



MEMORANDUM

To: Students
From: Secure Higher Ed, LLC
Re: The Serious Repercussions of Committing Sexual Assault
Date: December 16, 2015

Perpetrators of sexual violence may face hefty criminal charges, civil penalties, and academic sanctions. Each state has its own definitions of acts that constitute sexual violence. Additionally, your college or university will have its own policies regarding which actions constitute sexual assault, rape, domestic violence, sexual harassment, stalking, and retaliation. Schools implement these policies in accordance with federal regulations and guidelines (such as Title IX and the Clery Act), as well as state laws mandating additional requirements including criminal laws.

Criminal penalties may include lengthy jail or prison sentences, as well as mandatory registration with sex offender registries. Once incarcerated, sex offenders are often targeted by other inmates. In popular culture, there is a longstanding stereotype that sex offenders—especially child molesters or pedophiles—are the most hated demographic within a given prison population. In California state prisons, male sex offenders make up roughly fifteen percent of the prison population, but account for nearly thirty percent of incarcerated homicide victims.¹

Because schools have a recognized duty to protect their student populations, these institutions are empowered to take steps to ensure the safety of their communities. When a sexual assault is committed by or against a student, federal regulations allow the school to conduct its own investigation and adjudicatory proceedings, wholly separate from any other criminal or civil action. While you may not be criminally charged as a result of an allegation of sexual assault made against you, you may still face a lengthy legal battle in civil court. Additionally, some schools have declared expulsion to be the mandatory punishment for students who have violated their schools' sexual misconduct policies.²

Two states have enacted affirmative consent laws.³ These laws require all public and private schools that receive federal funding to enact institutional policies that define consent according to an affirmative standard. Affirmative consent, or 'yes means yes,' replaces the older 'no means no' or protest standard. Under the affirmative standard, consent cannot be given if someone is unconscious or otherwise incapacitated by

¹ *AP Exclusive: Many Sex Offenders Killed in California Prisons*, NY TIMES, Feb. 16, 2015, available at <http://www.nytimes.com/aponline/2015/02/16/us/ap-us-prison-homicides-sex-offenders.html>.

² Jake New, *Expulsion Presumed*, Inside Higher Ed, June 27, 2014, available at <https://www.insidehighered.com/news/2014/06/27/should-expulsion-be-default-discipline-policy-students-accused-sexual-assault>.

³ California (2014) and New York (2015).



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drugs or alcohol.⁴ Rather, prior to engaging in sexual activity, all parties must conspicuously and explicitly consent. Furthermore, consent may not be inferred from silence, lack of resistance or protest, or lack of an active response. Additionally, consent must be “ongoing throughout a sexual activity” and may be revoked at any time.⁵ While this standard is only legally required in a minority of states, your school may have ‘opted-in’ to an affirmative consent standard absent any state mandate. It is important to familiarize yourself with your school’s sexual misconduct policies, with special attention due to its definition of consent. If your school happens to be one that endorses the affirmative consent standard, you may violate its sexual misconduct policies if you fail to obtain an explicit ‘yes’ prior to engaging in sexual contact.

Some software development companies have created mobile applications (or ‘apps’) to help ensure an exchange of affirmative consent between parties. For example, the Good2Go app requires users to answer a series of questions designed to gauge whether each party is truly capable of giving affirmative consent. However, the evidentiary nature of these apps and the information they contain is currently up for debate. Many of these apps are intended as educational tools only, rather than legal pre-intercourse agreements.

As of June 2015, two states⁶ have also enacted legislation that requires schools—both public and private—to note on a student’s transcript if he or she has been suspended or dismissed for sexual assault.⁷ An accused student’s departure from school during an ongoing investigation must also be noted on the transcript.⁸ According to proponents of this legislation, this requirement allows colleges to track students who have been accused of sexual assault after they have left campus.⁹ Similar legislation is currently pending in the District of Columbia.¹⁰

At least one college athletic conference has also taken action to exclude students with violent backgrounds from competing: The Southeastern Conference (SEC), one of the largest and most lucrative college athletic conferences in the country, has adopted a proposal to prevent conference

⁴ Bill Chappell, *California Enacts ‘Yes Means Yes’ Law, Defining Sexual Consent*, NPR, Sept. 29, 2014, <http://www.npr.org/sections/thetwo-way/2014/09/29/352482932/california-enacts-yes-means-yes-law-defining-sexual-consent>; *NY Private Colleges to Adopt ‘Yes Means Yes’ Sexual Consent Policy*, CBS News, July 7, 2015, <http://www.cbsnews.com/news/new-york-yes-means-yes-sexual-consent-policy-private-colleges/>.

⁵ See e.g., CAL. EDUC. CODE § 67386(a)(1) (Deering 2015).

⁶ New York and Virginia

⁷ Jake New, *Requiring a Red Flag*, INSIDE HIGHER ED, July 10, 2015, available at <https://www.insidehighered.com/news/2015/07/10/states-requiring-colleges-note-sexual-assault-responsibility-student-transcripts> [hereinafter Red Flag]

⁸ See Red Flag, *supra* note 3.

⁹ See Red Flag, *supra* note 3.

¹⁰ Susan Svrluga, *A Scarlet Letter for Students Implicated in Sex Assaults: D.C. Bill Sparks Debate*, WASHINGTON POST, July 20, 2015, available at <http://www.washingtonpost.com/news/grade-point/wp/2015/07/20/a-scarlet-letter-for-students-implicated-in-sex-assaults-d-c-bill-sparks-debate/>.



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schools from accepting transfer students with violent histories.¹¹ Specifically, a transfer student-athlete who has been subject to any disciplinary action for 'serious misconduct,' including sexual assault and domestic violence, at any time during his or her enrollment at any previous collegiate institution, shall not be eligible for athletically-related financial aid, practice, or competition at an SEC member institution.¹² Under the conference ban, 'serious misconduct' includes sexual assault, domestic violence, and other forms of sexual violence.¹³

As discussed above, campus sexual misconduct allegations will have serious implications for your personal, academic and professional future. Should you find yourself facing a sexual misconduct allegation, you could face expulsion and the inability to transfer to a new school. If you are involved in student athletics, you could also be deemed ineligible to participate in college athletic programs. Sex offenders are also usually ostracized from social groups outside of the college setting. If you are found guilty of committing a sexual crime, you could be required to identify as a sex offender to your state and local governments. Sex offenders' personal information, including home address, phone number, and photograph, are widely available to the public via the Internet. In order to avoid jeopardizing your future, you should always monitor your alcohol and drug intake to ensure that you are capable of both giving and receiving consent prior to engaging in sexual activity. Your future and your reputation are too valuable to risk for a single hook-up!

¹¹ *SEC Adopts Rule Barring Transfers with Violent Pasts*, INSIDE HIGHER ED, June 2, 2015, available at <https://www.insidehighered.com/quicktakes/2015/06/02/sec-adopts-rule-barring-transfers-violent-pasts>.

¹² *SEC: Schools Can't Take Transfers with Serious Misconduct Past*, ESPN.com, May 30, 2015, available at http://espn.go.com/college-football/story/_/id/12977228/sec-adopts-proposal-prevents-transfer-students-histories-domestic-violence-sexual-assault.

¹³ Andy Staples, *SEC Passes Rule Banning Transfers Dismissed for 'Serious Misconduct'*, Sports Illustrated, June 1, 2015, available at <http://www.si.com/college-football/2015/05/29/sec-transfer-rule-serious-misconduct-domestic-violence>.