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"VAWA Section 304" (2021). *Evidence Inventory*. 362.

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## **VAWA Section 304**

### **Abstract**

VAWA Section 304

### **Keywords**

VAWA Section 304

# Return to Campus

A mask mandate is currently in place on campus. Learn more about the University's [health and safety protocols](#) to help protect the campus community from COVID-19 and reduce the spread of the virus.

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## VAWA Section 304

Kean University's Student Code of Conduct prohibits sexually violent acts, termed "Sexual Misconduct" by Kean University, which can be crimes as well. Sexual misconduct includes nonconsensual sexual intercourse, nonconsensual sexual contact, sexual exploitation, interpersonal relationship violence, sex/gender-based stalking and sexual harassment. While Kean University utilizes different standards and definitions from the New Jersey Code, sexual misconduct often overlaps with crimes of rape, sexual assault, sexual harassment, stalking, dating violence and domestic violence.

### Descriptions of Programs to Prevent Sexual Misconduct

1. In an effort to reduce the risk of sexual misconduct as well as the crimes of rape, sexual assault, sexual harassment, stalking, dating violence and domestic violence occurring among its students, Kean University utilizes a range of campaigns, strategies and initiatives to provide awareness, educational, risk reduction and prevention programming.

2. It is the policy of Kean University to offer programming to prevent domestic violence, dating violence, sexual assault (including stranger and known-offender assaults) and stalking each year. Educational programs are offered to raise awareness for all incoming students and employees, and are often conducted during new-student and new-employee orientation and throughout an incoming student's first semester. These programs and others offered throughout the year include strong messages regarding not just awareness, but also primary prevention (including normative messaging, environmental management and bystander intervention), and discuss institutional policies on sexual misconduct as well as the state of New Jersey's definitions of domestic violence, dating violence, sexual assault, stalking and consent in reference to sexual activity. Bystander engagement is encouraged through safe and positive intervention techniques and by empowering third-party intervention and prevention such as calling for help, using intervention-based apps, identifying allies and/or creating distractions.
3. Programs also offer information on risk reduction that strives to empower victims, how to recognize warning signals and how to avoid potential attacks, and to do so without victim-blaming approaches. Throughout the year, ongoing awareness and prevention campaigns are directed to students and employees, including faculty, often taking the form of Community Standards Week campaigns, emails, guest speakers and events such as those offered through the Community Standards and Student Conduct peer educator programs.

## **Complaint Procedures and Procedural Protections**

In the event that sexual misconduct, gender-based violence or the crimes of sexual assault, stalking, dating violence or domestic violence does occur, Kean University takes the matter very seriously. The University employs interim protection measures such as interim suspension and/or no contact orders in any case where a student's behavior represents a risk of violence, threat, pattern or predation. If a student is accused of sexual misconduct, other gender-based violence, or the crimes of rape, sexual assault, sexual harassment, stalking, dating violence or domestic violence, he or she is subject to action in accordance with the Kean University Student Code of Conduct. A student wishing to officially report such an incident may do so by contacting University Police located in Downs Hall, at (908) 737-4800, or the Office of Community Standards and Student Conduct located in the University Center, room 317, at (908) 737-5240. A complainant or anyone with knowledge

about sexual misconduct or gender-based violence or the crimes of rape, sexual assault, sexual harassment, stalking, dating violence or domestic violence is encouraged to report it immediately and may do so online at <https://publicdocs.maxient.com/incidentreport.php?KeanUniv>.

If you are the victim of sexual misconduct, gender-based violence, or the crimes of rape, acquaintance rape, sexual assault, sexual harassment, stalking, dating violence or domestic violence, some or all of these safety suggestions may guide you after an incident has occurred:

Sexual harassment in any form will not be tolerated at Kean University. Sexual harassment violates the dignity and rights of individuals and the moral conscience of the University community. In addition, it is a form of sexual discrimination prohibited by the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq, Title IX of the Education Amendment of 1972 and Title VII of the Civil Rights Act of 1964 (as amended in 1991). The Board of Trustees of Kean University recognizes its responsibility to ensure a working and learning environment free from discrimination, including sexual harassment. The University prohibits sexual harassment in accordance with campus policies and state and federal law.

The University follows the New Jersey State Policy Prohibiting Discrimination in the Workplace (Policy). Depending on the complaint, violations of the policy may be adjudicated through the Kean University student conduct process or the Office of Affirmative Action Programs. All complaints of sexual harassment by employees should be brought to the attention of the Affirmative Action Officer immediately. Delayed reporting may impede a satisfactory resolution or hamper a proper investigation.

