

Trauma-Informed Sexual Assault Investigations Training Binder



Improved Processes
Improved Competence
Improved Outcomes

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INTRODUCTION

Over the past decade, there has been a major shift in thinking on how to approach the sexual assault grievance process on campus. During the Obama administration, a growing number of advocates complained that the process did little to nothing to help students who have reported sexual assault. The Obama administration took these criticisms seriously and formulated the White House Task Force to Protect Students from Sexual Assault.

This task force made a number of recommendations to higher education institutions, asking schools to re-examine their policies and procedures. During this time, many institutions began to adopt a new approach called trauma-informed investigations. Trauma-informed investigations require investigators to consider the neurobiological responses to trauma. By providing specialized support and empathy for people who have reported a sexual assault, investigators can gain more accurate information for the investigation while minimizing re-traumatization.

By the time the Trump administration took over in 2017, a growing number of advocates were complaining about “victim-centric” policies and procedures. These advocates believed that the policies of the Obama administration went too far and led investigators to presuppose the guilt of people who had been accused of sexual assault. The Trump administration asked higher education institutions to reconsider sexual grievance policies and procedures again in 2017, emphasizing the importance of fairness to students who are accused of sexual assault. (The Trump administration was sued over its new guidance in 2017, so this could still be in flux.)

In this binder, we will take the advice of both administrations and offer an approach that is both trauma-informed and student-centered. In such a process, both students reporting and responding to claims of sexual assault should be approached empathetically and with concern for their unique circumstances. With a better understanding of what each student might be dealing with, institutions can:

- Better support students through the grievance process
- Create a grievance process that is fair and equitable
- Collect accurate information to determine if any policy violations took place

With an improved process, higher education institutions can improve the competence of their investigators and reach an improved outcome that is fair to all students involved in a sexual assault investigation.

IMPACT OF SEXUAL ASSAULT AND SEXUAL ASSAULT INVESTIGATIONS

RE-TRAUMATIZATION

Trauma creates psychological and physical symptoms. If an institution is going to properly respond to and prevent sexual assault on its campus, it is critical to understand this. In a best-case scenario, only specially trained individuals who have undergone training about the physical and psychological impact(s) of trauma would interact with the complainant in the early stages following a sexual assault. This is because, following a sexual assault, a complainant is easily re-traumatized. Re-traumatization inhibits the complainant's ability to heal and to fully participate in the investigation process (O'Neill, 2012).

According to Deborah O'Neill (2012), who wrote her dissertation at the University of Pennsylvania on college campus acquaintance rape, re-traumatization occurs due to many factors. In her dissertation, O'Neill explained that complainants are subjected to re-traumatization when they are made to feel blamed or disbelieved, when they are subjected to the traditional justice process and when they are required to relive the assault during an investigation. "[T]he absence of victim voice in describing their experience, the double standard requiring justification of one's character, clothes, choices, and behavior is degrading, emotionally depleting, and re-traumatizing."

In addition to the risk of re-traumatization, when some people suffer trauma, their affect, memory and ability to recall events in a systematic and organized way can be compromised (Arkansas Coalition Against Sexual Assault [ACASA], 2012). As outlined above, the psychological and physical impacts of trauma can affect long-term health and well-being.

Below is a list of some of the symptoms that a sexual assault survivor may experience as a result of trauma (Office of the Attorney General, 2017; National Center on Safe Learning Environments, 2018; Robinson, Smith, Segal, 2018):

- Nightmares
- Flashbacks
- Headaches
- Fear for safety
- Anxiety
- Depression
- Unstable emotions
- Social withdrawal
- Avoidance behaviors and actions
- Hyper-vigilance
- Sleep disorders
- Eating disorders
- Tunnel vision
- Psychic numbing/dissociation
- Cognitive intrusion
- Fatigue
- Problems with concentration
- Fragmented recollection
- Feelings of guilt
- Increased startle response
- Anger/rage
- Helplessness
- Sadness
- Nausea
- Forgetfulness
- Restlessness

THE EFFECTS OF AN ACCUSATION

Along the same lines, only specially trained individuals who have undergone training about the impact of an accusation on respondents should interact with the respondent in the early stages of an investigation. If respondents feel they are facing an unfair process with biased investigators, they will be less likely to cooperate. It could also be more difficult for campus officials to connect a student with important resources, like counseling, that could help respondents cope with the stress of being investigated.

