

**2018-2019 Recommendations for Indiana University's
Sexual Misconduct Policies, Procedures, and Prevention Efforts**

Presented by:
Indiana University Bloomington
Sexual Misconduct Student Working Group

IU Student Government
Culture of Care
It's On Us Facilitator
Residence Assistant
Shatter the Silence
Student Recreational Sports Association

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Chairs

Isabel Mishkin, IU Student Government Chief of Staff

Tom Sweeney, Culture of Care President

Becca Townsend, IU Student Government Chief of Health and Wellbeing

Maddie Dederichs, IU Student Government Chief of Staff Intern

EXECUTIVE SUMMARY

The Sexual Misconduct Student Working Group has been working since August 2018 to analyze sexual misconduct policies, procedures, and prevention resources at Indiana University. The goal of the Student Working Group has been to better understand student concern and misunderstanding about sexual misconduct policies. This document consists of recommendations and requests from the Student Working Group to the administration. The Student Working Group believes it is important for Indiana University to work with the the chairs of the group and other students to respond to these recommendations, as they reflect the needs and voices of IU students. As we continue forward with these recommendations, we hope to coordinate and collaborate with administrators to formulate solutions to each explicit need.

List of terms:

For clarity, we use “claimant” and “respondent” to refer to all students who are reported to the conduct system as someone who experienced sexual misconduct and as someone who was reported to have been the initiator of misconduct. This recommendation applies to all students flagged in the conduct system, not only those who sought formal resolution.

SACS: Sexual Assault Crisis Services

CVA: Confidential Victim Advocates

OSC: Office of Student Conduct

CAPS: Counseling and Psychological Services

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POLICY

Delineate Between Intoxication and Incapacitation

Scope: University-wide

Need:

Despite attempts to dispel the belief that any alcohol or drug consumption necessarily renders someone unable to give consent, IU students, faculty, and staff continue to misunderstand the difference in the Sexual Misconduct Policy.

Confusion over the relationship between substance use and IU's definition of consent has led to problems: misunderstanding whether the mere consumption of alcohol or drugs by a sexual partner necessarily prevents consent can impair students' decision-making and judgement when trying to follow the policy. More frustrated students may give up on trying to follow the policy altogether. Additionally, the confusion may lead to dismay or anger if a student begins a misconduct hearing process on the assumption that intoxicated consent is not consent, ultimately to discover a believed non-consensual act was indeed consensual under IU's definition.

Recommendation:

The working group recommends for the University Faculty Council to adopt material changes to the Sexual Misconduct Policy to explicitly delineate between intoxication and incapacitation, as well as make clear the consensual implications of each. We have included examples from four universities below as references. We believe the model used by the University of Minnesota — which includes the distinction between intoxication and incapacitation and examples of what intoxication looks like — is the best model for IU.

University of Minnesota:

Incapacitation due to the influence of drugs or alcohol is a state beyond mere intoxication or impaired judgment.

- A lack of control over one's physical movement (for example, an inability to walk or stand without stumbling or assistance).
- An inability to effectively communicate (for example, where one's speech is heavily slurred, incomprehensible, or nonsensical).
- A lack of awareness of one's circumstances or surroundings (for example, a lack of awareness of where one is, how one got there, who one is with, and how or why one became engaged in sexual contact).

(Source: <https://policy.umn.edu/hr/sexharassassault>)

If there is any doubt as to whether another individual is incapacitated, one should assume that the individual does not have the capacity to give consent.

(Source: <http://d.umn.edu/student-conduct/conduct-process/gender-sexual-violence/definitions>)

Purdue:

Intoxication is not equivalent to Incapacitation.

(Source: <https://www.purdue.edu/policies/ethics/iic1.html>)

University of Maryland:

Where alcohol or drug use is involved, Incapacitation is a state beyond intoxication, impairment in judgment, or “drunkenness.”

(Source: <https://president.umd.edu/sites/president.umd.edu/files/documents/policies/Sexual%20Misconduct%20Policy%20&%20Procedures%20A-C%2013May2016.pdf>)

Johns Hopkins:

A person can consume alcohol and/or drugs without becoming incapacitated.

