

## Introduction: Purpose and Objectives

VAWA ADJUDICATOR TRAINING PROGRAM

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### 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

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### 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	Assess reports to determine the appropriate resolution process	Develop student and employee conduct proceedings in a manner that "protects the safety of victims" and "promotes accountability"	Identify additional training needs for adjudicators

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HISTORY

## The Violence Against Women Act (VAWA)

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## Clery Act

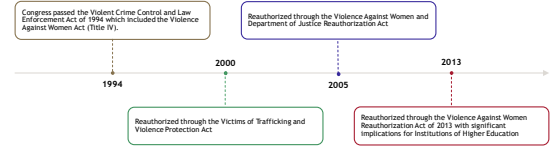


- Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act
- The Clery Act is a consumer protection law designed to educate and inform current and prospective students and employees about campus security related matters



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## The Violence Against Women Act



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## 2013 Reauthorization - Higher Education Implications



Combat Violent Crimes on Campus program



Annual Security Reports



Domestic Violence

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## 2013 Reauthorization - Higher Education Implications



Hate Crimes



Primary Prevention Programs



Ongoing Prevention and Awareness Programs

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2013 Reauthorization - Higher Education Implications



Written Notification



Behavioral Policies

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2013 Reauthorization - Higher Education Implications



Annual Training

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## Understanding Sexual Assault Complaints: Considerations for Adjudicators

VAWA ADJUDICATOR TRAINING PROGRAM

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### 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

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### 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.

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### 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.

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**Fondling**

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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**

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



**Statutory Rape**

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



**What is an Element?**

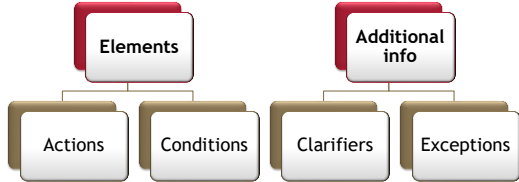
"An element is an essential item that a party is required to prove in order to successfully assert a claim or a defense."

Blacks Law Dictionary

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## Understanding the Elements



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## Definition - RAPE



*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.*

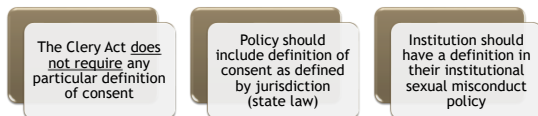


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## Consent



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## Element Two – Consent (Force)



- Physical or verbal resistance
- Threats (or perceived threats), coercion, intimidation
- Misinterpreted behaviors
- Power differentials (real or perceived)

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## 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

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## Definition - FONDLING



*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.

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## Definition - INCEST



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

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## Definition - STATUTORY RAPE



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

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## Evidentiary Standard



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## FINAL THOUGHTS




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## Understanding Domestic and Dating Violence Complaints: Considerations for Adjudicators

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### 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.

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## Domestic Violence

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- 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?”

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- 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 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

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## 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.

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

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## 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 does not include acts covered under the definition of domestic violence.

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## Important Considerations



Unique



Cycle of violence



Power and control

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# Interviews

Lack of cooperation

Cross-claims

Primary aggressor

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# 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?

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# FINAL THOUGHTS



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## Understanding Stalking Complaints: Considerations for Adjudicators

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### Learning Objectives




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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.

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## VAWA Offense: Stalking

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*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."

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## 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, observers, surveils, threatens, or communicates

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## 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.
- **Specific Person:** “to or about a person or interferes with a person’s property”

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## 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.”

- 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?

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## Substantial Emotional Distress

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- 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



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## 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

- Reasonable college student
- The Complainant’s perspective

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## 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

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## Stalking - Special Considerations

Stalking	and Interpersonal Violence
Stalking	and disability considerations
Stalking	under Title IX

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## Sanctioning and Remediating Stalking



- Motivation
  - Revenge
  - Fear
  - Joke
  - Power
- Impact
  - Severity
  - Work/school
  - Reputation
  - Emotional distress

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Final Thoughts



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