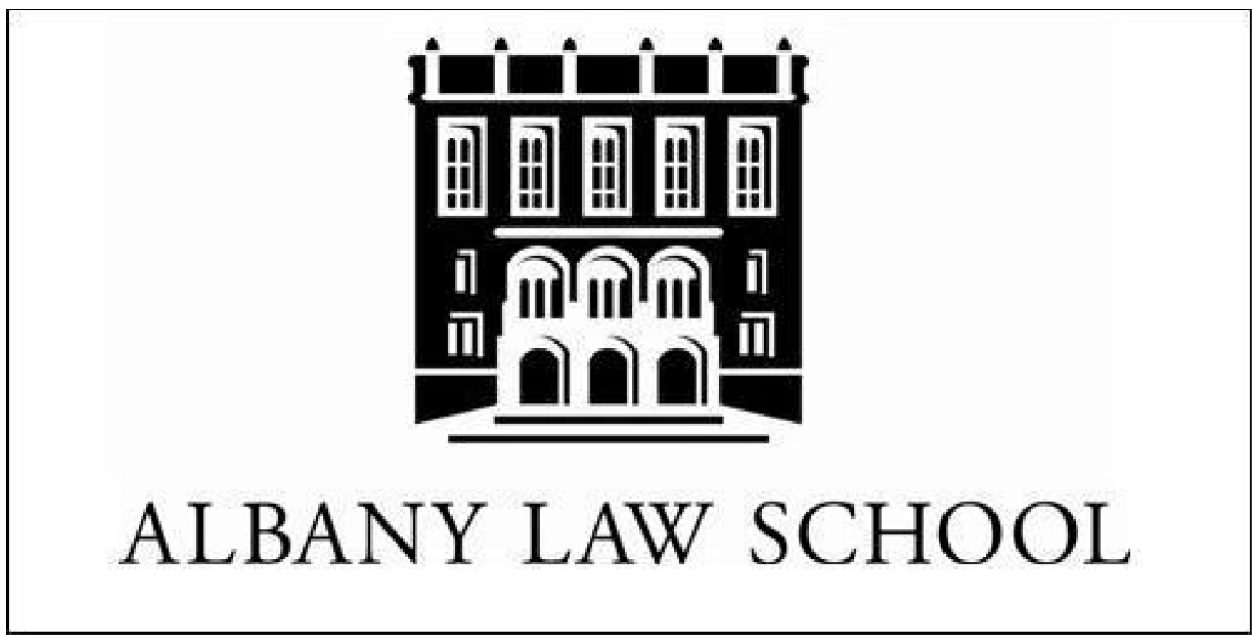


# ALBANY LAW SCHOOL

## Annual Security and Fire Safety Report



March 28, 2022

In November, 1990, the Student Right-to-Know and Campus Security Act was signed into law (Public Law 101-542 as amended by Public Law 102-26 and The Higher Education Amendments of 1992). This law, known as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, requires educational institutions to publish and distribute an annual security report containing campus security policies and procedures as well as campus crime statistics. The Higher Education Act of 2008 created additional requirements to disclose policies related to fire safety, missing persons and emergency notification. In 2013, the reauthorization of the Violence Against Women Act further expanded the requirements for policies and crime data collection. This document is published and distributed to the students and employees of Albany Law School in compliance with these acts.

### **Office of Public Safety**

Security services for Albany Law School are provided by the University Heights Association's Office of Public Safety. The University Heights Association is a consortium of three colleges - Albany Law School, The Albany College of Pharmacy and The Sage Colleges - which share contiguous campuses and a variety of services.

The Office of Public Safety provides uniformed, radio-dispatched patrols on a 24 hour a day, seven days a week basis. Among the services provided by the Office of Public Safety are:

- preventive patrol, by vehicle, foot and bicycle
- emergency response
- crisis management
- law enforcement
- incident reporting and Clery Act reporting
- investigations
- medical emergency response
- traffic control and parking enforcement
- crime prevention awareness and training
- liaison with public sector public safety agencies

The staff of the Office of Public Safety is assisted by several technologies that are intended to enhance the safety and security of students, faculty and staff across all of the campuses.

Those technologies include:

- "Blue light" emergency telephones that connect directly to the Public Safety dispatch center. They are placed at strategic locations around campus.
- Closed circuit television systems which place cameras at a number of locations, both inside and outside, around campus. The cameras are monitored and recorded for investigatory and evidentiary purposes.
- Proximity card access to exterior doors of buildings, which notifies Public Safety when doors are opened outside of normal business hours or when they are propped open.
- *Send Word Now*, an emergency text messaging system that the College uses to communicate vital information to Albany Law School community in the event of an emergency. *Send Word Now* allows students, staff and faculty to register multiple cellular phone numbers and email addresses to which emergency messages and instructions will be sent.

### **Authority of Campus Public Safety Officers**

Public Safety Officers are security guards licensed by the State of New York. They are trained to the standards and requirements set by the New York State Division for Criminal Justice Services and the Department of State.

As security guards, their authority to arrest is the same as a citizen; they may make warrantless arrests for a felony "in fact committed" or any offense "in fact committed" in their presence. They may not make warrant arrests or arrests based on reasonable cause.

Selected Public Safety Officers attend a regional Campus Public Safety Officer Academy at the Zone 5 Regional Law Enforcement Academy, which is certified by NYS DCJS. Graduates of that Academy are eligible for appointment, upon request of the Board of Trustees, as a private college security officer. Such appointment grants authority, restricted to the geographical area of authority, to make a warrantless arrest for an offense committed in their presence, or a crime when they have reasonable cause to believe that such person has committed such crime.

Public Safety Officers have the authority request identification from all persons on campus, and to determine the reason for their presence on campus.

Public Safety Officers have the authority to issue UHA tickets for parking violations and moving offenses on any of the UHA campuses.

## **Reporting Criminal Activity, Emergencies and Suspicious Behavior**

The Office of Public Safety is located in the Armory at Sage, 130 New Scotland Avenue, Albany, NY.

All students, staff and faculty of Albany Law School are encouraged to immediately report to Public Safety any criminal activity, emergency or hazardous situation, or suspicious person or behavior as follows:

Emergencies should be reported at **518-244-3177**. They may also be reported from any “blue light” telephone located across the UHA campuses.

Non-emergencies should be reported to 518-244-3177.

In the event that the victim of a crime is unable to report it, anyone with knowledge of the crime is encouraged to report it to Public Safety or any Campus Security Authority.

The Administrative Offices of UHA Public Safety may be reached at 518-292-1767 or by email at [publicsafety@universityheights.org](mailto:publicsafety@universityheights.org).

For your safety and protection, all calls made to 518-244-3177 are recorded and are available for instant replay. Although the Public Safety Dispatch Center has direct communication with the Public Safety Answering Points (PSAPs) in both Albany and Rensselaer counties, emergencies may be reported directly to the Albany Police or Fire Departments by dialing 911 from any campus telephone.

## **Campus Security Authorities**

Recognizing that crime victims may be inclined to report their victimization to someone other than a Public Safety Officer or the police, the Clery Act requires all institutions to collect crime reports from a variety of individuals that Clery considers to be “campus security authorities”. Under Clery, a crime is “reported” when it is brought to the attention of a CSA by a victim, witness, offender or third party. If a CSA receives crime information and believes it was provided in good faith, he or she must document the incident in a report.

At Albany Law School, Campus Security Authorities include all University Heights Association Public Safety Officers and the following.

<b>Title</b>	<b>Name</b>	<b>Phone</b>	<b>email</b>
Government Law Review & GLC Fellows Advisor, Associate Professor	Ayers, Ava	518-445-2351	<a href="mailto:aayer@albanylaw.edu">aayer@albanylaw.edu</a>
Law Review Advisor, Professor	Bonventre, Vincent	518-472-5856	<a href="mailto:vbonv@albanylaw.edu">vbonv@albanylaw.edu</a>
Harassment Committee Member, Professor	Breger, Melissa	518-445-3325	<a href="mailto:mbreg@albanylaw.edu">mbreg@albanylaw.edu</a>
Harassment Committee Member, Professor	Connors, Patrick	518-445-2322	<a href="mailto:pconn@albanylaw.edu">pconn@albanylaw.edu</a>
Pro Bono Coordinator, Associate Professor	De Barbieri, Ted	518-445-3234	<a href="mailto:edebea@albanylaw.edu">edebea@albanylaw.edu</a>
Harassment Committee Member, Director of Human Resources	Donnelly, Sherri	518-445-2396	<a href="mailto:sdonn@albanylaw.edu">sdonn@albanylaw.edu</a>
Science & Tech Advisor, Associate Professor	Heverly, Robert	518-445-2379	<a href="mailto:rheve@albanylaw.edu">rheve@albanylaw.edu</a>
Associate Director of Academic & Student Programs	Irizarry, Andrea	518-445-3302	<a href="mailto:airiz@albanylaw.edu">airiz@albanylaw.edu</a>
Director, Facilities and Administrative Services	McKinley, Charles	518-445-2381	<a href="mailto:cmcki@albanylaw.edu">cmcki@albanylaw.edu</a>
Assistant Dean for Admissions	Mangione, Amy	518-445-2361	<a href="mailto:amang@albanylaw.edu">amang@albanylaw.edu</a>
Associate Dean for Academic Affairs	Mayer, Connie	518-445-2393	<a href="mailto:cmaye@albanylaw.edu">cmaye@albanylaw.edu</a>
Associate Dean for Student Affairs	Queenan, Rosemary	518-445-3394	<a href="mailto:rquee@albanylaw.edu">rquee@albanylaw.edu</a>
Vice President for Finance & Business	Rauscher, Victor	518-445-3294	<a href="mailto:vraus@albanylaw.edu">vraus@albanylaw.edu</a>
Moot Court Advisor, Professor	Tenenbaum, Evelyn	518-445-3375	<a href="mailto:etene@albanylaw.edu">etene@albanylaw.edu</a>
Assistant Dean Career & Professional Development Center	Walsh-Fitzpatrick, Mary	518-445-2377	<a href="mailto:mfitz@albanylaw.edu">mfitz@albanylaw.edu</a>
Assistant Dean for Diversity and Inclusion	Cruz, Jermaine	518-445-2346	<a href="mailto:jcruz@albanylaw.edu">jcruz@albanylaw.edu</a>
Harassment Committee Member, Director of Financial Aid	Wedler, Andrea	518-445-2388	<a href="mailto:awedl@albanylaw.edu">awedl@albanylaw.edu</a>

Harassment Committee Member, Assistant Professor	Dodds, Ciji	518-445- 2304	<a href="mailto:cdodd@albanylaw.edu">cdodd@albanylaw.edu</a>
Harassment Committee Member, Senior Staff Attorney	Arena, Todd	518-445- 3225	<a href="mailto:taren@albanylaw.edu">taren@albanylaw.edu</a>
Harassment Committee Member, Title IX Coordinator	Botticelli, Chantelle	518-445- 3346	<a href="mailto:cbott@albanylaw.edu">cbott@albanylaw.edu</a>
Moot Court Advisor, Visiting Assistant Professor	Bearat, Hayat	518-445- 2354	<a href="mailto:hbear@albanylaw.edu">hbear@albanylaw.edu</a>

**Response to Reports**

It is the policy of the Office of Public Safety to investigate all crimes, complaints and incidents reported. It may proactively investigate any activity or situation of potential hazard or criminality. Depending on the seriousness of an incident, the wishes of the complainant and the needs of the institution, the incident may be referred to appropriate local, state or federal law enforcement agencies. A Memorandum of Understanding regarding the response to serious incidents and criminal investigations is in place with the Albany Police Department and a cooperative working relationship has been forged with them.

**Voluntary Anonymous Reporting**

If you are the victim of a crime and do not want to pursue action within Albany Law School judicial process or within the criminal justice process, you may want to consider making an anonymous report. With your permission, the Director of Public Safety will cause a report to be filed recording the details of the incident without revealing your identity. The purpose of an anonymous report is to comply with your wish to keep the incident confidential, while taking steps to ensure the future safety of yourself and others. With such information, the College can keep accurate records of the number of incidents involving students and Faculty/staff, determine if and where there is a pattern of crime, and alert Albany Law School community to a potential danger. Reports filed in this manner are counted and disclosed in the annual crime statistics for the institution.

## **Disclosing information to the Community**

Information related to reported crime and emergencies is essential to a safe campus. The Office of Public Safety has several means of sharing this important information with the community.

In the event of a serious incident that poses an immediate threat to members of the community, a message will be disseminated through the *Send Word Now* emergency notification system advising people of the incident and providing instructions that should be followed. This system will be used for “all hazards”, regardless of the nature of the incident. It may be used for crimes, weather emergencies, hazardous material incidents, terrorist incidents or natural disasters. *Send Word Now* will also be used to update the community and provide an “all clear” message when the incident has been resolved. *Send Word Now* messages are authorized by the President and Dean or Vice President for Finance and Business.

The Office of Public Safety will also provide “timely warnings” when crimes occur that pose a continuing threat to members of the community. A continuing threat occurs when a suspect in a crime is not yet identified or is identified but remains at large. These warnings are generally shared by email, voicemail, electronic bulletin board or by posted flyers. In the event that a threat is both immediate and continuing, *Send Word Now* may also be used.

