

# EXPANDING DOMESTIC VIOLENCE LAWS TO INCLUDE DORMS AND SHARED SPACES ON COLLEGE CAMPUSES

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## I. INTRODUCTION

Every year, ten million people are victims of domestic abuse.<sup>1</sup> Most domestic violence victims are college-age women.<sup>2</sup> Approximately 47.9% of female and 44.1% of male domestic violence victims experience this abuse between ages 18 and 24, when many young adults are living at college.<sup>3</sup> Additionally, 11.2% of all college students are

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<sup>1</sup> See M.C. Black, Kathleen C. Basile, Matthew J. Breiding, Sharron G. Smith, Mikel L. Walters, Melissa T. Merrick, Jieru Chen, & M. Stevens. *The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report* (2011). Centers for Disease Control and Prevention (CDC). Available at

[http://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf).

<sup>2</sup> Jennifer L. Truman & Rachel E. Morgan, *Nonfatal Domestic Violence, 2003-2012*, Bureau of Justice Statistics (BJS) (2014). Available at <http://www.bjs.gov/content/pub/pdf/ndv0312.pdf>.

<sup>3</sup> Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization — National Intimate Partner and Sexual Violence Survey, United States, CDC (2011).

sexually assaulted “through physical force, violence, or incapacitation.”<sup>4</sup>

This Article discusses the violence and sexual assault problems facing campuses, and how the broadening of the New Jersey Prevention of Domestic Violence Act of 1991 [“PDVA”] can protect students.<sup>5</sup> Section II details New Jersey’s approach to restraining orders and compares New Jersey’s approach to other states.<sup>6</sup> Section III examines the issues surrounding policies and procedures for reporting violence on college campuses.<sup>7</sup> Section IV explains the role of campus law enforcement in campus violence.<sup>8</sup> Section V makes recommendations for improving schools’ responses to sexual harassment claims.<sup>9</sup>

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<sup>4</sup> Rape, Abuse, and Incest National Network (RAINN). Campus Sexual Violence: Statistics (2015), Available at <https://www.rainn.org/statistics/campus-sexual-violence> (last visited Apr. 5, 2017).

<sup>5</sup> N.J. Stat. Ann. § 2C:25-17 *et seq.*

<sup>6</sup> See *infra* notes xx - xx.

<sup>7</sup> See *infra* notes xx - xx.

<sup>8</sup> See *infra* notes xx - xx.

<sup>9</sup> See *infra* notes xx - xx.

## II. NEW JERSEY'S APPROACH TO RESTRAINING ORDERS

Restraining orders are issued by courts to protect victims of domestic violence.<sup>10</sup> Restraining orders are governed by the New Jersey PDVA, which states that:

[D]omestic violence is a serious crime against society...[T]here are thousands of persons in this State who are regularly beaten, tortured and in some cases even killed by their spouses or cohabitants....It is therefore, the intent of the Legislature to assure the victims of domestic violence the maximum protection from abuse the law can provide.<sup>11</sup>

The Act also notes that:

[P]revious societal attitudes concerning domestic violence have affected the response of our law enforcement and judicial systems, resulting in these acts receiving

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<sup>10</sup> New Jersey Courts. The Prevention of Domestic Violence Act: A Guide to the Most Frequently Asked Questions, (2016). Available at [https://www.judiciary.state.nj.us/prose/11253\\_dv\\_act.pdf](https://www.judiciary.state.nj.us/prose/11253_dv_act.pdf) (last visited Apr. 5, 2017).

<sup>11</sup> N.J. Stat. Ann. § 2C:25-18.

different treatment from similar crimes when they occur in a domestic context. The Legislature finds that battered adults presently experience substantial difficulty in gaining access to protection from the judicial system, particularly due to that system's inability to generate a prompt response in an emergency situation.<sup>12</sup>

The PDVA's protection applies to anyone over the age of 18 "who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a present household member or was at any time a household member."<sup>13</sup> The PDVA does not further define "household member," however, recent case law has broadened the term beyond the traditional family household setting.<sup>14</sup>

In 2012, the Appellate Division of the Superior Court of New Jersey ruled that neighbors in a boarding house were considered "household member" under the PDVA.<sup>15</sup> In 2008, the plaintiff,

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<sup>12</sup> N.J. Stat. Ann. § 2C:25-18.

