



**D. STAFFORD
& ASSOCIATES**

**From the Campus to the Courtroom:
Prosecuting College Sexual Assaults**

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TYPES OF OFFENSES-As Defined in the FBI UCR Program

- ▶ Sexual Assault
 - ❑ Rape
 - ❑ Fondling
 - ❑ Incest
 - ❑ Statutory Rape



*For purposes of this presentation, we will use the pronoun "she" to refer to the victim. This is not intended to lessen the impact of male victimization but is intended to demonstrate that the vast majority of complaints that are prosecuted involve women and girls as the victims.

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UCR: Rape

UCR Rape Definition includes:

- ▶ Sodomy; and
- ▶ Sexual Assault with an Object Definitions



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UCR: The Elements of the Offense-Rape

"Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This definition includes any gender of victim or perpetrator."

Sexual penetration means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object.

This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol).

Physical resistance is not required on the part of the victim to demonstrate lack of consent.

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In contrast, State of Virginia:

- ▶ The Commonwealth of Virginia defines "Rape", "Sodomy", and "Object Sexual Penetration" as separate and distinct crimes under State law. All offenses include the following elements as means by which to accomplish the offense:
 - ❑ By force, threat, or intimidation; or
 - ❑ Through the use of the victim's mental incapacity or physical helplessness.
- ▶ In contrast, all are appropriately translated and classified as "Rape" under the FBI UCR program and reported to the Department of Education as a statistic for "rape."

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UCR: The Elements of the Offense-Rape

- ▶ This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol).
- ▶ Physical resistance is not required on the part of the victim to demonstrate lack of consent.

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UCR: The Elements of the Offense-Fondling

The touching of the private body parts of another person for the purpose of sexual gratification without consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or temporary or permanent mental or physical incapacity.



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UCR: Incest and Statutory Rape

Unlawful, non-forcible sexual intercourse.

Incest

Relationship of Parties 

Statutory Rape

Age of Victim 



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UCR: Incest

Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

▶ **NOTE:** Males and Females can be a victim



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UCR: Statutory Rape

Non-forcible sexual intercourse with a person who is under the statutory age of consent

- ▶ If force or threat of force exists—count as rape.
- ▶ Count only the victims that fit the state's statutory age limit.
- ▶ Males and Females can be a victim.



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Force, Threat, or Intimidation Defined 10 U.S. Code § 920 - Art. 120

- ▶ The term "force" means—
 - ❑ (A) the use of a weapon;
 - ❑ (B) the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or
 - ❑ (C) inflicting physical harm sufficient to coerce or compel submission by the victim.
- ▶ The term "threatening or placing that other person in fear" means—
 - ❑ a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another person being subjected to the wrongful action contemplated by the communication or action.



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Mental or Physical Incapacity Under 10 U.S. Code § 920 - Art. 120

- ▶ impairment by any drug, intoxicant, or other similar substance, and that condition is known or reasonably should be known by the person; or
- ▶ a mental disease or defect, or physical disability, and that condition is known or reasonably should be known by the person;
- ▶ asleep, unconscious, or otherwise unaware that the sexual act is occurring.



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The Elements of the Offense-State Law Example

- ▶ The Commonwealth of Virginia defines “Fondling” as “Aggravated Sexual Battery.” Taking into account the same factors of:
 - ❑ Victim’s age
 - ❑ Mental incapacity or physical helplessness

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The Charging Decision: Consult with Local Prosecutor



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Where to begin...

▶ THE VICTIM

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Who is she?

Question:
What bias, myths or stereotypes are people likely to have/hold/believe about a victim of sexual assault?



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Who she really is?



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Hurdles in the Case



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We Can Overcome:

- ▶ Prior sexual relationships
- ▶ Prior sexual relationships with the accused party
- ▶ Alcohol and/or drug use (legal or illegal)
- ▶ Counterintuitive behaviors
 - Victims' individual responses to trauma that are often counterintuitive to public expectations



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Rape Shield Statutes





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Prior Sexual Conduct

- ▶ General reputation or opinion evidence of the complaining witness's unchaste character or prior sexual conduct shall not be admitted
 - VIRGINIA CODE SECTION § 18.2-67.7



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Exceptions to Exclusion

- ▶ *Evidence offered to provide an alternative explanation for physical evidence of the offense charged which is introduced by the prosecution, limited to evidence designed to explain the presence of semen, pregnancy, disease, or physical injury to the complaining witness's intimate parts*
 - VIRGINIA CODE SECTION § 18.2-67.7 (1)



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Prior Sexual Conduct with Defendant

- ▶ GENERALLY, IT IS NOT ALLOWED
- ▶ Evidence of sexual conduct between the complaining witness and the accused offered to support a contention that the alleged offense was not accomplished by force, threat or intimidation or through the use of the complaining witness's mental incapacity or physical helplessness, provided that the sexual conduct occurred within a period of time reasonably proximate to the offense charged under the circumstances of this case
 - Virginia Code § 18.2-67.7 (2)



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Drug/ Alcohol Usage





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How Intoxicated Was the Victim?

