

COLLEGES AND UNIVERSITIES: A PLACE TO GET AWAY WITH RAPE

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I. INTRODUCTION

Tyler Thomas (“Tyler”) was a nineteen-year-old first-year college student who lived on campus at Peru State College¹ (“PSC”).² Tyler was last seen on December 3, 2010, and although her body has never been recovered, she was declared dead by a Nebraska court.³ Tyler’s mother filed

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1. PERU ST. COLL., <http://www.peru.edu> (last visited Apr. 29, 2016). Peru State College is a public, 4-year college located in Peru, Nebraska, at 600 Hoyt St, Peru, NE 68421. *Id.*

2. Thomas v. Bd. of Trs. of the Neb. State Colls., 2015 U.S. Dist. LEXIS 98296, *1 (D. Neb. July 28, 2015); see Roger Hamer & Malorie Maddox, *Ty Thomas Still Missing Four Years Later*, WOWT NEWS (Dec 01, 2014, 10:18 PM), <http://www.wowt.com/home/headlines/Ty-Thomas-Still-Missing-Four-Years-Later-284416711.html> (stating Peru State College student went missing); see also Lori Pilger, *Peru State Responds to Suit over Missing Student Thomas*, LINCOLN J. STAR (Apr. 29, 2013, 3:50 AM), http://journalstar.com/news/local/crime-and-courts/peru-state-responds-to-suit-over-missing-student-thomas/article_c8da773d-cf0e-5703-8f82-efc342d0a927.html (stating that Tyler was a first-year college student at Peru State College who went missing from campus).

3. Thomas, 2015 U.S. Dist. LEXIS 98296, at *1; Joe Duggan, *Judge Orders Death Certificate for Missing Peru State Student*, OMAHA.COM (Nov. 19, 2013, 12:00 AM), http://www.omaha.com/news/judge-orders-death-certificate-for-missing-peru-state-student/article_24316635-a2b7-55a3-b283-b98aafcc1d4e.html [hereinafter Duggan, *Judge Orders Death Certificate for Missing Peru State Student*] (noting Nemaha County District Judge Daniel Bryan stated there was enough evidence that proved Tyler was dead, although the cause of her death remains unknown); Joe Duggan, *Tyler Thomas Case: Family of Missing Student Wants Peru State Officials Held Responsible*, OMAHA.COM (Aug. 13, 2015, 1:00 AM), http://www.omaha.com/news/nebraska/tyler-thomas-case-family-of-missing-student-wants-peru-state/article_417ed020-6430-5fc3-ad58-6c6409a83ae1.html [hereinafter *Tyler Thomas Case*] (“Judge Bryan declared [Tyler Thomas] dead in 2013, although her remains have not been found.”); Lori Pilger, *Missing Peru State Student Declared Dead*, LINCOLN J. STAR (Nov. 20, 2013) http://journalstar.com/news/local/911/missing-peru-state-student-declared-dead/article_8c4320b4-5795-541f-bddc-674b06627684.html (noting that although a missing person, based on state law, will normally be declared dead after five years of being missing and after a diligent search, Tyler was declared dead after three years based on her parents’ request which allowed them to proceed with wrongful death lawsuits in both state and federal court); see Duggan, *Judge Orders Death Certificate for Missing Peru State Student*, *supra*. The evidence included signed affidavits from multiple friends and relatives who said Tyler was missing since the day she left an off-campus party, and that she has not used her financial accounts, her Facebook ac-

a complaint against the school where she alleged Tyler was abducted, sexually assaulted, and murdered by Joshua Keadle⁴ (“Joshua”).⁵ Joshua’s statements to the police varied,⁶ and although he denied hurting Tyler, his statements indicate he was alone with Tyler near the Missouri River, on the morning of December 3, 2010.⁷ It seems Joshua was the only person who had knowledge about Tyler’s whereabouts, but Joshua pled the Fifth Amendment⁸ and also refused to be deposed by Tyler’s mother.⁹

Joshua, who was 29 years old at the time of Tyler’s disappearance, was living on campus in the same dormitory as eighteen- to nineteen-year-old students, such as Tyler, who was his next-door neighbor.¹⁰ In August 2010, Joshua applied to volunteer and assist with the PSC women’s basketball team, which triggered a background check that revealed only minor traffic offenses in Nebraska.¹¹ At the same time, campus security suspected Joshua had stolen a laptop, which led to the Sheriff’s department investigation.¹² In September 2010, Joshua was charged with two separate viola-

count, or cell phone over the last three years. *Id.*

4. Brett Ellis, *Keadle Sentenced to 15–20 Years in Prison*, FREMONT TRIBUNE (April 25, 2012), http://fremonttribune.com/news/local/keadle-sentenced-to---years-in-prison/article_48afb542-8e44-11e1-95a5-001a4bcf887a.html?print=true&cid=print. Joshua Keadle was found guilty of an unrelated sexual assault of a minor in the first degree in March of 2012, because he sexually assaulted a 15-year-old girl in Fremont in 2008. *Id.*

5. *Thomas*, 2015 U.S. Dist. LEXIS 98296, at *1.

6. *Tyler Thomas Case*, *supra* note 3 (noting that although Joshua was arrested for false reporting, he has never been charged with Tyler’s murder).

7. *Thomas*, 2015 U.S. Dist. LEXIS 98296, at *21–22; Dan Swanson, *Investigators of Missing Peru State College Student Tyler Thomas’ Disappearance Say “Drag Marks” Link Joshua Keadle’s SUV to the Water’s Edge*, NEB. CITY NEWS-PRESS (Jan. 7, 2011), <http://www.ncnewspress.com/article/20110107/NEWS/301079996/?Start=1> (stating Joshua admitted taking Tyler to the Peru Boat Dock the night in question). That information was then used to secure a warrant to search Keadle’s 1996 Ford Explorer. *Id.*

8. *Fifth Amendment*, BLACK’S LAW DICTIONARY (10th ed. 2014) (explaining a person “cannot be . . . required to answer for a capital or otherwise infamous offense unless a grand jury issues an indictment or presentment . . .”).

9. *Thomas*, 2015 U.S. Dist. LEXIS 98296, at *21; Swanson, *supra* note 7 (stating that Joshua was identified as one of the last people who saw Tyler Thomas on the night she disappeared); *Judgment Filed Against Joshua Keadle in Tyler Thomas’s Death*, KETV OMAHA (Aug. 20, 2015, 5:24 PM), <http://www.ketv.com/news/judgment-filed-against-joshua-keadle-in-tyler-thomass-death/34822660> (noting a federal court judge found Joshua—an inmate convicted of an unrelated sexual assault case—responsible for Tyler’s disappearance and granted a default judgment against Joshua for failing to respond to the wrongful death lawsuit filed by Tyler’s mother).

10. *Thomas*, 2015 U.S. Dist. LEXIS 98296, at *5; *see* Hamer & Maddox, *supra* note 2 (emphasizing that Tyler’s relative questioned how a twenty-nine-year-old male was allowed to live on campus among sixteen, seventeen, and eighteen year-old boys and girls).

11. *Thomas*, 2015 U.S. Dist. LEXIS 98296, at *6–7.

12. *Id.* at *7–8 (stating that after the sheriff got involved, school officials learned that Joshua had been convicted of robbery of \$300.00 and stealing a purse in 2009, was accused of multiple burglaries for which he was not charged, and was also charged with forcible fondling (RAPE) of

tions of PSC's Code of Conduct based upon alleged inappropriate sexual behavior toward two female students at PSC.¹³ He admitted to the first charge of sexual harassment and was ordered to complete an online educational program and ten hours of community service; he failed to complete either sanction.¹⁴

On September 23, 2010, while sexual harassment charges were being investigated, William Stonebarger ("Mr. Stonebarger"), the Director of Housing and Security, recommended to Michaela Willis ("Ms. Willis"), Vice President for Enrollment Management and Student Affairs, that Joshua be removed from the dormitories if he admitted responsibility,¹⁵ but Ms. Willis disagreed.¹⁶ Local police and PSC's Title IX Coordinator were not informed of the sexual harassment allegations, and we will never know whether Tyler's life could have been saved if local authorities were involved when the harassment accusations against Joshua were made.¹⁷

Tyler's case is not an isolated occurrence.¹⁸ Studies show that about twenty percent of young undergraduate women¹⁹ and six percent of young

an 18-year-old female, but that such charges were dropped).

13. *Id.* at *10; *see also id.* at *11–13 (quoting each student's recount of the events that led to the inappropriate sexual behavior reports).

14. *Id.* at *19–20; Joe Duggan, *Lawsuit Against Peru State Offers New Details about Never-Charged Suspect in 2010 Disappearance*, OMAHA.COM (June 25, 2015, 1:00 AM), http://www.omaha.com/news/metro/lawsuit-against-peru-state-offers-new-details-about-never-charged/article_dec3781b-b853-542b-9107-1417f2d204fa.html [hereinafter Duggan, *Lawsuit Against Peru State*]. Vince Powers, the attorney representing Tyler's mother, stated that he believed the school was "deliberately indifferent" by never disciplining Joshua after a variety of academic and behavioral violations. *Id.* Powers further stated that school administrators were concerned with the fact that Joshua was "broke and had no place to go," instead of being concerned with young women's safety based on sexual abuse accusations and violent behavior on the part of Joshua. *Id.*

15. *Thomas*, 2015 U.S. Dist. LEXIS 98296, at *19.