(Source: https://sexualassault.jhu.edu/_template_assets/documents/JHU%20Sexual%20Misconduct%20Policy%20Effective%207%2017%2017.pdf)

Explicitly Prohibit Tampering with Preventative and Emergency Contraceptive Devices

Scope: University-wide

Need:

In recent months, many IUB students have urged that non-consensual contraceptive tampering, such as the non-consensual removal of condom during sex (“stealthling”) or alteration of a partner’s birth control medication, should constitute a violation of university policy. The working group also believes that this is a form of sexual misconduct. Although it is possible that tampering with contraceptives could be considered Sexual Harassment or Exploitation per the current policy, the definitions are

vague regarding whether these actions violate the policy. The lack of explicit prohibition of contraceptive tampering without consent is a gap in IU's policy.

Recommendation:

The Sexual Misconduct Policy does not explicitly include tampering with contraceptives. We hold that the severity and specificity of tampering with contraceptives merits a new definition in the Policy, similarly to how Sexual Exploitation is explicitly defined offers examples.

Examples of tampering with contraceptives include, but are not limited to:

- removing condoms during sex without consent (e.g. “stealthling”),
- tampering with oral birth control without consent, and;
- intentionally poking holes in condoms without consent.

We leave the exact formulation and placement (such as within Sexual Harassment or Sexual Exploitation) of a definition to policy experts. The feedback we have heard from students, however, is to specifically classify this as a form of Sexual Harassment.

PROCEDURE

Extend appeal date to 10 business days

Scope: University-wide

Need:

The current notice of appeal from a sexual misconduct case must be filed no later than five calendar days after the date the written decision of the sexual misconduct hearing is sent. For many students in previous cases, five calendar days has not been enough to mentally process the decision, seek advice on next steps, and pursue actions necessary before beginning a formal appeal. For example, in a scenario in which two of the five allocated appeal days include non-business days, such as over the weekend or national holidays, contacting a lawyer or seeking counsel may be difficult.

We have feedback from students noting that it is difficult to find someone who can take on a case immediately and has the time to visit OSC, read through the case files, then draft and submit a formal appeal.

Recommendation:

The working group recommends increasing the appeal period to ten business days to ensure that any party who chooses to appeal has adequate time to seek legal counsel after

students are notified of a decision. The working group is not opposed to appeal periods somewhat longer or shorter than ten business days if feedback indicates a greater need.

Allow all graduate students to volunteer as panelists

Scope: University-wide

Need:

Presently, the only panelists authorized to investigate in sexual misconduct hearings are faculty and staff. In the past, panelists have been bussed to different campuses to compensate for the limited disposal of panelists available for each hearing. The student working group sees a need for improvement of the panelists available for hearings. Graduate students, in some cases, may be better able to understand the facts, nature, extent or implications of situations involving young people due to common experience and similar communication methods. Graduate students are also mature adults, and the work would remain voluntarily and based in excellent training. Feedback from students who have exited the hearing process indicates that having other students on the panel could increase trust and confidence in its ability to perform its duty. However, undergraduate students also understand the downsides of having direct peers on panels. Allowing graduate students, who are typically not direct peers to undergraduates but also better able to understand the facts, nature, extent or implications of situations involving young people, serves as a compromise between these desires.

Recommendation:

We believe that, where possible, adding graduate students as panelists will broaden the pool of volunteers and create a culture of understanding. We recommend allowing graduate students to volunteer to become panelists and actively seeking out graduate student involvement. The group recommends that panel organizers make sincere efforts to include a graduate student on each panel.

Proactively Support Inter-Campus Transfer Students

Scope: University-wide

Need

Currently, there is no established procedure for notifying claimants who transfer to other IU campuses when an alleged aggressor or respondent also transfers to that same campus. We understand that few inter-campus transfers occur each year and that very few occur in which someone who transferred was the subject of sexual misconduct reports or investigations. However, feedback from students indicates concern that such cases have occurred and may occur in the future. Something as simple as setting up a procedure for

what to do in these situations will establish trust with students and better equip the Office of Student Conduct and Confidential Victim Advocates to address an issue if it arises.

