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Compelled Disclosure of College Sexual Assault

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Abstract

Sexual assault is a widespread problem on college campuses. In response, many institutions are developing policies mandating that certain employees report any student disclosure of sexual assault to university officials (and, in some cases, to police), with or without the survivor's consent. These policies, conceptualized here as *compelled disclosure*, have been prompted and shaped by federal law and guidance, including Title IX and The Clery Act. Proponents of compelled disclosure assert that it will increase reports—enabling universities to investigate and remedy more cases of sexual assault—and will benefit sexual assault survivors, university employees, and the institution. However, many questions remain unanswered. How broad (or narrowly tailored) are contemporary compelled disclosure mandates in higher education? Do any empirical data support assumptions about the benefits of these policies? Are there alternative approaches that should be considered, to provide rapid and appropriate responses to sexual violence while minimizing harm to students? The current article begins with an overview of federal law and guidance around compelled disclosure. Next, a content analysis of a stratified random sample of 150 university policies provides evidence that the great majority require most, if not all, employees to report student sexual assault disclosures. A review of the literature then suggests that these policies have been implemented despite limited evidence to support assumptions regarding their benefits and effectiveness. In fact, some findings suggest negative consequences for survivors, employees, and institutions. The article concludes with a call for survivor-centered reforms in institutional policies and practices surrounding sexual assault.

Keywords: Sexual Assault, Mandatory Reporting, Title IX, Clery, Office for Civil Rights

Compelled Disclosure of College Sexual Assault

More and more, universities¹ are requiring employees to report student experiences of sexual assault to university officials (and, in some cases, to police), even if the survivor does not want to report. These mandates have been prompted and shaped by federal law and guidance, including Title IX and The Clery Act. In this article, policies that require reporting of sexual assault are labeled *compelled disclosure policies* (they come under various names, however, including “mandatory reporting”). Although most university policies require reporting of various types of gender-based violence, the current article focuses specifically on sexual assault. *Sexual assault* encompasses a range of non-consensual sexual acts: unwanted sexual contact, sexual coercion, attempted and completed rape. Sexual assault is a widespread problem on college campuses (e.g., Fedina, Holmes, & Backes, 2016); and resulting harms can be psychological (e.g., posttraumatic stress), physical (e.g., gynecological problems), behavioral (e.g., substance use), and academic (e.g., withdrawal from school) (for a review, see White et al., 2015).

Compelled disclosure policies are a newer facet of evolving federal and institutional efforts to address campus sexual assault, giving rise to important questions: how broad (or narrow) are compelled disclosure mandates, and what are their effects? Proponents of compelled disclosure assert that it increases reports—enabling universities to investigate and remedy more cases of sexual assault—and benefits sexual assault survivors, university employees, and the institution. Do any empirical data support these claims? These are timely questions, with relevance to psychological science, practice, education, and policy. The purpose of this article is to: 1) review federal law and guidance around compelled disclosure, 2) analyze a sample of compelled disclosure policies to shed light on their scope, and 3) evaluate key assumptions about

¹ The terms “college” and “university” are used interchangeably for institutions of higher education.

the benefits of compelled disclosure through a review of the literature. The article concludes with a call for survivor-centered reforms in institutional policies and practices.

Overview of Compelled Disclosure Law and Guidance

Compelled disclosure laws are not new: state laws requiring the reporting of sexual abuse against children and elders have existed for decades. Legally, our society has established that children lack the maturity or authority to make many important decisions for themselves, and as result, cannot be expected to decide if abuse should be reported (Bledsoe, Yankeelov, Barbee, & Antle, 2004). All U.S. states have laws that identify mandatory reporters for child abuse (Child Welfare Information Gateway, 2016); some require any adult who suspects child abuse to report, but most designate specific professions (e.g., teachers). Eleven states have explicitly required university employees (e.g., athletics staff) to report child abuse—possibly in response to events at Pennsylvania State University, where university officials failed to report former football coach Jerry Sandusky for sexually abusing children on campus (Kim, Gostin, & Cole, 2012).

However, college students are not children—under U.S. law, most are adults with the right to self-determination. Adults, unlike children, have the capacity to make significant decisions in their lives. There are fewer laws that explicitly mandate reporting of abuse experienced by competent (non-elder) adults, but all states have medical reporting laws that may be applicable in cases of intimate partner violence (IPV) and criminal sexual assault (Kratovich, 2010). For instance, some states require medical personnel to report IPV and criminal sexual assault to police and/or social services, while others require reporting for certain injuries (e.g., resulting from weapon use; NDAA 2010). This article draws from research on IPV reporting laws to inform our understanding of compelled disclosure in higher education. Although there are differences between mandatory reporting policies for IPV and college sexual assault (e.g.,

IPV-related laws generally mandate reporting to the police, whereas university compelled disclosure policies may or may not involve law enforcement), both require reporting of violence experienced by adults with the capacity for self-determination.