All crimes reported to the Office of Public Safety will be recorded in the crime log, which is available to the public at 130 New Scotland Avenue. This chronological log of crime on campus is updated each business day and shows crimes occurring over the most recent 60 days. It contains information such as the nature of the crime, its location, date and time, and the disposition of the case.

A fire safety log is also available at the Office of Public Safety. It includes information about all fires occurring at Albany Law School, including the nature of the fire, its location, date and time. It is updated each business day and shows any fires occurring over the most recent 60 days.

Other sources of information about crimes and fires include the following tables in this document: Crime Statistics, Hate Crimes and Fires. Incident reports may be available to the community in the Office of Public Safety, contingent upon confidentiality requirements and the need for investigative integrity. The US Department of Education also offers this information for all colleges and universities in the country. It is available at [Security Survey](#).

## **Building Access**

### **General**

Albany Law School encourages the participation of the broader community in a range of campus activities, but asks members of the public to recognize that Albany Law School is a private institution and its grounds are designated for members of the Law School community, consisting of students, faculty and staff. The principal campus and other Law School owned properties are not public facilities, though the Law School seeks to respond to community needs and the needs of the general public by sharing its resources and facilities when appropriate and possible. In every case, the Law School must protect the central educational purpose for which it was established and must conserve its resources, both physical and financial. Albany Law School must also be concerned for the safety of all members of the Law School community.

Unless specifically designated as "open to the public," all Albany Law School meetings, activities and events on campus are considered to be limited to participation by members of the campus community. Please check the Law School's Website (<http://albanylaw.edu/>) to determine whether an event is "open to the public." Some events may require advance registration.

The Law School reserves the right to determine who may enter its property and reserves the right to refuse entry to any individual. The Law School further reserves the right to restrict the entry and presence of any individual or group on campus and to impose specific limitations or conditions related to the entry or presence of any individual or group on campus.

While on campus, any individual attending an event designated as "open to the public" must adhere to all Law School rules of conduct, all rules and conditions proscribed for that event, and state and federal law. Members of the general public who are authorized to attend public events may enter campus for the sole purpose of attending the event and should traverse the campus directly to and from the building or location of the event.

Members of the public are not authorized to enter any building other than the building where the event is scheduled to occur. Members of the general public must not interfere with, accost or disrupt any member of the Law School community while on campus.

In instances in which the Law School makes any of its facilities available for use by any external group or organization, the group or organization may impose additional limits and restrictions upon attendance at the events it sponsors. The Law School shall have no liability or responsibility for actions of such parties.



### **2000 Building**

Main Lobby door is unlocked and Security desk is manned: 7:45-4:30 Monday through Friday except Holidays. Outside of these times Students will have proximity card access based upon a programed schedule dependent on need. Faculty and Staff have proximity card access at all times.

### **1928 Building**

The Security desk is manned 8am-Midnight every day except Thanksgiving Day and a specified period over winter break.

The Holland Ave entrance is unlocked:

- 8am-8pm Monday through Friday
- 9am-8pm Saturday
- 10am-8pm Sunday

Students have proximity card access to the 1928 Building:

- 6:30am – Midnight Monday through Friday
- 8am –Midnight Saturday and Sunday

Faculty and Staff have proximity card access at all times.

### **Library**

Access is available to faculty, staff, students, visitors and the public until 4:30PM, based upon access requirements set by the Library and posted at the security desk. After 4:30PM it is restricted to faculty, staff, students and attorneys.

#### **Normal School year schedule:**

- |                           |                     |
|---------------------------|---------------------|
| • Monday through Thursday | 8:00 AM to Midnight |
| • Friday                  | 8:00 AM to 10:00 PM |
| • Saturday                | 9:00 AM to 9:00 PM  |
| • Sunday                  | 10:00 AM – Midnight |

**The schedule will vary throughout the year as posted at the Library entrance.**

The main entrance doors to the library are always locked. Faculty and certain administrative staff members have access cards allowing unlimited access; others are excluded when the building is closed, with certain specified exceptions to accommodate school programs such as the Law Review and Moot Court Board. Security and maintenance staff will not admit any unauthorized person to the library when it is closed. Although the Library, as a Federal Depository, is open to the public with a defined need 8 AM – 4:30 PM Monday through Friday, only students, faculty and staff of the law school are permitted at other times. The exception to this is that outside attorneys are permitted to use the library during evening and weekend hours.

## **Safety Awareness and Crime Prevention Programming**

From time to time during the year, the Law School or interested student groups offer programs on specific security concerns or problems. Memoranda are periodically addressed to all members of the Law School community to remind everyone to remain alert and use care in their personal activities. These may be issued in response to actual occurrences or reports from outside sources of patterns of suspicious activity in the area.

## **Emergency Notification and Evacuation of Albany Law School**

In the event of an emergency requiring immediate action, Albany Law School will notify the community and provide instructions as soon as a timely assessment of the situation allows. A *Send Word Now* message will be crafted and sent, and global email and voicemails may be sent. Depending on circumstances, a room by room verbal notification may be made. Each of those information delivery systems is practiced and tested once each semester.

Evacuation is practiced three times a year. Every classroom and office has evacuation routes and emergency information prominently displayed.

## **Fire Safety at Albany Law**

In partnership with the New York State Office of Fire Prevention and Control (OFPC) and the University Heights Association's Office of Public Safety, Albany Law School has a comprehensive fire safety program. A Fire Safety Officer employed by UHA is shared by the member institutions. Annual inspections conducted by the OFPC are thorough and intensive, and result in the certification of our facilities as completely compliant with state and local fire codes. Training programs for students, faculty and staff are available through UHA Public Safety. Policies are in place, in student and employee handbooks, that prevent sources of fire. Evacuation policies are practiced regularly through fire drills.

Albany Law School does not have residence facilities.

## **Missing Persons**

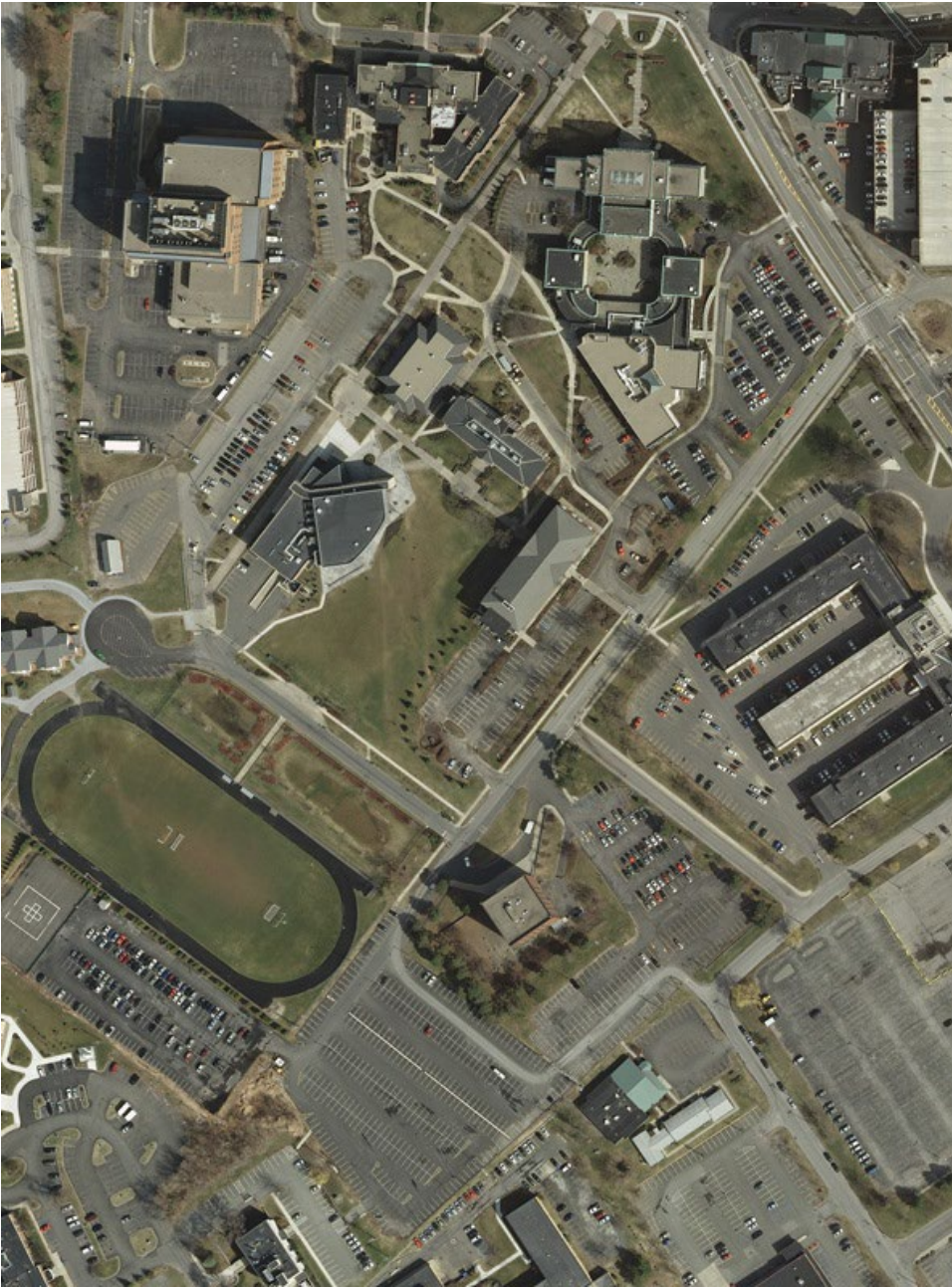
Albany Law School, in partnership with the University Heights Association's Office of Public Safety, has a comprehensive policy in place for the investigation of missing persons. Although primarily intended as a safety net for resident students, it may be used to investigate the disappearance of any student, staff member or faculty member who disappears from campus. It can be used to assist local law enforcement agencies who are investigating the disappearance

of a community member from some off-campus location.

Key elements of the plan include:

- Resident students may identify an emergency contact person who would be notified confidentially in the event of a disappearance.
- The emergency contact person and the Albany Police Department must be notified no longer than twenty-four hours after a person is thought to be missing.
- Circumstances such as the possibility of foul play or mental health concerns require the immediate notification of the emergency contact person and the Albany Police Department.
- A Memorandum of Understanding is in place between the University Heights Association's Office of Public Safety and the Albany Police Department that clearly sets responsibilities in such an investigation and requires a complete and timely exchange of information between the agencies.

**Campus Map**



## **Campus Crime Statistics**

The Campus Security Act requires that the institution collect and distribute statistical data concerning certain specified crimes on campus. It further requires that those crimes be reported according to where the incidents occur. There are four categories for location of criminal activity, defined as follows:

“campus” means any building or property controlled by an institution of higher education within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls and, property within the same reasonably contiguous geographic area of the institution that is owned by the institution but controlled by another person, is used by students, and supports institutional purposes (such as a food or other retail vendor).

“non-campus building or property” means any building or property controlled by a student organization recognized by the institution, and any building or property (other than a branch campus) owned or controlled by an institution of higher education that is used in direct support of, or in relation to, the institution's educational purposes, is used by students, and is not within the same reasonably contiguous geographic area of the institution.

“public property” means all public property, all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution if the facility is used by the institution in direct support of, or in a manner related to the institution's educational purposes.

“residence hall” has its common meaning. Albany Law School does not have residence halls.

