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## Are the Sexual Assault Policies on Illinois College Campuses Procedurally Structured to Support the Reproductive Rights of Female Victims?

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*Feature Article***Are the Sexual Assault Policies on Illinois College Campuses Procedurally Structured to Support the Reproductive Rights of Female Victims?**

Erika Weaver

On August 21, 2015, Illinois Governor Bruce Rauner signed a new bill, House Bill 0821, to address the policies, procedures, and process by which institutions of higher education address reports of sexual assault.<sup>1</sup> The statute stipulates that all institutions, both public and private, will be required to provide sexual violence primary prevention and awareness programming for all students who attend one or more on campus course.<sup>2</sup> The statute further requires that employees receive survivor-centered and trauma-informed response training.<sup>3</sup>

Illinois' statute comes at a time of heightened public awareness and data about sexual assault on college campuses. In 2013, there were 3,878 sexual assault reports made to local police in Illinois.<sup>4</sup> These reports were not reflective of the 18,048 survivors (adult, adolescent, and child sexual assault, child abuse, and sexual harassment) who received services from an Illinois Coalition Against Sexual Assault (ICASA) crisis center or hotline that same year.<sup>5</sup>

Nationwide, it is estimated that more than one in five college women experienced sexual assault each year:<sup>6</sup> in 2013 alone, there were 79,700 reports of sexual assault crimes made by women in the United States.<sup>7</sup> Additionally, the Illinois General Assembly estimates that of those sexually assaulted, at least

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<sup>1</sup> Associated Press, *New law requires strong sexual assault action from Illinois colleges*, USA TODAY, Aug. 23, 2015, <http://college.usatoday.com/2015/08/23/illinois-colleges-sexual-assault-new-law/>.

<sup>2</sup> 2015 IL H.B. 821 (NS) (West 2015)

<sup>3</sup> *Id.*

<sup>4</sup> *Statistics on Sexual Assault* (2014), ILLINOIS COALITION AGAINST SEXUAL ASSAULT (ICASA), <http://www.icasa.org/docs/misc/statistics%20on%20sexual%20assault%202014.pdf>.

<sup>5</sup> *Id.*: ICASA, a not-for-profit corporation of twenty-nine rape crisis centers, serves as a resource for sexual assault survivors. Ten of those centers are located within the city of Chicago, to serve the combined community and higher education population of just under 2.7 million.

<sup>6</sup> Kelly Wallace, *23% of women report sexual assault in college, study finds*, CNN, Sept. 23, 2015, <http://www.cnn.com/2015/09/22/health/campus-sexual-assault-new-large-survey/>

<sup>7</sup> ICASA, *supra* note 5

32,000 women will become pregnant and fifty percent of those pregnancies will end in abortion.<sup>8</sup>

As the election season is underway and candidates are vying for votes, sexual assault on college campuses has garnered political attention and is now on one candidate's platform, with candidates like Democratic presidential hopeful Hillary Clinton vowing to make campus sexual assault a priority.<sup>9</sup> Still, the question remains: How will this new political and public visibility lead to sexual assault policies that are better structured to support the reproductive rights of female victims?

### LOCAL AND NATIONAL BACKDROP

Currently, students who survive sexual assault can be examined at the college's health service center. Although this seems convenient, not every survivor-reporter is aware that the examination does not include an official rape-kit.<sup>10</sup> A mother of a sexual assault survivor in Illinois said:

My daughter was raped. She went into the student health center and reported it and was examined. She was terrified and didn't tell us for nearly two months. I couldn't understand why she wanted to come home every weekend. When we found out, her dad and I called health services to have the rape kit processed. We were told, "Oh we don't have rape kits here, all the girls think that. If they want a rape kit, they have to go to the [local hospital] and ask for an Illinois State Police rape-kit." I was so angry, because how would my daughter know that? Now her perpetrator gets away with it and she has dropped out of school.<sup>11</sup>

The White House created a task force named Not Alone, which helps schools live up to their obligations to protect students from sexual violence and provide those institutions with the toolkits to research campus climate.<sup>12</sup> To that effort, Not Alone has encouraged colleges and universities to voluntarily conduct the campus climate surveys.<sup>13</sup> Part of this process has been the devel-

<sup>8</sup> 410 Ill. Comp. Stat. Ann. 70/2.2 (West 2005) ("Sexual Assault Survivors Emergency Treatment Act")

<sup>9</sup> Maggie Haberman, *Hillary Clinton vows to confront sex assault issue on campus*, NEW YORK TIMES, Sept. 14, 2015, [http://www.nytimes.com/politics/first-draft/2015/09/14/hillary-clinton-vows-to-confront-sex-assault-issue-on-campuses/?\\_r=0](http://www.nytimes.com/politics/first-draft/2015/09/14/hillary-clinton-vows-to-confront-sex-assault-issue-on-campuses/?_r=0).