16. *Id.* (noting that Ms. Willis stated such sanction would not have been a typical response to a first offense involving conduct that made students uncomfortable without harm or threat); Duggan, *Lawsuit Against Peru State*, *supra* note 14 (stating that after Joshua was accused of sexual harassment, the security director of the school recommended that he be expelled; however, school officials disregarded his advice and ordered Joshua to complete awareness training online and ten hours of community service instead).

17. *See* Riley Johnson, *Judge Hears Arguments in Case over Death of Peru State Student*, LINCOLN J. STAR (June 23, 2015), http://journalstar.com/news/local/911/judge-hears-arguments-in-case-over-death-of-peru-state/article_3d2fe3c9-7a20-5687-be90-772c4a032390.html?print=true&cid=print (confirming Title IX Coordinators were not made aware of the two complaints against Joshua for sexual harassment); *see also* Hamer & Maddox, *supra* note 2 (mentioning Tyler's family believes her death could have been avoided).

18. *See The Case of Beckett Brennan*, CBS NEWS 1 (May 4, 2011),

undergraduate men²⁰ who go to college and reside on campus, will suffer from attempted or actual sexual abuse.²¹ Yet, sexual abuse is one of the most underreported crimes in the United States.²² The consequences faced by victims of sexual abuse are overwhelming, which include increased rates of depression,²³ stress disorder,²⁴ alcohol or drug consumption,²⁵ and suicide attempts.²⁶ We all need to do something.²⁷

<http://www.cbsnews.com/news/the-case-of-beckett-brennan/> (reporting on how Beckett Brennan's sexual assault case was handled by the school). Beckett Brennan ("Beckett") was a first-year college student at the University of the Pacific, and member of the women's basketball team. *Id.* In May 2008, three members of the school's men basketball team raped Beckett. *Id.* at 2. After a week of deliberations, the school board determined that all three men were guilty of violating the school's policy against sexual assault. *Id.* at 3. One student was expelled, one suspended for one semester, and one suspended for one academic year; no charges were filed with local authorities. *Id.*

19. CHRISTOPHER P. KREBS ET AL., *THE CAMPUS SEXUAL ASSAULT STUDY*, at xiii (Oct. 2007); Glenn Kessler, *One in Five Women in College Sexually Assaulted: The Source of this Statistic*, WASH. POST (May 1, 2014), <http://www.washingtonpost.com/blogs/fact-checker/wp/2014/05/01/one-in-five-women-in-college-sexually-assaulted-the-source-of-this-statistic/>; see NAT'L SEXUAL VIOLENCE RES. CTR., *Statistics About Sexual Violence* (2015), http://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media-packet_statistics-about-sexual-violence_0.pdf (stating that one in five women are sexually assaulted while in college); see also Nick Anderson & Scott Clement, *1 in 5 College Women Say they Were Violated*, WASH. POST (Jun. 12, 2015), <http://www.washingtonpost.com/sf/local/2015/06/12/1-in-5-women-say-they-were-violated/> (noting the "Post-Kaiser Family Foundation poll" found that 25 percent of women and seven percent of men stated they were sexually assaulted while in college).

20. See KREBS ET AL., *supra* note 19, at 5-5 (finding that approximately 6.1% of males (84 out of 1375) reported they experienced attempted or completed sexual assault since entering college); NAT'L SEXUAL VIOLENCE RES. CTR., *supra* note 19 (stating that one in sixteen men are sexually assaulted while they are attending college).

21. *Sexual Abuse*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining sexual abuse as "[a]n illegal or wrongful sex act."); see *The Realities of Sexual Assault on Campus*, BESTCOLLEGES.COM (2016), <http://www.bestcolleges.com/resources/preventing-sexual-assault/> (defining sexual assault as the "umbrella term used to describe a wide range of forced and unwanted sexual activity, including kissing, exhibitionism, groping, and rape."); see also HEATHER M. KARJANE ET AL., *SEXUAL ASSAULT ON CAMPUS: WHAT COLLEGES AND UNIVERSITIES ARE DOING ABOUT IT 2* (Dec. 2005) (stating that when projecting the data to a typical five year college career, one in five young women are raped, and that the more intimate the relationship between the attacker and the victim, the more likely for a rape to be completed rather than *attempted*).

22. See KARJANE ET AL., *supra* note 21, at ii; see also Corey Rayburn Yung, *Concealing Campus Sexual Assault: An Empirical Examination*, 21 PSYCHOL., PUB. POL'Y, & L. 1, 6 (2015) (explaining that during periods where universities are being audited for Clery Act violations, the reports of sexual assault in universities increases by 44%, whereas other crimes such as aggravated assault, robbery, or burglary do not change any time before, during, or after audits); *The Realities of Sexual Assault on Campus*, *supra* note 21 (stating that the American Civil Liberties Union (ACLU) estimates that 95% of campus rapes in the U.S. are not reported).

23. See DEAN G. KILPATRICK ET AL., *DRUG-FACILITATED, INCAPACITATED, AND FORCIBLE RAPE: A NATIONAL STUDY 4* (2007) (stating that 33% of college victims suffer from depression as a consequence of being the victim of rape).

24. See KILPATRICK ET AL., *supra* note 23, at 4 (stating that 34% of college victims suffer from posttraumatic stress disorder (PTSD) as a consequence of being the victim of rape); see also

Just as physicians, health professionals, and school officials are required to report suspicions of child abuse in Florida,²⁸ colleges and universities (collectively referred to as “schools”), should bear the same duty of mandatory reporting for cases of sexual abuse.²⁹ If a university has determined, by the preponderance of the evidence,³⁰ that sexual abuse has occurred, then the university should be compelled to report the incident to local police.³¹ Although Florida is known for having passed the toughest mandatory reporting laws for sexual abuse of *children* after the Sandusky Penn State scandal,³² there is no mandatory reporting requirement for

NAT’L SEXUAL VIOLENCE RES. CTR., *supra* note 19 (“81% of women and 35% of men [suffer from] significant short-term or long-term impacts such as Post-Traumatic Stress Disorder (PTSD) [as a consequence of sexual violence]”).

25. See KILPATRICK ET AL., *supra* note 23, at 4 (stating that 40% of college victims suffer from alcohol or drug abuse as a consequence of being the victim of rape).

26. Kevin Caruso, *Rape Victims Prone to Suicide*, SUICIDE.ORG, <http://www.suicide.org/rape-victims-prone-to-suicide.html> (last visited Apr. 30, 2016) (“33% of rape victims have [a] suicidal thought . . . [and] 13% of rape victims will attempt suicide.”).

27. Catharine Richmond & Melissa Richmond, *The Future of Sex Offense Courts: How Expanding Specialized Sex Offense Courts Can Help Reduce Recidivism and Improve Victim Reporting*, 21 CARDOZO J.L. & GENDER 443, 452 (2015) (“In the United States, about one in six women will experience an attempted or completed rape at some point in their lifetime.”); Penny M. Venetis, *It’s Time to Finally Tackle Sexual Abuse on College Campuses*, HUFFINGTON POST (Sept. 5, 2015, 12:40 PM), http://www.huffingtonpost.com/legal-momentum/its-time-to-finally-tackl_b_8090306.html (stating that schools should (1) screen all applicants and request disclosure of any conviction for domestic violence, sexual assault, dating violence, and stalking; and (2) have mandatory trainings on human sexuality and healthy relationships). See generally Richmond & Richmond, *supra*, at 452 (covering some of the statistics of rape victims); *Take Action Against Abuse - For Schools*, THE WHITE HOUSE, <https://www.whitehouse.gov/1is2many/take-action/schools> (last visited Apr. 30, 2016) (providing statistics and tips to detect dating violence at an early stage).

28. See FLA. STAT. § 39.201(1)(a)–(d) (2015); see also FLA. STAT. § 39.205(1) (2015). “A person who is required to report known or suspected child abuse, abandonment, or neglect and who . . . fails to do so . . . commits a felony of the third degree . . .” *Id.*

29. See Joe Cohn, *The Case for Mandatory Reporting of Campus Sexual Assault*, THE HILL: CONG. BLOG (Aug. 17, 2015, 3:00 PM), <http://thehill.com/blogs/congress-blog/education/251095-the-case-for-mandatory-reporting-of-campus-sexual-assault> [hereinafter Cohn, *Mandatory Reporting of Campus Sexual Assault*] (explaining that in order to hold perpetrators accountable and avoid re-offenses, mandatory reporting is an important part of the solution).

30. U.S. Dep’t of Educ., *Dear Colleague Letter: Sexual Violence*, 11 (Apr. 4, 2011) [hereinafter *Dear Colleague Letter*] (clarifying that preponderance of the evidence means that “it is more likely than not that sexual harassment or violence occurred . . .”).

31. Cohn, *Mandatory Reporting of Campus Sexual Assault*, *supra* note 29 (arguing for the benefits, and against the detriments, of timely mandatory reporting of sexual abuse incidents to the police).