The following crimes have been reported in the years 2013, 2014 and 2015:

Albany Law School  
Crime Statistics  
2018 - 2020


Offense	Year	On Campus Property	Non Campus Property	Public Property	Total		Residential Facilities	Unfounded
Murder/Non-Negligent Manslaughter	2018	0	0	0	0		0	0
	2019	0	0	0	0		0	0
	2020	0	0	0	0		0	0
Negligent Manslaughter	2018	0	0	0	0		0	0
	2019	0	0	0	0		0	0
	2020	0	0	0	0		0	0
Rape	2018	0	0	0	0		0	0
	2019	0	0	0	0		0	0
	2020	0	0	0	0		0	0
Fondling	2018	0	0	0	0		0	0
	2019	0	0	0	0		0	0
	2020	0	0	0	0		0	0
Incest	2018	0	0	0	0		0	0
	2019	0	0	0	0		0	0
	2020	0	0	0	0		0	0
Statutory Rape	2018	0	0	0	0		0	0
	2019	0	0	0	0		0	0
	2020	0	0	0	0		0	0
Robbery	2018	0	0	0	0		0	0
	2019	0	0	0	0		0	0
	2020	0	0	0	0		0	0
Aggravated Assault	2018	0	0	0	0		0	0
	2019	0	0	0	0		0	0
	2020	0	0	0	0		0	0
Burglary	2018	0	0	0	0		0	0
	2019	0	0	0	0		0	0
	2020	0	0	0	0		0	0
Motor Vehicle Theft	2018	0	0	0	0		0	0
	2019	0	0	0	0		0	0
	2020	0	0	0	0		0	0
Arson	2018	0	0	0	0		0	0
	2019	0	0	0	0		0	0
	2020	0	0	0	0		0	0

**Albany Law School  
Interpersonal Violence  
2018 - 2020**

<b>Offense</b>	<b>Year</b>	<b>On Campus</b>	<b>Non Campus</b>	<b>Public Property</b>	<b>Total</b>		<b>Residential Facility</b>
Domestic Violence	2018	0	0	0	0		0
	2019	0	0	0	0		0
	2020	0	0	0	0		0
Dating Violence	2018	0	0	0	0		0
	2019	0	0	0	0		0
	2020	0	0	0	0		0
Stalking	2018	0	0	0	0		0
	2019	0	0	0	0		0
	2020	0	0	0	0		0

**Albany Law School  
Arrests and Referrals  
2018 - 2020**

<b>Offense</b>	<b>Year</b>	<b>On Campus</b>	<b>Non Campus</b>	<b>Public Property</b>	<b>Total</b>		<b>Residential Facility *</b>
Liquor Law Arrests	2018	0	0	0	0		0
	2019	0	0	0	0		0
	2020	0	0	0	0		0
Liquor Law Violations referred for disciplinary action	2018	0	0	0	0		0
	2019	0	0	0	0		0
	2020	0	0	0	0		0
Drug Law Arrests	2018	0	0	0	0		0
	2019	0	0	0	0		0
	2020	0	0	0	0		0
Drug Law Violations referred for disciplinary action	2018	0	0	0	0		0
	2019	0	0	0	0		0
	2020	0	0	0	0		0
Illegal Weapons Possession Arrests	2018	0	0	0	0		0
	2019	0	0	0	0		0
	2020	0	0	0	0		0

Illegal Weapons	2018	0	0	0	0		0
Possession referred for disciplinary action	2019	0	0	0	0		0
	2020	0	0	0	0		0

\*Crimes reported in the Residence Halls are also included in the On Campus category

## **Hate Crimes**

Certain crimes that single out an individual because of actual or perceived race, gender, gender identity, religion, sexual orientation, ethnicity, national origin or disability are to be reported according to the category of prejudice. Those crimes include all of the crimes enumerated above in the “Crime Statistics” section of this report, as well as the crimes of larceny-theft, simple assault, intimidation, destruction/damage/vandalism to property and any other crime involving bodily injury.

Albany Law School reports no reported incidents of any of those crimes for the years 2018, 2019 and 2020.

## **Policy on Harassment, Sexual Assault and Relationship Violence**

### **I. Statement of Purpose**

Albany Law School recognizes the enriching effects of human diversity in all its forms on the Albany Law School community and the broader legal profession, and Albany Law School also clearly understands that discrimination, harassment, abuse, or exclusion on the basis of an individual’s personal characteristics may severely impair the ability of an individual to contribute to and benefit from the life of Albany Law School. Out of deep concern for these risks, Albany Law School’s policy is intended to provide a campus environment free of harassment, sexual assault and relationship violence for all members of the campus community. Albany Law School recognizes that sexual activity is a normal, multifaceted, and cherished part of human existence, that personal decisions about sexual activity are part of the basic autonomy of the self, and that the dignity of the individual requires abiding respect for the sexual privacy of each person. Albany Law School nevertheless, also understands clearly, that the personal benefits of human sexuality depend fundamentally upon the willing choice of each individual, and that the harms when that choice is invaded by others may be profound and enduring, and may severely impair the ability to contribute to and benefit from the life of Albany Law School. The right of the individual to sexual autonomy and sexual privacy are fundamental, and this policy shall be construed and implemented with the maximum respect possible for this ideal.

This policy is intended to define behavioral expectations and, therefore, deter incidents, and inform students as to the policies and procedures that will be used to respond to allegations.



## **II. Scope of the Policy**

This policy applies to behavior engaged in, or experienced by, any student. The behavior expectations stated in this policy apply on-campus as well as off-campus, if within the context of a Law School program, including interactions that occur via electronic or virtual means, as well as between a student and non-community members, such as visitors to campus (e.g., alumni, family of students, vendors, etc.). Conduct that occurs off-campus and not in connection with Law School programs may violate this policy if the conduct creates a threatening or hostile environment on-campus or with a Law School program or if the incident causes concern for the safety or security of Albany Law School community. If a complaint is made against an individual who is accepted to Albany Law School but is not yet matriculated as a student, the student disciplinary procedure will apply. Non-community members are expected to abide by the behavioral expectations in this policy. However, complaints against non-community members are not handled through the formal investigatory or disciplinary procedures set forth in this policy. Complaints against visitors to the campus should be reported to the Office of Student Affairs or Human Resources, which will take appropriate action, up to and including banning the individual from Law School property. This policy applies regardless of the complainant's or respondent's race, creed, color, gender, gender identity, gender expression, ethnicity, national origin, religion, marital status, familial status, pregnancy, age, sexual orientation, military or veteran status, disability, genetic predisposition status, domestic violence victim status, or any other protected characteristic under applicable local, state or federal law. If any part of the New York State's "Enough is Enough Law" (Article 129-B of the New York Education Law) is deemed unenforceable by a court of controlling authority, that portion of the policy affected by the unenforceable portion shall be deemed severed.

## **III. Definition of Harassment**

Albany Law School prohibits the harassment of any student, staff member or faculty member on the basis of legally protected characteristics. This includes harassment because of race, creed, color, gender, gender identify, gender expression, transgender status, ethnicity, national origin, religion, marital status, familial status, pregnancy, age, sexual orientation, military or veteran status, disability, genetic predisposition status, status as a victim of domestic violence or any other characteristic protected under local, state or federal law. Merely by way of example, harassing conduct may consist of epithets, slurs, racially or religiously offensive jokes or graffiti, or being targeted for hostile or degrading treatment because of one's race, color, national origin, ethnicity, and other characteristics listed above. Sexual harassment is one form of harassment. It refers to unwelcome, offensive sexual or gender-based conduct. Sexual harassment may include behavior that: exploits another on the basis of sex, such as voyeurism; intentionally invades privacy when a person is engaged in a physically private or intimate activity; or distributes sexually explicit images of another without that person's consent. The following list provides examples of the kind of behavior that may be harassing:

**Verbal** — examples: vulgar or lewd statements; racial, ethnic or religious slurs; name-calling; demeaning or denigrating a person because of his or her color or ethnic background; and so on

**Physical** — examples: unwanted touching or repeated pressuring for a dating or romantic relationship after it is clear that the attention is unwelcome; or physically harming or threatening another because of his or her race, religion, sexual orientation; and so on

**Visual** — examples: suggestive or lewd pictures or videos; cartoons, graffiti, or symbols that offend based on race, disability, sexual orientation; using gestures meant to mimic or mock; and so on

**Communication-based** — examples: unwanted, offensive sexually graphic, threatening or vulgar phone calls or emails; social media text messages, chats or blogs that threaten or demean a person on the basis of a protected characteristic; or communications with racially, religiously or similar offensive content; and similar conduct.

The determination as to whether the alleged harassment in violation of this policy occurred depends on a consideration of the totality of the circumstances. This includes the context of a communication or incident, the relationship of the individuals involved in the communication or incident, whether an incident was an isolated incident or part of a broader pattern or course of offensive conduct, the seriousness of the incident, the intent of the individual who engaged in the allegedly offensive conduct, and its effect or impact on the individual and the learning community. Even statements intended as jokes or pranks meant to be “all in good fun” can be deeply hurtful and inappropriate for a professional community, and, therefore, may violate this policy.

When harassment becomes so severe or pervasive as to interfere with an individual’s ability to work or learn, it is called a “hostile environment”. Albany Law School reserves the right to address harassing conduct that does not rise to the level of creating a hostile environment as defined by applicable law. Further, Albany Law School encourages students and others to report even minor incidents of concern, as early reporting often allows situations to be corrected more easily.

Albany Law School also prohibits “quid pro quo” harassment, which occurs when a person in a position of authority or control links the receipt of some benefit (such as a grade or a promotion) to another’s submission to unwelcome sexual advances or sexual conduct or requires the other to perform or submit to demeaning or degrading sex or sexually-charged acts. “Quid pro quo” harassment can be expressly stated, but it can also be implied by words,

actions or the surrounding circumstances. No person - no matter their title or position with Albany Law School – has the right to pressure a student for sexual activity.

Even consensual sexual relationships between faculty and students and staff and students are problematic due to the inherent power differential. Therefore, sexual or romantic relationships knowingly between faculty and currently matriculated students, or knowingly between staff and currently matriculated students, are absolutely prohibited. Similarly, sexual or romantic relationships knowingly between a supervisor, or manager, and any person with lesser authority within the chain of command, are absolutely prohibited. Similarly, sexual or romantic relationships knowingly between a supervisor, or manager, and any person with lesser authority within the chain of command, are absolutely prohibited.

This policy is designed to ensure that our community is a respectful environment. However, the fact that a person is offended by a statement or incident is not alone enough to constitute a violation of this policy. Albany Law School is an academic community in which vigorous intellectual exploration of the law and social policy is not only expected but demanded. This policy is not intended to stifle or penalize honest intellectual exploration or debate, or to prevent the expression of legitimate criticism as it applies to work or academic performance. This policy is intended to protect members of the Albany Law School community from discrimination, not to regulate protected speech or limit academic freedom. Thus, for example, this policy would not prohibit a person from speaking against affirmative action but would prohibit the use of racial slurs in the context of that discussion. As another example, this policy would not prohibit a class discussion about the legalization of same-sex marriage even if some students were offended by others' views, but would prohibit social media posts mocking a particular student on the basis of his or her sexual orientation.

In the practice of law, attorneys are expected to represent their clients' interests with vigor but also to treat their adversaries personally with collegiality and respect. This is the guiding principle underpinning this policy. As a professional legal community, we are called to treat each other with professionalism and respect at all times and to debate ideas vigorously but without personal denigration.

#### **IV. Affirmative Consent and Coercion with Respect to Sexual Assault**

A safe and respectful learning community requires that sexual activity be premised only on affirmative consent. If sexual activity involves a student, consent must be affirmative, and, whenever the word "consent" is used in this policy, it should be understood to mean affirmative consent as defined here. Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to

engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of affirmative consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression. Additionally, mere silence, passivity, or lack of resistance cannot be a defense to such an allegation. Certain conditions prevent a person from being able to consent. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol or drugs or other intoxicants may be incapacitated and therefore unable to consent. A person who has been drinking or using drugs is still responsible for ensuring that he or she has the other person's affirmative consent and/or appreciating the other person's incapacity to consent. It is not an excuse that the person accused of a sexual assault or relationship violence offense was himself or herself under the influence of alcohol or drugs and, therefore, did not realize the incapacity of the other. Consent to some sexual contact cannot be presumed to be affirmative consent for other sexual activity. A current or previous sexual or dating relationship is not sufficient to constitute affirmative consent. A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately. Sexual activity as the result of coercion is non-consensual. Coercion is a threat, undue pressure, intimidation, force or threat of harm to engage in sexual activity. In New York State, a minor (meaning a person under the age of 17 years) cannot consent to sexual activity. This means that sexual contact with a person less than 17 years old may be a crime, as well as a violation of this policy, even if the minor wanted to engage in the sexual act.

## **V. Definitions of Sexual Assault Offenses**

**Sexual Assault:** Consistent with federal law, Albany Law School defines sexual assault as including non-consensual sexual intercourse and non-consensual contact which can be further defined as follows:

**(A) Non-Consensual Sexual Intercourse** is any sexual penetration (anal, oral or vaginal), however slight, with any body part or object by a person upon another person that is without affirmative consent, including acts of incest and other instances where the complainant is legally incapable of giving consent. Non- consensual sexual acts include the following:

- 1. 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 affirmative consent of the complainant.
- 2. Statutory Rape:** Non-forcible sexual intercourse with a person who is under the statutory age of consent. In New York, the statutory age of consent is 17 years old.

**(B) Non-Consensual Sexual Contact:** is any intentional sexual touching, however slight, for purposes of sexual gratification or with sexual intent, of any private body part or object, by a person upon another person that is without affirmative consent. This may include forcible fondling and other non-penetrative sexual assaults.

## **VI. Definition of Relationship Violence**

**Dating Violence:** The term “dating violence” means violence, including sexual or physical abuse or the threat of such abuse, committed by a person –

**(A)** who is or has been in a social relationship of a romantic or intimate nature with the complainant; and

**(B)** where the existence of such a relationship shall be determined based on the reporting party’s statement and with consideration of the following factors –

1. the length of the relationship,
2. the type of relationship.
3. the frequency of interaction between the persons involved in the relationship.

**Domestic Violence:** The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction in which the acts of violence occurred, or by any other person against an adult or youth complainant who is protected from that person’s acts under the domestic or family violence laws of that jurisdiction.

**Stalking:** The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person under similar circumstances and with similar identities to the victim to –

**(A)** fear for his or her safety or the safety of others; or

**(B)** suffer substantial emotional distress (that may, but does not necessarily, require medical or other professional treatment or counseling).

Albany Law recognizes that relationship violence and sexual assault affect people of all backgrounds, regardless of ethnicity, gender, sexual orientation, and economic status. All situations will be handled with the respect and seriousness they deserve.

