

A Plain Language Explanation of Distinctions Between the New York State Penal Law and the University Disciplinary Processes*



The New York State Education Law Article 129-B requires that college/university or other officials explain differences between college/university processes and the criminal justice process in addressing sexual and interpersonal violence.

There are significant differences between the two systems because they have different, important goals. In the criminal justice system, prosecutors pursue cases when they believe there is sufficient evidence to prove, beyond a reasonable doubt, that an individual has committed a criminal act. A person who is convicted of a crime will face criminal penalties, such as incarceration, probation, or the imposition of a fine. The university disciplinary process seeks to determine whether an individual has violated college policy. In this process, a preponderance of the evidence standard of proof is used to determine responsibility. A person who is found to have violated university policy may be suspended, expelled or otherwise restricted from full participation in the college community. This document is intended to help explain the differences between the criminal justice system and university disciplinary processes.

	Criminal Justice System	University Disciplinary System
Goals.	Public safety, deterrence, and punishment.	Education; safety; safe and supportive campus environment.
Governing Law.	New York State Penal Code; New York State Rules of Criminal Procedure (or another state's rules if the crime took place there), Federal Criminal Law, and Rules of Evidence.	Title IX; The Clery Act as amended by the Violence Against Women Act; NYS Education Law sections 129-A and 129-B; Code of Conduct; Anti-Discrimination, Harassment (Including Sexual Misconduct, Dating Violence, Domestic Violence, Stalking) and Retaliation Policy.
How to report and whether there must be action once a report is made.	Crimes involving sexual violence may be reported to campus police (if the campus has police officers), the local police agency, or to the New York State Police. Certain crimes may also be reported to federal law enforcement agents. Once a report is made, the decision whether to investigate is made by the police/law enforcement agency, often in consultation with a District Attorney or other prosecuting agency. An investigation may be conducted without the consent or participation of a reporting individual. The ultimate decision of whether to initiate a criminal prosecution is initially made by a prosecutor. In cases involving felony charges, the final charging decision is made by a Grand Jury.	Victims may disclose sexual violence to various university employees who are designated confidential resources (Student Counseling Center, Health Services Center, & Pastoral Counselors of the Interfaith Center) or to others who will try to ensure privacy to the extent consistent with the institution's obligation to provide a safe educational environment. Disclosures made to a confidential resource will not trigger an investigation. When a report is made to the Title IX Coordinator (TIXC) or another Non-Confidential resource (i.e. Public Safety, Student Conduct, Student Affairs, Campus Security Authorities, Responsible Employees), the TIXC will determine whether an investigation is necessary by weighing a request for confidentiality by the reporting individual against the continuing safety of that person and the safety and best interests of the campus community.
Who investigates?	Police or other law enforcement officials.	Investigators employed or retained by the university; these individuals may work for different departments within the institution, including, but not limited to, the Public Safety department, Title IX, Student Affairs and Academic Affairs.
Procedures	See Governing Law. Procedures established by police departments, prosecutors' offices, etc.	University policies and Bylaws, which generally incorporate requirements of Governing Law. Collective bargaining agreements may impact some procedures.
Standard of Evidence.	Crimes must be proven "Beyond a Reasonable Doubt"	A violation of disciplinary rules must be found by a "Preponderance of the Evidence" (more likely than not)
Confidentiality.	Law enforcement agencies offer some confidential assistance, but a criminal charge and trial must be public.	Universities offer confidential resources, but a disciplinary proceeding requires that relevant information be shared with those involved.

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Privacy.	Criminal trials must be public.	Disciplinary proceedings are kept as private as possible, but some information may be shared with certain individuals within the university, the parties, and pursuant to law.
Who are the parties?	The prosecution and defendant. The victim/survivor is <u>not</u> a party, but often the critical witness for the prosecution.	Varies by school—some consider the institution and the respondent to be parties, and confer on the reporting individual certain rights to participate, as the law provides. Otherwise, reporting individual and accused/respondent.
Participation in the process.	In limited circumstances, a criminal prosecution can proceed without the participation or cooperation of the reporting individual, but without a reporting individual’s participation, it is generally more difficult to prove a crime beyond a reasonable doubt.	Reporting students cannot be required to participate in the university process. However, the university will be limited in its ability to respond if a reporting individual does not participate.
Who initiates the proceedings?	A prosecutor, acting on behalf of the state (or the United States in federal cases).	The university initiates proceedings. While rules vary from school to school, they must provide an active role for the reporting individual.
Testimony.	In court, testimony is generally public. Other parties are, through counsel, entitled to cross-examine witnesses.	The rules are established by individual university, but some institutions provide for alternative approaches that permit students to testify without having other parties in the room and/or to ask cross-examination questions only through the disciplinary panel, investigator, or representative of the reporting individual and/or respondent.
Role of attorneys.	Both the state and the defendant are represented by counsel; counsel may question witnesses.	No University employee, student, or third party may be accompanied by an attorney unless: (a) complainant or respondent are referred to the University Hearing Board pursuant to the Code of Conduct, or; (b) Criminal charges arising from the same incident have been filed, or (c) The case involves allegations of sexual misconduct, dating violence, domestic violence and/or stalking. In such cases, the role of the attorney or advisor of choice will be limited to private consultation with the complainant or respondent and the advisor of choice or attorney may not actively participate in the proceedings or meetings in any way.
Mental Health and Sexual History.	In New York, a reporting individual’s prior sexual and mental health history is generally, but not always, inadmissible in a criminal case. There are limited circumstances under which directly relevant evidence of that kind may be admitted.	Generally not admissible, but subject to quite limited exceptions. Education Law 129-b permits parties to exclude information about their prior sexual history with persons other than the other party and also to exclude evidence of their own Mental health history in the fact finding phase of the disciplinary process.
Possible Results.	If a prosecution takes place, the defendant may <ul style="list-style-type: none"> ❖ plead guilty or “no contest” ❖ have the case dismissed by the judge (on legal grounds) ❖ be found “guilty” or “not guilty” by a judge or jury 	In cases that do not involve sexual assault, some schools permit mediation or similar procedures if parties agree. If there is a formal proceeding, the respondent may be found “responsible” or “not responsible” for violations of the institution’s rules. Respondents may also accept responsibility before a finding by an adjudicator.
Sanctions.	An individual found guilty may be fined, imprisoned, or both. In some courts, alternative sanctions are sometimes used.	An individual found responsible for violating university policy may be given a range of sanctions (depending on the severity of the conduct and other factors, such as prior judicial history), ranging from a warning to suspension or expulsion from the institution.

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