Being accused of sexual assault can be a harrowing process for respondents. For some, an accusation of sexual assault comes as quite a shock and could have lasting mental health impacts. One respondent reported being ostracized by his friends, being called “rapist” around campus and feeling so depressed that he wanted to drop out—all before he was eventually cleared of wrongdoing by his institution (Hartocollis & Capecchi, 2017). Some respondents feel as though responding parties have been presumed guilty before investigations have been completed (Wilson, 2014). Before shelving Obama-era guidance, U.S. Secretary of Education DeVos met with members of an advocacy group founded by mothers of respondents and then warned against a process that favors complainants too heavily (Svrluga, 2017).

If an institution takes steps to separate students involved in an investigation, respondents might be provided with a very short time frame to move out of their residence hall rooms. While this is understandable from the point of view of enforcing a “no contact” order between students, it also represents a major life change that must be undertaken before an investigation has been completed. This can be hard for respondents to understand. One student who was eventually expelled from his institution for a sexual assault violation said, “They told me I had six hours to get out of my dorm and find somewhere else to live... They treated me with such hostility, like I was already a criminal” (Wilson, 2014).

Some feelings and mental health issues reported by respondents include (Grigoriadis, 2017; Svrluga, 2017; Wilson, 2014):

- Humiliation
- Depression
- Suicidal thoughts
- Being debased or attacked
- Questioning self-identity
- Guilt
- Alienation
- Anger

“Being accused is very debasing – if someone [says] you’re a sexual predator, it doesn’t get much worse than that... I almost would rather someone said I embezzled money or I was a drunk driver who killed someone. As a man, I have a deeply ingrained instinct that I want to protect women, not hurt them. This strikes right at the heart of my identity.”

— Student who was found responsible for a sexual assault violation

Source: Grigoriadis, 2017

THE EFFECTS OF AN ACCUSATION *(continued)*

- Social withdrawal
- Helplessness
- Family problems
- Weight loss

Given the length of time involved with campus sexual assault investigations, some respondents might feel the effects of chronic stress. Just as institutions must approach complainants with empathy and consideration, so too must institutions approach respondents with empathy and consideration. Dr. David Lisak, a clinical psychologist, has focused his research on the causes and consequences of interpersonal violence (Lisak, 2018). He explained that despite the very low incidence of false sexual assault reports, many respondents believe they are not responsible for the violation of which they have been accused (Wilson, 2014).

Some of this feeling may be attributable to a lack of understanding about affirmative consent. One mother of a respondent who had been expelled for an incident where his partner was too intoxicated to give consent lamented, “In my generation, what these girls are going through was never considered assault...It was considered, ‘I was stupid and I got embarrassed’” (Hartocollis & Capecchi, 2017). It is very possible that reporting and responding parties can have very different understandings of affirmative consent.

Dr. Lisak encouraged investigators to approach all parties in an investigation—whether complainant, respondent or witness—with an empathetic approach to create a relationship to help students through a stressful process and ensure an impartial investigation process (ACASA, 2013). Responding with empathy might feel strange to some first responders who have been trained to approach investigations in a fact-centered, unsympathetic way. Dr. Lisak expounded, “It’s not that in order to be a neutral fact gatherer you have to kind of have this demeanor of... no connection, no empathy, no compassion, so forth...I think it’s the key to any kind of forensic interview, whether you’re interviewing a victim, where you’re interviewing an offender: ...forge a bond with them to make them trust you to make them feel like they can talk to you...Be warm, compassionate, empathic and...get your information.”

As with complainants, in a best-case scenario, only specially trained individuals would interact with the respondent in the early stages of an investigation. A sexual assault complaint and investigation can lead to an incredible amount of stress for a respondent. In fact, it can be life changing. Understanding the stakes for respondents should not influence an investigator’s opinion on the investigation (e.g. “I don’t want to ruin this student’s life with an investigation”), but should rather provide insight into what the respondent might be feeling and in turn, provide insight into why a respondent might act a certain way, say certain things, etc. during the investigative process. Investigators and first responders must approach interactions with care and empathy to ensure an equitable investigation process.