## **VII. What to Do**

### Procedure for Responding to Crimes, Including Sexual Assault and Relationship Violence

If you are the victim of a crime, or any violation of this policy, follow the following procedures:

*1. Get yourself to a safe place.* UHA Public Safety and the Albany Police Departments can help you do this.

UHA Public Safety (518) 244-3177

Albany Police Department 911 or (518) 438-4000

*2. Obtain medical attention if it is required.* We encourage survivors of sexual assault to be examined as quickly as possible at a facility that uses Sexual Assault Nurse Examiners (“SANE”). Albany Medical Center is a SANE facility. Remember that this medical treatment may also provide the opportunity for the collection and documentation of evidence, should you decide to pursue the incident and offender through the criminal law enforcement system. UHA Public Safety and the Albany Police Department may assist you in this effort as well.

**Albany Medical Center:** 43 New Scotland Avenue, Albany, NY 12208

**Emergency Room: (518) 262-3131**

*3. Report the incident to law enforcement.* A victim of a crime, including sexual assault or relationship violence, is encouraged to, but is not required to, report the incident to local law enforcement and pursue criminal charges. Albany Law School encourages reporting of all criminal offenses to law enforcement authorities.

The Albany Law School disciplinary process and the criminal process are not mutually exclusive. This means that an individual may pursue either a criminal complaint or internal complaint with Albany Law School or both. Any internal Law School investigation and/or hearing process will be conducted concurrently with any criminal justice investigation and proceeding that may be pending. Temporary delays in Albany Law School’s internal processes may be requested by local law enforcement authorities for the purpose of gathering evidence. Any requested temporary delay shall not last more than ten (10) days, except when local law enforcement authorities specifically request and justify a longer delay.

In criminal cases, including non-consensual sex offenses, the preservation of evidence is critical and must be done properly and promptly. The local law enforcement authorities can assist in filing a criminal complaint and in securing appropriate examination, including by a Sexual Assault Nurse Examiner (SANE). For assistance with a criminal complaint, contact:

**UHA Public Safety (518) 244-3177**

**Albany Police Department (518) 438-4000**

**New York State Police (518) 783-3211**

New York State Police maintain a **24-hour hotline (1-844-845-7269)** staffed by individuals trained to respond to sexual assault. Reporting individuals should understand that not all sexual assault or relationship violence offenses under this policy are crimes and that the standard that local law enforcement employs in processing complaints is different than Albany Law School's standard under this policy. Questions about whether incidents violate criminal laws and how the criminal process works should be directed to local law enforcement officials or the Albany County District Attorney.

### **Orders of Protection**

Orders of Protection and other forms of legal protection may be available to individuals who have experienced or are threatened with violence. In appropriate circumstances, an Order of Protection may be available that restricts the offender's right to enter Albany Law School property, and Albany Law School will abide by any lawfully issued Order of Protection. Albany Law School officials will, upon request, provide reasonable assistance to any member of the Albany Law School community in obtaining an Order of Protection or, if outside of New York State, an equivalent Protective or Restraining Order, including providing that person with:

- a copy of an Order of Protection, or equivalent, when received by Albany Law School and providing that person with an opportunity to meet or speak with an Albany Law School representative, or other appropriate individual, who can explain the order and answer questions about it, including information from the Order about the other person's responsibility to stay away from the protected person or persons;
- an explanation of the consequences for violating these orders, including but not limited to, arrest, additional conduct charges, and interim suspension; and
- assistance in contacting local law enforcement related to alleged violations of such Order of Protection.

**4. Report the incident to Albany Law School.** Albany Law School will take appropriate disciplinary and/or remedial action in response to reported incidents. Reports may be made to the confidential or non-confidential resources listed below.

## **VIII. Options for Responding to Incidents**

A student who has been the victim of sexual assault or relationship violence has the right to make a report to Albany Law School, local law enforcement and/or the New York State Police, or choose not to report. If reported to Albany Law School under this policy, a reporting individual will be protected from retaliation and will receive appropriate assistance and resources from Albany Law School. A Student's Bill of Rights for cases involving sexual assault, domestic violence, dating violence or stalking is located at the end of this policy.

All Albany Law School staff, faculty and administrators have a duty to report to the Harassment Committee, the Office of Student Affairs, the Director of Human Resources or the Title IX Coordinator any reported or suspected violations of this policy. Therefore, any report or disclosure to an on-campus source is not considered confidential and may result in the initiation of an investigation and disciplinary action.

### **Victim Support in Reporting to Law Enforcement/Prosecution**

Albany County Crime Victim and Sexual Violence Center 112 State Street, Room 1100  
Albany, NY 12207  
(518) 447-7100  
Hotline: (518) 447-7716  
Website: [www.albanycounty.com/departments/cvsvc/](http://www.albanycounty.com/departments/cvsvc/)

The Legal Project  
24 Aviation Road, Suite 101  
Albany, NY 12205  
Phone: (518) 435-1770  
Website: [www.legalproject.org](http://www.legalproject.org)

Equinox Domestic Violence Services 95 Central Avenue, Albany, NY 12206  
(518) 434-6135  
Hotline: (518) 432-7865  
Website: [www.equinoxinc.org/](http://www.equinoxinc.org/)

### **Confidential Victim Support and Advocacy (ONLY these sources will NOT automatically report to local law enforcement, district attorney or Albany Law School)**

A student seeking only support, resources and treatment (and not responsive action by Albany Law School or law enforcement) should contact the following confidential resources.



**Dr. Peter Cornish, Campus Counselor [Dr.PeterCornish@yahoo.com](mailto:Dr.PeterCornish@yahoo.com)  
Room MW213, 1928 Building**

**Equinox Domestic Violence Services 95 Central Avenue, Albany, NY 12206  
(518) 434-6135  
Hotline: (518) 432-7865  
Website: [www.equinoxinc.org/](http://www.equinoxinc.org/)**

**Albany County Crime Victim and Sexual Violence Center 112 State Street, Room 1100  
Albany, NY 12207  
(518) 447-7100  
Hotline: (518) 447-7716  
Website: [www.albanycounty.com/departments/cvsvc/](http://www.albanycounty.com/departments/cvsvc/)  
Resource Advisor 1-888-209-7840  
[www.ResourceAdvisor.Anthem.com](http://www.ResourceAdvisor.Anthem.com),  
log in with program name: AnthemResourceAdvisor**

Sharing information with any Confidential Resource listed above will not result in a report to Albany Law School or investigatory or disciplinary action against the alleged offender. In order to initiate an investigation or disciplinary action, report the incident to any one of Albany Law School's Non-Confidential Resources mentioned below.

### **Reporting the Incident to On-Campus Non-Confidential Resources**

Any person having a complaint of harassment, sexual assault or relationship violence is encouraged to promptly make an internal report to Albany Law School by contacting the Director of Human Resources, at (518) 445-2396 or [sdonn@albanylaw.edu](mailto:sdonn@albanylaw.edu) or the Title IX Coordinator, at (518) 445-3346 or [TitleIXCoordinator@albanylaw.edu](mailto:TitleIXCoordinator@albanylaw.edu).

Reports of violations of this policy may also be reported to any member of the Albany Law School Harassment Committee, which is a group of faculty and staff members trained to respond to alleged violations of this policy. The Albany Law School Harassment Committee members are listed in Section XV of this policy.

A report may also be made to the Office for Student Affairs, at (518) 445-3235 or [StudentAffairs@albanylaw.edu](mailto:StudentAffairs@albanylaw.edu)

While all Law School employees are expected to report incidents of harassment, sexual assault and relationship violence, if a complaint is made to anyone other than the individuals mentioned above, the complainant risks the possibility that it will not come to the attention of the proper Law School officials and may, therefore, not be acted upon. Similarly, information

shared at public awareness and advocacy events is not considered a report to Albany Law School.

The Office of Student Affairs is available to inform persons affected about the reporting procedures for relationship violence, harassment and sexual assault, and offer appropriate referrals to resources, including counseling, health, mental health and victim advocacy, in a safe and supportive setting.

## **IX. Confidentiality**

Albany Law School will protect the privacy of all individuals throughout all phases of the complaint, investigation and resolution process, to the extent practicable and appropriate under the circumstances. A complainant may request that Albany Law School maintain the report as confidential. This type of request may be made if the complainant does not want his/her identity known to the respondent and witnesses, or the complainant wishes that Albany Law School not conduct an investigation or that action not be taken against an alleged perpetrator.

Albany Law School may or may not be able to comply with a request for confidentiality and/or to take no action. In cases covered by Title IX, Albany Law School is required to weigh the complainant's request with Albany Law School's commitment to provide a reasonably safe and non-discriminatory environment for all members of the Albany Law School community. In evaluating a request for confidentiality, the Title IX Coordinator will consider a range of factors, including, but not limited to:

- Whether the complainant wants to participate in an investigation or judicial hearing;
- The severity and impact of the harassment, sexual assault or relationship violence offense;
- The respective ages of the parties;
- Whether the complainant is a minor under the age of 18;
- Whether the respondent has admitted to the harassment, sexual assault or relationship violence offense;
- Whether there have been other sexual assault, relationship violence or harassment complaints about the respondent;
- Whether the respondent has a history of arrests or records from a prior school indicating a history of violence;
- Whether the respondent threatened further sexual assault or relationship violence or other violence against the complainant or others;
- Whether the sexual assault or relationship violence was committed by multiple respondents;
- Whether the sexual assault or relationship violence was perpetrated with a weapon;
- Whether Albany Law School possesses other means to obtain relevant evidence of the

sexual assault or relationship violence (e.g., security cameras or personnel, physical evidence) and

- The overall safety of the campus community (including the complainant).

The Title IX Coordinator will notify the complainant if Albany Law School cannot honor the complainant's request for confidentiality. However, even when confidentiality is not available, Albany Law School officials acting under this policy will maintain privacy to the greatest extent possible. Information provided to a Non-Confidential Resource will be relayed only as necessary for the Title IX Coordinator, and those acting under this policy, to carry out the purposes of this policy. Individuals participating in an investigation, proceeding, or hearing will be encouraged to maintain the privacy of the process in order to assist Albany Law School in conducting a thorough, fair and accurate investigation. Additionally, Albany Law School may have legal obligations to disclose information in the context of legal proceedings. In order to protect the community, Albany Law School may be obligated to respond to serious incidents even where the complainant would prefer otherwise. Complaints may be made anonymously. However, the nature of anonymous complaints may make the investigation, determination, and remediation more difficult and, at times, impossible. Records concerning reports of harassment, sexual assault or relationship violence are maintained in confidential files, and only those with a right and need to know are permitted access.

## **X. Interim Measures**

In certain cases, interim measures may be put in place before the investigation is completed and/or pending completion of the investigation, to ensure the safety of all parties and/or the Albany Law School community and to ensure the integrity of the investigation. In cases involving student respondents, the Office of Student Affairs will be responsible for ensuring that the recommended measures are taken. In cases involving employees or third parties accused, the Office of Human Resources will be responsible for ensuring that the recommended measures are taken. Albany Law School will review the facts and circumstances of each case, as well as the complainant's wishes, in deciding whether and what steps are reasonable and appropriate.

If interim measures are put in place, the Title IX Coordinator will communicate the measures to all affected parties. Implementing interim measure(s) does not imply a future finding of responsibility but is meant to create a safer environment. Examples of interim measures may include (but are not limited to) contact restrictions through the issuance of a No-Contact Order, the transfer of the complainant or respondent to different classes, and/or transportation arrangements. In cases involving third parties (vendors, contingent employees, clients and consultants), examples of interim measures may include, but are not limited to, the temporary reassignment of the third party employee or a temporary suspension of services.

Upon request, the complainant or respondent may request a prompt review of the need for and terms of any interim measures and accommodations imposed or requested that directly affects him/her, including the potential addition, modification or elimination of those measures. Such a request may be made by submitting a written request for review to the Title IX Coordinator, providing the basis for that request and any evidence in support of the request. Upon receipt of such a request, the Title IX Coordinator will inform the other party of the request and allow the other party to respond, including submitting evidence if desired. The Title IX Coordinator may, in his/her discretion, modify or suspend the interim measures or accommodations on a temporary basis while the parties are submitting their information and responses. The Title IX Coordinator will respond to any such requests as soon as possible, but generally no later than one calendar week of the request and the parties' submission of any evidence.

When a student is determined to present a continuing threat to the health and safety of the Albany Law School campus community, he or she is subject to an interim suspension pending the outcome of any proceedings under this policy. When the respondent is not a student, but is a member of the Albany Law School community, he or she is subject to an interim suspension and/or any other measures in accordance with Albany Law School employment policies and practices.

Upon written request to the Title IX Coordinator, both the respondent and the complainant will be afforded an opportunity for a review of the need for, and terms of, an interim suspension, as well as potential modification, by providing the basis for that request and any evidence in support.

## **XI. Disciplinary Process**

Disciplinary sanctions for violations of this policy will be imposed in accordance with applicable Albany Law School policies, including but not limited to, expulsion and/or termination of employment. Disciplinary proceedings shall provide a prompt, fair and impartial investigation and resolution and are conducted by officials who receive annual training on the matters covered by this policy, including domestic violence, sexual assault and stalking. At any disciplinary proceeding held under this policy, both the complainant and the respondent shall receive notice referencing the specific provision of this policy alleged to have been violated and the possible sanctions. This notice shall also include the date, time, location and factual allegations concerning the alleged violation.