Sexual harassment by students should be reported to the Office of the Vice President for Student Affairs or the Office of Community Standards and Student Conduct immediately. If, for any reason, a student wishes to complain or inquire regarding sexual harassment, but feels it would not be appropriate to raise such issues with the Office of the Vice President for Student Affairs or the Office of Community Standards and Student Conduct, the student may inquire or complain to any department chair or any officer of the University at the level of vice president or above, and such inquiries or complaints will receive a prompt and thorough investigation. If harassment is established, the University will discipline the offender.

Disciplinary action for violations of this policy can range from verbal or written warnings, up to and including immediate termination from employment or dismissal from the University for serious or repeated violations.

## **Instructions for victims, including personal contact**

1. Go to a safe place and speak with someone you trust. Tell this person what happened. If there is any immediate danger, contact University police if you are on campus at (908) 737-4800 or call 911 if you are off campus. Utilizing 911 on campus also dispatches to Kean University Police.
2. Consider securing immediate professional support (e.g., counseling, victim advocacy, medical services, etc.) to assist you in the crisis.
3. If you are on campus during regular business hours, you may go to the Kean Counseling Center for counseling services located in Downs Hall, room 127 as well as the Office of Campus Ministry. These are both confidential resources.
4. For your safety and well-being, immediate medical attention is encouraged. Further, being examined as soon as possible, ideally within 120 hours, is important in the case of rape or sexual assault. The hospital will arrange for a specific medical examination at no charge. To preserve evidence, it is recommended that you do not bathe, shower, douche, eat, drink, smoke, brush your teeth, urinate, defecate or change clothes before receiving medical attention. Even if you have already taken any of these actions, you are still encouraged to have prompt medical care, and evidence may still be recoverable. Typically, if police are involved or will be involved, they will obtain evidence from the scene, and it is best to leave things undisturbed until their arrival. They will gather bedding, linens or unlaundered clothing and any other pertinent articles that may be used for evidence. It is best to allow police to secure items in evidence containers, but if you are involved in transmission of items of evidence, such as to the hospital, secure them in a clean paper bag or clean sheet, to avoid contamination. If you have physical injuries, photograph or have them photographed, with a date stamp on the photo. Record the names of any witnesses, and their contact information. This information may be helpful to the proof of a crime, to obtain an order of protection or to offer proof of a campus policy violation. Try to memorize details (physical description, names, license plate number, car description) or, even better, write notes to remind you of details, if you have time and the ability to do so. If you obtain external orders of protection (e.g.,

restraining orders, injunctions, protection from abuse), please notify University Police or the campus Title IX Coordinator so that those orders can be observed on campus.

5. Even after the immediate crisis has passed, consider seeking support from the Kean Counseling Center, the Office of Campus Ministry and/or the Union County Rape Crisis Center.
6. Contact the Office of Community Standards and Student Conduct if you need assistance with University-related concerns, such as no contact orders or other protective measures. University Police will also assist in any needed advocacy for students who wish to obtain protective or restraining orders from local authorities. The University is able to offer reasonable academic accommodations, changes to living arrangements, transportation accommodations, escorts, no contact orders, counseling services access, and other supports and resources as needed by a victim.

## Legal Definitions

### Key Definitions

**Rape:** Rape is generally defined as forced sexual intercourse. It may also include situations where the victim is incapable of giving consent due to incapacitation by means of disability or alcohol or other drugs. Many rapes are committed by someone the victim knows, such as a date or a friend.

**Sexual Harassment:** Sexual harassment is a form of misconduct that undermines the integrity of the academic environment. It is the policy of the College/University that sexual harassment is prohibited. All members of the College/University community, especially officers, faculty and other individuals who exercise supervisory authority, have an obligation to promote an environment that is free of sexual harassment. Sexual harassment is defined as:

Sexual harassment in any form will not be tolerated at Kean University. Sexual harassment violates the dignity and rights of individuals and the moral conscience of the University community. In addition, it is a form of sexual discrimination prohibited by the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq, Title IX of the Education Amendment of 1972 and Title VII of the Civil Rights Act of 1964 (as amended in 1991). The Board of Trustees of

Kean University recognizes its responsibility to ensure a working and learning environment free from discrimination, including sexual harassment. The University prohibits sexual harassment in accordance with campus policies and state and federal law.

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## **NJ State Law**

Under New Jersey law, rape is defined as:

In New Jersey, the law defines sexual assault as "the penetration, no matter how slight, in which physical force or coercion is used or in which the victim is physically or mentally incapacitated." For the full definition of sexual assault please refer to NJSA 2C:14-1.

The law in New Jersey, which is gender neutral, does not specify male or female, but uses the words "actor" and "victim" to describe the persons involved.

Consent: According to New Jersey law, age, physical impairment and mental impairment all contribute to a person's ability to give consent. A person must be 16 years of age to legally consent to sexual activity. A person cannot give consent to sexual activity with someone

who has "the duty to care" for them unless they are over the age of 18. Individuals who fall into "the duty to care" category would include parents or guardians, and those in any type of formal supervisory role. If individuals are between the ages of 13 and 15, they can legally consent to sexual activity with a partner who is not more than four years older than themselves.

