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Supporting LGBTQ+ Survivors on Campus

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Supporting LGBTQ+ Survivors on Campus

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About us

Sexual Scripts and Criminal Statutes: Gender Restrictions, Spousal Allowances, and Victim Accountability After Rape Law Reform

Ethan Czuy Levine¹

Abstract

The author provides a mixed-methods assessment of U.S. rape statutes to assess progress in reform. Contemporary statutes offer restrictive frameworks for distinguishing criminal from noncriminal sexual violence, many of which are grounded in gendered and heterosexist assumptions. Fourteen states retain gender restrictions in rape statutes. Twenty maintain marital distinctions that limit accountability for spousal rape. Furthermore, whereas explicit resistance requirements have been eliminated nationwide, implicit resistance expectations manifest through emphasis on physical force and involuntary intoxication. Analyses conclude with recommendations for further legal reform and a discussion of the potential for legislation to affect broader social perceptions of rape.

Violence Against Women
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CAMPUS OUTREACH SERVICES



*Federal Intervention in
Campus Sexual Assault:
Title IX Investigations and
the "It's On Us" Campaign*
- Molly Sapia,
Temple University



Sexual Violence Among Middle School Students: The Effects of Gender and Dating Experience

Ethan Levine¹

Journal of Interpersonal Violence
1-24
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A Note on Language

L = Lesbian

G = Gay

B = Bisexual

T = Transgender & Gender
Nonconforming

Q = Queer & Questioning

+ = other sexual/gender minority
communities

“Queer” & “Trans” as umbrella terms

Gender inclusive language



Agenda

- ❖ Violence within and toward LGBTQ+ communities
 - ❖ Sexual violence and partner abuse
 - ❖ Hate violence and bullying
- ❖ Applicability of Title IX
 - ❖ Sexual violence in general
 - ❖ LGBTQ+ specific concerns
 - ❖ Case law and administrations' interpretations
- ❖ Supporting LGBTQ+ students



Sexual Violence and Partner Abuse in LGBTQ+ Communities

Sexual Violence and Partner Abuse in LGBTQ+ Communities

Centers for Disease Control, *National Intimate Partner & Sexual Violence Survey* [\(link\)](#)

- ❖ Lesbian & bisexual women report higher rates of sexual violence than heterosexual women
- ❖ Gay & bisexual men report higher rates of sexual violence than heterosexual men
- ❖ Lifetime rates of intimate partner stalking, sexual violence, and partner abuse combined:
 - ❖ 35% heterosexual women, 44% lesbian women, 61% bisexual women
 - ❖ 29% heterosexual men, 26% gay men, 37% bisexual men

National Center for Transgender Equality, *2015 U.S. Transgender Survey* [\(link\)](#)

- ❖ 47% of transgender individuals report lifetime sexual violence
- ❖ 54% report partner abuse, 24% report severe physical violence by a partner

Hate Violence and Bullying in LGBTQ+ Communities

NCTE, 2015 U.S. Transgender Survey [\(link\)](#)

- ❖ In the past year, 46% reported anti-trans verbal harassment and 9% reported physical attacks
- ❖ Of those who were out or perceived as trans in K-12, 54% were verbally harassed, 24% were physically attacked, and 13% were sexually assaulted because of being transgender
- ❖ 17% left a K-12 school due to anti-trans mistreatment
- ❖ 24% of those who were out or perceived as trans in college or vocational school experienced verbal, physical, and/or sexual harassment



Hate Violence and Bullying in LGBTQ+ Communities

GLSEN, 2015 *National School Climate Survey* [\(link\)](#)

- ❖ 71% of LGBTQ students report verbal harassment and 27% report physical harassment around sexual orientation
- ❖ 55% report verbal harassment and 8% report physical harassment around gender expression
- ❖ 60% report sexual harassment in school
- ❖ 58% felt unsafe at school due to their sexual orientation, and 43% felt unsafe because of their gender expression



Violence Within & Beyond LGBTQ+ Communities

- ❖ All of the usual concerns apply!
 - ❖ Effects of sexual violence, partner abuse, and bullying/hate violence
 - ❖ Campus systems: reporting, adjudication, wellness/counseling
 - ❖ Sexism and rape culture
- ❖ So what's different?
 - ❖ Less recognition of LGBTQ+ communities
 - ❖ Concerns about outness
 - ❖ Homophobia, biphobia, transphobia and rape culture
 - ❖ LGBTQ+ specific institutional barriers