<sup>10</sup> Telephone interview with Anonymous, mother of a sexual assault survivor (Oct 17, 2015).

<sup>11</sup> *Id.*

<sup>12</sup> *Home Page*, NOT ALONE, <https://www.notalone.gov/> (last visited Dec. 4, 2015).

<sup>13</sup> *Id.*

opment of a Campus Climate survey. Piloted by Rutgers University, the survey is expected to be ready for nationwide dissemination in 2016.<sup>14</sup>

The survey asks forty-three questions to gauge if students, male or female, have been sexually assaulted.<sup>15</sup> The survey inquires if the perpetrator was a friend of students, was enrolled in the institution, and was a member of faculty, staff or administration.<sup>16</sup> There are questions on gender and sexual identity, as well as the presence and usage of any drugs or alcohol.<sup>17</sup> The survey also gauges the students' awareness and access to information on campus sexual assault policies and resources.<sup>18</sup> Notably, there are no questions related to post-assault pregnancies, contraception, abortions, or adoptions.<sup>19</sup>

Along with examining the climate on college campuses, Not Alone is helping higher education institutions have more transparent, effective, and supportive disciplinary policies to address and investigate reports of sexual assault.<sup>20</sup> Currently, when a student-survivor report a crime of sexual assault on campus to a campus employee, the investigative and disciplinary process is handled by a campus committee or board, likely the Office of Student Standards.<sup>21, 22</sup>

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<sup>14</sup> *Not Alone: The First Report of the White House Task Force to Protect Students From Sexual Assault*, NOT ALONE, Apr. 29, 2014, <https://www.notalone.gov/assets/report.pdf>.

<sup>15</sup> *Understanding and Responding to Campus Sexual Assault: A Guide to Climate Assessment for College and Universities*, RUTGERS SCHOOL OF SOCIAL WORK, 2014, <http://socialwork.rutgers.edu/centersandprograms/vawc/researchevaluation/CampusClimateProject.aspx>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> NOT ALONE, *supra* note 14.

<sup>21</sup> *Id.* at 17 (“Schools are experimenting with new ideas. Some are adopting different variations on the ‘single investigator’ model, where a trained investigator or investigators interview the complainant and alleged perpetrator, gather any physical evidence, interview available witnesses – and then either render a finding, present a recommendation, or even work out an acceptance-of-responsibility agreement with the offender. These models stand in contrast to the more traditional system, where a college hearing or judicial board hears a case (sometimes tracking the adversarial, evidence-gathering criminal justice model), makes a finding, and decides the sanction”).

<sup>22</sup> In-person interview with Jeannie Ludlow, Coordinator of Women’s Studies at Eastern Illinois University, Charleston, Illinois (Sept. 30, 2015): At EIU, “Student Standards” is the office designated to hold students the standards of behavior contained in the Student Conduct Code.

## ILLINOIS UNIVERSITY POLICIES AND VIOLATIONS

The institutional trainings and programming outlined under House Bill 0821 will be required annually commencing in the 2016-2017 academic year.<sup>23</sup> Institutions will be required to have structured policies in place for complaint resolution, which includes identifying a confidential reporter, and make those policies transparent.<sup>24</sup> These policy measures come at a critical time for Illinois universities. As of October 7, 2015, four Illinois schools are among 144 universities under investigation by the Office for Civil Rights of the U.S. Department of Education for their handling of sexual assault cases: Knox College, Monmouth College, Southern Illinois University and the University of Chicago.<sup>25</sup>