PHYSICAL IMPACTS OF TRAUMA

Fight, Flight and Tonic Immobility

Different people will respond in different ways to sexual assault. It is well known that people will usually do one of two things during an assault: fight or flight. Often these are viewed as the only two viable actions an individual should take. Research is building to suggest, however, that there is a third possible response called tonic immobility.

As University of Sydney psychiatrist Kasia Kozłowska explained to *Scientific American*, “When flight or fight is possible, motor programs for running or fighting are activated, the arousal system is switched to a high-energy setting and nonopioid analgesia is switched on. This helps the victim either run away or fight...When flight or fight is not possible, immobility motor programs are activated, causing the paralysis. At the same time, the arousal system is switched to a low-energy setting, and the brain is flooded with ‘opioid analgesia’ to reduce the intensity of the fear and pain...In humans who are being raped, tonic immobility may be immediately triggered when their sensory inputs (touch, smell and so on) reach a critical threshold and they feel there is no escape.”

For years, those who have worked with survivors of extreme trauma, like sexual assault or combat, have reported that during their traumas, some survivors do not move, make a sound or fight back (Russo, 2017). Recent research aimed at verifying whether victims of sexual assault experience tonic immobility suggests that a large percentage of sexual assault survivors report symptoms (Möller, Söndergaard & Helström, 2017). At the Emergency Clinic for Raped Women in Stockholm, Sweden, 298 women who were raped agreed to participate in a study shortly after their assaults took place. The survey asked respondents to use a Likert scale of 0-6 to express the degree to which they felt symptoms of tonic immobility like feeling “frozen or paralyzed, the inability to move although not restrained, the inability to call out or scream, numbness, feeling cold, fearing for one’s life, and feeling detached from self.” Researchers found:

- 70 percent of survey participants reported “significant” tonic immobility
- 48 percent of survey participants reported “extreme” tonic immobility

Since tonic immobility is an involuntary response, those who experience it do not have control over what their body is doing. Helping investigators and first responders understand

TONIC IMMOBILITY

Tonic immobility is an “*unlearned*” state of profound motor inhibition typically elicited by a high fear situation that involves threat and/or restraint. After some struggling, a catatonic-like posture ensues. Vocalization stops, tremors occur, and there are periods of eye closure. Heart rate decreases while body temperature and respiration increase.”

Source: Suarez & Gallup, 1976

PHYSICAL IMPACTS OF TRAUMA *(continued)*

the range of physical responses to sexual assault will be helpful for complainants who might feel guilty about “not fighting back.” It can also help investigators and first response teams understand that failing to resist is one of many potential reactions to sexual assault.

The goal of asking complainants and respondents for information is to get data points that will move the investigation along in a fair and equitable way. If an investigation requires that survivors prove that they fought back during an attack, it could have the unfortunate effect of “causing psychological harm to the women and failing to recognize the body’s innate response to serious attack,” said Dr. Kozłowska. This might lead complainants to provide inaccurate answers or a reticence to share any information, giving investigators fewer data points with which to work.

When complainants who have experienced tonic immobility during a sexual assault are asked questions such as *Did you fight back?* or *Did you say no?*, complainants might feel like they have done something wrong. The reality is: some complainants can fight, some can flee and others might have no control over how their bodies responded. Therefore, it is important to avoid asking questions that make complainants feel badly about how they responded. Instead of asking *Did you fight back?* or *Did you say no?*, it would be better to ask open-ended questions like:

- *What were you feeling?*
- *What do you remember?* or
- *What can you tell me about what happened to you?*

(There is more information on interview techniques in the section entitled, “How to Conduct a Trauma-Informed Investigation.”)

“Most victims will freeze, if only briefly. Some will fight back, effectively. Some will resist in habitual, passive ways. Some will suddenly give in and cry. Others will become paralyzed, become faint, pass out or dissociate. Few who have experienced these responses realize that they are brain reactions to attack and terror. They blame themselves for ‘failing’ to resist. They feel ashamed. (Men especially may see themselves as cowards and feel like they’re not real men.) They may tell no one, even during an investigation... None of these responses – in women or men – entails consent or cowardice. None is evidence of resistance too insufficient to warrant our respect and compassion. They are responses we should *expect* from brains dominated by the circuitry of fear (just as we should expect fragmented and incomplete memories).”