<sup>13</sup> N.J. Stat. Ann. § 2C:25-19.

<sup>14</sup> *Id.*

<sup>15</sup> *See S.P. v. Newark Police Dep't*, 52 A.3d 178 (App. Div. 2012).

S.P., lived on the third floor of a boarding house in Newark.<sup>16</sup> The only other resident on the third floor was Louis Alfredo Santiago, Jr.<sup>17</sup> S.P. and Santiago had separate bedrooms, but shared a bathroom.<sup>18</sup>

On February 17, 2008, Santiago groped S.P. in the hallway and told her that he wanted to have sex, so she pushed him away and locked herself in her bedroom.<sup>19</sup> When Santiago tried to enter S.P.'s bedroom, S.P. called the police.<sup>20</sup> When the police officers arrived, S.P. told them what happened, and Santiago confirmed that he had touched S.P.<sup>21</sup> The officers advised Santiago to leave S.P. alone and left the premises.<sup>22</sup> Officer Bernal, who responded to the scene, later testified that he did not arrest Santiago because there were “no grounds of domestic violence [and] no physical signs of injury,” and that Santiago and S.P. “did not have any dating relationship ... live under the same roof

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<sup>16</sup> *Id.* at 180.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 181.

<sup>22</sup> *Id.*

[and] [t]hey're renting rooms.”<sup>23</sup> Therefore, based on his training and experience, the officer determined that the incident was not domestic violence.<sup>24</sup>

The next morning, S.P. encountered Santiago in the hallway again, where Santiago punched, choked, and raped S.P..<sup>25</sup> Police arrested Santiago that day.<sup>26</sup> S.P. obtained a Temporary Restraining Order (TRO) on February 21, 2008.<sup>27</sup> The TRO listed S.P. and Santiago as “household members.”<sup>28</sup> S.P. sued the Newark Police Department in 2010, alleging that they failed to properly arrest and remove Santiago from the building pursuant to the PDVA.<sup>29</sup> The Appellate Division found that S.P. and Santiago were “household members.”<sup>30</sup>

The Appellate Division stated that the definition of “household member” should be applied on a case by case basis with consideration of five factors:

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 181.

<sup>28</sup> *S.P. v. Newark Police Department*, 52 A.3d at 181.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 182.

(1) constancy of the relationship; (2) over-night stays at each other's residence; (3) personal items such as jewelry, clothing; and personal grooming effects stored at each other's residences; (4) shared property arrangements, such as automobile usage, access to each other's bank accounts and one mailing address for billing or other legal purposes; and (5) familiarity with each other's siblings and parents socially in dining and/or entertainment activities together, and/or attendance together at extended family functions such as weddings.<sup>31</sup>

The court held that

[W]e are satisfied the particular factual circumstances of this case gave rise to a finding that S.P. and Santiago were members of the same household within the intendment of the PDVA and the broad and flexible interpretation of 'household member' articulated in the case law.<sup>32</sup> Additionally, the court observed that "this housing arrangement of close living quarters

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<sup>31</sup> *Id.* at 187.

<sup>32</sup> *Id.*

with shared common areas placed S.P. in a more ‘susceptible position for abusive and controlling behavior in the hands of [Santiago].’”<sup>33</sup>

The court also based its decision on the Superior Court of New Jersey’s Chancery Division’s holding in *Hamilton v. Ali*.<sup>34</sup> In that case, the plaintiff and defendant were suite mates in a nine-person suite on a college campus.<sup>35</sup> The plaintiff and defendant were involved in a physical altercation in which the plaintiff was injured, and the plaintiff eventually obtained a restraining order against the defendant.<sup>36</sup> The court upheld the issuance of the restraining order because the plaintiff and the defendant were considered “household members” under the PDVA.<sup>37</sup> The court reasoned that “each ha[d] separate sleeping quarters but must interact on a frequent basis,” which left the plaintiff vulnerable to the defendant’s abuse.<sup>38</sup> Additionally, in *S.Z. v.*

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<sup>33</sup> *Id.*

<sup>34</sup> *S.P. v. Newark Police Department*, 52 A.3d at 188.

<sup>35</sup> *Hamilton v. Ali*, 795 A.2d 929, 929 (Ch. Div. 2001).

<sup>36</sup> *Id.* at 929-30.

<sup>37</sup> *Id.* at 934.