There are two primary compelled disclosure roles in higher education, both established through federal laws. First, The Clery Act requires colleges to collect and publish information about the prevalence of sex-related crimes on and near campus. Campus Security Authorities (CSA; 34 CFR 668.46(a)) are specific groups of people with reporting duties under Clery; this includes individuals responsible for campus security, student life (e.g., housing staff, advisors to student groups), and victim advocacy services. CSAs report aggregate information about sexual assaults (e.g., dates, locations) disclosed to them in their official capacity as a CSA. They need not report sexual assaults learned about through informal channels (e.g., mentioned in an assignment) or provide personally identifying information about the victim.² CSAs help universities fulfill their duties to disclose accurate crime statistics and issue emergency notifications about potential threats to the community (U.S. Department of Education, 2016).

Second, Title IX is a civil rights law established to prohibit sex discrimination in educational programs and activities receiving federal financial assistance (U.S. Department of Education, 2015). The Department of Education's Office for Civil Rights (OCR), the federal agency charged with enforcement of Title IX, enhanced its focus on sexual assault in its 2011 Dear College Letter (Ali, 2011). This "significant guidance document" emphasized that OCR considers sexual assault a prohibited form of sex discrimination—unlawful under Title IX—and institutions must respond to sexual assault promptly and equitably. Three years later, OCR released a Q&A document further explaining the guidance in the 2011 Dear Colleague Letter

² According to the Violence Against Women Act 1994, this can include names, home addresses, email addresses, phone numbers, other identification numbers (e.g., school ID), birthdates, etc.

(Lhamon, 2014). In its 2014 Q&A document, the OCR defined Responsible Employee—the compelled disclosure role under Title IX guidance—as any employee:

who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX Coordinator or other appropriate school designee; or whom a student could reasonably believe has this authority or duty. (Lhamon, 2014 p. 15)

Unlike CSAs, Responsible Employees are required to report not only relevant facts but also identifying information—including the names of the victim, alleged perpetrator (if known), and any witnesses. Responsible Employees must report this information to a university official (often the Title IX Coordinator³). Survivors who do not want the assault reported have no voice in the matter if they said something to a Responsible Employee designated by the university. Education about the importance of consent is central in sexual assault prevention efforts; yet, compelled disclosure policies may result in reports made *without* survivors' consent.

Some schools' policies take this a step further, requiring employees and/or the Title IX Coordinator to report all sexual assaults to the police (whether or not the survivor has consented to this action). California and Virginia have passed state laws requiring universities to notify law enforcement about sexual assault reports under certain circumstances (e.g., the perpetrator is an “ongoing threat”; Richards & Kafonek, 2016), and other states are introducing similar bills (e.g., Delaware, Georgia, Maryland, New Jersey, North Carolina, Rhode Island). The OCR encourages schools to establish and maintain collaborative relationships with law enforcement, but does not require Responsible Employees to report survivors' personally identifying information to the

³ A Title IX Coordinator directs university efforts to comply with Title IX, e.g., establishing policies, educating campus community members about their rights, and overseeing complaints.

police (Lhamon, 2014). Compelled disclosure policies that require reporting of personally identifying information, irrespective of survivor consent, are the primary focus of this article.

Analysis of Compelled Disclosure Policies

When establishing these compelled disclosure policies, institutions are responding to multiple, and often conflicting, directives. For instance, Title IX guidance provides autonomy in designating “Responsible Employees”—instructing institutions to consider a range of factors, such as employees’ positions, students’ perceptions and situations, and the school’s formal and informal practices (Lhamon, 2014). However, some Resolution Agreements following OCR investigations have approved the designation of *all* employees as Responsible Employees (e.g., University of Virginia OCR Case No. 11-11-6001). Other Resolution Agreements, in contrast, have not specifically required all employees to be designated as Responsible Employees (e.g., Hunter College OCR Case No. 02-13-2052). How are institutions interpreting these instructions? How broad (or narrowly tailored) are contemporary compelled disclosure mandates? To answer these questions, we analyzed a stratified random sample of university sexual assault policies.

Sample. First, using the Carnegie Classification of Institutions of Higher Education, we obtained three lists of 4-year, not-for-profit colleges and universities: small (enrollment of 1,000–2,999; $n = 683$), medium (enrollment of 3,000–9,999; $n = 480$), and large (enrollment of least 10,000; $n = 285$).⁴ Using a web-based random number generator, we drew a random sample of 50 schools from each list, for a total N of 150. Within this sample, 52% ($n = 78$) of institutions were public and 48% ($n = 72$) were private.

⁴ Enrollment numbers include all students. Each list included all residential classifications: highly residential, primarily residential, and primarily nonresidential. We excluded the United States Air Force Academy, Naval Academy, and Military Academy in West Point, because they are exempt from Title IX and The Clery Act.