32. *Penn State Scandal Fast Facts*, CNN, <http://www.cnn.com/2013/10/28/us/penn-state-scandal-fast-facts/> (last updated Dec. 24, 2015, 11:59 AM). Former Penn State assistant football coach, Jerry Sandusky, was found guilty of 45 criminal counts related to child sexual abuse on June 22, 2012. *Id.*

young adults who suffer sexual abuse in schools.³³ Additionally, schools do not currently offer programs of rehabilitation for the alleged assailant, and for the most part, the alleged attacker is allowed to continue pursuing his or her studies in the same university, running the risk of having repeat offenders on campus.³⁴

Part II of this comment will provide a background of the different laws and amendments previously enacted in an effort to eradicate sexual abuse from colleges and universities, such as (1) Title IX of the Education Amendments of 1972;³⁵ (2) Dear Colleague Letter;³⁶ (3) The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”);³⁷ (4) Campus Sexual Violence Elimination Act of 2013;³⁸ and (5) the proposed bill “Safe Campus Act of 2015,”³⁹ which was introduced to the House of Representatives on July 29, 2015, but has not been enacted.⁴⁰ Part III will discuss the problem of underreporting of sexual

33. See Alyssa Newcomb, *After Sandusky, Florida Passes One of Nation’s Toughest Sexual Abuse Reporting Laws*, ABC NEWS (Oct. 9, 2012), <http://abcnews.go.com/US/sandusky-florida-passes-nations-toughest-sexual-abuse-reporting/story?id=17434307> (noting that Florida’s sexual abuse reporting law applies only to victims that are children); see also Eliana Salzhauer & Claire Gordon, *Florida Becomes the Harshes State for Sex Offenders*, ALJAZEERA AM. (Apr. 5, 2014, 10:30 AM), <http://america.aljazeera.com/watch/shows/america-tonight/articles/2014/4/5/florida-becomes-theharshesstateforsexoffenders.html> (explaining that Florida became the harshes state for sex offenders). In Florida, there are tough laws in place detaining sex offenders indefinitely for crimes they have not yet committed. See Salzhauer & Gordon, *supra*. In Florida, after a person is convicted of a violent sexual offense and completes his or her sentence, that person can still be considered a risk to the community and be sent indefinitely to a civil commitment center called Arcadia. *Id.*

34. David Lisak & Paul M. Miller, *Repeat Rape and Multiple Offending Among Undetected Rapists*, 17 VIOLENCE & VICTIMS 73, 73 (2002), <http://www.davidlisak.com/wp-content/uploads/pdf/RepeatRapeinUndetectedRapists.pdf>; Kristen Lombardi, *A Lack of Consequences for Sexual Assault*, THE CTR. FOR PUB. INTEGRITY (Feb. 24, 2010, 12:00 PM), <http://www.publicintegrity.org/2010/02/24/4360/lack-consequences-sexual-assault>; see Lisak & Miller, *supra*, at 80 (explaining that the average number of completed or attempted rapes of a repeat rapist is six); see also Lombardi, *supra* (explaining that even after students are deemed “responsible” for alleged sexual misconduct on college campuses, they face minimal or even no consequences for their sexual acts, while the lives of their victims are impaired).

35. Education Amendments of 1972, Pub. L. No. 92-318, § 901, 86 Stat. 235, 373 (1972).

36. *Dear Colleague Letter*, *supra* note 30, at 1. Dear Colleague Letter was issued by the U.S. Department of Education in 2011. *Id.*

37. 20 U.S.C § 1092(f) (2012). See generally *Jeanne Clery Act*, CLERY CTR. FOR SECURITY ON CAMPUS (2012), <http://clerycenter.org/jeanne-clery-act> (providing an overview of the new provisions to the Jeanne Clery Act).

38. Campus Sexual Violence Elimination Act, H.R. 812, 113th Cong. (2013).

39. Safe Campus Act of 2015, H.R. 3403, 114th Cong. (2015).

40. *Id.*; see Susan Svrluga, *Do Students Get a Fair Hearing? An Effort to Change How Colleges Handle Sexual Assaults*, WASH. POST (July 29, 2015), <https://www.washingtonpost.com/news/grade-point/wp/2015/07/29/do-students-get-a-fair-hearing-an-effort-to-change-how-colleges-handle-sexual-assaults/> (emphasizing that the main

crimes, the disservice caused by universities investigating and handling sexual crimes internally, and the lack of punishment toward the assailant.⁴¹ Part IV proposes that (1) colleges and universities be obligated to report allegations of sexual assault to local authorities; (2) the victim's identity remain protected by the authorities, allowing the victim to proceed by pseudonym or anonymously, if the victim so chooses; (3) colleges and universities implement a rehab program in which the alleged assailant or any student who has a record of sexual misconduct must undergo a psychological evaluation and attend weekly counseling sessions; and (4) the assailant be automatically suspended upon being found responsible by the university's committee,⁴² until completion of the rehab program, followed by a one-semester probation in which the assailant has to continue attending monthly sessions; however, if the student violates probation, such student should be automatically expelled on the basis of sexual misconduct, which should be noted on his or her school transcripts.⁴³

II. BACKGROUND

A. TITLE IX, CLERY ACT, AND DEAR COLLEAGUE LETTER

Title IX of the Education Amendments of 1972⁴⁴ prohibits discrimina-

aims of this new bill are (1) to ensure that students get a fair hearing on campus and (2) to give law enforcement a more prominent role in sexual abuse cases).

41. See Cohn, *Mandatory Reporting of Campus Sexual Assault*, *supra* note 29; see also Tyler Kingkade, *Fewer than One-Third of Campus Sexual Assault Cases Result in Expulsion*, HUFFINGTON POST (Sept. 29, 2014, 08:59 AM), http://www.huffingtonpost.com/2014/09/29/campus-sexual-assault_n_5888742.html [hereinafter Kingkade, *Fewer Than One-Third*] (stating between 13% and 30% of students found guilty of sexual assault by their universities were expelled, and between 29% to 68% were suspended).

42. See Gloria Duffy, *Colleges in the Real World*, HUFFINGTON POST: THE BLOG (May 30, 2013, 04:23 PM), http://www.huffingtonpost.com/gloria-duffy/colleges-in-the-real-world_b_3360499.html ("Many colleges have Title IX administrators, special deans or other staff, 'honor courts' or similar internal mechanisms to investigate and adjudicate cases of sexual abuse."); see also Beth Pearsall, *Sexual Assault: An Unspoken Barrier to Higher Ed*, AAUW (Aug. 13, 2015), <http://www.aauw.org/2015/08/13/sexual-assault-higher-ed/> (discussing a student who reported her alleged rape to Hobart and William Smith College, which conducted a disciplinary hearing—even before rape kit results were available—and cleared the alleged attackers of all charges). Conducting internal hearings is also a practice at Northeastern University; after a student reported her rape, the school conducted a hearing in which the attacker was found responsible for her rape, but no disciplinary measures were taken against him. Pearsall *supra*.

43. See generally *FAQs on Sex Offender Treatment*, STOP IT NOW, <http://www.stopitnow.org/help-guidance/faqs/faqs-on-sex-offender-treatment> (last visited May 1, 2016) (explaining the benefits of sex-offender treatment and the different ways it benefits the offender).

44. Education Amendments of 1972, Pub. L. No. 92-318, § 901, 86 Stat. 235, 373 (1972); see *History of Title IX*, TITLEIX.INFO (2016), <http://www.titleix.info/history/history->

tion based on sex in any federally funded education program.⁴⁵ Additionally, Title IX provides that colleges and universities shall provide the victim of sexual abuse with a safe environment that does not interfere with the victim's right of pursuing an education.⁴⁶ A combination of one semester suspension for the offender, which is the most common reprimand according to the Department of Justice's ("DOJ") data on how sexual assaults are punished,⁴⁷ and a change of schedule for either the assailant or the victim may not be enough to provide a safe environment for the victim, when studies show that nine out of ten rapes are committed by repeat offenders.⁴⁸

The Clery Act,⁴⁹ which was enacted in 1990, requires colleges and universities to gather, collect, and report to all current and prospective students, every September 1st, a statistical report about crimes that occurred on or near the campus.⁵⁰ Schools must disclose statistics regarding the following criminal offenses reported to campus security authorities or local police agencies: (1) murder⁵¹; (2) sex offenses, forcible or nonforcible⁵²; (3)

overview.aspx (noting the main purpose behind the enactment of Title IX was to create gender equality). Title IX is a federal law, which is part of the Education Amendments of 1972 and was signed into law on June 23, 1972. § 901, 86 Stat. at 235.

45. 20 U.S.C. § 1681(a) (2014).

46. See *id.* (protecting sexual abuse victims by prohibiting institutions from retaliating against victims who report abuse); *Title IX in Detail*, KNOW YOUR IX, <http://knowyourix.org/title-ix/title-ix-in-detail/> (last visited May 1, 2016) [hereinafter *Title IX in Detail*] (stating schools must accommodate victims by changing academic or extracurricular schedules, by implementing prevention and safety measures such as no contact directives, or by helping the victim obtain a restraining order).

47. See Tyler Kingkade, *Sexual Assault Sanctions from DOJ FY2011-13*, SCRIBD.COM, <http://www.scribd.com/doc/241023157/Sexual-Assault-Sanctions-From-DOJ-FY2011-13> (last visited Apr. 30, 2016) [hereinafter *Sexual Assault Sanctions*].

48. Dr. Eric Anthony Grollman, *9 of 10 Campus Rapes are Committed by Repeat Offenders [Updated]*, KINSEY CONFIDENTIAL (May 25, 2010), <http://kinseyconfidential.org/most-campus-rapes-are-committed-by-repeat-offenders>; see Lisak & Miller, *supra* note 34, at 80.

