

# *Fitchburg State University*

## **TITLE IX OVERVIEW**

## **FACULTY DEVELOPMENT DAY**

Spring 2017



**RUBIN  
RUDMAN<sub>LLP</sub>**

# AGENDA

Campus  
Sexual Assault  
is a Federal  
Enforcement  
Priority

The Universities'  
Legal Obligations  
Regarding Campus  
Sexual Assault

Title IX

Clery Act

VAWA  
Campus SaVE

EO Plan

Obligations  
as an Employee

Duty to Inform

Duty to Report

# TITLE IX

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“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

Title IX of the Higher Education Amendments of 1972  
20 U.S.C. § 1681 & 34 C.F.R. Part 106

# SEXUAL ASSAULT ON CAMPUSES

20% of women and  
6% of men are  
targets of attempted  
or completed sexual  
assault in college

*(Campus Sexual Assault  
Study/funded DOJ)*

Less than 5% of men  
account for 90%-95%  
of campus rapes; but  
those 5% commit an  
average of 6 rapes, as  
well as other assaults

*(David Lisak)*

75%-90% of sexual  
assaults are  
perpetrated by a non-  
stranger

*(Nat. Inst. Justice)*

Less than 5% of  
sexual assaults are  
reported

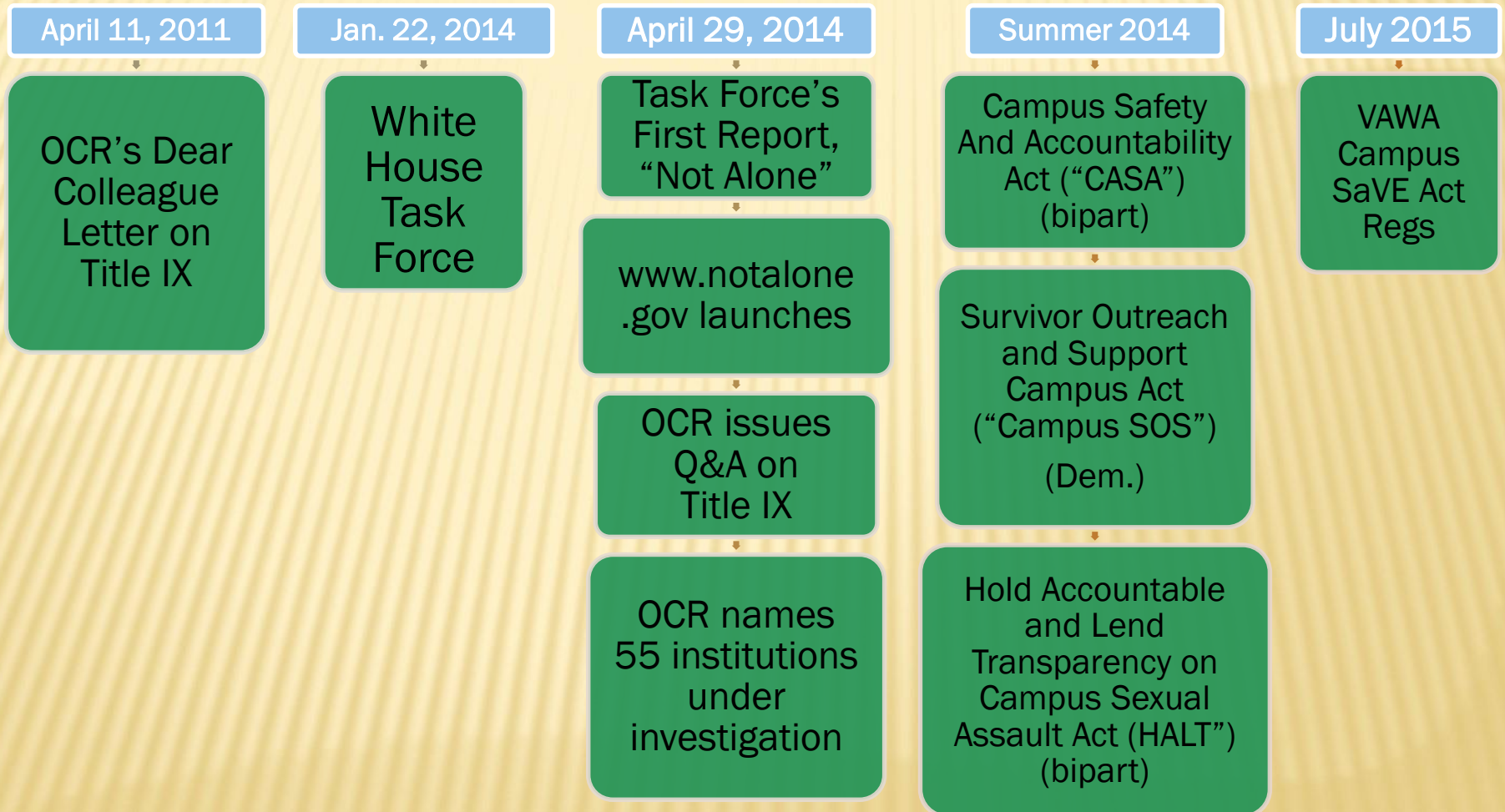
*(Nat. Inst. Justice)*

Most people tell the  
truth. A study of 136  
sexual assault cases in  
Boston found false report  
rate of 5.9%.

