

How Do States Handle Sexual Assault on Campus?

Non-federal statutes vary widely and could come into play should the Trump Administration move to decentralize the Office for Civil Rights' hardline on sexual assault.

HAYLEY GLATTER JAN 29, 2017, *The Atlantic*

There are 306 sexual-violence investigations currently pending at postsecondary institutions, according to the Office for Civil Rights's most recent report, which was ultimately released on Thursday.

Each week for the past two years, OCR, an office within the Department of Education, has released the list of active probes, but it failed to do so through mid-day Thursday, bucking the routine of earlier release. The absence was interpreted by some—including the Health, Education, Labor and Pension Committee's ranking Democrat, Senator Patty Murray—as a signal that the Trump Administration would be less transparent about and aggressive against sexual assault. When the Education Department did eventually release the contemporary list of investigations, it attributed the delay to a “misunderstanding.”

That being said, Education Secretary-nominee Betsy DeVos's commitment to decentralized education—via her positions on school choice and the incorrect assertion she made at her Senate confirmation hearing that the federal Individuals with Disabilities Act could be carried out at the state level—raises questions about how campus sexual assault could be handled by state governments. (She later backtracked on her comments about special education, saying she would enforce the federal law.) I spoke with Andrew Morse, a higher-education consultant with Keeling & Associates and a co-author of a December 2015 [report](#) on states' campus sexual-violence legislation, about how equipped state legislatures are to respond to a scaled back federal stance in regulating sexual assault. Our conversation below has been lightly edited for length and clarity.

Hayley Glatter: When you wrote your report in December 2015, there were 23 states that had taken some sort of legislative action on campus sexual violence. Nine of them had actually enacted policy. What are the trends now in state legislatures related to Title IX enforcement?

Andrew Morse: It's a little uneven across the states. There isn't necessarily

explicit policy architecture across the states directing Title IX compliance. What we did find is that there were a number of policy proposals that sought to add how campuses in particular address incidents of sexual violence as one element of Title IX compliance. There's not really consistency in protecting victims of sexual violence broadly. For instance, a 2015 analysis noted that though all 50 states have one criminal statute addressing sexual assault broadly—not just on campus—the concepts articulated in those statutes were often ill-defined or undefined and do not produce adequate support structures to adjudicate the handling of campus sexual assault.

Glatter: You mentioned there is that wide variance, so ultimately what does that mean for victims on a state-by-state level?

Morse: It means that there's an uneven legal and regulatory architecture at the state level about what states and campuses can do to prevent and address incidents of sexual violence. That's why there needs to be consistency and focus in legislative and regulatory approaches at the federal level to prevent and address sexual violence.

So, for instance, in our report we noted that there were some states considering legislative measures to affirm the rights of survivors following an incident of sexual violence in accordance with overarching Clery Act policy, which is a federal statute. So survivors would be able to choose whether or not their report of sexual violence to the institution would be turned over to local law enforcement. In direct conflict with that were policy proposals like that in Virginia where a report of sexual violence on campus is expected to be turned over to local law enforcement. And the problem with that, from a trauma-informed standpoint, is that survivors often don't feel comfortable going to local law enforcement. They still want protective measures while on campus but don't want to relive the trauma of their incident for years, potentially, in a court of law. And so there is an uneven support and protective structure across the states.

Glatter: If that federal oversight is so important, to what extent does the legislative action taken by states have any bearing on the outcomes for the victims themselves?

Morse: Without federal oversight or consistent emphasis on enforcing its existing law and regulation, the potential outcome is that state law will not provide the accurate enforcement mechanisms to protect survivors. And that will have a negative impact on affirming the rights and protections of survivors of sexual violence in accessing college or university experiences.

Glatter: You mentioned victims are oftentimes hesitant to talk about incidents of sexual violence with local authorities. How does this relate to the current policies that exist to regulate sexual assault on campus?

Morse: It's important to consider the reasons why survivors of sexual violence on

campus wouldn't want to go to their local law enforcement—not just their campus law enforcement, but their local law enforcement. There are studies showing survivors of sexual violence seeking justice in the criminal-justice system overwhelmingly have unfavorable outcomes. And this is after quite often a long and drawn out judicial process that means increased face-to-face encounters with the alleged assailant. It means that this individual is going to be reliving the trauma of their experience many times and being subject to questions of her or his honesty or integrity as an individual. Especially when that process leads to an unfavorable outcome, it doesn't necessarily provide for a positive or affirming process and protection there.

And so, the aims of the court system are completely different than those of the campus-conduct system. A finding of responsibility on the part of the assailant in a campus-conduct system might mean that they are removed from the campus. It doesn't mean that they're going to prison, and it doesn't also prevent that individual from seeking further study elsewhere after a period of time, perhaps.

But the point about the need for federal law and regulation that is trauma-informed and fair is that it can protect the rights to all parties involved in the adjudication process following a claim. ... The lower threshold as articulated in guidance in 2011 by the Office for Civil Rights provides the foundation for a likely outcome of responsibility that will protect survivors of sexual violence while still not prohibiting the individual found responsible for seeking educational opportunities later. The point of campus-adjudication processes is to affirm the rights of individuals to educational opportunities. And the reason we need federal laws and regulations to protect that structure, is that absent federal law and regulation, there isn't an established process to do that across the states.

Glatter: Anything you'd like to add?

Morse: One of the key findings of our report was that the policy proposals that we observed across the states didn't necessarily reflect the needs of survivors of sexual violence or the best interests of survivors of sexual violence while also protecting the rights of individuals who are allegedly responsible for committing those incidents. And so it's important when thinking about the potential easing of federal oversight that the individual rights of survivors of sexual violence might be compromised in the process, and that requires our attention and leadership as a higher-education community.