49. 20 U.S.C. § 1092(f) (2012). See generally *Pennsylvania v. Henry*, 569 A.2d 929, 932–33 (Pa. 1990) (providing an overview of the facts surrounding the rape and murder of Jeanne Clery in 1986 by another student at her school); *Ex-Lehigh Student Sentenced to Electric Chair for Murder*, N.Y. TIMES (Apr. 30, 1987), <http://www.nytimes.com/1987/04/30/us/ex-lehigh-student-sentenced-to-electric-chair-for-murder.html> (providing an overview of the proceedings that took place after Joseph Henry was charged with the rape and murder of Jeanne Clery). Jeanne Clery's murderer, Joseph Henry, was convicted and sentenced to death by the trial court, and the Pennsylvania Supreme Court affirmed the trial court's decision. *Pennsylvania*, 569 A.2d at 932, 942.

50. 20 U.S.C. § 1092(f); see also *The Campus Sexual Violence Elimination (SaVE) Act*, CLERY CTR. FOR SECURITY ON CAMPUS (2012), <http://clerycenter.org/campus-sexual-violence-elimination-save-act> (noting that the SaVE Act updated the Clery Act in terms of requiring that certain sexual incidents on campus be disclosed in yearly crime statistic reports).

51. *Murder*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining murder as "[t]he killing of a human being with malice aforethought.").

52. *Rape*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining rape as the "[u]nlawful

robbery⁵³; (4) aggravated assault⁵⁴; (5) burglary⁵⁵; (6) motor vehicle theft⁵⁶; (7) manslaughter⁵⁷; (8) arson⁵⁸; and (9) “arrests of persons referred for campus disciplinary action for liquor law violations, drug-related violations, and weapons possession.”⁵⁹

A little more than twenty years later, in April 2011, the United States Department of Education (“DOE”) released the Dear Colleague Letter (“DCL”).⁶⁰ DCL provides guidance for schools to comply with Title IX.⁶¹ Also, this letter was used to explain that a number of different acts, such as rape,⁶² sexual assault,⁶³ sexual battery,⁶⁴ and sexual coercion,⁶⁵ which fall

sexual activity . . . with a person . . . without consent and . . . by force or threat of injury.”).

53. *Robbery*, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining robbery as “[t]he illegal taking of property from the person of another, or in the person’s presence, by violence or intimidation . . .”).

54. *Aggravated Assault*, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining aggravated assault as “[c]riminal assault accompanied by circumstances that make it more severe, such as the intent to commit another crime or the intent to cause serious bodily injury . . . by using a deadly weapon.”).

55. *Burglary*, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining burglary as “[t]he common-law offense of breaking and entering another’s dwelling at night with the intent to commit a felony.”).

56. *Theft*, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining theft as “[t]he wrongful taking and removing of another’s personal property with the intent of depriving the true owner of it . . .”). This also includes the theft of a motor vehicle. *See id.*

57. *Manslaughter*, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining manslaughter as “[t]he unlawful killing of a human being without malice aforethought. . . . Also termed (in some jurisdictions) *culpable homicide*.”).

58. *Arson*, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining arson as “[a]t common law, the malicious burning of someone else’s dwelling house or outhouse that is either appurtenant to the dwelling house or within the curtilage.”).

59. 20 U.S.C. § 1092(f)(1)(F) (2012). In addition to those nine crimes previously stated, the school must disclose incidents of theft, simple assault, intimidation, vandalism of property, and of other incidents involving bodily injury to any person, in which the victim of any of these crimes is intentionally targeted because of his or her actual or perceived race, ethnicity, religion, gender, sexual orientation, national origin, or disability. *Id.* § 1092(f)(1)(F)(ii).

60. Dear Colleague Letter, *supra* note 30, at 1.

61. *Sexual Assault in Higher Education – Laws and Protocols*, THE ADVOCATES FOR HUM. RTS., http://www.stopvaw.org/sexual_assault_in_higher_education_laws_and_protocols#_ftn4 (last updated Jul. 31, 2011). DCLs mandate schools to distribute notice of a nondiscrimination policy, appoint a Title IX coordinator, and use a “preponderance of the evidence” standard as opposed to a “clear and convincing” standard (which was previously used by most schools) in evaluating complaints. *Id.*

62. *Rape*, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining rape as the “[u]nlawful sexual activity . . . with a person . . . without consent and [usually] by force or threat of injury.”).

63. *Sexual Assault*, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining sexual assault as “[s]exual intercourse with another person who does not consent.”).

64. *Sexual Battery*, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining sexual battery as “[t]he nonconsensual penetration of or contact with another’s sexual organs or the perpetrator’s sexual organs.”); *see* FLA. STAT. § 794.011(1)(h) (2015). In Florida, the crime of “sexual battery” is defined as “oral, anal, or vaginal penetration by, or union with, the sexual organ of another person . . . without consent and . . . by force or threat of injury.”).

into the category of sexual violence, are all forms of sexual harassment covered under Title IX.⁶⁶

B. CAMPUS SEXUAL VIOLENCE ELIMINATION ACT OF 2013

Two years later, the Campus Sexual Violence Elimination Act of 2013 amended the Clery Act,⁶⁷ and President Barack Obama signed it into law on March 7, 2013.⁶⁸ The purpose of this Act is to increase transparency regarding the incidents of sexual violence on campus, to inform and enhance rights⁶⁹ for the victims, to provide guidance to universities regarding investigations, and to enact campus wide educational programs.⁷⁰

The DOE's Clery Act Compliance Division has the power to investigate alleged violations of the Act and issue findings to enforce its provisions.⁷¹ Any institution found to violate the provisions of the Act can be fined a maximum of \$35,000 per violation.⁷² However, it seems that schools have been successful in paying lower fines than the ones originally

er or the anal or vaginal penetration of another by any other object [except] an act done for a bona fide medical purpose." § 794.011(1)(h).

65. See Michael Buchhandler-Raphael, *Sexual Abuse of Power*, 21 U. FLA. J.L. & PUB. POL'Y 78, 89 (2010) ("Sexual coercion occurs whenever a person engages in unilateral sexual acts with another person, by exploiting that other person's body for the purpose of his [or her] own gratification, arousal or sexual pleasure against the will of that other person.").

66. Dear Colleague Letter, *supra* note 30, at 1–2.

67. See 20 U.S.C. § 1092(f) (2012); see also *The Campus Sexual Violence Elimination (SaVE) Act*, *supra* note 50 (noting that the SaVE Act changed the Clery Act).

68. *Understanding the Campus SaVE Act*, KNOW YOUR IX, <http://knowyourix.org/understanding-the-campus-save-act/> (last visited May 4, 2016) (stating that the SaVE Act amended the Clery Act and that President Obama signed it into law on March 7, 2013); see also Campus Sexual Violence Elimination Act, H.R. 812, 113th Cong. § 2(a) (2013) (noting that the SaVE Act amended the Higher Education Act of 1965).

69. See *Title IX in Detail*, *supra* note 46.

70. See 20 U.S.C.S. § 1092(f). See generally *The Campus Sexual Violence Elimination Act*, CLERYACT.INFO (2014) <http://www.cleryact.info/campus-save-act.html> (discussing the necessary guidelines for the required educational programs under the SaVE Act). The SaVE Act requires that the educational programs educate students and employees regarding the issues of domestic violence, dating violence, sexual assault, and stalking. *Id.*

71. See *Clery Act Complaints*, CLERYACT.INFO (2014), <http://www.cleryact.info/clery-act-complaints.html> (stating that an institution that violates the Clery Act can be fined, lose the eligibility of participating in federal student aid programs, receive a decreased amount of federal aid, or receive a suspension from federal aid).

72. Adjustment of Civil Monetary Penalties for Inflation, 77 Fed. Reg. 60047 (October 2, 2012) (codified at 34 C.F.R. 36.2 (2015)); see *Statement from Clery Center for Security on Campus in Response to Increased Clery Act Fines*, CLERY CTR. FOR SECURITY ON CAMPUS (2012), <http://clerycenter.org/article/statement-clery-center-security-campus-response-increased-clery-act-fines> (noting the U.S. DOE announced an increase per-violation fine for the Jeanne Clery Act on October 2, 2012, from \$27,500 to \$35,000).

imposed by the DOE.⁷³

C. SAFE CAMPUS ACT OF 2015

The U.S. Congress, in an effort to eradicate sexual abuse on campus, introduced to the U.S. House of Representatives a bill—H.R. 3403—Safe Campus Act of 2015—which requires institutions of higher education to report allegations of sexual assault to law enforcement.⁷⁴ However, this bill has a disadvantage for victims who do not want to report their assailant because if the victim does not report, the school is not allowed to take security measures to assist the victim, such as changes to class schedule, suspensions, no contact orders, or changes in housing allocations, even upon victim's request.⁷⁵ Additionally, the bill states that schools are permitted to impose interim sanctions during the law enforcement investigation period.⁷⁶ The bill also states that schools are allowed to use the standard of proof that is deemed appropriate by the school for the purpose of adjudicating and imposing internal sanctions on the alleged assailant.⁷⁷

III. PROBLEM

A. UNDERREPORTING

Approximately ninety-five percent of campus rapes are not reported.⁷⁸ The main reasons that victims do not come forward are (1) the desire to keep the incident as a private matter because of shame or embarrassment;⁷⁹

73. See Michael Stratford, *Clery Fines: Proposed vs. Actual*, INSIDE HIGHER ED (July 17, 2014), <https://www.insidehighered.com/news/2014/07/17/colleges-often-win-reduction-fines-federal-campus-safety-violations> (stating that out of the twenty-one Clery Act fines that have been imposed from 2000 to 2014, seventeen have been lowered by the U.S. DOE because schools either persuaded officials or entered into a settlement with the U.S. DOE).