<sup>38</sup> *Id.*

*M.C.*, the Superior Court found that the definition of “household member” applied to a man, who was temporarily living with the plaintiff for seven months.<sup>39</sup> The court found that “[d]efendant’s alleged invasion of plaintiff’s privacy in furtherance of a sexual relationship began when they were living in the same home and resulted in defendant’s eviction from that home.”<sup>40</sup> These combined rulings expand the availability of restraining orders to students living in dormitories.<sup>41</sup>

Restraining order availability to non-family members varies among states.<sup>42</sup> For example, under New York’s narrow statute, restraining orders are only available against “[a] person related to the victim by blood or affinity, current or former spouse, [or] person who has a child with the

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<sup>39</sup> *S.Z. v. M.C.*, 417 N.J. Super. 622, 623, 11 A.3d 404, 405 (App. Div. 2011).

<sup>40</sup> *Id.* at 407.

<sup>41</sup> See *infra* notes xx - xx.

<sup>42</sup> American Bar Association, Domestic Violence Civil Protection Orders (CPOs) (2014),

[http://www.americanbar.org/content/dam/aba/administrative/domestic\\_c\\_violence1/Resources/statutorysummarycharts/2014%20CPO%20Availability%20Chart.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/domestic_c_violence1/Resources/statutorysummarycharts/2014%20CPO%20Availability%20Chart.authcheckdam.pdf) (last visited Apr. 7, 2017).

victim.”<sup>43</sup> Connecticut’s statute allows a restraining order for “[a]nyone who has been subjected to a continuous threat of present physical pain or physical injury by another family/household member or a current or former dating partner.”<sup>44</sup> Thirty states allow restraining orders against household members, however, the definitions are open to varying interpretations and confusion for law enforcement.<sup>45</sup>

### III. SEXUAL VIOLENCE ON CAMPUSES

Sexual assault reporting on college campuses is governed by Title IX of the Civil Rights Act of 1964.<sup>46</sup> Title IX requires that every school have a Title IX coordinator, who “ensures schools are compliant with Title IX, coordinates the investigation and disciplinary process, and looks for patterns or systematic problems with compliance to

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<sup>43</sup> *Id.* at 20.

<sup>44</sup> CONN. GEN. STAT. §46B-15(a) (2013).

<sup>45</sup> *Id.*

<sup>46</sup> Title IX - Know Your IX, Know Your IX, <http://knowyourix.org/title-ix/title-ix-in-detail/> (last visited Apr. 5, 2017).

ensure schools fulfill all their federal obligations.”<sup>47</sup> Title IX and subsequent guidance from the Department of Education also require sex assault response training for certain school employees, “prompt” handling of sex assault complaints, and “equitable” resolution of such complaints.<sup>48</sup>

Under the Clery Act, a consumer protection law aimed to foster campus safety, schools must create and distribute an Annual Security Report (ASR), detailing crime statistics and the school’s security policies.<sup>49</sup> The Clery Act also requires schools to provide comprehensive sexual assault education and include a summary of such educational programs in the ASR.<sup>50</sup> The Act also details the information schools are required to provide to individuals, who report sexual assault.<sup>51</sup> Victims must be informed of their right to call the police, available mental health services, and resources for changing classes

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Campus Sexual Assault Victims' Bill of Rights, Jeanne Clery Act (2016), <http://www.cleryact.info/campus-sexual-assault-victims--bill-of-rights.html> (last visited Apr. 5, 2017).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

or living situation.<sup>52</sup> Schools also must have internal disciplinary procedures for sexual assault, disclose possible outcomes after a final determination, and afford both the victim and the accused the same opportunity to call witnesses.<sup>53</sup> Schools that fail to abide by the mandates of the Clery Act are subject to financial penalties.<sup>54</sup>

However, despite the protections of Title IX and the Clery Act, reporting sexual assault to the school alone can unfortunately open the door to schools mishandling assault and misreporting sexual assault statistics.<sup>55</sup> A recent investigation by 31 senators indicates that many schools underreport sexual assault statistics.<sup>56</sup> The Senators delivered a letter to former United States Attorney General Loretta Lynch and former United States Department of

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Clery Act Reports, Federal Student Aid, <https://studentaid.ed.gov/sa/about/data-center/school/clery-act-reports> (last visited Apr. 21, 2018).