— Dr. James Hopper, consultant and instructor of psychology in the Department of Psychiatry at Harvard Medical School

Source: Hopper, 2015

**CULTURE,
MISCONCEPTIONS AND
TERMS TO KNOW**

TRAUMA-INFORMED INVESTIGATIONS

During the Obama administration, a new type of approach to handling sexual assault investigations came into prominence. Called “trauma-informed” investigations, it focuses on bringing a better understanding of the impact of sexual assault on survivors. With the Trump administration’s new guidelines that prohibit using gender stereotypes and emphasize the need to consider respondents’ rights, institutions should ensure that their processes provide an equitable investigation for all involved parties, as you can read in the box “Equitable Investigation.”

If correctly implemented, “trauma-informed” investigations can better support students while more effectively investigating sexual assaults. Such investigations allow an institution to:

- a. Treat complainants with care and empathy through a better understanding of the impact of trauma
- b. Gather important details that can corroborate or disprove an allegation of sexual assault
- c. Build a rapport with complainants and respondents alike

In fact, some of its techniques can help institutions respond in a careful and equitable way to responding parties as well. As mentioned above, though the type and magnitude of stress is different for complainants and respondents, a sexual assault investigation is a stressful experience for *everyone* involved. Approaching students with care does not equate to a finding of responsibility, but rather a desire to support students and get better information in an investigation.

EQUITABLE INVESTIGATION

“Any rights or opportunities that a school makes available to one party during the investigation should be made available to the other party on equal terms. Restricting the ability of either party to discuss the investigation (e.g., through ‘gag orders’) is likely to deprive the parties of the ability to obtain and present evidence or otherwise to defend their interests and therefore is likely inequitable. Training materials or investigative techniques and approaches that apply sex stereotypes or generalizations may violate Title IX and should be avoided so that the investigation proceeds objectively and impartially.”

– U.S. Department of Education,
Office for Civil Rights, 2017

HOW TO CONDUCT A TRAUMA-INFORMED, STUDENT-CENTERED INVESTIGATION

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PATIENCE

Patience is key when it comes to conducting an effective sexual assault interview. Complainants and respondents must be given time to recall their experiences in ways that work for them. According to New Hampshire's Office of the Attorney General (2017), an effective interviewer "should allow ample time to conduct a thorough...interview. The comfort and needs of the [interviewee] should be taken into consideration throughout the course of the interview process...trauma, cultural differences, cognitive ability, fear, self-blame and other factors can influence the [interviewee's] ability to provide clear and concise details about the assault."

"Every effort should be made by you to demonstrate genuine empathy, patience, and understanding towards the person with whom you are facilitating a disclosure of their experience. You may need to spend additional time establishing sincere empathy and caring concern to be invited into their traumatic and/or painful experience...One of the greatest needs of anyone who has experienced or is experiencing high stress and/or trauma is the need to be safe; trust is central to that need."

– Russell Strand, retired chief of the Behavioral Sciences Education and Training Division for U.S. Army Military Police School

Source: Strand, 2014

The National Center for Women and Policing (2001) does an excellent job of explaining why it may be challenging for investigators, especially law enforcement, to conduct interviews about sexual assault and why effective training is critical:

- "[S]ome have suggested that some aspects of the police personality make it difficult to conduct successful interviews, [particularly] with the sexual assault [complainant]. Police officers are typically action oriented people, yet sexual assault cases require patience for a long, detailed, and emotionally difficult interview.
- An additional barrier is the tough exterior that many officers assume because they are nervous and uncomfortable when responding to sexual assault cases. Police sometimes try to remain detached from cases that involve difficult emotions such as sexual assault, because they are unsure of how to respond effectively to [involved parties].
- A third barrier to effective interviewing stems from the typical career path of a police officer from

"One day all of your dreams are in front of you and you're on a path and a trajectory for you to achieve those dreams — only then for it to be yanked from you, totally out of your control...Basically, every day is a struggle to continue to go on and go forward."