- ▶ Amount of alcohol or drugs used
- ▶ Type of alcohol or drugs used
- ▶ Location of consumption
- ▶ Timing of consumption
- ▶ Was she conscious? blackout?
- ▶ Did she vomit?
- ▶ How were her motor skills?
- ▶ Was she coherent/slurring?

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How Did the Victim Become Intoxicated? Who is the Accused?



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Offender Focused Prosecution

- ▶ Explains why a rapist preys upon someone like the victim
- ▶ Shows the defendant as a predator
- ▶ The victim's vulnerability makes her a target
- ▶ Shaming her into silence because of her behavior
- ▶ Offender tricks the victim
 - ❑ "come to my apartment to use bathroom"

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Offender Focused Prosecution

- ▶ How drunk was he?
- ▶ Was there any attempts to control the situation?
- ▶ Did the defendant isolate the victim?
- ▶ Did the defendant "groom" the victim?
- ▶ Buy "special drinks", supply alcohol, gain her trust
- ▶ Prey on her vulnerabilities

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Corroboration and Credibility

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Victim's Credibility

- ▶ Actual credibility
 - ❑ Honesty is the best policy
- ▶ Ability to perceive at the time of the incident
 - ❑ Details of the event (time and space)
- ▶ Victim's ability to remember
 - ❑ Fragmented recollection

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Victim's Credibility

- ▶ Victim's reliability
 - ❑ Appears hostile or defensive?
 - ❑ Jurors believe people they like
- ▶ Flaws that make the victim a target also may make her unrelatable
- ▶ Victim's risky behavior = yes = consent = not guilty
- ▶ Assumption of the risk
- ▶ Voluntary consumption

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Victim's Credibility

- ▶ Existence of corroborative evidence
- ▶ Physical/scientific evidence
- ▶ Medical evidence
- ▶ Recent complaint
- ▶ Friends of the victim
- ▶ Friends of the defendant
- ▶ Eyewitnesses leading up to the event (bartender)
- ▶ Surveillance tapes
- ▶ Defendant's statement

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Trying the Case



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Jury Selection

- ▶ Voir Dire: The preliminary examination of prospective jurors to determine their qualifications and suitability to serve on a jury, in order to ensure the selection of a fair and impartial jury.

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Goals for Voir Dire

- 01 Eliminate jurors who cannot be fair
- 02 Lay the foundation for State's theory of its case
- 03 Reveal individual's preconceived notions regarding victim behavior
- 04 TRIAL STARTS NOW!!

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Witness Order

- ▶ Not always chronological in order
- ▶ Support the victim's testimony before she even takes the stand
 - First responding officer
 - Recent complaint witnesses
- ▶ Buttress her testimony afterwards
 - Sane Nurse



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Working with the Victim

Support	Support the victim
Protect	Protect the victim
Prepare	Prepare the victim

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Goals for Direct Examination

Personalize	Personalize the victim to the jury
Understand	Understand who she is to understand her choices and behavior
Introduce	Introduce the victim with sufficient foundation questions

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Goals for Direct Examination

- ▶ Why the victim initially trusted the defendant?
- ▶ How the defendant took advantage of that trust?
- ▶ At what point, did the victim realize she was in danger?
- ▶ What changes occurred in the defendant's behavior?
- ▶ Argue that the defendant became a stranger when he raped her

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Preparing Victim's Testimony

- ▶ Initial Meeting with the Victim
 - Review criminal process
 - Services available
 - Do not discuss details of the case initial meeting (building rapport)
- ▶ Second Meeting
 - Review details of attack
 - Discuss inconsistencies
 - Discuss partial revelations

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Preparing Victim's Testimony

- ▶ Third Meeting
 - Practice in the courtroom
 - Direct and cross examinations
 - Mock jurors
- ▶ Fourth Meeting
 - Touch base and review
 - Pep talk and allay any fears

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Tips for Cross-Examination

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- ▶ Listen
- ▶ Don't argue
- ▶ These responses are acceptable:
 - ❑ "I don't know"
 - ❑ "I don't remember"
 - ❑ "I don't understand"



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Final Thoughts

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