Data collection and analysis. We visited each school’s homepage and searched for its sexual assault policy. The precise policy titles varied across institutions, but all policies explicitly addressed sexual assault. Next, we read the entire policy for information about compelled disclosure. If there was a definition and information, all applicable text was saved. If there was no definition or information, we combed the school’s website, using a variety of search terms (e.g., “responsible employee,” “mandated reporter,” “required to report”). This research was classified as “not regulated” by the IRB. Using this procedure, we located compelled disclosure policies for 146 schools. In other words, in this stratified random sample of 150 institutions of higher education, 97% had an accessible policy mandating that certain employees report any possible sexual assault disclosed to them by a student.⁵

Next, we analyzed these policies using *content analysis*, a technique for classifying written text into meaningful categories (Stemler, 2001; Weber, 1990). In a deductive (or *a priori*) content analysis, researchers approach data analysis with specific questions and categories in mind; our focus in this case was the scope of compelled disclosure mandates. We identified four categories of scope: all employees, most employees, few employees, and ambiguous. Definitions and examples are displayed in Table 1. The first author and a trained research assistant coded the policies using these four categories; interrater reliability was excellent (Cohen’s kappa = 0.93; Cohen, 1960), and discrepancies were resolved through discussion between coders.

Results. Over two-thirds (69%, $n = 101$) of the 146 policies identified *all employees*—i.e., all faculty and staff employed by the school—as mandatory reporters of sexual assault. An illustrative example of these policies is:

⁵ In many cases the list of reportable offenses was broader than sexual assault, also including sexual harassment, IPV, and stalking, which often fall under the term “sexual misconduct.”

All employees who have any knowledge of on- or off-campus sexual assault...are required to report the incident to [University] Police, Dean of Students, Housing & Resident Life Director, or Title IX Coordinator. (Medium, Public)

Approximately one in five (19%, $n = 27$) schools designated *most employees* as mandatory reporters. Unlike the all-employee policies, these policies did not simply state that all employees were mandatory reporters, but the list of reporters included *nearly* all of their employees. Under these policies, only a small number of staff positions are considered exempt:

Responsible Employees include, but are not limited to: Administrators; Academic advisors; Coaches and other athletic staff who interact directly with students; Faculty members, including professors, adjuncts, lecturers, instructors, and teaching assistants; Student services personnel; Graduate research assistants; Residence life or community advisors; Student organization advisors; All supervisory personnel; Human Resources personnel; and The [University] Police Department. (Medium, Public)

Only 4% ($n = 6$) of the schools named *few employees* as mandatory reporters, limiting this role to faculty and staff who are in top leadership positions and/or have significant responsibility for student safety and wellbeing. See Table 1 for an example.

Finally, 8% ($n = 12$) of the schools provided an *ambiguous* definition. They did not designate all employees as mandatory reporters, but also did not clearly identify those who were; for instance, “*Most employees of the college are required by law to report any incidence of sexual misconduct of which they are aware*” (Small, Private). It was impossible to determine the full scope of these policies (e.g., would *all* faculty members fall under “most” employees?).

Follow-up analyses revealed no differences in the scope of compelled disclosure mandates between public and private institutions ($\chi^2(3, N = 146) = 1.77, p = 0.62$) or small,

medium, and large schools $\chi^2(6, N = 146) = 3.60, p = 0.73$). In sum, these findings suggest that the great majority of U.S. colleges and universities—regardless of size or public vs. private nature—have developed policies designating most if not all employees (including faculty, staff, and student employees) as mandatory reporters of sexual assault. Does empirical evidence support the widespread implementation of compelled disclosure policies?

Analysis of Rationales for Compelled Disclosure Policy

Given federal regulations requiring compelled disclosure roles in higher education, and evidence of the proliferation of very expansive compelled disclosure policies, it is crucial to examine underlying rationales regarding the benefits of compelled disclosure. For instance, assumptions are made that these policies will 1) bring more sexual violence to light, enabling universities to investigate and adjudicate more cases, 2) benefit sexual assault survivors, 3) benefit university employees, and 4) benefit and protect the institution by ensuring compliance with Title IX and reducing legal liability. Is there empirical evidence to support these claims? The following review of the literature analyzes each of these assumptions in turn.

Assumption #1: Compelled Disclosure Surfaces More Sexual Violence

Supporting evidence. A strong assumption in compelled disclosure policy-making is that it will bring more cases of sexual assault to the attention of university officials, enabling them to adjudicate more cases and distribute more accurate crime statistics. It is also assumed that increased reporting could facilitate the identification and removal of repeat perpetrators (for research on the extent of repeat college offenders, see Lisak & Miller, 2002 and Swartout et al., 2015). In a recent study, Mancini and colleagues (2016) asked a general sample of undergraduates (not limited to survivors) their perceptions of law requiring universities to report sexual assaults to police: 56% imagined they would be more likely to disclose sexual violence to

their university under such a law. Turning to research on IPV, Smith and Winokur (2004) found that women with an extensive history of IPV (e.g., multiple abusive relationships) indicated they would be more likely to seek healthcare if there were laws requiring medical professionals to report IPV to the police. Additionally, an analysis of 631 IPV cases reported to the Cabinet for Families and Children under Kentucky's mandatory reporting law suggested that the law helped to identify instances of IPV that may have gone undetected—approximately three quarters of the cases were at least somewhat substantiated (Bledsoe et al., 2004).