Additionally, The claimant may not know about the particular resources at that IU campus. Creating a process is important to ensure that claimants know what resources are available to them from the campus and local authorities (e.g. no contact or restraining order).

Recommendation

We recommend that the Office of Student Conduct coordinate with the University Transfer Office and other IU campuses to track students who transfer between campuses. We suggest creating a procedure for notifying a claimant who transferred campuses when the respondent transfers to that same campus. Procedures might also consider notifying a claimant who applies for inter-campus transfer when the other party had also transferred or applied for transfer to the same campus previously. The university might additionally consider expanding the procedures to notify the respondent about the claimant's transfer or application for transfer in similar situations.

We suggest designating a specific department or specific staff members (such as the Confidential Victim Advocates or the Office of Student Conduct of the respective campuses) as responsible for contacting the parties in question and carrying out the procedure. We suggest the contact be made over email and include information about the recent transfer to the campus, as well as resources the claimant might find helpful (such as Counseling and Psychological Services, Confidential Victim Advocates, and Office of Student Conduct, or campus equivalents).

Outline of Panelist Training with Learning Objectives Posted Online

Scope: University-wide

Need:

Panelists undergo rigorous training before sitting on panels to hear cases of sexual misconduct. Feedback from students, however, indicates that they do not understand the scope of what panelists are trained to analyze or the tasks which panelists are trained to perform. It is evident that students desire increased transparency about the sexual misconduct systems. Currently, the training of panelists is unknown to students and others, despite being very thorough and comprehensive. While posting the full training materials, including slide decks, worksheets, and presentation content, could severely increase the liability of the university, some compromise between all information and no information is desired. In particular, students have voiced keen interest in seeing some

sort of syllabus, outline, or detailed summary of the individual components of the training. Additionally, some idea of the learning objectives or what they panelists are meant to take away from training is important. Posting such documents or information publicly would increase trust and confidence in the panel system and the university's procedures.

Recommendation:

The working group suggests publishing an outline of topics and learning outcomes covered during panelist training, along with the general schedule or list of sessions. We suggest that this content be uploaded to stopsexualviolence.indiana.edu and highlighted on IUB social media pages and updated as the training is updated.

PREVENTION

Mandatory It's On Us Completion

Scope: IU Bloomington

Need:

Currently, student's attend It's On Us training to learn about the presence of sexual misconduct on IU's campus and how to be an effective, active bystander in a variety of situations. This program is not mandatory for students to complete and although there is a large portion of first year students attending It's On Us programming, student feedback indicates that undergraduates at Bloomington believe it would be beneficial to enforce the completion of It's On Us.

Recommendation:

The working group believes that placing a hold on student's accounts will further legitimize the program and enhance student's willingness to participate in the program. By putting student enrollment accounts on hold for the semester before completing It's On Us training, we believe we can achieve a higher percentage of students participating in the programming. The skills and resources learned during the It's On Us presentation are crucial for the further understanding of bystander prevention. The student working group is open to continuing conversations about the necessary procedure to implement a mandatory It's On Us training.

Separate It's On Us Training for Survivors

Scope: IU Bloomington

Need:

To better prepare students for potential situations faced in college, It's On Us uses videos and other engagement tools to help students better understand messages. Although this can help some students prepare to be an active bystander in difficult situations, it can also produce vivid triggers for those personally affected by sexual misconduct. For this reason, students affected have voiced wishes for an alternative It's On Us program for survivors. Currently, survivors are allowed to opt out of It's On Us training, but alternative program options may prove more beneficial, especially if participation becomes generally mandatory for all students. Additionally, some survivors felt that hearing offensive opinions about sexual violence from other participants in the room was damaging to their mental health. It is clear that survivors have different needs than students who have not thought as carefully about sexual violence, drugs and alcohol, and consent.

Recommendation:

The working group believes it would be beneficial to have a different program format for survivors. The additional program can be tailored to survivors needs including additional resources, trigger-free videos, empowering techniques, etc. We believe that those who identify as survivors will feel more comfortable in an environment that is tailored to their needs rather than viewing a possibly traumatic programming during the regular It's On Us training. Although this recommendation may require more time and resources, we believe that survivors on IU's campus should have the same opportunity for comfort and skill-building that other IU students receive. The student working group is open to continuing conversation for building this alternative programming as well as making sure survivors are not uncomfortable with the separate option.