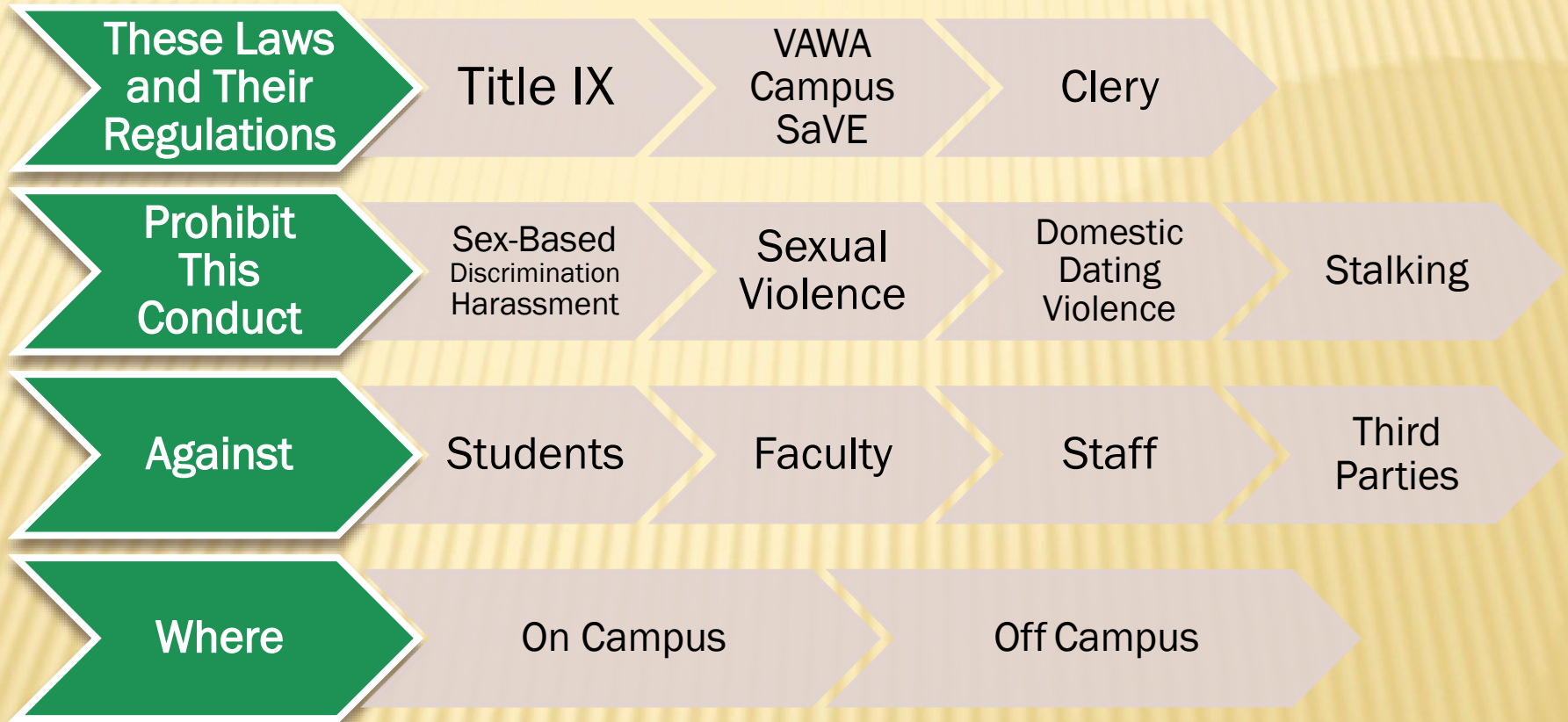
*(David Lisak)*

**The majority of  
perpetrators remain  
undetected.  
They are not caught.**

# CAMPUS SEXUAL VIOLENCE IS A FEDERAL ENFORCEMENT PRIORITY



# APPLICABLE LAWS AND REGULATIONS



# HOW HAVE THE STATE UNIVERSITIES RESPONDED TO THESE LEGAL OBLIGATIONS?

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The nine state universities have revised the **Equal Opportunity Plan (EO Plan)** to expand the prohibition against discrimination, discriminatory harassment and retaliation to include the prohibition of all forms of:

Sexual Harassment

Gender-Based Harassment

Domestic Violence

Dating Violence

Stalking

Sexual Violence

Rape and Statutory Rape

Sexual Exploitation

Incest

Retaliation

# THE NEW SEXUAL VIOLENCE POLICY

Applies to all students, faculty, staff and others

Prohibits sexual and gender-based harassment, sexual violence, dating and domestic violence and stalking

Identifies prohibited conduct by definitions and examples

Addresses consensual relationships

Identifies on/off campus support resources

Lists all complaint reporting options both on/off campus

Explains victims' rights to confidentiality

Discusses interim measures and victim accommodations

Details parties' rights and options during investigations