Conflicting evidence. Other studies suggest that sexual assault survivors may be *less* likely to come forward under compelled disclosure mandates. A survey conducted by the National Alliance to End Sexual Violence and Know Your IX found that 88% of survivors agreed that requiring mandatory reporters to tell campus police (without victims' consent) would lead to fewer disclosures (NAESV, 2016). In a recent study of college students, only 5.8% indicated they would be “extremely likely” to tell a university employee about an unwanted sexual experience if there was a policy requiring employees to report sexual assault; in contrast, 21% were “extremely likely” to disclose if there was a policy requiring employees to respect students' decisions about reporting (Barnes & Freyd, 2017). Other research indicates that, due to concerns about confidentiality, college sexual assault survivors do not disclose to housing staff (Holland & Cortina, 2017a) or campus authorities (e.g., Nasta et al., 2005; Walsh, Banyard, Moynihan, Ward, & Cohn, 2010). Studies of IPV similarly find that victims lie to healthcare providers or avoid accessing medical care when providers are mandated to report to the police (e.g., Davidov, Jack, Frost, & Coben, 2012; Gielen et al., 2000; Sullivan & Hagen, 2005). In addition, there is some evidence that survivors forced into criminal justice proceedings without their consent are less likely to engage with those processes (Campbell, Greeson, Fehler-Cabral,

& Kennedy, 2015; Patterson, & Campbell, 2010). This is deeply problematic, because investigation and adjudication hinge heavily on information provided by the survivor; these processes do not go far without that individual's participation (Spohn & Tellis, 2014).

Summary and future directions. Some studies suggest that mandatory reporting (to police) can potentially bring more cases of victimization to light. However, other research complicates and contradicts this conclusion; some evidence even suggests that these reporting mandates can deter survivors from disclosing. Moreover, it remains entirely unclear whether reports made through compelled disclosure, without survivor consent, lead to more (or less) successful investigation and adjudication of sexual assault. Many questions remain unanswered and deserve the attention of psychological science: Do expanded compelled disclosure mandates cause a rise or fall in survivors' disclosures? Do compelled disclosure policies assist or hinder the meaningful investigation and adjudication (or criminal prosecution) of sexual assault?

Assumption #2: Compelled Disclosure Policies Benefit Survivors

Supporting evidence. A second major assumption in favor of compelled disclosure is that these policies benefit survivors, for example by connecting them with information, services, and support. In Mancini and colleagues' (2016) study of college students, many imagined positive results of compelled disclosure, such as increased accountability for both universities and perpetrators and increased assistance to survivors. Studies of women who had experienced IPV found that a majority agreed that medical personnel should be required to report IPV to the police, and believed there would be benefits (e.g., it would be easier to get help; Gielen, Campbell, Garza, & O'Campo, 2006; Malecha et al., 2000). Rodríguez and colleagues (2002) found that IPV survivors supported mandatory reporting laws if the law allows survivors to have a voice in the decision to report. Another study reported that support for medical compelled

disclosure laws increased with the severity of abuse: women in multiple abusive relationships saw more potential benefits in the law (Smith & Winokur, 2004).

Conflicting evidence. While the findings reviewed above suggest that compelled disclosure policies could benefit survivors, there is conflicting evidence. For instance, Mancini and colleagues (2016) also found that the majority of students worried about negative consequences of compelled disclosure, including reduction in survivors' autonomy and re-traumatization of survivors. Similarly, many IPV survivors see problems in mandatory reporting laws (e.g., failing to stop abuse, increasing risk of abuse, reducing their likelihood of disclosing to medical providers; Gielen et al., 2006; Malecha et al., 2000). Moreover, research consistently finds that perceptions of compelled disclosure laws differ between IPV victims and non-victims, with the former being significantly less supportive (e.g., Gielen et al., 2006; Rodriguez, McLoughlin, Nah, & Campbell, 2001; Sachs et al., 2002).

Major medical associations and victim advocacy organizations oppose mandatory reporting for adult victims, including the American Medical Association (Sachs, 2007), the World Health Organization (WHO, 2013), and National Alliance to End Sexual Violence (NAESV, 2015). Rules that deny independent, competent adults the decision to report or not report abuse can stigmatize and humiliate victims and perpetuate harmful stereotypes (e.g., survivors are helpless; Kratochvil, 2010). Survivors of sexual assault endure an extreme loss of control during their victimization, and "one of the only aspects that remains in their control is if, how, when, and to whom to share their story" (DeAmicis, 2013, para. 29). Following a report, even if a survivor explicitly asks the school not to investigate, authorities can deem that the incident threatens campus safety (e.g., a weapon was used, a predator is "loose" in the community and may rape again), ignore the request, and take action (Lhamon, 2014).

