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VIEWPOINT

Sexual Assaults Among University Students

Prevention, Support, and Justice

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Sexual assault is common among college-aged women (18 to 25 years). In 2007, 1 in 5 reported experiencing these crimes during their college years.¹ Acute and long-term consequences of sexual assault may include physical trauma, sexually transmitted infections, post-traumatic stress disorder, depression, and substance abuse. Although sexual assaults are underreported in all settings, college students are particularly less likely to report; up to 80% of sexual assaults in college settings are unreported.² Survivors have the option of reporting assaults to the university or to the police, but the goals of these 2 systems—and women's experiences with them—can be quite different. The criminal justice system's principal aim is to adjudicate guilt, but the university has the broader purpose of fostering a safe learning environment.

How could university administrators help prevent sexual assaults and, if necessary, fairly adjudicate claims? The critical points of intervention include nurturing a respectful environment; encouraging reporting; ensuring fair and rigorous investigations; implementing appropriate sanctions for inappropriate

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behavior; and reintegrating survivors back into the academic community.³ Importantly, coordination and cooperation between the university and criminal justice systems will improve experiences for survivors of sexual assault.

Defining the Problem

Research from 2005 to 2007 has suggested that 19% of female students experienced attempted or completed sexual assault during their college years.¹ Those data indicate that the vast majority (75% to 80%) of survivors knew their assailant, with 17% to 19% of sexual assaults occurring during a date.¹ Student survivors of sexual assault are less likely to report to police than nonstudent survivors (20% vs 32%).² Physical and emotional harms are common, yet fewer than 1 in 5 female survivors received assistance from a victim service agency.²

Nurturing a Respectful Environment

Colleges receiving federal funding are required to implement programs to prevent sexual assaults on campus,

including awareness campaigns.³ Yet evaluations of sexual assault prevention programs have reported mixed results. Effective prevention programs must be sustained and comprehensive, addressing risk factors at the individual, relationship, and community levels.³ Strengthening prevention programs is critical to reduce campus violence, creating an environment that supports safety, respect for women, and trust.

Encouraging Reporting

The reluctance to file a police report following sexual assault may be attributable to embarrassment, fear of retaliation, perception of insufficient evidence or "seriousness" of incident, or concerns about intrusive and prolonged investigations.^{3,4} For similar reasons, students may be reluctant to report to campus authorities, especially when students have particular concerns about confidentiality. Federal law requires "responsible employees" of universities to report incidents of alleged sexual violence to universities' Title IX coordinator or other appropriate school designee.⁵ While well-intentioned, this requirement can deter assault survivors from reporting and accessing support and counseling. Colleges should have resources and processes in place to make official reports of sexual assault and to provide survivors with prompt access to trained, confidential advocates who can provide emergency care and ongoing support.³ Providing outlets for reporting

through a hotline or website has been shown to improve reporting.⁶ Student survivors, moreover, should be made aware of a college's ability to take remedial action, even without a formal investigation. Ultimately, colleges should create a justice system that engenders respect and trust, fostering student confidence to report and seek help with violence-related concerns.

Fair and Rigorous Investigations

Although the criminal justice system's investigation into a sexual assault is discretionary and often lengthy, school officials must respond quickly and effectively. Federal law requires schools to conduct investigations that are "adequate, reliable, impartial, and prompt," including opportunities for both parties to present witnesses and evidence.⁵ Nevertheless, underinvestigation remains a serious problem. Only one-fourth of all reported rapes lead to arrest, only one-fifth lead to prosecution, and only one-half of prosecutions result in felony convictions.⁴ Reported assaults may not always be investigated; one study found that more

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than 40% of schools had not conducted a single investigation in the previous 5 years.⁶

Campus adjudication processes for sexual assaults, moreover, often are the same as those used for any student misconduct, such as cheating or plagiarism.⁶ This could result in investigations that may not be sensitive to the unique needs of sexual assault survivors, resulting in the failure to treat them with the proper dignity and respect. School officials, for example, often receive little training in conducting sexual assault investigations, including understanding culturally ingrained misapprehensions of sexual violence, such as acquaintance vs stranger rape, what constitutes consent, and how trauma can affect the survivor's demeanor and memory.⁶

Some adjudication processes do not comply with federally required best practices for sexual assault adjudications, ie, permitting questioning about the survivor's sexual history with people other than the alleged perpetrator and allowing parties to personally cross-examine each other. Universities, moreover, should move from the "judicial board" model, which often tracks the adversarial, evidence-gathering model of the criminal justice system.³ A "single investigator" model—whereby a trained investigator interviews the parties, gathers evidence, interviews witnesses, and renders a finding or recommendation—encourages reporting and bolsters trust.³

Appropriate Sanctions

Sanctions for campus sexual assault vary substantially, depending on whether the criminal or university justice system serves as the adjudicator. A person convicted of rape or sexual assault can face imprisonment or may be required to undergo treatment or register with the sex offender registry. Expulsion is the harshest disciplinary action that can be taken by a university, and this action is not often taken—only 10% to 25% of students found responsible for sexual assault are permanently expelled.⁷ Lesser sanctions include reprimands, counseling, suspensions, or community service.

