

Distinctions Between Proceedings Under New York State Penal Law and Bard College’s Gender-Based Misconduct Policy

	New York State Criminal Justice System	Bard College Gender-Based Misconduct Investigations
Goals	Public safety, deterrence, and punishment.	Safe and non-discriminatory educational and work environment to ensure the College’s educational mission.
Governing Law & Policy	New York State Penal Code; New York State Rules of Criminal Procedure (or another state’s rules if the crime took place there), Federal Criminal Law, and Rules of Evidence.	Bard College’s Gender-Based Misconduct Policy, in accordance with Title IX, The Clery Act as amended by the Violence Against Women Act, and New York State Education Law Articles 129-A and 129-B.
How to report and whether there must be action once a report is made	Crimes involving sexual violence may be reported to the local police agency, or to the New York State Police. Certain crimes may also be reported to federal law enforcement agents. Once a report is made, the decision whether to investigate is made by the police/law enforcement agency, often in consultation with a District Attorney or other prosecuting agency. An investigation may be conducted without the consent or participation of a reporting individual. The ultimate decision of whether to initiate a criminal prosecution is initially made by a prosecutor. In cases involving felony charges, the final charging decision is made by a Grand Jury.	Individuals may disclose sexual assault, intimate partner violence, and stalking to various Bard College employees who are designated confidential resources or to others who will try to ensure privacy to the extent consistent with the College’s obligation to provide a safe and non-discriminatory environment. Disclosures made to a confidential resource will not trigger an investigation. When a report is made to the Title IX Coordinator or another non-confidential College employee, the Title IX Coordinator will determine whether an investigation is necessary by weighing a request for confidentiality by the reporting individual against the continuing safety of that person and the safety and best interests of the campus community.
Who investigates?	Police or other law enforcement officials.	Institutional investigations are conducted by trained external investigators, primarily attorneys, hired by the College.
Procedures	See Governing Law. Procedures established by police departments, prosecutors’ offices, etc.	See Gender-Based Misconduct Policy, which incorporates federal and state legal requirements.
Standard of Evidence	Crimes must be proven “Beyond a Reasonable Doubt”	Violations of the Gender-Based Misconduct Policy are determined based on the “Preponderance of the Evidence” (i.e., whether it is more likely than not that a policy violation occurred).
Confidentiality	Law enforcement agencies offer some confidential assistance, but a criminal charge and trial must be public.	Bard College offers confidential resources, but an institutional investigation requires that relevant information be shared with those involved.
Privacy	Criminal trials must be public.	Institutional investigations are kept as private as possible, but information must be shared with certain individuals within the College, the parties, and pursuant to law.

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Who are the parties?	The prosecution and defendant. The reporting individual is <u>not</u> a party, but often a critical witness for the prosecution.	The reporting party and responding party. In certain circumstances, the College may also be a party.
Participation in the process	In limited circumstances, a criminal prosecution can proceed without the participation or cooperation of the reporting individual, but without a reporting individual's participation, it is generally more difficult to prove a crime beyond a reasonable doubt.	Reporting individuals cannot be required to participate in the College's process. However, the College may be limited in its ability to respond if a reporting individual does not participate.
Who initiates the proceedings?	A prosecutor, acting on behalf of the state (or the United States in federal cases).	Bard College initiates institutional investigations, but seeks consent from the reporting party prior to initiating an investigation.
Testimony	In a court, testimony is generally public. Other parties are, through counsel, entitled to cross-examine witnesses.	Investigators conduct separate interviews of the parties and witnesses. Parties may submit written questions for the investigator's consideration.
Role of attorneys	Both the state and the defendant are represented by counsel; counsel may question witnesses.	Both the reporting and responding parties are entitled to an adviser of their choosing, which may be an attorney, to accompany, support, and advise them throughout the reporting, intake, investigation, and resolution process. During interviews and meetings, the advisor may talk quietly with and ask clarifying questions of their advisee, but are not permitted to answer questions or speak on behalf of their advisee.
Mental Health and Sexual History	In New York, a reporting individual's prior sexual and mental health history is generally, but not always, inadmissible in a criminal case. There are limited circumstances under which directly relevant evidence of that kind may be admitted.	The reporting and responding parties have the right to exclude their own prior sexual history with persons other than the other party in the investigation, and the right to exclude their own mental health diagnosis and/or treatment from admittance in the investigations stage that determines responsibility.
Possible Results	If a prosecution takes place, the defendant may <ul style="list-style-type: none"> ● plead guilty or "no contest" ● have the case dismissed by the judge (on legal grounds) ● be found "guilty" or "not guilty" by a judge or jury 	If there is an institutional investigation, the responding party may be found "responsible" or "not responsible" for violating the Gender-Based Misconduct Policy.
Sanctions	An individual found guilty may be fined, imprisoned, or both. In some courts, alternative sanctions are sometimes used.	An individual found responsible for violating Bard College's Gender-Based Misconduct Policy may be given a range of sanctions (depending on the severity of the conduct and other factors, such as prior disciplinary history), ranging from a warning to suspension or expulsion from the College.

* Proceedings under New York State Penal Law and Bard College's Gender-Based Misconduct Policy are separate processes that can occur concurrently. Information reported to the College may be subject to disclosure pursuant to a lawful subpoena issued to the College or pursuant to a request or investigation by an authorized government agency.