<http://www.fitchburgstate.edu/about-us/equal-opportunity-diversity-and-affirmative-action-title-ix/>



# WHAT DOES TITLE IX REQUIRE?

Once a school has **NOTICE** of possible sexual harassment or violence, it **MUST**:



take immediate and appropriate steps to **INVESTIGATE** what occurred;  
and



take prompt and effective action to **END** the harassment, **REMEDY** its effects, and **PREVENT** it from occurring again.

# WHEN IS THE UNIVERSITY ON NOTICE?

An Individual  
Files A Complaint  
(Internally Or Externally)

An Individual Makes A  
Report To The  
Title IX Coordinator/EO  
Officer

An Individual Makes  
A Report To a Faculty  
Member/Instructor

An Employee Witnesses  
Sexual Harassment Or  
Violence

An Employee Receives  
Indirect Notice From  
Sources Such As Another  
Employee, News Reports,  
Media Reports, Or Online  
Postings

Where Harassment  
Is Widespread,  
Openly Visible,  
or Well-known  
On Campus

# MAKING NO REPORT

Victims have the *right* not to make a report to anyone

But the Universities strongly encourage victims to seek medical attention, counseling and support services

Victims are always welcome to make a report at a later date, but delays in reporting tend to weaken the evidence necessary to determine whether the accused is found responsible for engaging in prohibited conduct.