Albany Law School reserves the right to investigate and potentially discipline any violation of this policy that comes to its attention. If the individual who was subjected to the violation (i.e., the complainant/survivor) does not wish to act in the role of the complainant, Albany Law School may continue nevertheless to investigate and refer the case for possible discipline. In

such a situation, Albany Law School will appoint an appropriate administrator to act in the role of the complainant in any disciplinary hearing.

In sexual assault, stalking, dating violence and domestic violence cases, the complainant and respondent may be accompanied by an advisor of his/her choice (at the party's own expense) during any investigatory meeting and/or disciplinary proceedings. The advisor's role is to support the complainant or respondent throughout the process and aid in his/her understanding of the investigatory and/or disciplinary process. The advisor may talk quietly with the party, but may not participate in the interview and the party is required to speak on his/her own behalf. The advisor may not intervene in, or disrupt, an investigatory meeting or disciplinary proceeding. An advisor who does not abide by this role may be precluded from further participation.

Both parties will receive simultaneous written notice of outcomes of all disciplinary proceedings, to the extent permitted by law.

For those crimes of violence that Albany Law School is required by federal law to include in its Annual Security Report, the transcripts of students found responsible after a hearing and an appeal, if any, shall include the following notation:

- Withdrew with conduct charges pending (note that Albany Law School reserves the right to disallow a student to withdraw after an allegation has been made against him/her), or
- Suspended after a finding of responsibility for a code of conduct violation, or
- Expelled after a finding of responsibility for a code of conduct violation.

Transcript notations for suspensions may be removed at the discretion of Albany Law School one (1) year after the conclusion of the suspension. Transcript notations for expulsion shall not be removed. Notwithstanding the foregoing, Albany Law School reserves the right to provide information to licensing authorities and/or other appropriate outside entities regarding findings of responsibility for any crimes of violence, including sexual assault offenses.

## **XII. Retaliation**

Albany Law School policy and applicable law prohibit retaliation against any individual who files a good-faith complaint, or assists, or participates in good-faith in any manner, in an investigation or proceeding conducted by Albany Law School or an external agency. Any retaliation is subject to disciplinary action, up to and including expulsion/termination.

### **XIII. Complaint Procedure**

In the event Albany Law School receives a report that this policy has been violated, the report will be investigated by the Harassment Committee and/or designee(s). The following investigatory procedures will apply.

#### **a. Composition of Committee:**

- i. The Harassment Committee shall be composed of three faculty members and four staff members. The Title IX Coordinator and Director of Human Resources are permanent staff appointments to the committee. All other members are appointed by the Dean and serve term appointments. The Title IX Coordinator will call the first meeting in the fall of each academic year at which the Committee will select a Chair who will serve for that year.
- ii. Members of the Harassment Committee shall receive annual training with respect to this policy, the procedures under this policy, and the topics covered by this policy. The Title IX Coordinator shall arrange for this training in the fall of each year.
- iii. Committee members shall serve three-year terms.
- iv. The members of the Committee will treat each complaint as confidentially as possible, while still performing a thorough and complete investigation.

#### **b. Complaint Intake:**

- i. Upon notification to the Title IX Coordinator, Director of Human Resources or any member of the Harassment Committee of a complaint, the Title IX Coordinator or other appropriate person will discuss with the complainant the options available under this policy and ensure that a written document is prepared capturing the substance of the complaint
- ii. If the complainant requests confidentiality and/or that no action be taken on the report, Albany Law School will determine whether such a request can be granted in accordance with this policy (discussed above).

#### **c. Informal Resolution:**

- i. In some cases, an informal resolution may be appropriate. One form of informal resolution is mediation, where a designated third-party explores whether the parties can agree on a result.
- ii. Informal resolution must be agreed upon by both parties and the Title IX Coordinator must agree that informal resolution is appropriate. The parties may, but will not be required, to meet together as part of the informal resolution process. At any time during the informal resolution process, the complainant or the respondent has the right to initiate or resume the formal processing of the complaint (i.e., investigation, disciplinary procedure, appeal). The informal resolution process may provide for sanctions.
- iii. Not all complaints are eligible for informal resolution. For example, a complaint of sexual assault or any form of violence is not appropriate for mediation.

**d. Investigation:**

**i. Conducting the Investigation:**

An investigation may occur because a complainant wishes to proceed with a complaint, the parties' attempt at informal resolution was not successful, or because Albany Law School determines that this is necessary despite the wishes of the complainant. The Chair of the Harassment Committee will appoint three investigators selected from the Harassment Committee to conduct an investigation of an alleged violation of this policy. In special circumstances, Albany Law School may appoint external investigators. In any case in which there is more than one respondent or more than one complainant, the Chair of the Harassment Committee has the discretion to determine if the allegations will be investigated jointly.

In conducting the investigation, the investigative team will obtain information from the complainant, the respondent, and other persons believed to have pertinent factual knowledge, as well as review pertinent records. The parties will have an equal opportunity to offer information, evidence, and to suggest witnesses who should be interviewed. However, the investigative team has discretion to determine the scope of the investigation and the methods of fact gathering. The investigative team will prepare a written report of the

investigation and its conclusions within 30 days of receipt of a complaint. In unusual circumstances, this 30 day timeframe may be extended, in which case the parties will be informed of the delay. The full written report will be sent to the Associate Dean for Student Affairs (if the respondent is a student); the Director of Human Resources (if the respondent in a non-faculty employee); or the Academic Dean (if the respondent is a faculty member). In the event the Committee determines that the report should not be filed with the Dean for Student Affairs, the Director of Human Resources or the Academic Dean due to conflicts concerns, the Committee has the discretion to determine that the report should instead be sent to the Dean or the Vice President for Finance and Business.

Determinations are made based on a majority vote of the investigative team. The complainant and the respondent will be provided with written notification of the outcome of the investigation. The parties, upon submission of a written request to the Title IX Coordinator at the conclusion of the investigation, will be permitted to review information in the case file, subject to redaction permitted and/or required by law and consistent with Law School policy and applicable federal and state law, including the Family Educational Records Privacy Act.

The Dean and Chair of the Board of Trustees may be given notice of a complaint following the investigation, or, earlier in the process, if the Harassment Committee deems prudent under the circumstances. In any case where it would be appropriate for notification to be made to the Chair of the Board of Trustees but where the Chair is named or implicated in the allegation, notice will be made to another appropriate member of the Board of Trustees. In any case where it would be appropriate for notification to be made to the Dean but where the Dean is named or implicated in the allegation, notice will be made only to the Chair of the Board of Trustees.

**ii. Possible Outcomes of the Investigation:**

a. If the complaint is against a student, the investigative team will make a determination as to whether the student is responsible for violation(s) of this policy and, if so, will assign sanction(s). Both the student accused of having engaged in a violation and the complainant will receive simultaneous written notice (which may be electronic notice) of the investigative team's determination, to the extent permitted by law. The outcome letter shall include factual findings supporting the determination, the decision and the sanction, if any, as well as the rationale for the decision and sanction. The investigation team's finding is



subject to appeal as stated in the Student Disciplinary Code, Chapter XI. In the absence of an appeal, the investigative team's determination is final.

**b.** If the complaint is against a faculty or staff member, the investigative team's report and determination is advisory. The investigative team's report will recommend a finding either that the respondent is, or is not, responsible for violation(s) of this policy, and the report will include a rationale for the outcome. The investigative team's report will NOT include recommended sanction(s) but will recommend only that the appropriate Albany Law School authority take or initiate discipline in accordance with the (Staff Handbook) and faculty (Faculty Handbook).

**iii. Procedural Rules**

**a.** Notwithstanding anything contrary in any other policy or procedure, the standard of evidence used to determine whether a violation of this policy occurred is a "preponderance of the evidence" standard. This is less than "beyond a reasonable doubt". A "preponderance of the evidence" means the evidence which is of greater weight or is more convincing than opposing evidence such that it is "more likely than not" that a violation of this policy occurred.

**b.** Respondent has a right to a presumption that the respondent is not responsible until a finding of responsibility is made pursuant to the provisions of this policy.

**c.** In any case where a student is a respondent or complainant, both the complainant and respondent will be permitted to submit a written impact statement to Albany Law School after a finding of responsibility for violation of this policy and prior to the determination of an appropriate sanction(s).

**d.** Notwithstanding anything to the contrary in any other policy or procedure, in any case of sexual assault, dating violence, domestic violence or stalking where the respondent is a student, both the complainant and respondent will be afforded access to one level of appeal before a panel. See the Student Disciplinary Code for the rules applicable to an appeal.

**e.** If either the complainant or respondent is a student, the complainant and the respondent shall have access to a full and fair record of any hearing held upon its conclusion which shall be preserved and maintained for at least five (5) years from the date of the end of the

hearing and may include a transcript, recording or other appropriate record. This provision does not apply to investigative interviews. The full and fair record of a hearing shall be protected from public release until a final determination is made. A final determination is made under this policy when no appeal of the decision of the investigative team is sought, or in the event of an appeal, when the decision of the appeals panel is communicated in writing to the complainant and the respondent. Any public release of the full and fair record of the hearing shall be made in accordance with applicable Albany Law School policy and federal and state laws.

**e. Protection of the Parties**

- i. The complainant will be informed of significant steps taken during the investigation.
- ii. All reasonable action will be taken to assure that individuals do not experience retaliation based on his/her filing of a report or participating in the investigation and disciplinary proceeding.
- iii. To the extent possible, the investigations and proceedings will be conducted in a way calculated to protect the privacy interests of both parties.
- iv. During any investigatory or disciplinary proceeding or related meetings into allegations of sexual assault, dating violence, domestic violence or stalking, the complainant and the respondent have the right to be accompanied by a representative of his or her choice, (at the party's own expense).
- v. Where a complainant or the respondent is a student, both shall have the right to exclude their own prior sexual history with persons other than the other party or their own mental health diagnosis and/or treatment from admittance in any disciplinary proceeding held under this policy. Past disciplinary violations, including those involving domestic violence, dating violence, stalking or sexual assault, may be considered for purposes of determining the appropriate sanction after the finding of responsibility.

- vi. The disciplinary process should be completed within 60 days of receiving the initial complaint, but this timeframe may be extended if necessary under the circumstances.

**f. Possible Sanctions:**

A violation of this policy by a student will result in sanction(s) that Albany Law School determines are appropriate based on its assessment of the facts and circumstances in accordance with the sanctions provisions of the Student Disciplinary Code (Chapter XI of the Student Handbook).

**g. Committee Members:**

Melissa Breger	Faculty Term exp. 2022—Rm. M-201—ext. 3325 <a href="mailto:mbreg@albanylaw.edu">mbreg@albanylaw.edu</a>
Patrick Connors	Faculty Term exp. 2021—Rm. L-205—ext. 2322 <a href="mailto:pconn@albanylaw.edu">pconn@albanylaw.edu</a>
Ciji Dodds	Faculty Term exp. 2023—M-124—ext.2304 <a href="mailto:cdodd@albanylaw.edu">cdodd@albanylaw.edu</a>
Todd Arena	The Justice Center Term exp. 2023—Rm. U113—ext. 3225 <a href="mailto:taren@albanylaw.edu">taren@albanylaw.edu</a>
Andrea Wedler	Financial Aid Term exp. 2022--Rm. U227—ext. 2388 <a href="mailto:awedl@albanylaw.edu">awedl@albanylaw.edu</a>

**Permanent:**

Sherri Donnelly –	Director of Human Resources Rm.U-226A—ext. 2396 <a href="mailto:sdonn@albanylaw.edu">sdonn@albanylaw.edu</a>
Chantelle Cleary-	Interim Title IX Coordinator Rm. M208—ext. 3346

#### **XIV. Amnesty**

The health and safety of every student at Albany Law School is of utmost importance. Albany Law School realizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Albany Law School strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to Law School officials. A bystander acting in good faith, or a reporting individual acting in good faith, that discloses any incident of domestic violence, dating violence, stalking or sexual assault to Albany Law School officials or law enforcement will not be subject to Albany Law School's Student Disciplinary Code for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking or sexual assault. Notwithstanding the foregoing, Albany Law School reserves the right to implement measures to protect the rights of clients (including but not limited to requiring substance abuse treatment and testing) and will comply with any obligations it may have to provide information to licensing authorities.

#### **XV. Coordination With Other Policies**

A particular situation may potentially invoke one or more policies or processes of Albany Law School. Albany Law School reserves the right to determine the most applicable policy or process and to utilize that policy or process. This policy does not apply to decisions relating to requests for reasonable accommodation due to disability.

#### **XVI. Designation of Authority**

Any Law School administrator or official to whom this policy empowers to act may delegate his/her authority to any other appropriate Law School official. Delegation of authority may be necessary to avoid conflicts of interest or where time constraints or other obligations prevent a Law School official named in this policy from fulfilling his/her designated role.