– Student who was suspended for a sexual assault violation

Source: Rees Shapiro, 2017

PATIENCE *(continued)*

patrol to investigations. Given that officers typically begin their career patrolling the streets they learn about interviewing in the worst imaginable circumstances, in chaos or confusion with a great deal of noise, anxiety, and time pressure. In addition, there is very little incentive for doing a thorough investigation, because they need to file their reports quickly and get back on the streets to prepare for the next call. As a result of these experiences, patrol officers ‘learn’ how to conduct interviews by directing a number of rapid-fire questions at witnesses to establish basic information.”

To effectively respond to sexual assault, colleges and universities must invest the resources needed to ensure that their investigators are trained to conduct interviews in a trauma-informed manner that also recognizes the difficult nature of being a respondent.

CONSIDERATIONS FOR COMPLAINANTS

Empowerment

Sexual assault is a crime of control. During a sexual assault, the perpetrator takes away all control from the victim. It is imperative that we give the control back to students who believe they have been assaulted as soon as possible because empowering the complainant and giving back control can be the first step toward healing.

Colleges and universities need to understand the importance of empowerment and make sure that their response teams are trained to help complainants regain control. This is not

ALLOWING COMPLAINANTS TO BE IN CHARGE OF THEIR NEXT STEPS

“Allowing [complainants] to make informed decisions and to take charge of their next steps goes a long way toward helping victims heal.

Start by asking simple questions:

- ◆ What would you like to be called?
- ◆ Where do you prefer to sit?
- ◆ Is there anything that I can get for you?
- ◆ Would you prefer the door open or closed?

Continue by determining other ways to help victims regain control:

- ◆ Help identify and address the [student’s] safety needs.
- ◆ Make suggestions that can increase safety—for example, ask if [complainants] feel safe being alone and if there is anything that would increase their sense of safety.
- ◆ Give [complainants] as much control as possible, such as letting [them] decide when and where they want to talk and in what order to do things.
- ◆ Give [complainants] information to help them make informed decisions.
- ◆ Explain processes (e.g., examinations, interviews, investigations) and who or what will be involved before beginning them.
- ◆ Maintain a nonjudgmental attitude to help [complainants] regain power and control— individuals who perceive judgment may immediately relinquish control to others to avoid further judgments.
- ◆ Help [complainants] identify their strengths.
- ◆ Treat [complainants] as individuals rather than as cases.”

– U.S. Department of Justice, Office of Justice Programs, 2011

CONSIDERATIONS FOR COMPLAINANTS *(continued)*

difficult, because simple gestures, like allowing complainants to decide whether they would like a glass of water, or what chair they would like to sit in, are small steps that will help complainants regain control.

Response teams must also be cognizant that as easy as it is to give complainants control, it is also very easy to inadvertently take it away. This should be avoided as much as possible. For example, saying to a victim, “*You should get a medical exam*” is a lot different than asking, “*Would you like to get a medical exam?*” The question, especially when paired with a rationale, is empowering; the statement is controlling.

“Recognize that the [survivor] had no control over what happened to them. Let them know that the way they survived during the traumatic experiences was actually their way of resisting what was happening to them and of saying no, even if it did nothing to stop the person behaving abusively.”

– Clinic Community Health Center, 2013

CONSIDERATIONS FOR RESPONDENTS

Importance of Language

College and university sexual assault response teams must understand that the language they use with responding parties will have a major impact on whether the student feels the investigation is proceeding in a fair and equitable manner. “Victim” is one important word that has been called out by those advocating on behalf of students who they believe were unfairly accused. One such group, Stop Abusive and Violent Environments (2018), wrote in an open letter, “By their very name, their ideology, and the methods they foster, ‘believe the victim’ concepts presume the guilt of an accused. . . District Court Judge F. Dennis Saylor wrote it was presumptuous to assume someone is a ‘victim’ in the investigative context because ‘[w]hether someone is a “victim” is a conclusion to be reached at the end of a fair process, not an assumption to be made at the beginning.’” Instead, sticking to terms like “respondent,” “complainant,” and “responding and reporting parties” projects the neutral stance that should be adopted by investigators.