# CONFIDENTIAL REPORTING OPTIONS

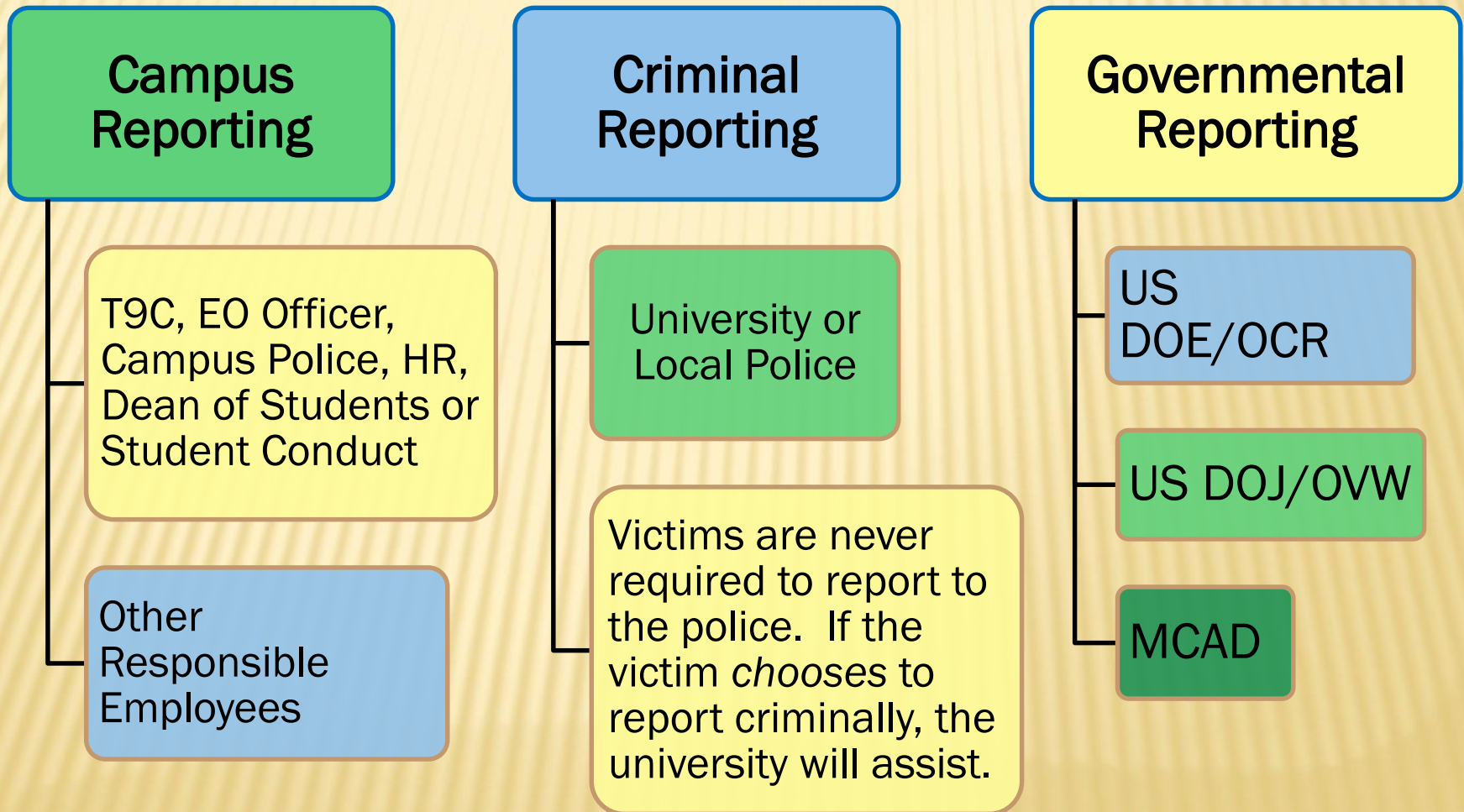
**Clergy or  
Pastoral  
Counselors,  
Licensed  
Medical or  
Health Care  
Providers**

**Acting in their  
Licensed  
Capacities**

**The Employee  
Assistance  
Program (EAP)**

**Anonymous  
Reporting**

# NON-CONFIDENTIAL REPORTING OPTIONS



# WHO IS IN CHARGE OF ALL THIS? THE TITLE IX COORDINATOR (“T9C”)

**Maintains Compliance With Title IX**

**Administers the Sexual Violence Policy**

**Provides Information About Reporting Options and Support Resources**

**Initiates Interim Measures  
(works with Asst. Dean of Conduct and Mediation)**

**Coordinates Appropriate Accommodations**

**Assists Persons in Filing Complaints with Law Enforcement, When Requested**

**Monitors Steps Taken to Remedy Effects of Misconduct on Complainants, Including any Investigation, Resolution or Disciplinary Proceedings**