Sexism and Then Some: Homophobia, Biphobia, Transphobia

Sexism & Sexual Violence

- ❖ Gender roles in heterosexual dating
- ❖ Rape myths
 - ❖ Women are “asking for it”
 - ❖ Women lie about rape
- ❖ Institutional barriers
 - ❖ Doubting women's stories
 - ❖ Putting victims/survivors “on trial”
 - ❖ Sexist cultures in education, athletics, Greek life, criminal justice
 - ❖ “Gender neutral” policies/processes
- ❖ Sexism as a resource for perpetrators

LGBTQ+ Marginalization

- ❖ Lack of community visibility
- ❖ Rape myths
 - ❖ Men always want sex, women don't rape
 - ❖ LGBTQ+ people as “sexual predators”
- ❖ Institutional barriers
 - ❖ Limited knowledge, discomfort
 - ❖ Agency forms and environments
 - ❖ Homo/bi/transphobic cultures
 - ❖ Heteronormativity in prevention
- ❖ LGBTQ+ oppression as a resource for perpetrators

Homophobia, biphobia, and transphobia

Survivor may be closeted and can't reach out for support

Abuser may blame the survivor's identity for the abuse

LGBTQ communities do not identify partner abuse as a community issue

Friends and family may not believe LGBTQ partner abuse exists

Survivor may have the same support system as abuser

Less validation of the relationship and self

Lack of visibility means there are few role models for healthy LGBTQ relationships

Survivor may blame their identity for the abuse

Source: The Network/La Red. 2011. [Open Minds, Open Doors](#).

Survivor Stories:

Cultural/Community Barriers

I, all my life was told that I brought on such assaults because of who I was.

My partner's coerced/nonconsensual sex with another FTM has fractured the local community into parties who believe my partner, parties who believe the perpetrator, and parties who don't want to take sides (who are perceived to not believe my partner as a result)...

My ex had me convinced that she could turn everyone against me...and that no one would want to deal with a queer (of whatever stripe I was) like me.

Source: FORGE. 2015. [Transgender Sexual Assault Survivors: A Self Help Guide to Healing and Understanding.](#)

Survivor Stories: Institutional Barriers

I'm afraid to go anywhere for help, because they will say my transgenderism is related to abuse, or that I somehow egged it on by being a freak.¹

One assault was in an Emergency Room at a hospital, by a female doctor who I believe was angered by my appearance (I looked male and my hospital bracelet/chart said "female").¹

The clerk was friendly when she gave Robin the paperwork and began giving her instructions. When Robin said the person she wanted a restraining order against was her ex-girlfriend,...the clerk wasn't so nice anymore...she said, "Well, you can fill out the form anyway, but if she doesn't have any weapons, you don't have a very good case, do you?"...We ended up leaving.²

¹Source: FORGE. 2015. [Transgender Sexual Assault Survivors: A Self Help Guide to Healing and Understanding.](#)

²Source: The Network/La Red. 2011. [Open Minds, Open Doors.](#)

Title IX Law and Federal Guidance

Title IX Questions

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.

Does “sex” include “sexual orientation” and “gender identity and expression?”

Does violence within and toward LGBTQ+ communities constitute sex discrimination or sex-based exclusion, harassment, or violence?

History of Title IX

- ❖ Civil rights law
- ❖ Systematic discrimination against women in athletic, educational, and career achievements
- ❖ Second wave feminist argument against patriarchy
- ❖ Male-on-female sexual assault as sex-based harassment & discrimination
- ❖ But what about same-sex or non-binary violence?



Federal Administrations as Contexts

- ❖ Different administrations interpret and enforce the law differently
- ❖ Obama and Trump Administrations on LGBTQ+ inclusion under Title VII & Title IX
- ❖ Issuing & rescission of guidance



Title IX Timeline

- ❖ 1972 Title IX issued
- ❖ ...
- ❖ 1997 Major federal guidance on Title IX
- ❖ 2001 Modified guidance on Title IX- Still in use today!
- ❖ ...
- ❖ Obama Administration
 - ❖ 2011 Dear Colleague Letter (Sexual assault)
 - ❖ 2014 Q&A on Sexual Violence
 - ❖ 2016 Dear Colleague Letter (Transgender students)
- ❖ Trump Administration
 - ❖ 2017 Rescission of above three
 - ❖ 2017 New interim guidelines