#### **XVII. Policy Compliance**

The Albany Law School's Title IX Coordinator is responsible to ensure compliance with this policy. Any questions or concerns about the administration of this policy should be directed to the Title IX Coordinator, at (518) 445-3346 or [TitleIXCoordinator@albanylaw.edu](mailto:TitleIXCoordinator@albanylaw.edu)

Inquiries and complaints may be made externally to the U.S. Department of Education, Office for Civil Rights, 400 Maryland Avenue, SW, Washington, DC 20202-1100.

### **XVIII. Clery Act Compliance**

Beginning in its 2014 report, Albany Law School will collect and publish in its Annual Security Report (ASR) statistics on incidents of domestic violence, dating violence, and stalking that are reported to campus security authorities or local police agencies. Albany Law School will also establish educational prevention and awareness programs that promote the awareness of rape, domestic violence, sexual assault, forcible and non-forcible sexual offenses and stalking for all incoming students and new employees. Names of individuals involved in incidents are not reported or disclosed in ASRs. Albany Law School will submit crime statistics to the U.S. Department of Education and participate each fall in a web-based data collection to disclose crime statistics by type, location and year. In addition, Albany Law School will keep a daily crime log of alleged criminal incidents that is open to public inspection. Albany Law School will issue a timely warning for any *Clery Act* crime that represents an ongoing threat to the safety of students or employees, and issue an emergency notification upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health and/or safety of students and/or employees occurring on the campus. In such circumstances, the name of the alleged perpetrator may be disclosed to the Albany Law School community, but the name of the complainant will not be disclosed.

### **XIX. Students' Bill of Rights**

All students have the right to:

- 1) Make a report to local law enforcement and/or State Police;
- 2) Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- 3) Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by Albany Law School;
- 4) Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- 5) Be treated with dignity, and to receive from the institution, courteous, fair, and respectful health care and counseling services, where available;
- 6) Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;

- 7) Describe the incident to as few institutional representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- 8) Be protected from retaliation by Albany Law School, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of Albany Law School;
- 9) Access to at least one level of appeal of a determination;
- 10) Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
- 11) Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of Albany Law School.

### **NEW YORK STATE WORKPLACE SEXUAL HARASSMENT SUPPLEMENTAL POLICY**

In compliance with New York State law, the Law School provides for the following notifications concerning workplace sexual harassment. The following does not replace -- and is instead in addition to -- the Law School's Policy on Prohibition of Discrimination, Harassment and Retaliation ("Harassment Policy"), and the Law School's Student Policy on Harassment, Sexual Assault & Relationship Violence. Sexual harassment is defined in the Law School's Harassment Policy, and the procedures for reporting, investigating and adjudicating complaints of sexual harassment are contained in the Harassment Policy.

The Law School's policies addressing sexual harassment apply to all employees. They also apply to individuals who are not employees of the Law School but are employees of contractors, subcontractors, vendors, consultants, and other persons who provide services in the Law School's workplace, such as interns and temporary employees.

Sexual harassment is a form of employee misconduct. A Law School employee who is experiencing sexual harassment or suspects that another individual is being harassed may contact his/her supervisor or department head or a member of the Law School's Harassment Committee, as outlined in the Harassment Policy. A Law School supervisor or manager who receives a complaint or information about workplace sexual harassment is required to take appropriate action. Appropriate action may include immediately intervening if harassment is witnessed by the supervisor or manager, and in all instances includes reporting the situation to the Law School's Director of Human Resources. In addition to being subject to discipline if they themselves engage in sex discrimination, sexually harassing conduct, or retaliation, persons with supervisory authority over other Law School employees will be subject to discipline for knowingly allowing sexual harassment to continue. A reporting form is provided as an attachment to this policy that employees may use, if they wish, to submit a report of workplace sexual harassment.

The Law School reserves the right to take action to correct -- including to discipline -- behaviors that violate the Law School's professional conduct expectations even if the conduct does not violate the law. Therefore, not all situations that violate Law School policy will constitute a violation of the law or allow for a legal remedy. The following agencies enforce laws prohibiting sexual harassment. An individual who has experienced sexual harassment may file a complaint with the Law School or also may file a complaint with an enforcement agency.

The **New York State Division of Human Rights (DHR) enforces the Human Rights Law (HRL)**, codified as N.Y. Executive Law, art. 15, § 290 et seq., which prohibits sexual harassment in employment in New York State, and protects employees, and other individuals working in an employer's workplace. A complaint alleging a violation of the Human Rights Law may be filed either with DHR, subject to a one year statute of limitations, or in New York State Supreme Court, subject to a three year statute of limitations.

The DHR will investigate the complaint to determine if unlawful harassment occurred and if the circumstances amount to a violation of the law. If unlawful discrimination is found after a hearing, the DHR or the court may award relief, which varies, but may include requiring the employer to take action to stop the harassment, or redress the damage caused, including reversing an unlawful employment action, paying monetary damages, attorneys' fees and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458, (718) 741-8400 [www.dhr.ny.gov](http://www.dhr.ny.gov). The DHR can be contacted at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint) for more information about filing a complaint. The website has a complaint form and contact information for DHR's regional offices across New York State.

The **United States Equal Employment Opportunity Commission (EEOC)** enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An employee must file a complaint with the EEOC within 300 days from the conduct giving rise to the complaint. The EEOC also investigates complaints, but does not hold hearings or award relief. The EEOC may take other action including pursuing cases in federal court on behalf of complaining parties, or issuing a Right to Sue Letter that allows an individual to pursue his/her claims in federal court. Federal courts may award remedies if discrimination is found to have occurred.

The EEOC can be contacted by calling 1-800-669-4000 (1-800-669-6820 (TTY)), or visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov) If an individual files an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the individual's right to proceed in federal court.

There may be additional applicable laws, including local laws, or agencies that address the topics covered by this policy. If the harassment involves physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. An employee who believes that a crime has been committed, or if the employee believes he/she is in physical danger, is urged to file a report with the local police department immediately.

Individuals are reminded that no one who in good-faith makes a complaint of sexual harassment or participates in an investigation into sexual harassment -- whether an internal Law School process or an external enforcement agency process -- may be retaliated against. Retaliation is against Law School policy and it is against the law.

## **ALBANY LAW SCHOOL**

### *Harassment Reporting Form*

This form is designed to assist individuals making a report under Albany Law School's (the "Law School") policy on the Prohibition of Discrimination, Harassment, and Retaliation (the "Policy"). If you believe you are being or have been subjected to conduct in violation of the Policy, or witness or otherwise become aware of such conduct, you are expected to report such, either verbally or in writing. It is the Law School's policy to promptly and thoroughly investigate such reports.

If you wish to make a written report, you may use this form to do so. After completing this form, you should submit it to the Director of Human Resources, Room U-226 in the 2000 Building or via e-mail to [sdonn@albanylaw.edu](mailto:sdonn@albanylaw.edu). Alternatively, you may submit to the Title IX Coordinator, Room M208 in the 1928 Building or via e-mail to [TitleIXCoordinator@albanylaw.edu](mailto:TitleIXCoordinator@albanylaw.edu)

If you are more comfortable reporting verbally or in another manner, you are welcome to do so. For information concerning additional alternate avenues of reporting, please refer to the Policy.

The Law School prohibits retaliation against any individual who opposes a discrimination practice, makes a good faith report of discrimination or harassment, or who participates in an investigation of such a report. Your cooperation in truthfully completing this form and providing as much accurate information as possible will enable us to investigate and respond to these matters more efficiently.

### **INFORMATION ABOUT YOU**

Name: \_\_\_\_\_



Home Address: \_\_\_\_\_

Work Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Job Title: Email: \_\_\_\_\_

Select Preferred Communication Method: Phone Email In person

**INFORMATION ABOUT YOUR SUPERVISOR (IF APPLICABLE)**

Immediate Supervisor's Name: \_\_\_\_\_

Title: \_\_\_\_\_

Work Phone: Work Email: \_\_\_\_\_

Work Address: \_\_\_\_\_

**INFORMATION CONCERNING SUSPECTED POLICY VIOLATION**

**1. Your report concerns:**

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Work Phone: \_\_\_\_\_ Work Email: \_\_\_\_\_

Work Address: \_\_\_\_\_

Relationship to you: Supervisor Subordinate Co-Worker

Other: \_\_\_\_\_

2. Please describe the conduct or incident(s) that is/are the basis of this report and how the conduct is affecting you and your work. Describe each act or incident separately including dates, times, locations and your reaction and/or action(s) taken in response. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

3. Why do you believe the conduct or incident(s) described above violate(s) the Policy?

4. Is the conduct continuing? Yes No

5. Please list the name and contact information of any witnesses or individuals that may have information related to your report:

6. Are there any documents or other evidence of the conduct or incident? If so, please describe and/or attach.

7. What is your desired outcome of the investigation?

Upon receipt of this notification, you will be contacted by a member of the Harassment Committee. Every effort will be made to assure that confidentiality will be maintained throughout the investigatory process to the extent consistent with adequate investigation and appropriate corrective action. For additional information, please refer to the Policy.

*The information provided in this report is true, accurate and complete. I am willing to cooperate fully in the investigation of this report and provide whatever evidence the Law School deems relevant.*

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

### **Memoranda of Understanding**

Albany Law School has Memoranda of Understanding in place with a number of agencies intended to facilitate the investigation of violent crimes and missing persons, to provide advocacy for victims of sexual assault and interpersonal violence and to safeguard the legal rights of students. Those agencies include the Albany Police Department, Albany Medical Center, Equinox, Inc., Albany County Crime Victim and Sexual Violence Center and The Legal Project.

### **New York State Laws Preventing Sexual Assault**

Article 130 of the New York State Penal defines and prohibits sexual assault in New York State. It is included here.

S 130.00 Sex offenses; definitions of terms.

The following definitions are applicable to this article:

1. "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight.
2. (a) "Oral sexual conduct" means conduct between persons consisting of contact between the mouth and the penis, the mouth and the anus, or the mouth and the vulva or vagina.  
(b) "Anal sexual conduct" means conduct between persons consisting of contact between the penis and anus.
3. "Sexual contact" means any touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing, as well as the emission of ejaculate by the actor upon any part of the victim, clothed

or unclothed.

4. For the purposes of this article "married" means the existence of the relationship between the actor and the victim as spouses which is recognized by law at the time the actor commits an offense proscribed by this article against the victim.

5. "Mentally disabled" means that a person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct.

6. "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other act committed upon him without his consent.

7. "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

8. "Forcible compulsion" means to compel by either:

a. use of physical force; or

b. a threat, express or implied, which places a person in fear of immediate death or physical injury to himself, herself or another person, or in fear that he, she or another person will immediately be kidnapped.

9. "Foreign object" means any instrument or article which, when inserted in the vagina, urethra, penis, rectum or anus, is capable of causing physical injury.

10. "Sexual conduct" means sexual intercourse, oral sexual conduct, anal sexual conduct, aggravated sexual contact, or sexual contact.

11. "Aggravated sexual contact" means inserting, other than for a valid medical purpose, a foreign object in the vagina, urethra, penis, rectum or anus of a child, thereby causing physical injury to such child.

12. "Health care provider" means any person who is, or is required to be, licensed or registered or holds himself or herself out to be licensed or registered, or provides services as if he or she were licensed or registered in the profession of medicine, chiropractic, dentistry or podiatry under any of the following: article one hundred thirty-one, one hundred thirty-two, one hundred thirty-three, or one hundred forty-one of the education law.

13. "Mental health care provider" shall mean a licensed physician, licensed psychologist, registered professional nurse, licensed clinical social worker or a licensed master social worker under the supervision of a physician, psychologist or licensed clinical social worker.

S 130.05 Sex offenses; lack of consent. Updated 2021 New text below.

1. Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without consent of the victim.

2. Lack of consent results from:

(a) Forcible compulsion; or

(b) Incapacity to consent; or

(c) Where the offense charged is sexual abuse or forcible touching, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct; or

(d) Where the offense charged is rape in the third degree as defined in subdivision three of section 130.25, or criminal sexual act in the third degree as defined in subdivision three of section 130.40, in addition to forcible compulsion, circumstances under which, at the time of the act of intercourse, oral sexual conduct or anal sexual conduct, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances.