Two Illinois university cases in the last year and a half demand particular attention. In 2014, Northwestern University investigated and found then-professor Peter Ludlow, who was accused of sexual assault by one of his female students, guilty of having violated the institution's rules that protect against sexual harassment.<sup>26</sup> Ludlow was not terminated, nor was there evidence that he was removed from his teaching responsibilities for nearly two years after the complaint; instead, he resigned five days prior to giving testimony in a termination hearing.<sup>27</sup> Northwestern has since revised its sexual assault policy to clearly define consent and expanded sexual misconduct to include dating violence and stalking.<sup>28</sup>

As noted above, in February 2014, the University of Chicago came under scrutiny for a possible breach of Title IX.<sup>29</sup> Just a few days later, Professor Allen Sanderson made a joke during the university's commencement ceremony referencing the university's recent survey of students and experiences with sex-

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Alexandra Silets, *Addressing Sexual Assault on College Campuses*, CHICAGO TONIGHT WTTW, Oct. 8, 2015, <http://chicagotonight.wttw.com/2015/10/08/addressing-sexual-assault-college-campuses>

<sup>26</sup> Rebecca Schuman, *Northwestern University found that a star professor violated the sexual harassment code in his treatment of a student. Why is he still teaching?*, SLATE, Feb. 23, 2014, [http://www.slate.com/articles/news\\_and\\_politics/education/2014/02/northwestern\\_university\\_found\\_professor\\_peter\\_ludlow\\_violated\\_the\\_sexual.html](http://www.slate.com/articles/news_and_politics/education/2014/02/northwestern_university_found_professor_peter_ludlow_violated_the_sexual.html).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Joy Crane, *University under federal investigation for sexual assault policy*, THE CHICAGO MAROON, Feb. 11, 2014, <http://chicagomaroon.com/2014/02/11/university-under-federal-investigation-for-sexual-assault-policy/>.

ual assault.<sup>30</sup> In light of the survey results provost Eric Isaacs has called on collective action to address sexual assault, and the institution has implemented “Sex Signals,” a mandatory sexual awareness workshop for all incoming student.<sup>31</sup>

The University of Illinois has also implemented an interactive workshop which facilitates discussions over the dynamics of sexual assault.<sup>32</sup> The program, First Year Campus Acquaintance Rape Education (FYCARE), is mandatory for all first-year and transfer students.<sup>33</sup> The workshops are held in residence halls and facilitated by specially trained, undergraduate peer educators.<sup>34</sup>

### IMPACTS ON REPRODUCTIVE JUSTICE

While these state and university-based policies provide procedural structure, they do not present a formula to support reproductive justice. Professor Jeannie Ludlow of Eastern Illinois University explained one possible impact of this ambiguity on the student-faculty relationship: “Our interpretation of the law is that now faculty members are mandated reporters, with some possible exceptions for professors of Sociology and Psychology, because they may be clinicians.”<sup>35</sup>

Female students who are victims of sexual assault and either become pregnant or are concerned with the risk of pregnancy do not have the choice to remain anonymous.<sup>36</sup> In order to obtain the day-after pill or a voucher for an abortion, the student-survivor must go to an emergency room where medical professionals are mandated reporters.<sup>37</sup> Although the student-survivor is not

<sup>30</sup> S. Cholke, ‘Rape joke’ during U. of C. graduation prompts apology from professor, DNAINFO, June 17, 2015, <http://www.dnainfo.com/chicago/20150617/hyde-park/rape-joke-during-u-of-c-graduation-prompts-apology-from-professor>.

<sup>31</sup> Bonnie Miller Rubin, *To combat sexual assault, colleges say yes to affirmative consent*, CHICAGO TRIBUNE, Nov. 9, 2015, <http://www.chicagotribune.com/news/ct-college-sexual-assault-affirmative-consent-met-20151029-story.html>. “Sex Signals” is presented by Catharsis Productions, a Chicago-based education group who uses an “unorthodox, humor-facilitated approach to examining our culture, sex and the core issue of bystander intervention.”

<sup>32</sup> *FYCARE: First Year Campus Acquaintance Rape Education Workshop*, UNIVERSITY OF ILLINOIS URBANA-CHAMPAIGN, OFFICE OF INCLUSION & INTERCULTURAL RELATIONS, <https://oiiir.illinois.edu/womens-center/our-programs/fycare> (last visited Dec. 4, 2015).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Ludlow, *supra* note 22.