74. See Safe Campus Act of 2015, H.R. 3403, 114th Cong. § 2(a) (2015) (proposing amendments to Title I of the Higher Education Act of 1965 to require institutions to report allegations of sexual abuse to law enforcement officials).

75. *Id.* (permitting an institution to refrain from notifying law enforcement of an incident of sexual abuse if the victim of the abuse instructs the institution not to do so); Cohn, *Mandatory Reporting of Campus Sexual Assault*, *supra* note 29.

76. *Id.*

77. *Id.*

78. *The Realities of Sexual Assault on Campus*, *supra* note 21 (stating that the American Civil Liberties Union (ACLU) estimates only 5% of campus rapes in the U.S. are actually reported).

79. Eliza Gray, *Why Victims of Rape in College Don't Report to the Police*, TIME (Jun. 23, 2014), <http://time.com/2905637/campus-rape-assault-prosecution/> (indicating that 40% to 50% of victims choose not to report because they do not want anyone to know); *Rape / Sexual Assault*, NETWORK OF VICTIM ASSISTANCE (2013), <http://www.novabucks.org/otherinformation/rape/>

(2) lack of understanding of what constitutes sexual assault or rape,⁸⁰ (3) lack of trust in the criminal system;⁸¹ (4) fear of losing control after reporting the crime;⁸² and (5) fear of the community blaming victims.⁸³ Furthermore, Peter Lake,⁸⁴ a law professor at Stetson University College of Law who also provides trainings to students on sexual assault,⁸⁵ said there is a troubling cultural acceptance of sexual crimes, leading some victims to be-

(listing shame and embarrassment as factors that contribute to under-reporting).

80. See Gray, *supra* note 79 (noting that sometimes victims choose not to report because they are uncertain as to what constitutes a crime). Further, the author quotes Colby Bruno, Senior Legal Counsel at the Victim Rights Law Center, who has expertise in representing college students who are victims of sexual violence, who said, “Victims don’t often identify it as a crime because they know the person, they trusted the person, sense of denial or disbelief that it happened” *Id.*

81. See Katie J.M. Baker, “*They Told Me it Never Happened*,” BUZZFEED (Sept. 27, 2015, 8:17 PM), <http://www.buzzfeed.com/katiejmbaker/the-police-told-her-to-report-her-rape-then-arrested-her-for#.xoMXwOY5z> (explaining that when Lara McLeod reported her brother in law, Joaquin, had raped her, police officers arrested her claiming she was lying about the rape); Gray, *supra* note 79 (stating that a study showed victims do not report to the police either because (1) they do not think “the police would take the crime seriously,” or (2) they fear “the police would treat them poorly.”). Further, because the police did not believe Joaquin raped Lara, he was able to portray himself as a fit parent, and a judge gave Joaquin unsupervised visits for his 15-month son, who ended up dead while in his custody. See Baker, *supra*. He is now awaiting trial, and prosecutors are asking for the death penalty. *Id.* The chief of police later admitted to Lara’s family that the Prince William County Police Department in Virginia mismanaged many aspects of the investigation. *Id.*

82. See Gray, *supra* note 79 (finding that based on the media portrayals of rape trials, which show the level of questioning into the victim’s character and credibility, and the low conviction rate, victims consequently believe that reporting a rape is not worth the risk).

83. Tony Gonzalez, *Study: Sexual Assaults Greatly Underreported*, USA TODAY (Nov. 19, 2013, 11:42 PM), <http://www.usatoday.com/story/news/nation/2013/11/19/study-sexual-assaults-greatly-underreported/3648197/> (quoting Amber Stevenson, who is the clinical supervisor and therapist at the Nashville Sexual Assault Center); see Michael B. King, *Male Sexual Assault in the Community* in MALE VICTIMS OF SEXUAL ASSAULT 1, 5 (Gillian C. Mezey & Michael B. King eds., 1992) (explaining that in the case of men, underreporting is mainly based on negative stereotyping by society that accuses male victims of either not being strong enough to prevent it or as being homosexuals who secretly wanted to be abused).

As long as we as a community continue to make victim-blaming statements, such as, ‘She put herself in this situation,’ . . . ‘She didn’t fight back, she must have wanted it,’ we will continue to see rapes go unreported . . . [.] We have to stop blaming the victim. The conversation needs to shift to the person who chose to rape.

Gonzalez, *supra*. “[M]en find rape difficult to believe or accept—if you let it happen you must be queer, if you’re not queer it can’t have happened.” King, *supra*, at 5.

84. STETSON UNIV., <http://www.stetson.edu/law/faculty/lake-peter-f/> (last visited May 11, 2016). Peter Lake received his Juris Doctor and Bachelor of Arts degrees from Harvard University. *Id.*

85. *Sexual Assault*, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining sexual abuse as “[s]exual intercourse with another person who does not consent”).

lieve it is acceptable.⁸⁶

Another area of underreporting is on the part of schools.⁸⁷ A study shows schools underreport sexual abuse⁸⁸ crimes because they continue to view sexual abuse as a public relations problem, which could impact their image,⁸⁹ rather than as a safety concern.⁹⁰ One reason for underreporting, on the part of schools, is that employees responsible for organizing and submitting crime statistics might have personal incentives to underreport to further their career goals by preserving their institution's reputation.⁹¹ Another reason is that administrators seek to avoid scandals associated with high crime levels because it could trigger a complaint by a student organization, which in turn can lead to a Title IX investigation.⁹² Lastly, another strong reason for underreporting is that reporting high sexual assault rates can impair an institution's goal of recruiting quality students because prospective students and parents take into consideration crime rates when selecting a school.⁹³

B. THE DISSERVICE CAUSED BY UNIVERSITIES INVESTIGATING AND HANDLING SEXUAL CRIMES INTERNALLY

Because school administrators want to minimize the evidence pro-

86. Kimberly Hefling, *Justice Department: Majority of Campus Sexual Assault Goes Unreported to Police*, PBS (Dec. 11, 2014, 1:30 PM), <http://www.pbs.org/newshour/runtdown/four-five-acts-campus-sexual-assault-go-unreported-police/>.

87. Yung, *supra* note 22, at 2, 7 (explaining how although report numbers increase when schools are being audited for Clery Act violations, the actual rate is perceived to be about "44% higher than the numbers that universities submit in compliance with the Clery Act.").

88. *Sexual Abuse*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining sexual abuse as "[a]n illegal or wrongful sex act.").

89. Collin Binkley et al., *Reports on College Crime are Deceptively Inaccurate*, THE COLUMBUS DISPATCH (Sept. 30, 2014, 6:44 AM), <http://www.dispatch.com/content/stories/local/2014/09/30/campus-insecurity.html>. Jim Moore, a U.S. Department of Education official, stated, "[A] vast majority of schools comply with the law but some purposely underreport crimes to protect their images . . ." *Id.*

90. See Yung, *supra* note 22, at 6.

91. See Deena Fulton, *Clery Reporting and Prevention?*, PREVENTCONNECT (Feb. 25, 2015), <http://www.preventconnect.org/2015/02/clery-reporting-and-prevention/>; Yung, *supra* note 22, at 6; see also Collin Binkley et al., *supra* note 89 (stating the campus police chief and the college chancellor, at Elizabeth City State University, in North Carolina, resigned after the "[p]olice found 127 cases of crimes on campus that had not been thoroughly investigated by the college, including eight rapes").

92. See Yung, *supra* note 22, at 6.

93. See Richard Pérez-Peña & Kate Taylor, *Fight Against Sexual Assaults Holds Colleges to Account*, N.Y. TIMES (May 3, 2014), http://www.nytimes.com/2014/05/04/us/fight-against-sex-crimes-holds-colleges-to-account.html?hpw&rref=us&_r=0 (quoting an activist, Dana Bolger, who graduated from Amherst College and said no school wants to talk about sexual abuse to avoid scaring away prospective students and impairing its reputation); Yung, *supra* note 22, at 6.

duced out of their internal investigations—in hopes that the problem would disappear—they do not help the victim get justice, and they do not afford the person accused the possibility of a fair defense.⁹⁴ Additionally, schools do not have the knowledge to carry out sexual assault investigations that should be handled by the justice system⁹⁵; for the most part, school administrators, faculty, and students are not trained to deal with cases of sexual misconduct.⁹⁶ Often, schools deal with conflicting stories from the victim and the accused, minimal or no physical evidence, and impaired recollection due to the use of alcohol or drugs.⁹⁷ Further, school personnel may be subject to pressure from colleagues, alumni(ae), donors, students and their families, administrators, and any other person who may improperly influence the outcome of those hearings.⁹⁸

However, schools are starting to seek professional help.⁹⁹ Recognizing the fact that a panel of students¹⁰⁰ and professors might not be adequate to resolve sexual assault cases, some schools are hiring retired judges to act as impartial adjudicators for these hearings.¹⁰¹ In addition, afraid that ad-

94. See Dante Ramos, *Colleges are Not Equipped to Investigate Campus Sex Assaults*, THE BOS. GLOBE (June 03, 2015), <https://www.bostonglobe.com/opinion/2015/06/02/are-colleges-equipped-investigate-campus-sexual-assault/mFFOINP8LIr7EQ1dYQt2AN/story.html> (stating school administrators often “behave . . . like bureaucrats under siege—minimizing the paper trail, wishing that the problem would go away, and satisfying no one in the end.”).