As explained earlier, the use of open-ended questions is also vitally important in communicating to respondents that no assumptions are being made. For example, if an investigator asked, “*Why didn’t you realize the complainant was so intoxicated?*”, this communicates that the investigator is assuming that the respondent was solely responsible for determining the complainant’s ability to consent. Andrew Miltenberg, one lawyer who has filed suit on behalf of respondents against higher education institutions for discrimination, explained, “As much as everyone wants to appear forward-thinking in terms of sexuality, colleges are applying an antiquated, chauvinistic, and paternalistic standard. . . In every one of these situations, the male is in no better shape, physically, emotionally, or maturity-wise, to make any of these decisions than the girl [*sic*] is.”

Rather, if an investigator is hoping to gather more information about the level of intoxication from a respondent’s perspective, the investigator could ask, “*Can you help me understand why you decided to escort the complainant back home?*” To learn more about whether consent was sought, investigators could ask, “*How was sexual contact initiated?*” and follow up with questions about what each party said or did.

It is impossible to explain every scenario in which the choice of language can impact respondents, so it is important for investigators and first responders to understand students’ state of mind and then make good choices about the language they use. There is no way to publish a detailed list of what questions investigators should ask and what questions investigators should not ask. Instead, investigators must understand that the most important thing they can do is be empathetic. If they are patient and listen when respondents tell their stories, empathy will lead to the appropriate questions.

TRAINING RESOURCES

SAMPLE

It Was Consensual, Wasn't It?

Joe, a junior, had seen Eva, a sophomore, around their on-campus apartment building. They were not close friends, but were friendly enough to talk occasionally. One night, Joe and Eva were at the same party. After talking and drinking all night, Eva invited Joe back to her room. While both students were intoxicated, Joe didn't think he or Eva were really that drunk. After a little bit of foreplay in Eva's room, it seemed clear that things were moving forward. Eva asked Joe to put on a condom and he complied. Joe and Eva had sex.

After the encounter, Eva asked Joe to leave, explaining that it was late and she had too much to drink. Joe gave her a kiss, got dressed and left. The next day, Joe woke up around 1pm and messaged Eva on a social media platform.

Joe wrote, "Had a great time last night. Was that a one night thing, or is the start of something more serious?"

Eva replied, "One night."

Later that day, Joe got a call from the Dean of Students Office. A judicial officer explained that he was under investigation for sexual assault. The judicial officer informed Joe that he would need to move to a temporary housing assignment because the university had put an order of no contact between the two students.

Joe was shocked to learn that Eva had told investigators that she was so intoxicated that she blacked out and had no memory of the encounter. Joe could not believe it. He believed the sex to be consensual. He knew he would never sleep with a woman who was blackout drunk.

Discussion Questions:

1. What are your institution's policies on consent? How does alcohol intoxication impact a student's ability to give effective consent?
2. What are some of the challenges involved with being a student who is accused of sexual assault?
3. How can investigators support Joe while interim measures, like a new housing assignment, are enforced?
4. When interviewing Joe about the alleged assault, what types of questions should the investigator avoid asking Joe? What types of questions should be asked?
5. How can the investigator approach Joe with empathy and still maintain an objective investigation?

Handling Complainant & Respondent Interviews

During Complainant Interviews

DON'T SAY... ○ →	INSTEAD SAY...
I know how you feel. ○ →	How are you feeling?
Everything is going to be all right. ○ →	I am sorry this happened to you.
Sit here. ○ →	Where would you like to sit?
You should file a police report. ○ →	Would you like to file a police report?
Did you resist or say no? ○ →	What did you do or say?
Why didn't you...? ○ →	What did you do?
Did you think you were going to...? ○ →	What did you think was going to happen?

During Respondent Interviews

DON'T SAY... ○ →	INSTEAD SAY...
I know how you feel. ○ →	How are you feeling?
Everything will work out. ○ →	I am sorry this happened.
Sit here. ○ →	Where would you like to sit?
Was she fighting back? ○ →	What did you observe?
Didn't you ask for consent? ○ →	What did you do or say?
Why didn't you...? ○ →	What did you do?
Did you think you were going to...? ○ →	What did you think was going to happen?