When support providers take control away, survivors report increased posttraumatic stress, depression, and anxiety (Orchowski, Untied, & Gidycz, 2013; Peter-Hagene & Ullman, 2014). Survivors must regain their sense of control to recover and heal after sexual trauma (e.g., Frazier, 2003; Walsh & Bruce, 2011; Zweig & Burt, 2007). Some sexual assault and IPV victims forego treatment and support, rather than sacrifice their privacy and control under compelled disclosure (Davidov, Jack, et al., 2012; Moylan, 2016; Sullivan & Hagen, 2005). Although OCR guidance explicitly states that colleges are *not* required to investigate information shared at public events like Take Back the Night rallies or Survivor Speak-Outs (Lhamon, 2014), at some institutions, survivors cannot disclose at such events without fear that a report will be made should a mandated reporter be present (Moylan, 2016).

The idea that survivors will benefit from compelled disclosure also assumes that interacting with the university reporting process and/or criminal justice system will be a positive experience. However, survivors often encounter negative treatment from law enforcement and other formal supports (e.g., medical providers)—leaving them feeling blamed, traumatized, and reluctant to seek further help (Campbell, 2008). Many endure institutional betrayal, which refers to wrongdoings perpetrated by an institution against those who are dependent on it (Smith & Freyd, 2013; 2014); this includes acts of commission (e.g., blaming the victim) and omission (e.g., doing too little to prevent the assault). Student survivors who experience institutional betrayal report more posttraumatic symptoms (Smith & Freyd, 2013). Fear of such secondary victimization is among the top reasons college students do not report their sexual assaults to police (e.g., Fisher, Daigle, Cullen, & Turner, 2003; Thompson, Sitterle, Clay, & Kingree, 2007).

Summary and future directions. In sum, evidence is weak that compelled disclosure policies clearly benefit survivors. Some studies have demonstrated positive attitudes toward

compelled disclosure mandates. Much of this work, however, included either non-victims (e.g., Mancini et al., 2016) or victims who were already accessing services (e.g., criminal justice system, healthcare centers, IPV shelters). For instance, IPV victims who had contacted the police for assistance were more likely to support mandatory reporting laws (Smith & Winokur, 2004). It remains unknown whether these findings would generalize to survivors more broadly, especially those who are unable or unwilling to seek help. Other research has documented fears and experiences of negative consequences (e.g., institutions stripping survivors of control, first responders blaming victims). One limitation that applies to much of this research (both supporting and opposing mandatory reporting) is the factor of age, being over 10 to 15 years old; this raises questions about its applicability in today's social climate.

These issues deserve renewed research attention, addressing a range of questions. For example, do today's college student survivors—including those who have not accessed any supports—see and experience benefits from compelled disclosure policies? Do these policies differentially affect survivors belonging to marginalized groups? For instance, ethnic and sexual minority students are more likely to encounter discrimination and institutional betrayal (Smith, Cunningham, & Freyd, 2016; Gómez, 2015); do they feel protected and relieved or surveilled and distressed by compelled disclosure policies that require reporting of their assaults?

Assumption #3: Compelled Disclosure Policies Benefit Employees

Supporting evidence. Another argument about the benefit of making *all* faculty and staff Responsible Employees is that it simplifies policies and reduces confusion (see, for example, Association of Title IX Administrators, 2015). According to OCR Title IX guidance, universities must inform all employees and students about which members of the campus community are Responsible Employees, so that employees are equipped to handle disclosures and survivors are

able to make informed disclosure decisions (Lhamon, 2014). In theory, an all-employee reporting policy should remove ambiguity about reporting responsibilities and simplify employee roles. However, these claims have not yet received empirical evaluation, in part because these policies are new to the context of university employment. A forthcoming study of resident assistants (RAs)—who are frequently designated as required reporters—assessed RA opinions of their mandatory reporting requirements (Holland & Cortina, 2017b). On average, RAs believed mandatory reporting was a necessary and (somewhat) helpful part of their jobs, but also complicated their other job roles (e.g., making it more challenging to gain residents' trust; see Holland & Cortina 2017b for more detail). In a study of physicians conducted in the 1990s, approximately two-thirds of the sample believed that compelled disclosure laws could improve physician responses to IPV (Rodriguez, McLoughlin, Bauer, Paredes, & Gumbach, 1999).

Conflicting evidence. Studies of IPV reporting suggest that compelled disclosure mandates do not simplify the responsibilities of reporters, who are often unprepared for this role. Studies find that healthcare providers often lack knowledge about IPV-related reporting laws (Davidov & Jack, 2014; Gerbert, Caspers, Bronstone, Moe, & Abercrombie, 1999), and they are less likely to report suspected IPV when they are unaware of their legal mandate or do not know how to report (Davidov, Nadorff, Jack, & Coben 2012; Rodriguez, McLoughlin, et al., 1999; Smith, Rainey, Smith, Alamares, & Grogg, 2008).