<sup>55</sup> “Why schools handle sexual violence reports - Know Your IX,” Know Your IX, <http://knowyourix.org/why-schools-handle-sexual-violence-reports/> (last visited Apr. 5, 2017).

<sup>56</sup> VAWA-Clery-Anniversary-Letter, Documentcloud.org (2016), <https://www.documentcloud.org/documents/2938057-VAWA-Clery-Anniversary-Letter.html> (last visited Apr. 5, 2017).

Education Secretary John B. King, Jr.<sup>57</sup> Their report found that schools were grossly underreporting sexual assault statistics, stating that

91 percent of schools reported no incidents of domestic violence or dating violence. These directly conflict with the [Department of Justice (DOJ)] and [Centers for Disease Control and Prevention (CDC)] data on sexual assault, and strongly suggest that schools are either not taking the reporting obligation seriously or are not creating an environment where students feel comfortable coming forward to report, and are vastly underreporting these crimes.<sup>58</sup>

Some specific instances of underreporting or misreporting are William and Mary University, which failed to report a sexual assault and hate crime assault, and Georgetown, which mischaracterized a forced fondling as a “Burglary — No Force.”<sup>59</sup> Additionally, Georgetown University

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Clery Act Reports, Federal Student Aid, <https://studentaid.ed.gov/sa/about/data-center/school/clery-act-reports> (last visited Apr. 21, 2018).

was cited for requiring students to sign a non-disclosure agreement prior to accessing judicial proceeding outcomes and sanctions.<sup>60</sup> Oklahoma State University professor John Foubert observed that “too many institutions are looking to protect their institutional brand by saying ‘rape doesn’t happen here.’”<sup>61</sup>

Furthermore, despite the educational mandate of the Clery Act and government funding for educational programs, many schools fall short regarding education on violence, assault, and sexual assault.<sup>62</sup> Many schools simply offer online courses that contain a 30-minute introductory program regarding sexual assault.<sup>63</sup> Studies have shown that introductory programs on sexual assault do not have long term benefits and can even help assailants

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<sup>60</sup> Clery Act Reports, Federal Student Aid, <https://studentaid.ed.gov/sa/about/data-center/school/clery-act-reports> (last visited Apr. 21, 2018).

<sup>61</sup> Allie Bidwell, *Campus Sexual Assault: More Awareness Hasn't Solved Root Issues*. U.S. NEWS & WORLD REPORT (2015), available at <https://www.usnews.com/news/articles/2015/05/20/sexual-assault-on-college-campuses-more-awareness-hasnt-solved-underlying-issues> (last visited Apr. 5, 2017).

<sup>62</sup> See *infra* notes 64 - 66.

<sup>63</sup> *Id.*

avoid detection.<sup>64</sup> Professor Foubert remarked, describing Oklahoma State University, that “[t]hey’re getting up to a bare minimum level.”<sup>65</sup>

Unfortunately, the Clery Act has not led to a decrease in the incidence of violence and sexual assault on campuses, but rather an increase in the number of incidents.<sup>66</sup> Sexual assaults on campus have risen from approximately 4,000 in 2012 to 5,000 in 2015.<sup>67</sup> A report by a group of Senators released in May 2015 indicated that an increase from 3,264 sexual assaults reported in 2009 to 6,016 reported in 2013.<sup>68</sup> Rutgers University has the eighth highest incidence of rape reporting of universities in the United States.<sup>69</sup>

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<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> See Bureau of Justice Statistics, National Center for Education Statistics, Indicators of School Crime and Safety: 2015 (2015), available at <https://www.bjs.gov/content/pub/pdf/iscs15.pdf> (last visited Apr. 5, 2017).

<sup>67</sup> *Id.*

<sup>68</sup> New Data Indicates a Rise in Sexual Assault Allegations Despite Decreasing Campus Crime Numbers, Generation Progress (2016), available at <http://genprogress.org/voices/2016/05/26/43612/new-data-indicates-rise-sexual-assault-allegations-despite-decreasing-campus-crime-numbers/> (last visited Apr. 5, 2017).