95. See Ada Meloy, *Why are Campus Sexual Assaults Not Handled by Law Enforcement?*, THE WASH. POST (July 4, 2014), https://www.washingtonpost.com/opinions/why-are-campus-sexual-assaults-not-handled-by-law-enforcement/2014/07/04/f58385ec-0222-11e4-8bb2-6b921949ecfa_story.html. Because the Education Department’s Office for Civil Rights pressures schools to resolve sexual assault cases within sixty days, it is even harder for schools to resolve these cases for which they are not equipped to adjudicate in the first place. *Id.*

96. See Duffy, *supra* note 42.

97. See Meloy, *supra* note 95.

98. See Duffy, *supra* note 42 (explaining that students found responsible for sexual assault are occasionally the children of donors of the college). Similarly, some parents threaten the school with a suit if their children are expelled after an intra-college hearing as opposed to a criminal process. *Id.*

99. See Jake New, *Outsourced Campus Judges*, INSIDE HIGHER ED (Jun. 30, 2015), <https://www.insidehighered.com/news/2015/06/30/colleges-turning-judges-campus-sexual-assault-cases>.

100. See John Lauerman, *College Serial Rapists Evade Antiquated Campus Responses*, BLOOMBERG BUS. (June 13, 2013, 12:01 AM), <http://www.bloomberg.com/news/articles/2013-06-13/college-serial-rapists-evade-antiquated-campus-responses> (explaining some schools have ‘honor courts,’ which are composed by students, who determine whether the Honor Code was violated); see also *Honor Court*, THE UNIV. OF N.C. AT CHAPEL HILL, <https://studentconduct.unc.edu/honor-system/honor-system-structure/honor-court> (last visited May 11, 2016) (describing how students can easily become members of the Honor Court).

101. New, *supra* note 99. In 2013, Swarthmore College hired Jane Greenspan—former Pennsylvania Supreme Court Justice—to resolve sexual assault cases at the school hearings. *Id.* Also, in December 2014, Florida State University hired Major Harding—retired Florida Supreme

ministrators are disrupting due process rights of accused students, some states are considering implementing legislation similar to what North Carolina,¹⁰² Arkansas,¹⁰³ and North Dakota¹⁰⁴ have enacted, which allows students facing non-academic disciplinary sanctions to hire an attorney to fully participate in representing them in the hearings, instead of only advising them.¹⁰⁵

C. LACK OF PUNISHMENT TOWARD THE ASSAILANT

Even after a student is found “responsible” for violating a school’s code of conduct based on inappropriate sexual behavior, or even after a student admits to a charge of sexual abuse or harassment, there is little to no consequences toward the assailant who usually ends up graduating.¹⁰⁶ Victims, however, typically end up dropping out of school because they fear seeing their assailant on campus.¹⁰⁷ Studies show that only thirteen to thirty percent of students who are found responsible of sexual misconduct are actually expelled from school.¹⁰⁸ Further, if the student, after being

Court Justice—to participate in the hearing and help resolve the case of the university’s star quarterback Jameis Winston who was accused of raping a female student. *Id.*

102. H.B. 74, Gen. Assemb., 2013 Sess. (N.C. 2013) (affording students the right to hire an attorney during disciplinary proceedings); see Denisha Hedgebeth, *New N.C. Law Allows College Students Right to an Attorney*, USA TODAY (Sept. 9, 2013), <http://www.usatoday.com/story/news/nation/2013/09/09/north-carolina-students-right-to-attorney-college/2786691/> (stating that college students in North Carolina are the first to not have to worry about confronting non-academic disciplinary hearings without an attorney).

103. H.B. 1892, 90th Gen. Assemb., Reg. Sess. (Ark. 2015) (giving rights to Arkansas students to hire an attorney during disciplinary appeal proceedings at state supported institutions of higher educations).

104. S.B. 2150, 64th Legis. Assemb., Reg. Sess. (N.D. 2015) (allowing students to hire an attorney or a non-attorney advocate for disciplinary proceedings, except for matters involving academic misconduct); see Jamie Hutchinson, *Bill Seeks to Expand Rights*, DAKOTA STUDENT (Feb. 5, 2015), <http://dakotastudent.com/5812/news/bill-seeks-to-expand-rights/> (noting that, before this bill, students could not hire an attorney for disciplinary hearings; they could only seek advice); see also Ashe Schow, *Due Process Win: North Dakota Students now have Right to Attorney*, WASH. EXAMINER (Apr. 22, 2015, 3:40 PM), <http://www.washingtonexaminer.com/due-process-win-north-dakota-students-now-have-right-to-attorney/article/2563451> (stating that North Dakota became the third state to allow students to hire an attorney when facing disciplinary charges).

105. New, *supra* note 99.

106. See Lombardi, *supra* note 34 (“Many times, victims drop out of school, while their alleged attackers graduate.”).

107. *Id.* Victims also feel a lack of institutional support and disciplinary actions against the assailant. *Id.*

108. Kingkade, *Fewer Than One-Third*, *supra* note 41. Compare N.Y. PENAL LAW § 130.35 (Consol. 2016) (stating forcible rape is a class B felony), with Katie J.M. Baker, *College Campuses are Treating Rape like a Crime Without Criminals*, BUZZFEED (Apr. 24, 2014, 8:27 PM), <http://www.buzzfeed.com/katiejmbaker/college-campuses-are-treating-rape-like-a-crime-without->

found responsible, decides to transfer to another school, no marks or warnings are placed in the student's transcripts for other schools to be aware of the misconduct.¹⁰⁹ For that reason, critics argue that even expulsion is not enough because it leaves serial rapists free to rape at a different school, while their offenses are kept private based on confidentiality policies.¹¹⁰

The most common disciplinary actions schools impose on sexual offenders are community service hours, suspension, or even sensitivity trainings.¹¹¹ These forms of punishment are mere slaps on the wrist, warnings, or advice to be more cautious, and the alarming numbers of repeat rapists on campus show that these school-imposed sanctions are not deterring criminal conduct.¹¹² Harsher punishments and psychological treatment are imperative to deter students from engaging in sexual misconduct.¹¹³

crim#.nhYVVB2j93 (noting that a female student at Brown University was forcibly raped, which resulted in serious physical injury, but the university dissuaded the victim from filing criminal charges and only reprimanded the male student rapist with a one-year suspension). *See generally Sexual Assault Sanctions*, *supra* note 47 (providing figures on the number of students at various universities that were expelled as a result of sexual misconduct in 2011 through 2013).

109. *See* Susan Svrluga & Aaron C. Davis, 'Scarlet Letter' would Mark Transcripts of College Students Convicted of Assault, THE WASH. POST (July 14, 2015), https://www.washingtonpost.com/local/dc-politics/scarlet-letter-would-mark-transcripts-of-college-students-convicted-of-assault/2015/07/14/abec2fea-2a41-11e5-a250-42bd812efc09_story.html?hpid=z4 [hereinafter *Scarlet Letter*] (stating there is proposed D.C. legislation that would require colleges to put a permanent mark on the academic transcripts of students convicted of sexual assault or students who try to withdraw from school while the investigation for sexual misconduct is taking place). Further, such records would follow these students to other schools, graduate programs, or even the workforce. *Id.*

110. *See* Lauerman, *supra* note 100 (noting that schools allow students who had previously engaged in sexual misconduct while they were students to re-enroll when they can be easily identified as serial rapists); Jed Rubenfeld, *Mishandling Rape*, N.Y. TIMES (Nov. 15, 2014), http://www.nytimes.com/2014/11/16/opinion/sunday/mishandling-rape.html?_r=0. After a male student was found responsible for raping two female students, he was expelled. Lauerman, *supra*. After his appeal was resolved, he was allowed to re-enroll at the same school, in which he found new victims, and was again found responsible for the sexual misconduct by the school's committee. *Id.*

111. Abigail Bessler, *Universities Keep Failing to Actually Punish Rapists*, THINKPROGRESS (June 13, 2014, 11:04 AM), <http://thinkprogress.org/health/2014/06/13/3448464/campus-sexual-assault-punishments/> (stating Stanford University's punishment for campus rape is withholding the degree for two years, while Brandeis University requires sensitivity training).

112. *See id.* (stating that on-campus "forcible rapes" have increased about fifty percent between 2008 and 2012); Rubenfeld, *supra* note 110 (asserting that out of the more than ninety percent of on-campus rapes committed by men, four percent are repeat rapists, who average six victims each).

