Introduction: Purpose and Objectives

VAWA ADJUDICATOR TRAINING PROGRAM

Purpose

▪ Provide officials involved in the student or employee conduct processes with an understanding of the requirements of the Clery Act as it relates to disciplinary proceedings involving the VAWA Offenses which are sexual assault, dating violence, domestic violence, and stalking

▪ To meet the basic VAWA annual training requirement for adjudicators

Program Learning Outcomes

Articulate

Define

Understand

Assess

Develop

Identify

Articulate the requirements for Institutions of Higher Education (IHE) under VAWA specific to managing acts of Sexual Assault, Dating Violence, Domestic Violence, and Stalking

Define the VAWA Offenses and identify issues related to Sexual Assault, Dating Violence, Domestic Violence, and Stalking

Understand the intersection of Title IX and VAWA

Access reports to determine the appropriate resolution process

Develop student and employee conduct proceedings in a manner that "protects the safety of the victim and promotes accountability"

Identify additional training needs for adjudicators

The Violence Against Women Act (VAWA)

HISTORY

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Clery Act

- Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act
- The Clery Act is a consumer protection law designed to educate and inform current and prospective students and employees about campus security related matters

The Violence Against Women Act

Congress passed the Violent Crime Control and Law Enforcement Act of 1994 which included the Violence Against Women Act (Title IV).

- Reauthorized through the Violence Against Women and Department of Justice Reauthorization Act
- Reauthorized through the Violence Against Women Reauthorization Act of 2013 with significant implications for Institutions of Higher Education

2013 Reauthorization - Higher Education Implications

- Combat Violent Crimes on Campus program
- Annual Security Reports
- Domestic Violence

- Hate Crimes
- Primary Prevention Programs
- Ongoing Prevention and Awareness Programs
Understanding Sexual Assault Complaints: Considerations for Adjudicators

Learning Objectives

After completing this module, learners will be able to:

• Define the offenses of rape, fondling, incest, and statutory rape
• Identify the elements contained in the definitions of rape, fondling, incest, and statutory rape
• Identify the exceptions and clarifiers that rest within the definitions of sexual assault

Sexual Assault

An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting Program.

Rape

Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
Fondling
The touching of the private body parts of another person for the purpose of sexual gratification without consent of the victim, including instances where the victim is incapable of giving consent b/c of his/her age or temporary or permanent mental or physical incapacity.

Incest
Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape
Non-forcible sexual intercourse with a person who is under the statutory age of consent.

What is an Element?
"An element is an essential item that a party is required to prove in order to successfully assert a claim or a defense." — Black's Law Dictionary
Rape is the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Element Two – Consent (Force)
- Physical or verbal resistance
- Threats (or perceived threats), coercion, intimidation
- Misinterpreted behaviors
- Power differentials (real or perceived)

Consent
- The Clery Act does not require any particular definition of consent
- Policy should include definition of consent as defined by jurisdiction (state law)
- Institution should have a definition in their institutional sexual misconduct policy
Element Two – Consent (Incapacitation)

- Alcohol or drug consumption
- Decision-making ability of the parties
- Awareness of consequences
- Ability to make informed judgments
- Capacity to appreciate the nature and the quality of the act

Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim.

Clarifier: including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

Definition - FONDLING

Definition - INCEST

Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Definition - STATUTORY RAPE

Statutory Rape is sexual intercourse with a person who is under the statutory age of consent.
Evidentiary Standard

Preponderance of the Evidence standard

Clear and Convincing standard

FINAL THOUGHTS
Understanding Domestic and Dating Violence Complaints: Considerations for Adjudicators

VAWA ADJUDICATOR TRAINING PROGRAM

Learning Objectives

After completing this module, learners will be able to:

• Define the offenses of domestic and dating violence;
• Identify the elements contained in the definitions of domestic and dating violence; and
• Identify the exceptions and clarifiers that rest within the definitions of domestic and dating violence.

Domestic Violence

A felony or misdemeanor crime of violence committed by:

a) a current or former spouse or intimate partner of the victim
b) by a person with whom the victim shares a child in common
c) by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner
d) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred or

e) by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred

What is a “Crime of Violence?”

According to Section 16 of title 18 of the United States Code, the term “crime of violence” means

• an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
• any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.
Domestic Violence

A felony or misdemeanor crime of violence committed by
a) A current or former spouse or intimate partner of the victim
b) By a person with whom the victim shares a child in common
c) By a person who is cohabiting with, or has cohabited with the victim as a spouse or intimate partner
d) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred OR
e) By any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred

Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

The existence of such a relationship shall be based on the reporting party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition—
- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse
- Dating violence does not include acts covered under the definition of domestic violence.

Important Considerations

- Unique
- Cycle of violence
- Power and control
Interviews

- Lack of cooperation
- Cross-claims
- Primary aggressor

Primary Aggressor

- Past behaviors?
- Self defense?
- Who is afraid?
- Body language of each?
- Witnesses?
- What does the scene look like?
- Excited utterances?
- What are the extent of the injuries?

FINAL THOUGHTS
Understanding Stalking Complaints: Considerations for Adjudicators

Learning Objectives

Completing this module, learners will be able to:

• define the offense of stalking;
• identify the elements contained in the definition of stalking; and
• identify the exceptions and clarifiers that rest within the definition.

VAWA Offense: Stalking

Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

• Fear for the person's safety or the safety of others; or
• Suffer substantial emotional distress

Defining Stalking

STALKING: “engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others; or to suffer substantial emotional distress.”

“Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.”
Defining Stalking

STALKING: “engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others; or to suffer substantial emotional distress.”

- “Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.”
  - Who: stalker or third party
  - How: any action, method, device or means
  - What: follows, monitors, observes, surveils, threatens, or communicates

Is the Complainant:

- afraid for their safety
- afraid for the safety of others or
- suffering substantial emotional distress

If not, would a reasonable person in the Complainant’s position experience any of these effects?

Substantial Emotional Distress

- Difficulty eating or sleeping
- Anxiety or nervousness
- Nightmares
- Drug or alcohol use
- Headaches/illness
- School/work impacted
- Irritability, anger, shock, or confusion
- Fear response/hypervigilance
- Changing routines
- Depression
Defining Stalking

STALKING: “engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or to suffer substantial emotional distress.”

- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant
  - The Complainant's perspective

Defining Stalking

- STALKING: “engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or to suffer substantial emotional distress.”

- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim
  - Totality of the circumstances
  - Eggshell/bowling ball Complainants

Sanctioning and Remedy Stalking

- Motivation
  - Revenge
  - Fear
  - Joke
  - Power

- Impact
  - Severity
  - Work/school
  - Reputation
  - Emotional distress