<sup>69</sup> Tom Davis, *Rutgers’ Reported Rapes Are Eighth Most In U.S., New Data Shows*, NEW BRUNSWICK PATCH (June 7, 2016), available at <http://patch.com/new-jersey/newbrunswick/rutgers-among-us->

Increased media attention on school mishandling of sexual assault cases may contribute to colleges improving their practices.<sup>70</sup> In 2012, a fellow student, Paul Nungesser, sexually assaulted Columbia University student Emma Sulkowicz in her dorm room.<sup>71</sup> Emma filed a complaint with Columbia in 2013 and a hearing was held, where Paul was found not responsible.<sup>72</sup> Emma appealed the decision but her appeal was denied.<sup>73</sup> Emma then went to the local police, but found the interaction “so upsetting” that she did not pursue charges.<sup>74</sup> Emma maintained that Columbia’s investigation and hearing processes were flawed

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colleges-most-rapes-new-report-finds. This can also indicate a higher incidence of reporting rather than a higher incidence of rape itself. *Id.*<sup>70</sup> See Emily Bazelon, *Have We Learned Anything from the Columbia Rape Case?* NEW YORK TIMES (2014), available at <https://www.nytimes.com/2015/05/29/magazine/have-we-learned-anything-from-the-columbia-rape-case.html> (last visited Apr. 5, 2017).

<sup>71</sup> Roberta Smith, *In a Mattress, a Lever for Art and Political Protest*, NEW YORK TIMES (2014), available at [https://www.nytimes.com/2014/09/22/arts/design/in-a-mattress-a-fulcrum-of-art-and-political-protest.html?\\_r=0](https://www.nytimes.com/2014/09/22/arts/design/in-a-mattress-a-fulcrum-of-art-and-political-protest.html?_r=0) (last visited Apr. 5, 2017).

<sup>72</sup> *Id.* Paul continues to deny the allegations and sued Columbia in April in 2015 for allowing him to be harassed in the wake of the hearing and during Emma’s protest. *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

because of the evidence that was admitted and the inappropriate questions asked during the hearing.<sup>75</sup>

In protest of Columbia's handling of her case, Emma carried her mattress around campus and on graduation day.<sup>76</sup> In 2014, Columbia changed its sexual assault practices.<sup>77</sup> Students involved in sexual assault hearings may have an attorney present at the hearing, and a student will be provided an attorney if he or she cannot afford one.<sup>78</sup> Additionally, Columbia overhauled its investigators and staff, revamped its training, and launched the Sexual Respect Initiative.<sup>79</sup> The Sexual Respect Initiative aims to:

[i]ncrease your knowledge of key concepts related to sexual respect, including healthy and problematic behaviors, and the methods and potential impact of bystander

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<sup>75</sup> Emily Bazelon, *Have We Learned Anything from the Columbia Rape Case?* NEW YORK TIMES (2014), available at <https://www.nytimes.com/2015/05/29/magazine/have-we-learned-anything-from-the-columbia-rape-case.html> (last visited Apr. 5, 2017).

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

intervention; [i]ncrease awareness of University resources and community values; and [p]rovide opportunities to dispel myths about sexual violence, learn more about the link between gender stereotypes, harassment and violence, and foster awareness about sexual violence within our community and broader society.<sup>80</sup>

The grassroots advocacy of Emma Sulkowicz is a hopeful example of students' ability to publicly expose schools' mishandling of sexual assault and force schools to enact policies to protect students.

#### IV. ROLE OF CAMPUS POLICE

Reporting sexual assault to campus authorities provides benefits that are not available from police.<sup>81</sup> Primarily, school reporting procedures provide an avenue for victims who may not want to

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<sup>80</sup> Sexual Respect and Community Citizenship Initiative 2016, *Sexual Respect* (2016), Columbia University, *available at* <https://sexualrespect.columbia.edu/sexual-respect-and-community-citizenship-initiative-2016> (last visited Apr. 5, 2017).