3. A person is deemed incapable of consent when he or she is:

(a) less than seventeen years old; or

(b) mentally disabled; or

(c) mentally incapacitated; or

(d) physically helpless; or

(e) committed to the care and custody or supervision of the state department of corrections and community supervision or a hospital, as such term is defined in subdivision two of section four hundred of the correction law, and the actor is an employee who knows or reasonably should know that such person is committed to the care and custody or supervision of such department or hospital. For purposes of this paragraph, "employee" means (i) an employee of the state department of corrections and community supervision who, as part of his or her employment, performs duties: (A) in a state correctional facility in which the victim is confined at the time of the offense consisting of providing custody, medical or mental health services, counseling services, educational programs, vocational training, institutional parole services or direct supervision to incarcerated individuals; or (B) of supervising persons released on community supervision and supervises the victim at the time of the offense or has supervised the victim and the victim is still under community supervision at the time of the offense; or

(ii) an employee of the office of mental health who, as part of his or her employment, performs duties in a state correctional facility or hospital, as such term is defined in subdivision two of section four hundred of the correction law in which the incarcerated individual is confined at the time of the offense, consisting of providing custody, medical or mental health services, or direct supervision to such incarcerated individuals; or

(iii) a person, including a volunteer, providing direct services to incarcerated individuals in a state correctional facility in which the victim is confined at the time of the offense pursuant to a contractual arrangement with the state department of corrections and community supervision or, in the case of a volunteer, a written agreement with such department, provided that the person received written notice concerning the provisions of this paragraph; or

(f) committed to the care and custody of a local correctional facility, as such term is defined

in subdivision two of section forty of the correction law, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such facility. For purposes of this paragraph, “employee” means an employee of the local correctional facility where the person is committed who performs professional duties consisting of providing custody, medical or mental health services, counseling services, educational services, or vocational training for incarcerated individuals. For purposes of this paragraph, “employee” shall also mean a person, including a volunteer or a government employee of the state department of corrections and community supervision or a local health, education or probation agency, providing direct services to incarcerated individuals in the local correctional facility in which the victim is confined at the time of the offense pursuant to a contractual arrangement with the local correctional department or, in the case of such a volunteer or government employee, a written agreement with such department, provided that such person received written notice concerning the provisions of this paragraph; or

(g) committed to or placed with the office of children and family services and in residential care, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to or placed with such office of children and family services and in residential care. For purposes of this paragraph, “employee” means an employee of the office of children and family services or of a residential facility in which such person is committed to or placed at the time of the offense who, as part of his or her employment, performs duties consisting of providing custody, medical or mental health services, counseling services, educational services, vocational training, or direct supervision to persons committed to or placed in a residential facility operated by the office of children and family services; or

(h) a client or patient and the actor is a health care provider or mental health care provider charged with rape in the third degree as defined in section 130.25, criminal sexual act in the third degree as defined in section 130.40, aggravated sexual abuse in the fourth degree as defined in section 130.65-a, or sexual abuse in the third degree as defined in section 130.55, and the act of sexual conduct occurs during a treatment session, consultation, interview, or examination; or

(i) a resident or inpatient of a residential facility operated, licensed or certified by (i) the office of mental health; (ii) the office for people with developmental disabilities; or (iii) the office of alcoholism and substance abuse services, and the actor is an employee of the facility not married to such resident or inpatient. For purposes of this paragraph, “employee” means either: an employee of the agency operating the residential facility, who knows or reasonably should know that such person is a resident or inpatient of such facility and who provides direct care services, case management services, medical or other clinical services, habilitative services or direct supervision of the residents in the facility in which the resident resides; or an officer or other employee, consultant, contractor or volunteer of the residential facility, who knows or reasonably should know that the person is a resident

of such facility and who is in direct contact with residents or inpatients; provided, however, that the provisions of this paragraph shall only apply to a consultant, contractor or volunteer providing services pursuant to a contractual arrangement with the agency operating the residential facility or, in the case of a volunteer, a written agreement with such facility, provided that the person received written notice concerning the provisions of this paragraph; provided further, however, "employee" shall not include a person with a developmental disability who is or was receiving services and is also an employee of a service provider and who has sexual contact with another service recipient who is a consenting adult who has consented to such contact; or

(j) detained or otherwise in the custody of a police officer, peace officer, or other law enforcement official and the actor is a police officer, peace officer or other law enforcement official who either: (i) is detaining or maintaining custody of such person; or (ii) knows, or reasonably should know, that at the time of the offense, such person was detained or in custody.

#### S 130.10 Sex offenses; limitation; defenses.

1. In any prosecution under this article in which the victim's lack of consent is based solely upon his or her incapacity to consent because he or she was mentally disabled, mentally incapacitated or physically helpless, it is an affirmative defense that the defendant, at the time he or she engaged in the conduct constituting the offense, did not know of the facts or conditions responsible for such incapacity to consent.

2. Conduct performed for a valid medical or mental health care purpose shall not constitute a violation of any section of this article in which incapacity to consent is based on the circumstances set forth in paragraph (h) of subdivision three of section 130.05 of this article.

3. In any prosecution for the crime of rape in the third degree as defined in section 130.25, criminal sexual act in the third degree as defined in section 130.40, aggravated sexual abuse in the fourth degree as defined in section 130.65-a, or sexual abuse in the third degree as defined in section 130.55 in which incapacity to consent is based on the circumstances set forth in paragraph (h) of subdivision three of section 130.05 of this article it shall be an affirmative defense that the client or patient consented to such conduct charged after having been expressly advised by the health care or mental health care provider that such conduct was not performed for a valid medical purpose.

4. In any prosecution under this article in which the victim's lack of consent is based solely on his or her incapacity to consent because he or she was less than seventeen years old, mentally disabled, a client or patient and the actor is a health care provider, or committed to the care and custody or supervision of the state department of corrections

and community supervision or a hospital and the actor is an employee, it shall be a defense that the defendant was married to the victim as defined in subdivision four of section 130.00 of this article.

S 130.16 Sex offenses; corroboration.

A person shall not be convicted of any offense defined in this article of which lack of consent is an element but results solely from incapacity to consent because of the victim's mental defect, or mental incapacity, or an attempt to commit the same, solely on the testimony of the victim, unsupported by other evidence tending to:

- (a) Establish that an attempt was made to engage the victim in sexual intercourse, oral sexual conduct, anal sexual conduct, or sexual contact, as the case may be, at the time of the occurrence; and
- (b) Connect the defendant with the commission of the offense or attempted offense.

S 130.20 Sexual misconduct.

A person is guilty of sexual misconduct when:

1. He or she engages in sexual intercourse with another person without such person's consent; or
2. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent; or
3. He or she engages in sexual conduct with an animal or a dead human body.

Sexual misconduct is a class A misdemeanor

S 130.25 Rape in the third degree.

A person is guilty of rape in the third degree when:

1. He or she engages in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than seventeen years old;
2. Being twenty-one years old or more, he or she engages in sexual intercourse with another person less than seventeen years old; or
3. He or she engages in sexual intercourse with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

Rape in the third degree is a class E felony.

S 130.30 Rape in the second degree.

A person is guilty of rape in the second degree when:

1. being eighteen years old or more, he or she engages in sexual intercourse with another person less than fifteen years old; or



2. he or she engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.

It shall be an affirmative defense to the crime of rape in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.

Rape in the second degree is a class D felony.

#### S 130.35 Rape in the first degree.

A person is guilty of rape in the first degree when he or she engages in sexual intercourse with another person:

1. By forcible compulsion; or
  2. Who is incapable of consent by reason of being physically helpless;
- or
3. Who is less than eleven years old; or
  4. Who is less than thirteen years old and the actor is eighteen years old or more.

Rape in the first degree is a class B felony.

#### S 130.40 Criminal sexual act in the third degree.

A person is guilty of criminal sexual act in the third degree when:

1. He or she engages in oral sexual conduct or anal sexual conduct with a person who is incapable of consent by reason of some factor other than being less than seventeen years old;
2. Being twenty-one years old or more, he or she engages in oral sexual conduct or anal sexual conduct with a person less than seventeen years old; or
3. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

Criminal sexual act in the third degree is a class E felony.

#### S 130.45 Criminal sexual act in the second degree.

A person is guilty of criminal sexual act in the second degree when:

1. being eighteen years old or more, he or she engages in oral sexual conduct or anal sexual conduct with another person less than fifteen years old; or
2. he or she engages in oral sexual conduct or anal sexual conduct with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.

It shall be an affirmative defense to the crime of criminal sexual act

in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.

Criminal sexual act in the second degree is a class D felony.

S 130.50 Criminal sexual act in the first degree.

A person is guilty of criminal sexual act in the first degree when he or she engages in oral sexual conduct or anal sexual conduct with another person:

1. By forcible compulsion; or
  2. Who is incapable of consent by reason of being physically helpless;
- or
3. Who is less than eleven years old; or
  4. Who is less than thirteen years old and the actor is eighteen years old or more.

Criminal sexual act in the first degree is a class B felony.

S 130.52 Forcible touching.

A person is guilty of forcible touching when such person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire.

For the purposes of this section, forcible touching includes squeezing, grabbing or pinching.

Forcible touching is a class A misdemeanor

S 130.53 Persistent sexual abuse.

A person is guilty of persistent sexual abuse when he or she commits the crime of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree, as defined in section 130.55 of this article, or sexual abuse in the second degree, as defined in section 130.60 of this article, and, within the previous ten year period, excluding any time during which such person was incarcerated for any reason, has been convicted two or more times, in separate criminal transactions for which sentence was imposed on separate occasions, of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree as defined in section 130.55 of this article, sexual abuse in the second degree, as defined in section 130.60 of this article, or any offense defined in this article, of which the commission or attempted commission thereof is a felony.

Persistent sexual abuse is a class E felony.

S 130.55 Sexual abuse in the third degree.

A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that (a) such other person's lack of consent was due solely to incapacity to consent by reason of being less than seventeen years old, and (b) such other person was more than fourteen years old, and (c) the defendant was less than five years older than such other person.

Sexual abuse in the third degree is a class B misdemeanor.

S 130.60 Sexual abuse in the second degree.

A person is guilty of sexual abuse in the second degree when he or she subjects another person to sexual contact and when such other person is:

1. Incapable of consent by reason of some factor other than being less than seventeen years old; or
2. Less than fourteen years old.

Sexual abuse in the second degree is a class A misdemeanor.

S 130.65 Sexual abuse in the first degree.

A person is guilty of sexual abuse in the first degree when he or she subjects another person to sexual contact:

1. By forcible compulsion; or
2. When the other person is incapable of consent by reason of being physically helpless; or
3. When the other person is less than eleven years old; or
4. When the other person is less than thirteen years old and the actor is twenty-one years old or older.

Sexual abuse in the first degree is a class D felony.

S 130.65-a Aggravated sexual abuse in the fourth degree.

1. A person is guilty of aggravated sexual abuse in the fourth degree when:

(a) He or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person and the other person is incapable of consent by reason of some factor other than being less than seventeen years old; or

(b) He or she inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of some factor other than

being less than seventeen years old.

2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the fourth degree is a class E felony.

S 130.66 Aggravated sexual abuse in the third degree.

1. A person is guilty of aggravated sexual abuse in the third degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person:

(a) By forcible compulsion; or

(b) When the other person is incapable of consent by reason of being physically helpless; or

(c) When the other person is less than eleven years old.

2. A person is guilty of aggravated sexual abuse in the third degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of being mentally disabled or mentally incapacitated.

3. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the third degree is a class D felony.

S 130.67 Aggravated sexual abuse in the second degree.

1. A person is guilty of aggravated sexual abuse in the second degree when he or she inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person:

(a) By forcible compulsion; or

(b) When the other person is incapable of consent by reason of being physically helpless; or

(c) When the other person is less than eleven years old.

2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the second degree is a class C felony.

S 130.70 Aggravated sexual abuse in the first degree.

1. A person is guilty of aggravated sexual abuse in the first degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person:

(a) By forcible compulsion; or

(b) When the other person is incapable of consent by reason of being physically helpless; or

(c) When the other person is less than eleven years old.

2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the first degree is a class B felony.

S 130.75 Course of sexual conduct against a child in the first degree.

1. A person is guilty of course of sexual conduct against a child in the first degree when, over a period of time not less than three months in duration:

(a) he or she engages in two or more acts of sexual conduct, which includes at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact, with a child less than eleven years old; or

(b) he or she, being eighteen years old or more, engages in two or more acts of sexual conduct, which include at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact, with a child less than thirteen years old.

2. A person may not be subsequently prosecuted for any other sexual offense involving the same victim unless the other charged offense occurred outside the time period charged under this section.

Course of sexual conduct against a child in the first degree is a class B felony.

S 130.80 Course of sexual conduct against a child in the second degree.

1. A person is guilty of course of sexual conduct against a child in the second degree when, over a period of time not less than three months in duration:

(a) he or she engages in two or more acts of sexual conduct with a child less than eleven years old; or

(b) he or she, being eighteen years old or more, engages in two or more acts of sexual conduct with a child less than thirteen years old.

2. A person may not be subsequently prosecuted for any other sexual offense involving the same victim unless the other charged offense occurred outside the time period charged under this section.

Course of sexual conduct against a child in the second degree is a class D felony.

S 130.85 Female genital mutilation.

1. A person is guilty of female genital mutilation when:

(a) a person knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not reached eighteen years of age; or

(b) being a parent, guardian or other person legally responsible and charged with the care or custody of a child less than eighteen years old, he or she knowingly consents to the circumcision, excision or

infibulation of whole or part of such child's labia majora or labia minora or clitoris.

2. Such circumcision, excision, or infibulation is not a violation of this section if such act is:

(a) necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner; or

(b) performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife.

3. For the purposes of paragraph (a) of subdivision two of this section, no account shall be taken of the effect on the person on whom such procedure is to be performed of any belief on the part of that or any other person that such procedure is required as a matter of custom or ritual.

Female genital mutilation is a class E felony.

S 130.90 Facilitating a sex offense with a controlled substance.

A person is guilty of facilitating a sex offense with a controlled substance when he or she:

1. knowingly and unlawfully possesses a controlled substance or any preparation, compound, mixture or substance that requires a prescription to obtain and administers such substance or preparation, compound, mixture or substance that requires a prescription to obtain to another person without such person's consent and with intent to commit against such person conduct constituting a felony defined in this article; and

2. commits or attempts to commit such conduct constituting a felony defined in this article.