# WHAT ARE PROMPT AND EFFECTIVE ACTIONS TO END THE CONDUCT, REMEDY ITS EFFECTS, AND PREVENT IT FROM OCCURRING AGAIN?

## Interim Measures to Ensure The Victim's Safety

- Temporary suspension of the accused from residence halls or campus
- No contact orders
- Separating the accused and the victim in living/work spaces
- Academic adjustments
- Counseling
- Escorts

Complaint Investigations and Resolutions

Discipline/Sanctions

Prevention and Awareness Training

# COMPLAINT INVESTIGATION AND RESOLUTION PROCEDURES

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Implement an investigatory model

Eliminate hearing panels/boards and appeal hearings

Limit appeals to new evidence or procedural error

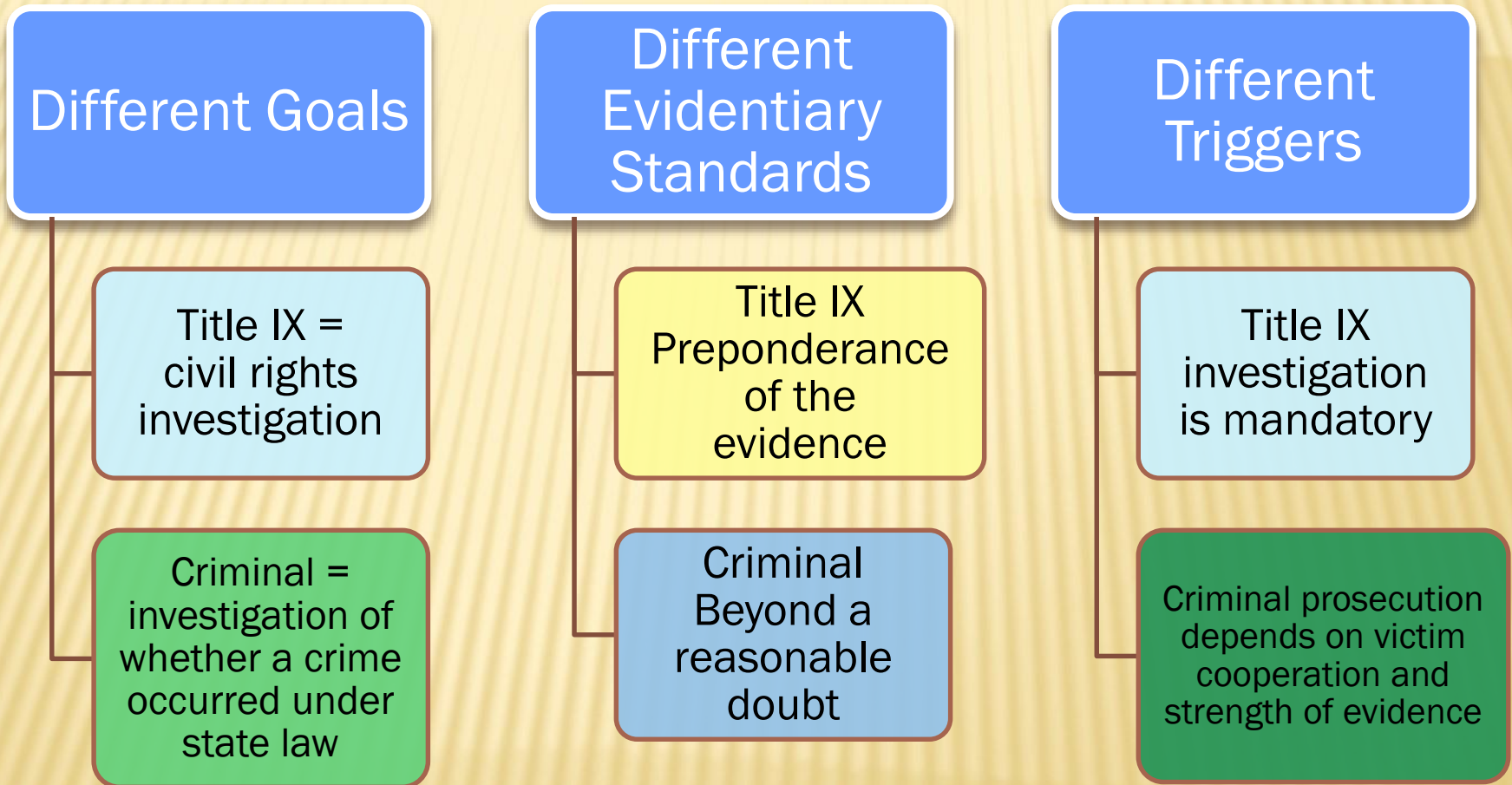
Identify possible disciplinary sanctions