<sup>81</sup> "Why schools handle sexual violence reports - Know Your IX," Know Your IX, <http://knowyourix.org/why-schools-handle-sexual-violence-reports/> (last visited Apr. 5, 2017).

go to the police for fear of retaliation, the fact of reliving assault at a trial, or the result of not being believed.<sup>82</sup> Furthermore, campus authorities are the only avenue for men in states where sexual assault on a man may not be a crime.<sup>83</sup> Additionally, schools are required to offer victim services that police do not offer, such as “academic accommodations, dorm and class transfers, and mental health support.”<sup>84</sup> Finally, campus proceedings move faster than court proceedings, offering quicker resolution to all parties involved.<sup>85</sup>

Even though flaws exist in campus policing of sexual assault, both campus police and universities try to warn students about sexual assault. For example, the Rutgers University Health Services website advises students on the definitions of “sexual assault” and “consent;” what to do if they are assaulted; and links to an incident report form

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

for on-campus crime.<sup>86</sup> The website advises students to go to the emergency room. and “[i]f [they] have been injured, or feel unsafe now, if on campus, call police, 973-353-5581 (x5581); if off-campus dial 911 (emergency) immediately.”<sup>87</sup> The school also operates a sexual assault hotline.<sup>88</sup> With respect to interpersonal violence, the website contains the definition of dating violence and advises students to call campus police or 911.<sup>89</sup>

The New Jersey State Police website also contains information defining sexual assault and advising victims regarding what to do in the event of assault.<sup>90</sup> The New Jersey State Police advise individuals to contact their county’s Sexual Violence Agency “for emotional support, information and to learn about your options”, seek medical attention, then “[h]ave your Sexual Assault

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<sup>86</sup> Rutgers University Health Services, <http://health.newark.rutgers.edu/sexual-assault-interpersonal-violence-services/sexual-assault> (last visited Apr. 5, 2017).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> New Jersey State Police. Sexual Violence Information, *available at* <http://www.njsp.org/division/operations/sexual-violence-info.shtml> (last visited Apr. 6, 2017).

Response Team (SART) activated if you wish to have forensic evidence collected by calling your local police department or dialing 911.”<sup>91</sup>

Although school assault policies contain common threads, they also differ in ways that can have consequences for student reporting.<sup>92</sup> Only a few schools provide amnesty for victims who were under the influence when an incident of assault occurs.<sup>93</sup> Some schools impose time limits for reporting.<sup>94</sup> Many policies mention education and prevention efforts, but none require them, which one commentator observed “may show that the federal government and institutions value compliance over prevention education.”<sup>95</sup> These flaws in campus policies underscore the need for broader restraining order protections under the law.<sup>96</sup>

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<sup>91</sup> *Apr. Id.*

<sup>92</sup> Amy Beyer, An Investigation into Title IX Compliance at Land Grant Institutions 43 (2015), *available at* <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1247&context=cehsedaddiss> (last visited Apr. 6, 2017).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

## V. CONCLUSION

Considering the problems facing schools and students regarding sexual assault prevention and handling, extending restraining orders to dormitories similar to in New Jersey could help reduce violence and sexual assault in other states, both by protecting students and deterring further violence.<sup>97</sup> Involving law enforcement in campus violence incidents increases the options for victims and provides increased resources for investigation.<sup>98</sup>

The added remedy of a restraining order is in the event of violence or assault; however, this will only protect students if they are aware of this option. Schools in New Jersey should educate students about the availability of this option should they choose to involve the police. Although fear of reporting an internal bias may still be factors deterring students from seeking help after a sexual assault, the added protection of including the police

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<sup>97</sup> See *S.P. v. Newark Police Dep't*, 52 A.3d 178 (App. Div. 2012).

<sup>98</sup> American Association of University Professors (AAUP), *Campus Sexual Assault: Suggested Policies and Procedures*, available at <https://www.aaup.org/report/campus-sexual-assault-suggested-policies-and-procedures> (last visited Apr. 14, 2017).

at schools can still reduce assault and increase awareness.<sup>99</sup>

An additional solution proffered by John Banzhaf, a law professor at George Washington University, is to establish an independent organization funded and shared by schools in a given area.<sup>100</sup> This organization would consist of trained sexual assault experts and an independent arbitration panel.<sup>101</sup> Professor Banzhaf stated that these organizations

could afford . . . to keep on staff two or three or four people because they are covering 30 to 40 colleges. They would have the training, they would have the expertise, to interview the victims fairly and properly, to get and preserve the evidence, and to do so in a completely impartial way.<sup>102</sup>

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<sup>99</sup> “Why schools handle sexual violence reports - Know Your IX,” Know Your IX, <http://knowyourix.org/why-schools-handle-sexual-violence-reports/> (last visited Apr. 5, 2017).