Reporters' mistrust of compelled disclosure policies may also create challenges. For instance, compared to other RAs, those who hold negative perceptions of compelled disclosure responsibilities were significantly less likely to report sexual assault disclosures to university authorities (Holland & Cortina, 2017b). Other studies have found that healthcare providers believe IPV compelled disclosure laws hinder their ability to help patients and could inflict harm

(Davidov, Jack, et al., 2012; Gerbert et al., 1999), and providers are less likely to report suspected IPV when they fear it may damage relationships with their patient or put the victim at greater risk for abuse (Davidov, Nadorff, et al., 2012; Smith et al., 2008). Another study found approximately 60% of physicians stated that they would not report IPV if a patient did not want them to (Rodriguez, McLoughlin et al., 1999). Nurse practitioners with a personal history of IPV are also less likely to agree that they would report IPV to the police (Bryant & Spencer, 2002).

The field of psychology has long recognized the ethical dilemmas that compelled disclosure laws create for psychologists (e.g., Fisher, 2008; Pope & Bajt, 1998). Two central responsibilities for psychological practice include building trusting relationships with clients and protecting their confidentiality. Critical questions arise about how to perform these essential job functions while also breaking confidentiality as required by law—potentially jeopardizing clients' dignity, autonomy, and safety (Fisher, 2008). The OCR exempts licensed psychologists and counselors, healthcare providers, and pastoral counselors from reporting responsibilities, and encourages universities to exempt sexual assault center employees and advocates as well (Lhamon, 2014).⁶ Accordingly, these employees would not be obligated to report identifying information without survivor consent. Although teachers and advisors are not bound by the same level of confidentiality, many strive to build trusting relationships with students and safeguard their privacy. In short, compelled disclosure may require faculty to deviate from the principles of good, ethical educational practice.

According to anecdotal evidence, many faculty members express disbelief and anger after learning that their university sexual assault policy requires them to betray their students' trust (DeAmicis, 2013; Flaherty, 2015). Moreover, faculty fear that expansive compelled disclosure

⁶ Although, in other roles (e.g., instructor), “these employees may have responsibilities that would otherwise make them responsible employees for Title IX purposes” (Lhamon, 2014 p 22).

will deter survivors from participating in research and hinder rigorous investigation of sexual assault and other forms of violence (see Potter & Edwards, 2015). The American Association of University Professors (AAUP, 2016) opposes sweeping compelled disclosure policies. In Moylan's (2016) study of university victim advocates, being designated as a Responsible Employee hampered advocates' ability to perform their jobs (i.e., assisting survivors).

Summary and future directions. Compared to few-employee policies, all-employee compelled disclosure policies appear simpler on their face. However, scant evidence supports the assumption that the latter are easier or better for university employees. Faculty have voiced concerns about the practical, ethical, and instructional challenges created by compelled disclosure, and these claims warrant careful study (e.g., Are students less likely to trust faculty who are Responsible Employees? Do these policies hinder faculty ability to teach about sex, gender, or violence? Do they impede research on sexual violence?). It is also important that schools evaluate the enactment of compelled disclosure mandates: how well are Responsible Employees responding to student disclosures, and how could those responses be improved?

Assumption #4: Compelled Disclosure Policies Benefit the Institution

Supporting evidence. A final argument in favor of compelled disclosure policies is that they ensure compliance with Title IX and protect the institution against legal liability. The OCR established that a college has "official notice" of a sexual assault when any Responsible Employee "knows or reasonably should know" about the incident (Lhamon, 2014, p. 15). Once the school has official notice, administrators must take immediate action to investigate, determine if the conduct has created a hostile environment (violating Title IX), and if so, remedy the situation quickly and equitably (Lhamon, 2014). Some schools may designate all faculty and staff as "Responsible Employees" in an attempt to insulate themselves from liability under the

“known or should have known” standard (Moylan, 2016; Savino, 2015). If all employees must report any sexual assault they see or hear about, the university can strive to take appropriate action in response to every incident. Schools that fail to respond rapidly and equitably to sexual assault run the risk of losing federal funding (U.S. Department of Education, 2014). However, there is no concrete evidence that compelled disclosure policies insulate against legal liability.

Conflicting evidence. Some scholarly work suggests that broad compelled disclosure policies could potentially violate other aspects of Title IX guidance. These policies prioritize the OCR directive to investigate all reports, while overlooking OCR guidance to provide victim-centered support and respect survivors’ autonomy and privacy (Moylan, 2016). According to qualitative accounts by Title IX investigators (i.e., student affairs professionals gathering facts for sexual assault complaints), their primary focus—respecting and supporting complainants and respondents throughout the fact-finding process—is sometimes at odds with university attorney concerns about legal liabilities (Peters, 2016). The 2011 Dear Colleague Letter states that if a survivor requests confidentiality, the school should “take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation” (Ali, 2011, p. 5). However, even when university officials do everything possible to respect requests for confidentiality, Responsible Employee reports made against a survivor’s wishes already disregarded that individual’s desire for confidentiality and autonomy.