Ensure complete, fair and impartial investigations by trained investigators

Promote efficiency and consistency



# WHAT IS THE DIFFERENCE BETWEEN A TITLE IX INVESTIGATION AND A CRIMINAL INVESTIGATION?



# TITLE IX / INVESTIGATORS FOR THE UNIVERSITY

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**Laura Croteau**, Associate Director of  
Housing and Residential Services

Aubuchon Hall N101

978-665-3565

[lcrotea8@fitchburgstate.edu](mailto:lcrotea8@fitchburgstate.edu)

**Kristin Murphy**, Director of Housing &  
Residential Services

Aubuchon Hall - 978-665-4141

[kmurph72@fitchburgstate.edu](mailto:kmurph72@fitchburgstate.edu)

**Kimberly Page**, Associate Director of  
Human Resources

Sanders 202 - 978-665-3850

[kpage3@fitchburgstate.edu](mailto:kpage3@fitchburgstate.edu)

**Brittany Rende**, Staff Assistant –  
Recreational Programming - Athletics &

Recreation Center – 112

978-665-4648

[brende@fitchburgstate.edu](mailto:brende@fitchburgstate.edu)

**Jason Smith**, Director Expanding  
Horizons – Hammond Hall 315

978-665-3373

[jsmit151@fitchburgstate.edu](mailto:jsmit151@fitchburgstate.edu)

# DESIGNATED RESPONSIBLE EMPLOYEE

Certain employees are required to report incidents of sexual and gender-based harassment, sexual violence, domestic violence, dating violence and stalking to the T9C, however we encourage all members of the university to offer resources and assists with reporting



Responsible Employees or “REs” are:

those with supervisory responsibilities or the authority to address or remediate misconduct, or

those whom students might reasonably believe have such supervisory responsibility or authority.

# WHO ARE THE RE'S AT THE UNIVERSITIES?

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|---|--|
| <ul style="list-style-type: none"><li>• Members of the Boards of Trustees</li><li>• The President and Vice Presidents</li><li>• Assist./Assoc. Vice Presidents</li><li>• Title IX Coordinator/Deputy Coordinators</li><li>• EO Officer</li><li>• Campus Police</li><li>• Institutional Security Officers</li><li>• Director and Assist./Assoc. Director of Human Resources</li><li>• Departmental Directors and Assist./Assoc. Directors</li><li>• Residence Life Staff (including RDs and RAs)</li></ul> | <ul style="list-style-type: none"><li>• Athletic Coaches, Assistant Coaches and Athletics Administrators</li><li>• Studio Managers</li><li>• Lab Managers</li><li>• Deans and Assistant/Associate Deans</li><li>• Academic Department Chairs</li><li>• Academic and Non-Academic Program Directors/Coordinators</li><li>• Faculty/Staff Leading or Chaperoning Travel or Overnight Trips</li><li>• Faculty/Staff Advisors to Student Organizations</li></ul> |
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# DUTY TO REPORT



# DUTY TO INFORM

Before a person “reveals information that s/he may wish to keep confidential,” you should make every effort to ensure that the victim understands:

1. Your **obligation to report to the T9C** (names and relevant facts such as the date, time, and location), that confidentiality cannot be maintained but we will keep the matter protected to only those members of the campus who must play a role in the process.
2. the option to **request** that the University maintain confidentiality/make no investigation, which the University will consider but cannot promise; and
3. the option to **report the incident confidentially** by speaking to Counseling, Health Services, Clergy/Pastoral Counselors, EAP).