An individual who is physically or mentally impaired, generally, cannot give consent to sexual activity. Physical or mental impairment includes: a person who is visual, speech or hearing impaired; a person with a cognitive impairment; a person who is unconscious or sleeping; or a person who is voluntarily or involuntarily under the influence of alcohol or other substance(s).

Criminal Sexual Contact is legally defined as "intentional, nonconsensual touching by the victim or actor, either directly or through clothing, of a victim's or actor's sexual organs, genital area, anal area, inner thigh, groin, buttock or breast, for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor" (NJSA 2C:14-3).

Sexual violence can happen to anyone regardless of employment or educational level, race or ethnic background, religion, marital status, physical ability, age or sexual orientation.

## **Additional Security Categories**

### **Domestic Violence Information**

#### **What is Domestic Violence?**

A general definition:

Domestic Violence is a pattern of physical, emotional, verbal and sexual abuse, which includes, but is not limited to, threats, intimidation, isolation and/or financial control. Domestic Violence is an intentional pattern of behavior that is used by one person as a means to harm and take power and control over another person in the context of a dating, family, roommate or caretaker relationship

*and/or*

Domestic Violence, which is also called spouse abuse, intimate partner abuse, battering and partner violence, is when an individual is in some way hurt by a person that he or she knows. These “hurts” are not limited to physical harm; a person can also be sexually abused or psychologically abused. Often a victim is hurt in more than one of these ways. Domestic Violence can continue over a long period of time and becomes more frequent and more severe over time.

A legal definition:

Domestic violence means the occurrence of one or more of the following criminal offenses upon a person protected under the Prevention of Domestic Violence Act:

Homicide	N.J.S.A. 2C:11-1
Terrorist Threats	N.J.S.A. 2C:12-3
Criminal Restraint	N.J.S.A. 2C:13-2
Sexual Assault	N.J.S.A. 2C:14-2
Criminal Sexual Contact	N.J.S.A. 2C:14-3
Burglary	N.J.S.A. 2C:18-2
Harassment	N.J.S.A. 2C:33-4
Assault	N.J.S.A. 2C:12-1
Kidnapping	N.J.S.A. 2C:13-1
False Imprisonment	N.J.S.A. 2C:13-3
Lewdness	N.J.S.A. 2C:14-4
Criminal Mischief	N.J.S.A. 2C:17-3

## **Who can be a victim of Domestic Violence?**

Domestic Violence acts are established by the relationship between the offender and the victim. A person protected by the Prevention of Domestic Violence Act is 18 years of age or older, or who is an emancipated minor, and who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a present or former household member. Any person, regardless of age, sex or physical/psychological condition, who has been subjected to domestic violence by one of the following actors:

- A person with whom the victim has a child in common
- A person with whom the victim anticipates having a child in common, if one of the parties is pregnant
- A person with whom the victim has had a dating relationship

## **Sex Offenders**

In accordance with the Campus Sex Crimes Prevention Act of 2000, which amends the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, the Jeanne Clery Act and the Family Educational Rights and Privacy Act of 1974, the University is providing a link to the New Jersey State Sex Offender Registry. All sex offenders are required to register in the state of New Jersey and to provide notice of each institution of higher education in New Jersey at which the person is employed, carries a vocation or is a student: [http://www.njsp.org/info/reg\\_sexoffend.html](http://www.njsp.org/info/reg_sexoffend.html).

In addition to the above notice to the State of New Jersey, all sex offenders are required to deliver written notice of their status as a sex offender to the Kean University Campus Police Department no later than three (3) business days prior to their enrollment in, employment with, volunteering at or residence in Kean University. Such notification may be disseminated by the University to, and for the safety and well-being of, the University community, and may be considered by the University for enrollment and discipline purposes.

New Jersey State definitions of Stalking and Dating Violence:

## **Stalking**

a. As used in this act:

1. "Course of conduct" means repeatedly maintaining a visual or physical proximity to a person; directly, indirectly, or through third parties, by any action, method, device, or means, following, monitoring, observing, surveilling, threatening, or communicating to or about, a person, or interfering with a person's property; repeatedly committing harassment against a person; or repeatedly conveying, or causing to be conveyed, verbal or written threats or threats conveyed by any other means of communication or threats implied by conduct or a combination thereof directed at or toward a person.
2. "Repeatedly" means on two or more occasions.
3. "Emotional distress" means significant mental suffering or distress.
4. "Cause a reasonable person to fear" means to cause fear that a reasonable victim, similarly situated, would have under the circumstances.

b. A person is guilty of stalking, a crime of the fourth degree, if he purposefully or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for his safety or the safety of a third person or suffer other emotional distress.

c. A person is guilty of a crime of the third degree if he commits the crime of stalking in violation of an existing court order prohibiting the behavior.

d. A person who commits a second or subsequent offense of stalking against the same victim is guilty of a crime of the third degree.

e. A person is guilty of a crime of the third degree if he commits the crime of stalking while serving a term of imprisonment or while on parole or probation as the result of a conviction for any indictable offense under the laws of this State, any other state or the United States.

f. This act shall not apply to conduct that occurs during organized group picketing.