113. *See* Tyler Kingkade, *Jimmy Carter Pushes Colleges to Get Tougher on Campus Rapists*, HUFFINGTON POST (Dec. 05, 2014, 1:40 PM), http://www.huffingtonpost.com/2014/12/05/jimmy-carter-campus-rapists_n_6271668.html (mentioning former President Jimmy Carter explained that harsher punishment is needed because serial rapists are getting away with crimes on college campuses); Renee Sorrentino, *Sex Offenders and the Law*, 39 VT. B.J. 26, 27 (2013) (noting that psychological treatment could help control

IV. PROPOSED SOLUTION

A. MANDATORY REPORTING

Although it is argued that mandatory reporting can deter victims from coming forward, sexual assault needs to be eliminated at its roots.¹¹⁴ After decades and decades of implementing laws and regulations,¹¹⁵ sexual abuse on school campuses is an ongoing problem that has not been eradicated.¹¹⁶ If a school determines through its investigations that sexual abuse in fact has occurred, the school should be compelled to report the crime to local authorities.¹¹⁷ Schools do not have the authority to punish criminal conduct, or the experience to resolve disputes fairly and impartially.¹¹⁸ Even if the school is required to report, the victim is not compelled to cooperate with the authorities if he or she does not want to.¹¹⁹

B. PROTECT VICTIM'S IDENTITY

In order to encourage victims of sexual assault to come forward and report crimes, it is imperative that the victim's identity be protected.¹²⁰

the behavior of sex offenders). Former President Carter also stated he does not understand why schools would want a serial rapist as a student. Kingkade, *supra*.

114. See Cohn, *Mandatory Reporting of Campus Sexual Assault*, *supra* note 29 (stating that although opponents of mandatory reporting emphasize the fact that only a small percentage of reported rapes end up in convictions—meaning the justice system can be greatly improved—opponents fail to recognize that “none of the allegations withheld from police result in jail time.”).

115. See discussion *supra* Part II.

116. See KREBS ET AL., *supra* note 19, at 6-3.

117. See Cohn, *Mandatory Reporting of Campus Sexual Assault*, *supra* note 29 (explaining the benefits of reporting on-campus sexual assault incidents to local authorities).

118. Joe Cohn, *Colleges are not the Place to Try Rape Cases*, THE WASH. POST (Jan. 16, 2015), https://www.washingtonpost.com/opinions/colleges-are-not-the-place-to-try-rape-cases/2015/01/16/7d7e44be-9d87-11e4-a7ee-526210d665b4_story.html [hereinafter *Colleges are not the Place to Try Rape Cases*] (stating the criminal justice system is better equipped to resolve sexual assault cases). Law enforcement has the tools and experience to conduct thorough investigations that schools do not have, and courts have the expertise to attain a fair and just result and the power to impose the proper punishment when a person is found guilty of a crime. *Id.*

119. See Cohn, *Mandatory Reporting of Campus Sexual Assault*, *supra* note 29 (“If the alleged victim doesn’t want to talk to the police, he or she doesn’t have to.”). But if authorities are unaware, they do not have an “opportunity to offer support and services to [victims], or discover other evidence to prosecute the crime.” *Id.*

120. Kellie Wingate Campbell, *Victim Confidentiality Laws Promote Safety and Dignity*, J. MO. B. 76, 82 (2013) (explaining that many victims of sexual crimes chose not to report because they fear being exposed); see Kelly Glista, *Some Rape Victims Reject ‘Jane Doe’ Anonymity*, THE HARTFORD COURANT (Mar. 30, 2014), http://articles.courant.com/2014-03-30/news/hc-jane-doe-0315-20140314_1_jane-doe-rapes-encouraging-victims (“The ability to go through the process without being publicly identified helps encourage victims to make a report.”).

Some states have laws in place to protect the identity of victims in the criminal system.¹²¹ Moreover, although the Federal Rules of Civil Procedure (“FRCP”) do not expressly allow a party to proceed under a pseudonym,¹²² several courts, after balancing the plaintiff’s interest against the interests of the defendant and the public, have either explicitly, or implicitly, permitted its use.¹²³ Because the consequences of forcing a victim to pro-

121. *E.g.*, CAL. PENAL CODE § 293.5(a) (West 2016); CONN. GEN. STAT. ANN. § 54-86e (West 2016); FLA. STAT. ANN. § 92.56(3) (West 2016); NEV. REV. STAT. ANN. § 200.3772(1) (West 2016); TEX. CODE CRIM. PROC. ANN. art. 57B.02(b)–(c) (West 2016).

[T]he court, at the request of the alleged victim, may order the identity of the alleged victim in all records and during all proceedings to be either Jane Doe or John Doe, if the court finds that such an order is reasonably necessary to protect the privacy of the person and will not unduly prejudice the prosecution or the defense.

PENAL § 293.5(a).

The name and address of the victim of a sexual assault . . . and such other identifying information pertaining to such victim as determined by the court, shall be confidential and shall be disclosed only upon order of the Superior Court, except that (1) such information shall be available to the accused in the same manner and time as such information is available to persons accused of other criminal offenses, and (2) if a protective order is issued in a prosecution under any of said sections, the name and address of the victim, in addition to the information contained in and concerning the issuance of such order, shall be entered in the registry of protective orders pursuant to section 51-5c.

§ 54-86e.

The state may use a pseudonym instead of the victim’s name to designate the victim of [an enumerated sex crime] or any crime involving the production, possession, or promotion of child pornography . . . in all court records and records of court proceedings, both civil and criminal.

§ 92.56(3).

A victim of a sexual offense . . . may choose a pseudonym to be used instead of the victim’s name on all files, records and documents pertaining to the sexual offense, offense involving a pupil or sex trafficking, including, without limitation, criminal intelligence and investigative reports, court records and media releases.

§ 200.3772(1).

(b) A victim may choose a pseudonym to be used instead of the victim’s name to designate the victim in all public files and records concerning the offense, including police summary reports, press releases, and records of judicial proceedings. A victim who elects to use a pseudonym as provided by this article must complete a pseudonym form developed under this article and return the form to the law enforcement agency investigating the offense.

(c) A victim who completes and returns a pseudonym form to the law enforcement agency investigating the offense may not be required to disclose the victim’s name, address, and telephone number in connection with the investigation or prosecution of the offense.

art. 57B.02(b)–(c).

122. *Pseudonym*, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining pseudonym as “[a] fictitious name or identity.”).

123. *Doe v. Evans*, 202 F.R.D. *173, *176 (E.D. Pa. 2001); *see Sealed Plaintiff v. Sealed Defendant #1*, 537 F.3d 185, *190–91 (2d Cir. 2008) (finding error on the part of the District Court for (i) believing it was “strictly bound by the requirement of Rule 10(a) [of the Federal Rules of Civil Procedure] that the title of a complaint include the names of ‘all the parties’ [and (ii) not balancing] plaintiff’s interest in proceeding anonymously against the interests of defendants and the public.”).

ceed without the use of a pseudonym are excruciating, and because it is recognized that secondary victimization¹²⁴ can negatively impact a victim's self-esteem and cause emotional distress, all jurisdictions should allow victims of sexual abuse to proceed under the use of a pseudonym.¹²⁵

C. REHABILITATION PROGRAM

Among the most common disciplinary measures for sexual assailants is completing a sensitivity training.¹²⁶ However, such measure is not adequate for a person who has shown compulsive or aggressive sexual behavior by sexually assaulting or abusing others.¹²⁷ Even expulsion, which can allegedly be the proper deterrence,¹²⁸ is ineffective against future victims of other schools.¹²⁹ If the new school, where the expelled student transfers, is unaware of the student's behavioral disorder, the school cannot take steps

124. Timothy M. Maher, *Police Sexual Misconduct: Officers' Perceptions of its Extent and Causality*, 28 CRIM. JUST. REV. 355, 359 (2003). "Some victims fear the depersonalization and humiliation of the phenomenon called 'secondary victimization,' by which victims of some crimes, especially sexual violence, are often subjected to negative experiences in the criminal justice system . . ." *Id.*

125. *Protecting Victims' Privacy Rights: The Use of Pseudonyms in Criminal Cases*, NAT'L CRIME VICTIM L. INST., <https://law.lclark.edu/live/files/21757-protecting-victims-privacy-rightsthe-use-of> (last visited May 16, 2016) ("[A]llowing victims to proceed by pseudonym in criminal proceedings not only helps prevent 'secondary victimization,' but also assists with the proper functioning of the system.").

126. Compare Tyler Kingkade, *Brandeis University Punishes Sexual Assault with Sensitivity Training*, HUFFINGTON POST (June 11, 2014, 4:44 PM), http://www.huffingtonpost.com/2014/06/11/brandeis-sexual-assault_n_5476508.html (stating that after the Brandeis University School Committee found a *college student* responsible for sexual assault—albeit the student had also been charged with "taking advantage of one's incapacitation, sexual harassment, physical harm and invasion of personal privacy"—he was given a warning and was ordered to complete a sensitivity training), with Paresh Dave, *Arizona Teen a 'Serial Rapist' who Victimized 18 Girls, Sheriff Says*, L.A. TIMES (May 2, 2014, 6:01 PM), <http://www.latimes.com/nation/nationnow/la-na-nn-arizona-teen-serial-rapist-18-girls-victims-police-say-20140502-story.html> (noting that an 18-year-old *high-school student* accused of over a dozen sexual offenses faced a possibility of life in prison without parole).

127. See Jenny A. Montana, Note, *An Ineffective Weapon in the Fight Against Child Sexual Abuse: New Jersey's Megan's Law*, 3 J.L. & POL'Y *569, *598 (noting that even the most promising treatment for sex offenders ("relapse prevention") can help offenders constrain their sexual urges, but may never ultimately "cure" the offenders).

128. See Kinjo Kiema, *Mandatory Expulsion Could Deter Sexual Assault, Improve Campus Climate*, THE GW HATCHET (Feb. 17, 2015), <http://www.gwhatchet.com/2015/02/17/kinjo-kiema-mandatory-expulsion-could-deter-sexual-assault-improve-campus-climate/> (contending that mandatory expulsion as the default penalty for on-campus sexual misconduct will deter sexual misconduct and protect victims).