However, sanctions for campus sexual assaults do little to prevent repeat offenses. Even expelled students can commit sexual assaults elsewhere, while federal law prohibits universities from

publicly releasing sanctions with respect to a specific, named individual, because disciplinary records constitute protected "education records" under the Family Educational Rights and Privacy Act.⁴ This is particularly troubling, given that most campus sexual assaults are committed by repeat offenders.⁴ One study from 2002 found that 7% of college men admitted to committing rape or attempted rape, and of this group 63% admitted committing multiple offenses, averaging 6 rapes for each perpetrator.⁸ A college's effective cooperation and coordination with local law enforcement, as a result, is essential for cases in which the survivor also decides to file a criminal complaint. Opening lines of communication between the university and criminal justice systems, such as through Memoranda of Understanding, could help to improve coordination between the 2 systems.³

Reintegrating Survivors

Survivors of sexual assault need access to services to regain a sense of control and safety.³ Colleges have an obligation to respond to survivors' needs through counseling, disability services, physical and mental health services, legal assistance, and other support services.⁵ Some colleges have the capacity to provide comprehensive trauma-informed services, but others may partner with community-based organizations, such as rape crisis centers.³ Survivors of campus assault, moreover, often have specific needs that their university is uniquely positioned to address, such as academic, housing, and employment accommodations, as well as campus restraining orders.⁴ Universities must ensure the safety and well-being of the complainant before the final outcome of an investigation. Interim measures can involve changing academic schedules and extracurricular activities, as well as altering living, transportation, dining, and working situations as appropriate.⁵

The magnitude of sexual assaults on college campuses and the severe harms caused demand a robust and coordinated response by the university and criminal justice systems. Universities and the communities that support them have a responsibility to college students to nurture an environment of safety, dignity, and respect, and to rigorously pursue justice so that young adults can receive a quality education and pursue their life goals.

ARTICLE INFORMATION

Conflict of Interest Disclosures: The authors have completed and submitted the ICMJE Form for Disclosure of Potential Conflicts of Interest and none were reported.

REFERENCES

1. Krebs CP, Lindquist CH, Warner TD, Fisher BS, Martin SL. The Campus Sexual Assault (CSA) Study. National Criminal Justice Reference Service website. <https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>. December 2007. Accessed June 2, 2015.
2. Sinozich S, Langton L; US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Rape and Sexual Assault Among College-Age Females, 1995-2013. Bureau of Justice Statistics website. <http://www.bjs.gov/content/pub/pdf/rsavcaf9513.pdf>. December 2014. Accessed May 26, 2015.
3. White House Task Force to Protect Students from Sexual Assault. Not Alone: The First Report of the White House Task Force to Protect Students from Sexual Assault. Not Alone website. <https://www.notalone.gov/assets/report.pdf>. April 2014. Accessed May 26, 2015.
4. Know Your IX (KYIX) website. <http://knowyourix.org/>. Accessed April 27, 2015.
5. US Department of Education, Office for Civil Rights. Questions and Answers on Title IX and Sexual Violence. US Dept of Education website. <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>. 2014. Accessed May 26, 2015.
6. US Senate Subcommittee on Financial and Contracting Oversight—Majority Staff. Sexual Assault on Campus: How Too Many Institutions of Higher Education Are Failing to Protect Students. Association of Title IX Administrators website. <https://www.atixa.org/wordpress/wp-content/uploads/2012/01/Summary-of-Sexual-Violence-on-Campus-McCaskill.pdf>. July 9, 2014. Accessed May 26, 2015.
7. Lombardi K; The Center for Public Integrity. A Lack of Consequences for Sexual Assault. Center for Public Integrity website. <http://www.publicintegrity.org/2010/02/24/4360/lack-consequences-sexual-assault-0>. February 24, 2010. Accessed June 2, 2015.
8. Lisak D, Miller PM. Repeat rape and multiple offending among undetected rapists. *Violence Vict*. 2002;17(1):73-84.