4. Inform the victim that she or he is entitled to **support services**

5. Inform the victim that the university prohibits **retaliation**

# WHAT IF A VICTIM REQUESTS CONFIDENTIALITY OR NO INVESTIGATION?

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1. If the victim wants to tell you what happened, but also maintain confidentiality or ask that no investigation occur, you must tell the victim that the University will **consider** the request, but **cannot guarantee** that the University will be able to honor it.
2. In reporting the details of the incident to the T9C, you must **inform** the Coordinator of the victim's request for confidentiality and/or no investigation.

# HOW DOES THE UNIVERSITY EVALUATE A VICTIM'S REQUEST FOR CONFIDENTIALITY OR NO INVESTIGATION?

In consultation with University Police and other personnel as necessary, the T9C will evaluate a request for confidentiality or no investigation or no discipline by considering a range of factors, such as whether:

- there have been other similar complaints about the same accused;
- the accused has a history of arrests or records indicating a history of violence;
- the accused threatened any further violence against the victim or others;
- the misconduct was committed by multiple alleged perpetrators;
- the act was perpetrated with a weapon;
- the victim is a minor;
- there appears to be a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group



# WHAT MUST BE INCLUDED IN THE INFORMATION TO T9C?

An RE must report all known details about the alleged incident, including:

Employee's name, position and contact information

any date, time and location of incident that was shared

the date the incident was reported to the employee

the name and contact information of the victim or other party who reported the incident

the name and contact information of the accused (if known)

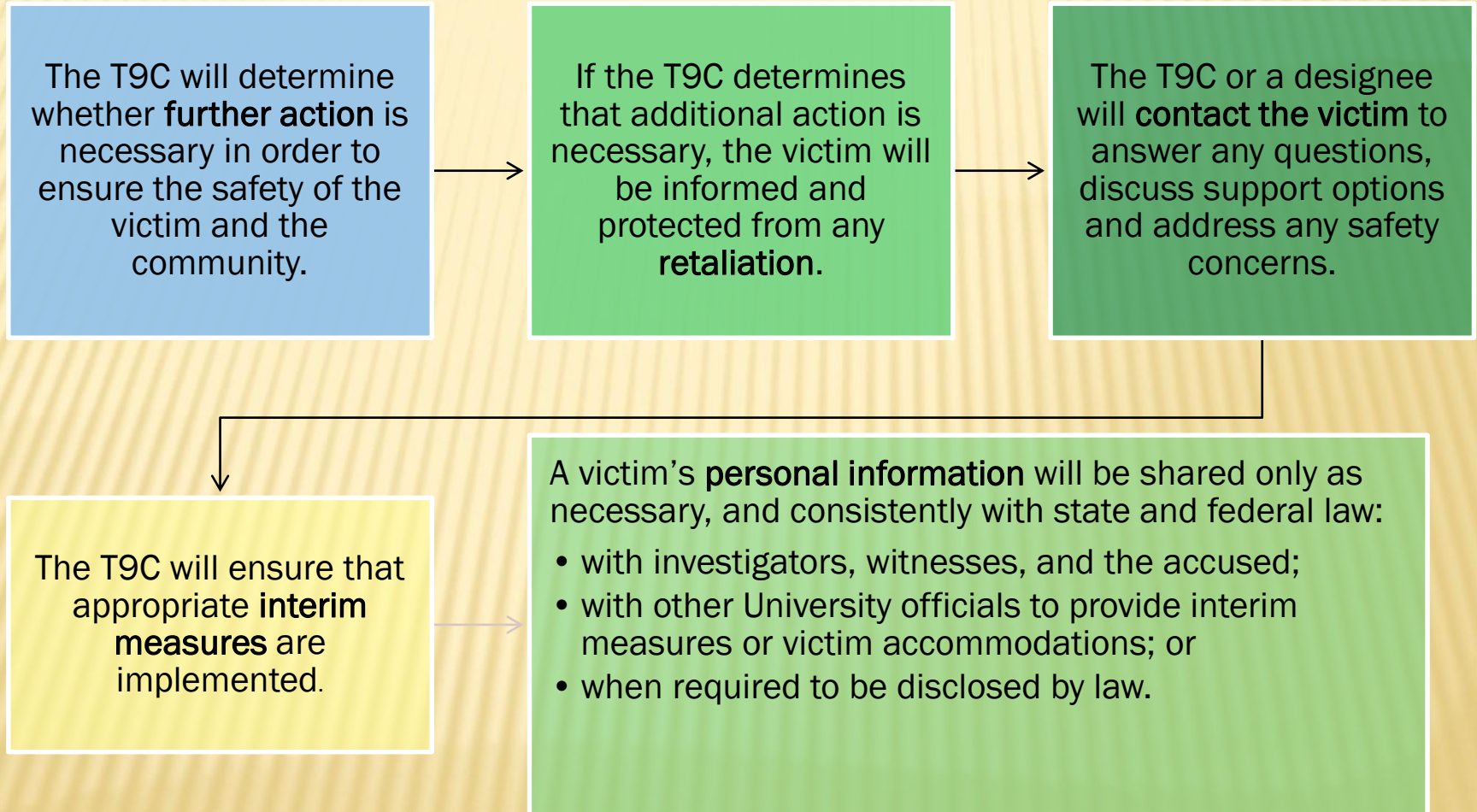
a description of the incident (as much factual detail as possible; names of witnesses, if available)