Responsible Employees have significant responsibilities—revealing deeply personal, distressing information about student-survivors and putting them in contact with university officials, resources, and possibly law enforcement (which could then pull survivors into criminal justice proceedings). These employees must be properly trained to respond to sexual assault disclosures with appropriate information, compassion, and discretion. The OCR outlines detailed

expectations for Responsible Employee training: schools should train Responsible Employees to understand thoroughly 1) their responsibility to inform survivors about their role as a mandatory reporter, ideally before the disclosure takes place; 2) their reporting obligations, e.g., what and to whom they must report; 3) their duty to explain all of survivors' reporting options, e.g., making a Title IX complaint, reporting to the police; 4) survivors' right to request confidentiality or confidential resources; and 5) ways to respond appropriately to survivors, e.g., using nonjudgmental language (Lhamon, 2014). Responsible Employees who are inadequately or improperly trained could exacerbate survivor distress and trauma, for example by asking questions that communicate doubt or blame (Campbell, 2008; Orchowski et al., 2013).

The importance of training raises a critical question: Can institutions with broad compelled disclosure policies appropriately train every employee (or even most) on their campus to the extent expected by OCR? Research has found that many institutions do not meet the recommended education standards under Title IX and Clery (Griffin, Pelletier, Griffin, & Sloan, 2016; Richards, 2016). For instance, at Senator Claire McCaskill's request, the U.S. Senate Subcommittee on Financial & Contracting Oversight (2014) conducted a national survey to assess university sexual assault policies, procedures, and resources. They found that 21% of schools did not train faculty and staff members on how to respond to sexual assault disclosures; of the schools that did provide training, 54% said this training was voluntary.

Summary and future directions. Compelled disclosure may seem justifiable if it protects the institution and embodies the victim-centered goals of Title IX and related guidance: investigating and adjudicating more assaults, assisting survivors, holding perpetrators accountable, preventing future assaults, and enhancing campus safety. Many would agree that these are laudable objectives. It remains unclear, however, whether expansive compelled

disclosure policies achieve their intended goals. Do they insulate institutions against legal liability? Make it easier for survivors to receive assistance and justice? Result in prompt and equitable investigation and adjudication of sexual assault? These questions remain unanswered and merit careful study. Moreover, research is needed to evaluate the effectiveness of training for Responsible Employees. Which training approaches are most (and least) effective, using which formats and materials (e.g., lectures, role plays, case studies, videos), and for whom?

Survivor-Centered Reforms

The preceding sections illustrate that broad compelled disclosure policies have become ubiquitous in American higher education, despite a dearth of evidence regarding their effectiveness (and some data suggesting possible harm). This is especially problematic from the perspective of psychology: according to the APA Ethics Code, the principle of *beneficence and nonmaleficence* dictates that psychologists must carefully assess risks and benefits, ensure benefits outweigh costs, and avoid or minimize harm before an intervention is implemented (and certainly before it becomes widespread). Our analyses suggest that expansive compelled disclosure policies may not live up to these ideals. Thus, there is an urgent need for alternative, innovative policies and practices. The overarching goal should still be rapid and appropriate institutional response to sexual violence, but there should also be minimization of harm to students and respect for their right to self-determination. Ideally, these alternative approaches should be developed with input from survivors as well as experts in sexual violence and mental health, and they should then be carefully evaluated for their efficacy. When one thinks beyond compelled disclosure, what policies and practices seem most promising?

Alternative #1: Ascertain and respect survivors' wishes. First, universities could require employees who receive a student disclosure of sexual assault to ascertain what the

survivor wants to have happen with her or his private information, and then respect that student's choice (an idea proposed by Freyd, 2016). In a study of nurses and their patients, both indicated that the ideal response to an IPV disclosure is to allow the victim to have control over whether a report is made (Davidov, Jack, et al., 2012). If the survivor wants the information relayed to university officials or law enforcement, the employee must relay it. If instead the student desires privacy, the staff or faculty member should respect that choice. The policy should also acknowledge that survivors' wishes might change with time. For example, see the "student-directed employees" policy recently enacted at the University of Oregon (US16/17-07, 2016).

Alternative #2: Create a restricted reporting option. A second approach could be to implement a restricted reporting option, where students can make an initial report, provide evidence, and receive services, but choose not to launch an (immediate) official investigation. The U.S. military offers a similar reporting option for sexual assault: service members can make an unrestricted report (initiating an official investigation) or a restricted report (remaining confidential while accessing services); a survivor can later switch a restricted report to an unrestricted report (Department of Defense Directive 6495.01). The Department of Defense (DoD) documented a 40% increase in sexual assault reports in the year following the implementation of the Sexual Assault Prevention and Response program and restricted and unrestricted reporting options (DoD, 2016). Although survivors are more likely to make unrestricted reports, Service women report more positive experiences with restricted reports (e.g., protected privacy; Mengeling, Booth, Torner, & Sadler, 2014). Restricted reporting options protect survivors' autonomy—giving them time to receive services, weigh their options, and recover mentally, physically, and emotionally before deciding to make their report "official."