Sexual Harassment under Title IX

- ❖ “Unwelcome conduct of a sexual nature...[which]can include unwelcome sexual advances, requests for sexual favors, and other **verbal, nonverbal, or physical** conduct of a sexual nature” (2).
- ❖ “Title IX protects students in connection with **all** of the academic, educational, extra-curricular, athletic, and other programs of the school” (2).
- ❖ “A student may be sexually harassed by a school employee, another student, or a non-employee third party (e.g., a visiting speaker or visiting athletes)” (3).
- ❖ “...the issue is whether the harassment rises to a level that it **denies or limits a student’s ability to participate in or benefit from the school’s program based on sex**” (2). (a “hostile environment”)

Title IX on Gender Identity and Expression

“...gender-based harassment, including that predicated on **sex stereotyping**, is covered by Title IX if it is sufficiently serious...Thus, it can be discrimination on the basis of sex to harass a student on the basis of the victim’s failure to conform to stereotyped notions of masculinity and femininity” (v).

Title IX on Sexual Orientation

- ❖ “...both **male and female students are protected** from sexual harassment ...Title IX prohibits sexual harassment **regardless of the sex of the harasser**, i.e., even if the harasser and the person being harassed are members of the same sex” (3).
- ❖ “Although Title IX **does not prohibit discrimination on the basis of sexual orientation**, sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student’s ability to participate in or benefit from the school’s program constitutes sexual harassment prohibited by Title IX...” (3)

The Courts and “Sex Discrimination”

- ❖ Title VII and Title IX
 - ❖ “...it is helpful to look to Title VII to determine whether the alleged sexual harassment is severe and pervasive enough to constitute illegal discrimination on the basis of sex for purposes of Title IX” (*Smith v. Metro. Sch. Dist. Perry Twp.*, 128 F.3d 1997).
- ❖ *Price Waterhouse v. Hopkins*, 1989, Title VII: gender stereotyping
- ❖ *Whitaker v. Kenosha Unified School District*, 2017, Title IX: transgender protections
- ❖ *Zarda v. Altitude Express, Inc.*, 2018, Title VII: sexual orientation protections
- ❖ **Open question:** does sexual violence always constitute sex discrimination?

Administrations' Approaches

Obama Administration

- ❖ Title VII
 - ❖ Actively supports LGBTQ+ protections
 - ❖ Holder's memo on gender identity
- ❖ Title IX
 - ❖ 2011 Dear Colleague Letter (Sexual assault)
 - ❖ 2014 Q&A on Sexual Violence
 - ❖ 2016 Dear Colleague Letter (Transgender students)

Trump Administration

- ❖ Title VII
 - ❖ Works against LGBTQ+ protections
 - ❖ Sessions' amicus brief on sexual orientation and Title VII, pre-Zarda
 - ❖ Sessions' memo on gender identity
- ❖ Title IX
 - ❖ 2011, 2014, and 2016 guidelines rescinded
 - ❖ 2017 Q&A interim guidelines

Open question: does sexual violence always constitute sex discrimination?

Supporting LGBTQ+ Survivors on Campus

Supporting LGBTQ+ Survivors: Title IX as a Limited Resource

- ❖ What do we do with all of this information?
- ❖ Title IX is a constrained and precarious resource for LGBTQ+ students
 - ❖ Recognize that all students can experience gender/sex-based discrimination and harassment
 - ❖ Consider barriers to support for LGBTQ+ survivors
 - ❖ Consider political and campus climates
- ❖ Use Title IX as appropriate
- ❖ Identify additional/alternative strategies



Supporting LGBTQ+ Survivors: Additional Legal & Policy Avenues

- ❖ Check your local and state laws for protections based on gender identity, gender expression, and sexual orientation
- ❖ Establish a policy at your school
- ❖ Additional civil rights laws: Title VII, Equal Protection Clause
- ❖ Stay up to date on legal changes



Supporting LGBTQ+ Survivors: Inclusive Spaces and Partnerships

- ❖ Create inclusive spaces
 - ❖ Physical spaces, documentation, language use
 - ❖ Ongoing staff training and support
 - ❖ Title IX offices can be welcoming and affirming, even if the capacity of adjudication to address students' concerns is limited
- ❖ Community partnerships
 - ❖ On and off campus
 - ❖ Counseling and other non-legal services





Thank you!

Any questions?

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