whether complainant has requested confidentiality

whether other offices are involved (has the victim reported the incident to anyone else on campus, to the police, or to an outside agency?)

how the employee left the matter with the victim

# WHAT DOES THE UNIVERSITY DO WITH THE REPORT?



# WHEN CAN THE UNIVERSITY BE FOUND LIABLE FOR VIOLATING TITLE IX?

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The University can be held liable for sexual harassment of a student by an employee or by a fellow student if a University administrator who had the authority to stop the harassment had **actual knowledge** of the harassment and was **deliberately indifferent** to the harassment.

The University can also be responsible for violating Title IX if it **knew or reasonably should have known** of the harassment, and **failed to promptly take reasonable steps** to end the harassment and prevent its recurrence.

# WHAT ARE THE PENALTIES FOR VIOLATING TITLE IX?

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- ✘ Administrative action by OCR
  - Revocation of federal aid
  - No fines (yet!)
- ✘ Private right of action against the University (not individuals)
  - Monetary judgment
- ✘ Publicity
- ✘ Reputational damage
- ✘ Financial costs to defend
- ✘ Time and effort to defend
- ✘ Individual liability under state law
  - Cost of private attorney
  - No indemnification by the Commonwealth

# A NOTE ABOUT MINORS ON CAMPUS

When ANY employee has reasonable cause to believe that a child 17 or younger is suffering from any form of abuse or neglect on campus or on campus owned or controlled property, the employee must contact University Police.

An employee may also directly contact law enforcement or DCF in cases of suspected abuse or neglect.

**Contact  
University  
Police**

If an employee has reasonable cause to believe that an elderly or disabled person is suffering injury from abuse on campus or on University owned or controlled property, the employee must contact University Police.

University Police, who, in consultation with other officials, shall contact the Department of Children and Families (“DCF”) and/or outside law enforcement.

# RESOURCES

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## On Campus Resources

- ✓ University Police 978-665-3111
  - ✓ Counseling Services 978-665-3152
  - ✓ Health Services 978-665-3643
- To file a formal report w/ the university  
contact Student & Academic Life 978-665-3887

## Off-Campus Resources

- ✓ YWCA Battered Women's Resources 978-537-8601
- ✓ Pathways for Change (Rape Crisis Ctr) 800-870-5905
- ✓ National Domestic Violence Hotline 800-799-7233
- ✓ National Suicide Prevention Lifeline 800-273-8255

# PROPOSED SYLLABUS LANGUAGE

## Sexual Discrimination Reporting

Fitchburg State University is committed to maintaining safe and healthy learning, living and working environments. Because of this commitment, if you tell a teacher about an experience of **sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation** involving members of the campus, your teacher may need to report this information to the Assistant Dean of Student & Academic Life/Deputy Title IX Coordinator or the Associate VP of Human Resources & Payroll Services/Title IX Coordinator.

# TITLE IX

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Questions?