Improved Pre-Matriculation Education

Scope: IU Bloomington

Need:

Feedback from students to the working group indicates that MyStudentBody has not been effective in achieving learning outcomes for incoming students. Students felt that the system was too easy to click through without learning any material, not especially helpful or effective in its mode of instruction, and had a user interface which was difficult to use for learning. Additionally, multiple students had serious concerns with one section of

MyStudentBody which invited students to give their own views on sex and consent in the form of selecting on a scale. These students perceive that such a question format encourages MyStudentBody learners to maintain improper understandings of consent. A core problem with the MyStudentBody system is that it presumes everyone starts at the same level, whereas using some sort of pre-test could help cater the education to the student. A more appropriately matched curriculum, beginning each student at a more individualized starting point, could improve engagement with a pre-matriculation program and the achievement of learning outcomes.

Recommendation:

We recommend IU Bloomington accept proposals for the creation of new pre-matriculation education system to replace MyStudentBody or should create one for itself, at least for the topics of sex and consent. In the meantime, the student working group recommends that more feedback surveys be administered, both immediately after completion of MyStudentBody and at least one year after matriculation. The data should determine the most and least effective aspects of the MyStudentBody program and guide the format for the new program. In particular, the working group recommends that the new program use pre-tests to help individualize the curriculum, have a user interface which is easier to use for learning, and not allow easy clicking through without learning any material.

Additional Prevention Efforts for Upperclassmen

Scope: IU Bloomington

Need:

There is no training or program specifically for upperclassmen. The target audience for It's On Us programming is first year students, and only a handful of second year students and older complete the staff Title IX online training. Students shouldn't be expected to retain everything taught by MyStudentBody and It's On Us.

Recommendation:

We recommend IU Bloomington invest in a continuing education program which targets upperclassmen. We suggest a pilot program for the executive members of all registered student organizations.

Male counselor for SACS and CVA

Scope: IU Bloomington

Need:

Sexual misconduct can happen to any individual. According to RAINN.org, one in ten men has been sexually assaulted. It is imperative for IU to make sure we are providing the necessary resources each individual student may need.

(Source: <https://www.rainn.org/statistics/victims-sexual-violence>.) Current efforts by CVAs and SACS is helpful for now, but students believe there is a need that must continue to be taken seriously.

Recommendation:

We recommend IU hire a male counselor for SACS and CVA. While the current staff is well trained and experts in this area, the student working group believes it will be beneficial for a male counselor to join the SACS team. We believe this will make students, specifically male students affected by sexual assault, more comfortable when seeking help. This recommendation will also help to reduce the stigma associated with males coming forward about sexual assault. We understand that sexual misconduct can happen to anyone regardless of gender, race, socio-economic class, etc. and we want to make sure each student is given the resources to make them most comfortable at IU.

More explicit outlines of the abilities of CVAs

Scope: IU Bloomington

Need:

The CVA's current description on the Division of Student Affairs website reads:

A CVA will:

- Help you explore options for dealing with past, present, and future academic concerns.
- Provide information about and assist with the reporting process.
- Supply information and get you connected to campus and community resources.
- Support you through the campus judicial process, if you choose to participate.

The description of services falls under the categories of academic concerns, the reporting process, connecting survivors to resources, and supporting them through the judicial process. These objectives are broad and prove to be difficult to understand when survivors are seeking assistance. The brevity of the description masks other important functions performed by CVAs. Student feedback indicates that some may believe their concerns may not fall under one of these categories. Additionally, many students do not understand the power of the CVA as a first option for support.

Recommendation:

CVAs have in the past been able to move students to new sections, help with delayed grades, protection orders, grade change and more. The student working group recommends the current description of CVAs be expanded to include these other services and made easier to find throughout IU materials. In addition, the group believes that the reinforcement of publicizing CVAs and Sexual Assault Nurse Examiners as first options for survivors should be more visible. As a result of these recommendations, survivors will easily locate and access these resources.