Alternative #3: Make use of a third party reporting system. A third approach could be to use third party reporting technologies, such as Callisto (<https://www.projectcallisto.org>). Callisto is a non-profit, online platform that can perform a number of important functions: 1) compile information about sexual assault policies, reporting options, and resources in a given college community, 2) allow survivors to create and save a time-stamped electronic record of the assault—including photographic evidence, 3) provide survivors the option to submit their report to the university at any time, 4) provide a “matching” option, which automatically submits the report if another student reports the same perpetrator, and 5) send anonymous, aggregate statistics to administrators in order to better track the prevalence of sexual violence over time and understand the campus climate. Systems like these are a new approach to sexual assault reporting, and it will be important for future research to evaluate their efficacy.

Alternative #4: Reform compelled disclosure procedures. While expanding voluntary reporting options is the most survivor-centered alternative, institutions may be hesitant to abandon compelled disclosure policies entirely, given OCR directives. Some may also see compelled disclosure as a tool for detecting sexual predators and protecting the community. If nothing else, a blended approach is possible: alongside compelled disclosure, there could be expanded voluntary reporting options that provide survivors with additional outlets for disclosure. The aims could be to decrease involuntary disclosures (i.e., fewer reports without survivor consent) while increasing voluntary ones (more survivor-initiated or consented reports).

Modifications to compelled disclosure procedures could also help mitigate harm. For instance, universities could require Responsible Employees to report sexual assault disclosures to well-trained and confidential advocates, rather than Title IX officials or law enforcement. With enhanced social, emotional, medical, and legal support, more survivors may choose to participate

in reporting and investigation processes later. This was a key finding in Campbell's (2006) study: rape survivors who worked with victim advocates were more likely to file an official police report and permit an investigation. A similar approach has been taken under Kentucky IPV law, which requires mandatory reporters to report to the department for social services rather than law enforcement. Researchers found that this law facilitated social workers' ability to assist IPV victims (e.g., with safety planning, finding legal help; Bledsoe et al., 2004), and IPV survivors preferred such approaches (Antle, Barbee, Yankeelov, & Bledsoe, 2010).

Conclusion

A content analysis of 150 university policies provides evidence that schools are widely implementing policies that require most, if not all, employees to report student disclosures of sexual assault (even without student consent). A review of the literature reveals limited research to support assumptions regarding the benefits of compelled disclosure. In fact, some evidence suggests that these mandates may carry negative consequences: silencing and disempowering survivors, complicating employees' jobs, and prioritizing legal liability over student welfare. Policymakers and administrators must consider empirical evidence when making decisions about compelled disclosure policies. The alternatives outlined above purposefully move away from mandatory reporting as a primary response mechanism, and instead expand voluntary reporting options. Establishing more confidential supports, providing multiple voluntary reporting options, and improving investigation and adjudication processes could help survivors come forward on their own. With a combination of increased voluntary reporting and improved institutional response, universities could potentially remedy more cases of sexual assault, without sacrificing survivors' autonomy. There is a pressing need for additional research to further understand the efficacy and effects of compelled disclosure policies and survivor-centered alternatives.

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Table 1

Categories Classifying the Scope of Compelled Disclosure Policies

Category	n(%)	Definition and Example
All employees	101(69%)	<p>The policy states, very generally, that all employees and/or staff members are mandatory reporters.</p> <p><i>E.g., All faculty, staff, volunteers, vendors and agents are required to report any incidents of sexual misconduct...to the Title IX Coordinator or a Title IX Deputy Coordinator. (Small, Private)</i></p>
Most employees	27(19%)	<p>The policy does not simply state that all employees are mandatory reporters, but the list of reporters includes nearly all employees.</p> <p><i>E.g., Responsible Employees shall include all administrators, faculty, staff, student workers, except: any employee with confidentiality obligations and...cafeteria staff, custodial staff, groundskeeper staff, maintenance staff, and ranch/agricultural staff not assigned administrative duties. (Small, Public)</i></p>
Few employees	6(4%)	<p>The policy provides a very specific and selective list of employees who are mandatory reporters, and excludes most employees.</p> <p><i>E.g., Responsible Reporting Officials include employees, acting in their official University capacities, in the Office of the Title IX Coordinator, Office of Student Conduct, [University] Police, the Designated Harassment Resource Persons, Resident Advisors and Community Directors...Director of Equal Opportunity Programs/University Compliance Officer and Human Resources, non-student University employees in a senior management role...such as Deans, Vice Presidents, Department Chairs, and Directors...Faculty members, graduate teaching or research assistants, and undergraduate student employees are not generally considered Responsible Reporting Officials. (Large, Public)</i></p>
Ambiguous	12(8%)	<p>The policy does not simply state that all employees are mandatory reporters, but also does not clearly identify those who are reporters.</p> <p><i>E.g., Some employees are required to report all the details of an incident (including the identities of both the victim and alleged perpetrator) to the Title IX Coordinator. (Large, Public)</i></p>