted, including a clear understanding of how to report to authorities and where and how to seek medical assistance.

Specifically, the Model MOU lays out key action items that include:

- Clarifying the duties of campus authorities and law enforcement agencies following an assault, including who will act as first responder, who will collect and preserve evidence, and how to share necessary information while preserving victim privacy;
- Ensuring that campuses, law enforcement, and community-based organizations work together to connect victims to services – including rape kits – as soon as possible; and,
- Committing to regular training for both the campus and law enforcement communities.

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<sup>i</sup> Westat, Prepared for the Association of American Universities. (2015). Campus Climate Survey on Sexual Assault and Sexual Misconduct. [https://www.aau.edu/registration/public/PAdocs/Survey\\_Communication\\_9-18/Final\\_Report\\_9-18-15.pdf](https://www.aau.edu/registration/public/PAdocs/Survey_Communication_9-18/Final_Report_9-18-15.pdf)

<sup>ii</sup> Krebs, C. P., Lindquist, C., Warner, T., Fisher, B., & Martin, S. (2007). The campus sexual assault study: Final report. National Criminal Justice Reference Service: <http://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>.

<sup>iii</sup> Fisher, B., Cullen, F., & Turner, M. (2000). The sexual victimization of college women (NCJ 182369). National Criminal Justice Reference Service: <https://www.ncjrs.gov/pdffiles1/nij/182369.pdf>.

<sup>iv</sup> California State Auditor (2013). Report 2013-124. <https://www.auditor.ca.gov/pdfs/reports/2013-124.pdf>.

<sup>v</sup> Assembly Higher Education Committee. <http://ahed.assembly.ca.gov/archivedinformationalhearings>.

<sup>vi</sup> California State Auditor (2015). Report 2015-032. <https://www.bsa.ca.gov/pdfs/reports/2015-032.pdf>.

<sup>vii</sup> UC Systemwide Policy on Sexual Harassment and Sexual Violence <http://policy.ucop.edu/doc/4000385/SHSV>.

<sup>viii</sup> UC website: <http://sexualviolence.universityofcalifornia.edu/>.

<sup>ix</sup> CSU Systemwide Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking Policy: <https://www.calstate.edu/eo/EO-1095-rev-6-23-15.html>; Systemwide Policy Prohibiting Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking against Employees and Third Parties and Systemwide Procedure for Addressing Such Complaints by Employees and Third Parties: <https://www.calstate.edu/eo/EO-1096-rev-6-23-15.html>; Systemwide *Policy* Prohibiting Discrimination, Harassment and Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking against Students and Systemwide *Procedure* for Addressing Such Complaints by Students: <https://www.calstate.edu/eo/EO-1097-rev-6-23-15.html>.

<sup>x</sup> Office of Attorney General Kamala Harris. Campus Sexual Assault Resources. <https://oag.ca.gov/campus-sexual-assault>