Facilitating a sex offense with a controlled substance is a class D felony.

S 130.91 Sexually motivated felony.

1. A person commits a sexually motivated felony when he or she commits a specified offense for the purpose, in whole or substantial part, of his or her own direct sexual gratification.

2. A "specified offense" is a felony offense defined by any of the following provisions of this chapter: assault in the second degree as

defined in section 120.05, assault in the first degree as defined in section 120.10, gang assault in the second degree as defined in section 120.06, gang assault in the first degree as defined in section 120.07, stalking in the first degree as defined in section 120.60, strangulation in the second degree as defined in section 121.12, strangulation in the first degree as defined in section 121.13, manslaughter in the second degree as defined in subdivision one of section 125.15, manslaughter in the first degree as defined in section 125.20, murder in the second degree as defined in section 125.25, aggravated murder as defined in section 125.26, murder in the first degree as defined in section 125.27, kidnapping in the second degree as defined in section 135.20, kidnapping in the first degree as defined in section 135.25, burglary in the third degree as defined in section 140.20, burglary in the second degree as defined in section 140.25, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, arson in the first degree as defined in section 150.20, robbery in the third degree as defined in section 160.05, robbery in the second degree as defined in section 160.10, robbery in the first degree as defined in section 160.15, promoting prostitution in the second degree as defined in section 230.30, promoting prostitution in the first degree as defined in section 230.32, compelling prostitution as defined in section 230.33, disseminating indecent material to minors in the first degree as defined in section 235.22, use of a child in a sexual performance as defined in section 263.05, promoting an obscene sexual performance by a child as defined in section 263.10, promoting a sexual performance by a child as defined in section 263.15, or any felony attempt or conspiracy to commit any of the foregoing offenses.

#### S 130.92 Sentencing.

1. When a person is convicted of a sexually motivated felony pursuant to this article, and the specified felony is a violent felony offense, as defined in section [70.02](#) of this chapter, the sexually motivated felony shall be deemed a violent felony offense.
2. When a person is convicted of a sexually motivated felony pursuant to this article, the sexually motivated felony shall be deemed to be the same offense level as the specified offense the defendant committed.
3. Persons convicted of a sexually motivated felony as defined in section 130.91 of this article, must be sentenced in accordance with the provisions of section [70.80](#) of this chapter.

#### S 130.95 Predatory sexual assault.

A person is guilty of predatory sexual assault when he or she commits the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree, or course of sexual conduct against a child in the first degree, as defined in this article, and when:

1. In the course of the commission of the crime or the immediate flight therefrom, he or she:
  - (a) Causes serious physical injury to the victim of such crime; or
  - (b) Uses or threatens the immediate use of a dangerous instrument; or
2. He or she has engaged in conduct constituting the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree, or course of sexual conduct against a child in the first degree, as defined in this article, against one or more additional persons; or
3. He or she has previously been subjected to a conviction for a felony defined in this article, incest as defined in section [255.25](#) of this chapter or use of a child in a sexual performance as defined in section [263.05](#) of this chapter.

Predatory sexual assault is a class A-II felony.

S 130.96 Predatory sexual assault against a child.

A person is guilty of predatory sexual assault against a child when, being eighteen years old or more, he or she commits the crime of [rape in the first degree](#), [criminal sexual act in the first degree](#), [aggravated sexual abuse in the first degree](#), or [course of sexual conduct against a child in the first degree](#), as defined in this article, and the victim is less than thirteen years old.

Predatory sexual assault against a child is a class A-II felony.

### **Sex Offender Registry and Access to Related Information**

The federal Campus Sex Crimes Prevention Act, enacted on October 28, 2000, went into effect October 28, 2002. The law requires institutions of higher education to issue a statement advising the campus community where law enforcement agency information provided by a State concerning registered sex offenders may be obtained. It requires sex offenders already required to register in a State to provide notice, as required under state law, of each institution of higher education in that State at which the person is employed, carries on a vocation, or is a student. The New York State sex offender registry may be accessed at [New York State Sex Offender Registry](#). In addition, the City of Albany maintains a sex offender registry that may be accessed by "Entities of Vulnerable Population". The UHA Office of Public Safety has been so declared and the registry may be accessed through the Director of Public Safety.



## **Alcohol and Drug Policy**

The Drug Free Schools and Communities Act of 1989 requires that institutions of higher education receiving certain funding adopt and implement a drug and alcohol abuse prevention program to prevent the unlawful possession, use or distribution of illicit drugs and alcohol by all students and employees on school premises or as part of any of its activities. It is distributed annually to all students and employees and is subject to biannual review in December of even numbered years.

### (1) Albany Law School Drug and Alcohol Policy

The unlawful possession, use, or distribution of drugs and alcohol by students and employees is prohibited on Albany Law School property, or while engaged in Albany Law School sponsored activities or employment.

### (2) Violations of Policy

#### (a) Disciplinary Action

Students and employees in violation of drug and alcohol policies governed by the Institution and local, State, and Federal laws will be subjected to disciplinary action (including dismissal) and applicable legal sanctions. The investigative and disciplinary procedures for employees shall be followed and administered by Albany Law School. In the event of an employee's alleged involvement in a criminal drug- or alcohol-related offense, his or her case may also be referred to appropriate law enforcement officials and the District Attorney's Office for investigation and prosecution.

An employee may be subject to disciplinary action up to and including termination for failure to comply with Albany Law School policies or established practices. Albany Law School, at its discretion, may require an employee to participate satisfactorily in a drug and/or alcohol abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or designated agency.

#### (b) Legal Sanctions

Albany Law School provides the following summary of New York State and Federal laws barring illicit drugs and governing the use of alcohol on campus and while engaged in Albany Law School sponsored activities or employment:

As stated in Article 33, Sections 3300 and 3304 of the New York State Public Health Law, it shall be unlawful for any person to manufacture, sell, prescribe, distribute, dispense, administer, possess, have under his control, abandon, or transport a controlled substance (except as

expressly allowed by the article). Articles 220 and 221 of the New York State Penal Law describe the sanctions for offenses involving controlled substances and marijuana. These articles set criminal penalties for possession or sale of drugs considered harmful or subject to abuse. The seriousness of the offense and penalty imposed upon conviction depend upon the individual drug and amount held or sold.

- (1) Possession of a narcotic drug (e.g., Cocaine, Heroin, Opium), no matter how small is a misdemeanor; possession of 1/8 ounce or more is a felony with the exception of cocaine. Criminal possession of cocaine, including crack, is a Class D felony if in possession of 500 milligrams or more. Sale of any amount is a felony.
- (2) Possession of an unprescribed depressant drug is a misdemeanor.
- (3) Possession of 10 ounces or more of any depressant listed as a “Dangerous Depressant” (e.g., Barbiturates, Methaqualone) is a felony.
- (4) Possession of 50 milligrams or more of phencyclidine (Angel Dust) is a felony.

New York State Penal Law defines a misdemeanor as a crime punishable by imprisonment for more than 15 days but not more than one year. A felony is a crime punishable by imprisonment for more than one year.

The Marijuana Reform Act of 1977 has classified possession of lesser amounts of marijuana up to 25 grams (25-30 cigarettes), as a violation; penalties range from \$100 to \$250 fine and/or up to 15 days in jail, depending on whether it is the first, second, or third offense.

- (1) Possession of any amount in public view or of any amount of burning marijuana in a public place is a misdemeanor.
- (2) Possession of more than 25 grams but not more than 8 ounces is a misdemeanor. Possession of 8 ounces or more is a felony. Sale of 25 grams or less is a misdemeanor; sale of more than 25 grams is a felony.
- (3) Sale of any amount to a minor is a felony.
- (4) The penalties for sale or possession of hashish are more severe. Possession of any amount, no matter how small is a misdemeanor and possession of ¼ ounce is a felony; sale of any amount of hashish, no matter how small, is a felony.

Also under New York State Law:

Alcohol Beverage Control Law § 65-C

Effective January 1, 1990 it is unlawful for anyone under 21 to possess alcohol with the intention to consume it. A \$50.00 fine will be levied against persons found guilty.

Penal Law § 260.20

Persons over 21 who sell, give, or otherwise provide alcoholic beverages to anyone under 21 are guilty of a Class A misdemeanor punishable by a fine and up to one year in jail.

## General Obligation Law § 11-100

A third party injured by an impaired or intoxicated person under age 21 has a right of legal action against a person or organization which “knowingly” caused such impairment by unlawfully furnishing or assisting in procuring alcohol for the person under 21 years of age.

## Vehicle & Traffic Law, Article 31109

In New York State you are legally intoxicated when your Blood Alcohol Content (B.A.C.) reaches .08%. Your ability may be impaired when the B.A.C. is between .05% and .08%. Sanctions for first violations of Driving While Intoxicated (DWI) and Driving While Ability Impaired (DWAI) are as follows:

Fine Maximum Jail Time Mandatory Action

DWI \$500-\$1,000 1 year 6-month revocation of driver’s license

DWAI \$300-\$500 15 days 90-day suspension of driver’s license.

\*Similar penalties apply to Driving While Drug-Impaired (DWDI).

Two or more DWI or DWDI violations in ten years constitute a felony. The minimum fine for a felony DWI or DWDI is \$1000; the minimum action is a one-year revocation of your driver’s license, and the maximum prison term is four years.

Federal penalties and sanctions for illegal possession of a controlled substance include:

### 21 U.S.C. 844(a)

First conviction: Up to one year imprisonment and fined at least \$1,000 but not more than \$5,000, or both.

After one prior drug conviction: At least 15 days in prison, not to exceed two years and fined at least \$2,500, but not more than \$10,000, or both.

After two or more prior drug convictions: At least 90 days in prison, not to exceed three years and fined at least \$5,000, but not more than \$25,000, or both.

Special sentencing provisions for possession of any mixture or substance with a cocaine base (including crack cocaine): Mandatory at least five years in prison, not to exceed 20 years and fined between \$1,000 and \$250,000, or both, if:

(a) First conviction and the amount of crack possessed exceeds 5 grams.

(b) Second crack conviction and the amount of crack possessed exceeds 3 grams.

(c) Third or subsequent crack conviction and the amount of crack possessed exceeds 1 gram. In addition, costs of investigation and prosecution may be imposed.

### 21 U.S.C. 881(a)(7)

Forfeiture of real property used to possess or to facilitate possession of a controlled substance if that offense is punishable by more than one year imprisonment.

21 U.S.C. 881(a)(4)

Forfeiture of vehicles, boats, aircraft, or any other conveyance used to transport or conceal a controlled substance, or to facilitate its sale, receipt or possession.

21 U.S.C. 844(a)

Civil fine of up to \$10,000; three years in jail (no suspended sentence).

21 U.S.C. 862

Denial of Federal benefits, such as student loans, grants, contracts, and professional and commercial licenses, up to one year for first offense, up to five years for second and subsequent offenses.

21 U.S.C. 861(d)

Penalty to providing a controlled substance to an underage person: prison for up to five years, or a fine of up to \$50,000 or both.

18 U.S.C. 922(g)

Ineligible to receive or purchase a firearm.

Miscellaneous:

Revocation of certain Federal licenses and benefits, e.g., pilot license, public housing tenancy, etc., are vested within the authorities of individual Federal agencies.

Federal penalties for trafficking in controlled substances of marijuana, hashish, and hashish oil include up to life imprisonment and millions of dollars in fines.

(3) Health Risks Involving the Use of Drugs and Alcohol

The use of illicit drugs and the abuse of alcohol may seriously endanger the health of the individual user. In addition, their use may endanger the health and safety of their family members and communities.

Included below are a few health and safety risks involved with the use of illicit drugs and the abuse of alcohol:

- There are more deaths and disabilities each year in the U.S. from substance abuse than from any other cause.
- One-quarter of all emergency room admissions, one-third of all suicides, and more than half of all homicides and incidents of domestic violence are alcohol related.
- Heavy drinking contributes to illness in each of the top three causes of death: heart disease, cancer and stroke.
- Drug-using employees take three times as many sick benefits as other workers. They are five times more likely to file a worker's compensation claim.
- Non-alcoholic members of alcoholics' families use ten times as much sick leave as members of families in which alcoholism is not present.

- Nearly on-fourth of all persons admitted to general hospitals have alcohol problems or are undiagnosed alcoholics being treated for the consequences of their drinking.
- Fetal alcohol syndrome (FAS), the leading known cause of mental retardation is caused by maternal alcoholism or heavy drinking during pregnancy.
- Heavy and chronic drinking depresses the immune system and results in a predisposition to infectious diseases, including respiratory infections, pneumonia, and tuberculosis.
- 70% of AIDS cases among women are drug-related.
- Over 75% of all perinatally-acquired HIV infections are secondary to intravenous drug use by an infected mother or her sexual partner

### **Preparation of the Annual Security Report**

This report is presented on an annual basis and is available by October 1. It is prepared by the Director of Public Safety utilizing incident reports generated during the subject year, as well as information provided by Campus Security Authorities and the City of Albany Police Department. It is available in hard copy as well as on the Web at Annual Security and Fire Safety Report for 2016.