<sup>36</sup> In-person interview with Erin Daniels-Walters, M.S., Mattoon, IL (Sept. 30, 2015).

<sup>37</sup> *Id.*

required to talk to the police, a report of the crime is made with his or her name.<sup>38</sup>

By requiring that sexual assault survivors visit emergency rooms for examination in order receive such services, all anonymity is removed.<sup>39</sup> This means that female students who have been sexual assault victims and desire to take advantage of the day-after-pill or to take advantage of the SASETA (Sexual Assault Survivors Emergency Treatment Act) voucher, must make a decision as to whether they are prepared for the crime against them to be reported. Daniels-Walters explained, "The SASETA voucher functions like Medicaid, and covers anything beyond what insurance covers, including any follow-up services."<sup>40</sup>

### SUGGESTED POLICY IMPROVEMENTS

Walters suggested that in order to be more supportive of sexual assault survivors, institutions could look into moving the accuser into a different residence hall or rearranging their schedules, instead of the student-survivor.<sup>41</sup> "When the student-survivors are moved, they are removed from their support system, their friends, roommates, or classmates."<sup>42</sup> Ludlow recommended a "systematic approach from a lot of different places at the same time: train all of the nurses, have conferences get the Athletics' Department on board (because of impact on Title IX), campus (and local) police, and faculty."<sup>43</sup> She also added:

We need to offer rape kits on campus, have stronger relationships with Rape Crisis Centers, and a confidential reporting system with a Reporting Officer to take information from the student-survivor, redact the victim's names and carry it forward in name of the reporting officer. Sexual assault is a crime against the campus and a Code of Conduct violation, an investigation can begin without victim's participation.<sup>44</sup>

Another prospective improvement would be to hire independent adjudicators to handle sexual assault reports, investigations, and hearings. Philadelphia Supreme Court Retired Justice Jane Greenspan works in this capacity in the

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Ludlow, *supra* note 22.

<sup>43</sup> *Id.*

<sup>44</sup> In-person interview with Erin Daniels-Walters, *supra* note 29.

Pennsylvania area.<sup>45</sup> Justice Greenspan notes that independent adjudicators are not usually associated with either party and thus offer a more objective decision.<sup>46</sup> Justice Greenspan added, “Faculty [and] administrators figuratively live at the school and work for the school. . . [I’m] just trying to find out what actually happened and how it can be [resolved] in the way best for everybody involved.”<sup>47</sup> This is a course of action that is undeniably worth exploration.

### CONCLUSION

Illinois colleges and universities should work with the retired Illinois judiciary members to create a pool of independent adjudicators to handle all sexual assault complaints. This would demonstrate that these crimes are considered as serious offenses and that institutions are dedicated to finding legally binding resolutions. While colleges and universities operate *in loco parentis*—in place of the parent—the charge of investigating and punishing sexual assaults in a manner that is fair and just to the accuser and the accused should be an external process leaving only violations of institutional codes of conduct for an internal process.

Further, to support the reproductive rights of student survivors, schools should consider providing on-campus access to rape kits, and emergency contraception like the day after pill. Institutions should also create a system that provides transportation for survivors to local medical facilities for post-assault examinations. These examinations can be vital in identifying sexually transmitted diseases or infections that may cause infertility. The Center for Disease Control and Prevention (CDC) identifies chlamydia and gonorrhea can cause infertility, and have no discreet symptoms.<sup>48</sup> These diseases, if untreated, can cause a fallopian tube infection with no discerning symptoms and lead to infertility in 10-15% of women.<sup>49</sup>

By providing these accommodations, the institution reduces the chances of compounding the impact of the assault and increases the trust relationship between student and institution. No system is perfect. However, institutions are charged with developing policies that will not only hold perpetrators of

<sup>45</sup> J.D. Capelouto, *Campus sexual assault cases not always decided by insiders*, USA TODAY, Sept. 15, 2015, <http://college.usatoday.com/2015/09/15/campus-sexual-assault-cases-not-always-decided-by-insiders/>.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *STDs & Infertility*, CENTER FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/std/infertility/> (last visited Dec. 4, 2015).

<sup>49</sup> *Id.*



sexually violent crimes on college campuses accountable and render appropriate disciplinary action, but also promote a confidential and supportive culture among college campuses and within our society.