## Dating Violence

"Dating violence" means a pattern of behavior where one person threatens to use, or actually uses physical, sexual, verbal or emotional abuse to control a dating partner. In accordance with N.J.S.A. 18A:37-34, "Dating partner" means any person involved in an intimate association with another individual that is primarily characterized by the expectation of affectionate involvement, whether casual, serious, or long-term.

## **Campus Procedures for Addressing Sexual Misconduct, Dating Violence, Domestic Violence, Stalking, Sexual Harassment and other acts of sex and gender discrimination.**

For offenses including sexual misconduct or other gender-based violence, which typically include the crimes of domestic violence, dating violence, sexual harassment, sexual misconduct and stalking, sanctions range from warnings through expulsion. Serious and violent incidents and acts of nonconsensual sexual intercourse (the policy equivalent to the crime of rape) usually result in suspension, expulsion or termination of employment.

### **Explanation of Sexual Assault Investigation Process**

Procedurally, when the University receives a report of sexual misconduct, gender-based violence, or other sex or gender discrimination, the campus Title IX Coordinator is notified. If the victim wishes to access local community agencies and/or law enforcement for support, the University will assist the victim in making these contacts. The Title IX Coordinator will offer assistance to victims in the form of interim or long-term measures such as opportunities for academic accommodations, changes in housing for the victim or the responding student, visa and immigration assistance, changes in working situations and other assistance as may be appropriate and available on campus or in the community (such as no contact orders, campus escorts, transportation assistance, targeted interventions, etc.). If the victim so desires, he or she will be connected with a counselor on or off campus, as well as an on-or off-campus victim's advocate. No victim is required to take advantage of these services and resources, but the University provides them in the hopes of offering help and support without condition or qualification. A summary of rights, options, supports and procedures, in the form of this document, is provided to all victims, whether they are students, employees, guests or visitors. This same protocol is applied to faculty/staff and students.

### **Timeline of Institutional Process**

When appropriate upon receipt of notice, the Title IX Coordinator will cause a prompt, fair and impartial process to be initiated, commencing with an investigation that may lead to the imposition of sanctions, based upon a preponderance of evidence (what is more likely than not), upon a responding student or other accused individual. Procedures detailing the

investigation and resolution processes of the University can be found online [here](#). The Coordinator is ultimately responsible to assure in all cases that the behavior is brought to an end, the University acts to reasonably prevent its recurrence, and the effects on the victim and the community are remedied. With the involvement of trained investigators, the Coordinator is also responsible to assure that training is conducted annually for all advocates, investigators, hearing officers, panelists and appeals officers that encompass a hearing process that protects the safety of victims and promotes accountability. Training will focus on sexual misconduct, domestic violence, dating violence, sexual assault, stalking, sexual harassment, retaliation and other behaviors that can be forms of sex or gender discrimination covered by Title IX and the Clery Act. Training will help those decision-makers in the process to protect the safety of victims and to promote accountability for those who commit offenses.

## **Confidentiality and Privacy**

The investigation and records of the resolution conducted by the University are maintained confidentially. Information is shared internally between administrators who need to know, but a tight circle is kept. Where information must be shared to permit the investigation to move forward, the person bringing the accusation will be informed. Privacy of the records specific to the investigation are maintained in accordance with New Jersey State law and the federal FERPA statute. Any public release of information, records and FERPA to comply with the open crime logs or timely warning provisions of the Clery Act will not release the names of victims or information that could easily lead to a victim's identification. Additionally, the University maintains privacy in relation to any accommodations or protective measures afforded to a victim, except to the extent necessary to provide the accommodations and/or protective measures.

In any complaint of sexual misconduct, sexual assault, stalking, dating violence, domestic violence or other sex- or gender-based discrimination covered under the federal law, Title IX, the person bringing the accusation and the responding party are entitled to the same opportunities for a support person or advisor of their choice throughout the process, including any meeting, conference, hearing or other procedural action. Once complete, the parties will be informed, in writing, of the outcome, including the finding, the sanctions (if any) and the rationale therefore. Delivery of this outcome to the parties will occur without undue delay between notifications. All parties will be informed of the University's appeal

processes, and their rights to exercise a request for appeal. Should any change in outcome occur prior to finalization, all parties will be timely informed in writing, and will be notified when the results of the resolution process become final.

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# Policies

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## Division of Student Affairs

### Kean University

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