129. See Rubinfeld, *supra* note 110; see also *Scarlet Letter*, *supra* note 109 (stating at least one state, in an effort to protect future victims at other schools, has proposed legislation that would require colleges to put a permanent mark on the academic transcripts of students convicted of sexual assault or who try to withdraw from school while the investigations are pending).

to prevent future sexual crimes.¹³⁰ Therefore, if a student is expelled without treatment for the sexual misconduct, such student will likely continue abusing victims somewhere else.¹³¹ Instead of eradicating sexual abuse, we would be transferring rapists between schools.¹³²

After a school committee finds a student responsible for any type of sexual abuse, the student should be compelled to undergo a psychological evaluation,¹³³ and attend weekly psychological sessions for a required period of time as determined by the school psychologist after completing the evaluation.¹³⁴ Sex offender therapy is challenging because it can involve resistance to treatment, cognitive distortions, and potential for criminogenic behavior.¹³⁵ Also, therapists may have to deal with other factors such as addictions, factual denials, intent denials, impact denial, co-occurring disorders, shame, guilt, and demeaning self-talk.¹³⁶ However, sex offender therapy does work, and its ultimate goal is to prevent future incidents.¹³⁷

130. See *id.* (noting that indicating a student's sexual misconduct on his or her academic transcript would help protect future victims of on-campus sex crimes).

131. See Lisak & Miller, *supra* note 34, at 74 (stating that there are high rates of sexual reoffending); Rubinfeld, *supra* note 110 (stating that out of ninety percent of rapists, four percent rape repeatedly, and each of the four rapists average six victims); *Responding to Campus Sexual Assault*, U.S. DEP'T OF JUST., https://www.justice.gov/ovw/responding-campus-sexual-assault#_edn3 (last updated May 13, 2015) (stating that most perpetrators of sexual assault are often serial sexual offenders).

132. See Rubinfeld, *supra* note 110; see also Lisak & Miller, *supra* note 34, at 74.

133. See generally Vladimir Coric et al., *Assessing Sex Offenders*, PSYCHIATRY MMC, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2993520/> (last visited May 17, 2016) (providing an overview of the different types of sexual assessments available for sexual offenders, which include psychological evaluations). Sexual assessment can include questionnaires, penile plethysmography, visual reaction time, and even polygraph assessments. *Id.*

134. See *Choosing the Best Inpatient Sex Addiction Rehab Center*, REHABS.COM, <http://www.rehabs.com/about/sex-addiction-rehabs/> (last visited May 17, 2016) (stating some individuals with sexual behavioral disorders need to attend a rehab program and undergo various forms of therapy, including counseling, for twenty-eight to thirty days, and other individuals with a more serious sexual addiction might need to attend the program for ninety days or even longer).

135. Michael Hubbard, *Sex Offender Therapy: A Battle On Multiple Fronts*, COUNSELING TODAY (Mar. 31, 2014), <http://ct.counseling.org/2014/03/sex-offender-therapy-a-battle-on-multiple-fronts/> (noting that criminogenic behavior involves being manipulative, using power plays, deflection, or lying). Cognitive distortions occur when the sex offender says, for example, "[t]his label is unfair," or "[w]e'd had sex before and she didn't complain." *Id.*

136. *Id.* A sexual offender therapist has to deal with a sex offender's "denial of facts ('It wasn't me'); denial of intent ('I was drunk'); denial of impact ('She didn't seem to mind'); and denial of the need for treatment." *Id.*

137. See Jamie Nettles, *What Good is Sex Offender Treatment?*, JAMIE'S PAGES (2012), <http://jamiennettles.com/sex-offender-treatment.html> (noting that sex offender treatment can prevent future persons from being victimized); Hubbard, *supra* note 135 ("Although the risk of recidivism exists [among sexual offenders,] most offenders can and will lead productive and offense-free lives after treatment."); see also Karen Kersting, *New Hope for Sex Offender Treatment*, AM. PSYCHOL. ASS'N (2003), <http://www.apa.org/monitor/julaug03/newhope.aspx>

Therefore, when a therapist effectively treats a sexual offender, the person most benefitted from the treatment is any potential victim, who can live a normal life without becoming an actual victim of sexual abuse.¹³⁸

D. AUTOMATIC SUSPENSION OR EXPULSION

In order to ensure protection for the victims, once the school finds a student responsible for the sexual misconduct, such student should be automatically suspended, until completing the psychological evaluation and appropriate treatment.¹³⁹ Following the psychological treatment, the student may return to classes on a probation status, provided the student attends monthly sessions for that semester.¹⁴⁰ Nevertheless, if the student fails to submit himself or herself to the psychological evaluation, fails to complete the rehabilitation treatment, or fails to attend any monthly session, the student must be automatically expelled and the sexual misconduct must appear on the student's transcript.¹⁴¹

V. CONCLUSION

After forty years of struggle against sexual abuse and the enactment of several laws, the number of rapes on campuses is still alarming.¹⁴² The latest bill, Safe Campus Act of 2015, which was referred to the House

(explaining that a study found recidivism rates among untreated offenders was 17.3 percent versus 9.9 percent for treated offenders); Mark Oliver, Stephen Wong & Terry Nicholaichuk, *Outcome Evaluation of a High-Intensity Inpatient Sex Offender Treatment Program*, 24 J. OF INTERPERSONAL VIOLENCE, 522–23 (2008) [hereinafter *Sex Offender Treatment Program*].

In conclusion, the present study provides empirical support to indicate that a high-intensity treatment program for moderate to high-risk sex offenders that follows the 'what works' principles can yield reductions in sexual recidivism in both the shorter and longer-term, even after potentially confounding variables were controlled for. In short, treatment appeared to 'work' for this group of sex offenders.

Id.

The study showed that sexual reconviction rates after three years were 11.1% for treated offenders versus 17.7% for non-treated offenders; after five years, 16.9% for treated offenders versus 24.5% for non-treated offenders; and after ten years, 21.8 for treated offenders versus 32.3 for non-treated offenders. *Id.*

138. See Hubbard, *supra* note 135; Nettles, *supra* note 137.

139. See *FAQs on Sex Offender Treatment*, *supra* note 43 (stating sex offender treatment is different from other types of rehabilitation, because it is a serious and reassuring process that focuses on learning particular strategies aimed to stop abusive behavior).

140. See Kelci Lynn Lucier, *Disciplinary Probation*, ABOUT ED., <http://collegelife.about.com/od/academiclife/g/Disciplinary-Probation.htm> (last visited May 17, 2016) (“‘Disciplinary probation’ is the term many schools use to indicate that students . . . have engaged in behavior that the institution deems unacceptable.”).

141. See *Scarlet Letter*, *supra* note 109.

142. See generally KREBS ET AL., *supra* note 19, at 5-8 to -9 tbl.5-5 (providing statistics on sexual assault victims in colleges).

Committee on July 20, 2015, can be greatly improved.¹⁴³ As opposed to what the bill proposes, schools should have the ability to accommodate and protect victims, regardless if the victim reports the crime to the police or not.¹⁴⁴

Schools should be compelled to report alleged sexual abuse cases to local authorities once they have determined that such crime likely has occurred.¹⁴⁵ Further, a victim's identity should be protected, and schools should implement psychological evaluations and rehabilitation treatment for sexual abusers who continue attending school.¹⁴⁶ Victims need protection, and alleged perpetrators are entitled to due process of law.¹⁴⁷ A victim will not be forced to participate in a police investigation.¹⁴⁸ However, schools—in an effort to protect all their students—need to alert local authorities.¹⁴⁹ If the thesis of this paper had been accepted, and authorities had been alerted after two female students accused Joshua Keadle of sexual abuse, police would have investigated him, and Tyler's life might have been saved.¹⁵⁰

143. Cohn, *Mandatory Reporting of Campus Sexual Assault*, *supra* note 29 (stating that, under the Safe Campus Act, non-punitive accommodations should remain available for students who sustain on-campus sexual abuse, but who decide not to report their abuse).

144. See Safe Campus Act of 2015, H.R. 3403, 114th Cong. § 163(a)(2)(A), (c)(1) (2015) (stating that if the victim chooses not to report the crime to local police, the school will be prohibited from accommodating the victim's needs by making changes to class schedules or dormitory assignments).

145. See *supra* note 29 and accompanying text.

146. See *Sex Offender Treatment Program*, *supra* note 137 (explaining how treatment works for sexual offenders).

147. See Tovia Smith, *For Students Accused of Campus Rape, Legal Victories Win Back Rights*, NPR (Oct. 15, 2015, 4:45 AM), <http://www.npr.org/2015/10/15/446083439/for-students-accused-of-campus-rape-legal-victories-win-back-rights> (stating that school hearings can sometimes infringe on the rights of students accused of sexual assault, and that the justice system has intervened to provide these students with due process of law). A student from University of California was suspended after a fellow student accused him of sexual assault. *Id.* He asked the school permission to introduce text messages he had received from the alleged victim as evidence, but the school refused. *Id.* The student went to court and filed a case as John Doe; the judge found the school proceeding was unfair and ordered the school to reinstate John Doe. *Id.*

148. See *supra* note 119 and accompanying text.

149. See *supra* note 29 and accompanying text.

150. See Johnson, *supra* note 17.