<sup>100</sup> Tierney Sneed, *Is This the Solution to the Campus Rape Conundrum?* U.S. NEWS & WORLD REPORT (2015), available at <https://www.usnews.com/news/articles/2015/03/16/is-this-the-solution-to-the-campus-rape-conundrum> (last visited Apr. 12, 2017).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

The assistance of trained, independent mediators to handle sexual assault cases would improve the process for all parties and could avoid situations akin to the Emma Sulkowicz mattress case by removing the potential biases of schools and police from the fact-finding and punishment equation. Mediation offers all of the damages available in litigation and arbitration, but in a flexible, customizable, and confidential format that is ideal for sensitive matters such as sexual assault.<sup>103</sup> Additionally, the parties are not hampered by the rules of evidence, and are thus more freely able to express their side of the story in a way that is more sensitive to sexual assault cases.<sup>104</sup>

Mediation has a high success rate, with conflicts resolved in approximately eighty-five percent of cases, and parties satisfied in approximately

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<sup>103</sup> See Carrie Bond, *Shattering the Myth: Mediating Sexual Harassment Disputes in the Workplace*, 65 *Fordham Law Review* 2512 (1997).

<sup>104</sup> Carrie Bond, *Shattering the Myth: Mediating Sexual Harassment Disputes in the Workplace*, 65 *Fordham Law Review* 2515 (1997).

seventy-seven percent of cases.<sup>105</sup> Parties have increased flexibility to control the damages and outcome, including customized non-monetary damages, which would be ideal in cases of campus assault, where the parties may have to continue to coexist on campus.<sup>106</sup> For example, damages have included a personal apology, which can be integral in helping a victim gain closure.<sup>107</sup> Mediation has already been successfully implemented in workplace sexual harassment cases, and would be beneficial to all parties if implemented in college sexual assault cases.<sup>108</sup>

In sum, New Jersey's expansion of restraining order availability to more college students is a step in the right direction to curtail campus sexual

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<sup>105</sup> Carrie Bond, *Shattering the Myth: Mediating Sexual Harassment Disputes in the Workplace*, 65 *Fordham Law Review* 2511, 2513 (1997).

<sup>106</sup> Carrie Bond, *Shattering the Myth: Mediating Sexual Harassment Disputes in the Workplace*, 65 *Fordham Law Review* 2514, 2516 (1997).

<sup>107</sup> Carrie Bond, *Shattering the Myth: Mediating Sexual Harassment Disputes in the Workplace*, 65 *Fordham Law Review* 2517 (1997).

<sup>108</sup> Carrie Bond, *Shattering the Myth: Mediating Sexual Harassment Disputes in the Workplace*, 65 *Fordham Law Review* 2514, 2516 (1997).

assault.<sup>109</sup> However, schools still need to go further to comply with existing laws and protect their students.<sup>110</sup> Increasing media attention and student mobilization should put a spotlight on schools and incentivize them to abide by existing laws to reduce sexual assault on campuses.<sup>111</sup> Furthermore, mediation should be implemented on campuses to resolve sexual assault disputes because it would ensure a more individualized, flexible and confidential resolution process that would protect the interests of both the victim and the accused from the intersecting interests of schools and the police.<sup>112</sup>

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<sup>109</sup> See *S.P. v. Newark Police Dep't*, 52 A.3d 178 (App. Div. 2012).

<sup>110</sup> See VAWA-Clery-Anniversary-Letter, Documentcloud.org (2016), <https://www.documentcloud.org/documents/2938057-VAWA-Clery-Anniversary-Letter.html> (last visited Apr. 5, 2017); see also Allie Bidwell, *Campus Sexual Assault: More Awareness Hasn't Solved Root Issues*, U.S. NEWS & WORLD REPORT (2015), available at <https://www.usnews.com/news/articles/2015/05/20/sexual-assault-on-college-campuses-more-awareness-hasnt-solved-underlying-issues> (last visited Apr. 5, 2017).

<sup>111</sup> See Emily Bazelon, *Have We Learned Anything from the Columbia Rape Case?* NEW YORK TIMES (2014), available at <https://www.nytimes.com/2015/05/29/magazine/have-we-learned-anything-from-the-columbia-rape-case.html> (last visited Apr. 5, 2017).

<sup>112</sup> Carrie Bond, *Shattering the Myth: Mediating Sexual Harassment Disputes in the Workplace*, 65 Fordham Law Review 2518 (1997).