

**STUDY GUIDE :  
ADVISING THE REPORTING PARTY**

**20**-Minutes-to...  
*Trained*

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## **20-Minutes-to...*Trained*: Advising the Reporting Party Learning Outcomes**

- Participants will understand that appropriate intake reporting is crucial to the “stop, prevent, and remedy” mandate under Title IX.
- Participants will be able to assess the physical environment used for intake reports to optimize security and comfort and eliminate distractions or obstacles to effective communication.
- Participants will recognize how the timing of the report impacts assessments of safety, application of remedies, and availability of resolution options.
- Participants will be able to explain to the reporting party how jurisdictional, policy, and process implications of different types of reported misconduct affect resolution options.
- Participants will be able to recognize the impact of trauma on a reporting party’s ability or willingness to communicate.



## **20-Minutes-to...*Trained*: Advising the Reporting Party Discussion Questions**

- When a reporting party comes to an intake meeting, what are their primary concerns? How does the intake process address those concerns? Do they change based on who the reporting party is (student, faculty, staff, etc.)?
- What should be the first level of analysis for the interviewer? Does that analysis change based on the length of time since the alleged misconduct occurred?
- How many different resolution processes are there? Which types of misconduct are covered by each process? Are they different based on the individual's status (student, faculty, staff, etc.)? How does that impact advice to the reporting party?
- A reporting party that cannot provide a complete account should be supported but should not be allowed to make a formal allegation. True or False? Why?
- How does potential trauma impact the reporting party? How should the intake process appropriately anticipate traumatic impact?



## **20-Minutes-to...*Trained*: Advising the Reporting Party Case Studies**

### **Anne**

Anne Chen, a student at Citron College, was an ardent basketball fan. Last term, she attended a basketball game with a group of friends. At the game, she met three young men who were fraternity brothers. Anne had friendly conversations with the men, who shared a container of rum and coke with her.

The young men invited Anne and her friends back to their fraternity house for a post-game party and to talk about the “big win,” but her friends declined. Anne decided to go with the young men. The party lasted for hours, and a considerable amount of alcohol was consumed by everyone, including Anne.

Anne eventually accompanied the three men to their upper floor room for further conversation, and to listen to music. She continued to drink alcohol there and became so intoxicated that she occasionally “passed out” for several minutes at a time. Anne contends that she was raped by the three men while she was not fully conscious.

Anne left the fraternity house early in the morning to return to her dorm. She did not call the police or seek medical attention. Ten days later, she described the incident to a friend, who convinced her to file a report with the Dean of Student’s Office at the college.

Anne indicated she does not want to testify at the conduct hearing if it means that she will have to confront the three men, but she is willing to submit a written statement.

### **Jeremy**

Jeremy is struggling with some of the writings for his Spanish Literature course and seeks out Professor Sanchez during her office hours. Jeremy took a previous course from Professor Sanchez and performed well, though the current course is more difficult. After guiding Jeremy through his concerns, Professor Sanchez gets up and closes the door to her office. She then sits down next to Jeremy and proceeds to tell him about a special comparative literature project that she would like him to be part of.

During their conversation, she compliments his work and places her hand over his, indicating that she really hopes he will agree to be part of the project. Pleased and a little excited, he readily agrees. Professor Sanchez

tells him the project group will be meeting at her house the following evening. She also notes that he should stay after the group leaves so they can discuss his long-term goals of getting into graduate school and how she can be of help in the process.

Jeremy arrives at Professor Sanchez's house and the group of four students and the professor meet for about an hour. Jeremy notices that Professor Sanchez makes prolonged eye contact with him, and she goes out of her way to compliment him throughout the evening. Once the other group members leave, Professor Sanchez draws close to him. She tells him that he has remarkable potential and she wants to see him do well in her course, but she needs something from him in return. She leans in to kiss him. The two ultimately begin a sexual relationship.

Jeremy and Professor Sanchez meet a few times a week, typically at her house, and engage in sexual intercourse. Occasionally, they engage in sex in her office after hours as well. They spend a weekend in Miami together. With regularity, the two send each other naked pictures of themselves and involve themselves in daily sexting.

**NOTE:** If you want to challenge your team's internal perceptions, make Professor Sanchez a male and/or make Jeremy a female. If you want to test knowledge of consensual relationships policies at your institution, change the academic relationship between Professor Sanchez and Jeremy so that Professor Sanchez does not directly impact Jeremy's grades.

### **Academic Accommodations for Reporting Party**

A female student reported and made a formal complaint regarding dating violence. Upon initial inquiry, the male student provided information that indicated that the female student may have engaged in conduct that would also be a violation of our policy. Both were noticed that the totality of the conduct of both parties would be investigated.

Both students were provided support and resources. The female student was offered support and resources which included that we made contact with a faculty member to arrange some accommodations on the student's behalf — including that she be given an extension for certain assignments. The class is a "reader" and the student was accomplishing the bulk of the course load remotely while completing an internship.

The accommodation required follow up from the female student directly with the faculty member to work out specific arrangements. The faculty member was extremely amenable and spoke once with the student to alter some deadlines but then the female student never followed up with the faculty member and never turned in or completed the assignments. I am meeting with the female student today to discuss her transition back to the campus (she just completed her internship) and just learned yesterday from the faculty member that the female student has fallen behind considerably in the class where the accommodation was requested, including that she has not contacted the faculty member since late February. This class is the one class she takes with the male student, including that they shared a book that he purchased and then did not allow her to use following the incident that prompted the complaint.

The student is slated to graduate this semester. The faculty member does not believe the student can possibly complete the required coursework in time given how far she has fallen behind. We are prepared to offer the typical accommodations such as an incomplete — ability to withdraw from the class etc. However, should we be doing something more? It seems clear that the issues that are the basis of the complaint have led to this

downward spiral but does it matter that we set the stage for this student to succeed in this class and she did not follow through with communication to the faculty member?



## 20-Minutes-to...*Trained*: Advising the Reporting Party Case Studies Question & Answer

### Anne

#### For Discussion:

- What are the first steps of the institution's response to this report?
  - Anne should know that the institution will assist in reporting to campus and/or local police.
  - Anne should be advised of available medical and mental health providers and offered support with contacting, scheduling, or transportation (if appropriate).
  - Assess for Clery reportability based on the location of the fraternity house.
  - Anne should be offered any other reasonable support measures.
  - Anne should be advised of the next steps under policy, including contacting witnesses and the responding parties and disclosing information including her name.
- What policy and/or process applies to the reported misconduct? Does the institution have jurisdiction to enforce the reported potential violations? On what grounds?
  - The allegations describe sexual misconduct, likely prohibited by the institution's sexual misconduct policy or discrimination/harassment policy.
  - The parties are all students, implicating the Student Code of Conduct.
  - The institution does not have Title IX-mandated jurisdiction but may extend discretionary jurisdiction over the allegations to address the on-campus effects.
  - Jurisdiction and policy application will be further informed by collecting information regarding the discriminatory effect (if any) of the conduct on Anne.
- How does Anne's demeanor affect your assessment of her physical safety? What other elements contribute to your assessment?
  - The timing of the report is close to the timing of the alleged misconduct, suggesting the need for supportive measures may be greater.
  - Anne does not appear to display urgency or outward signs of trauma. She did not report to police or seek medical attention. She did not initially seek on-campus resolution. She may be in shock or scared to report. Assessment by a medical professional and assurances of the institution's commitment to her safety/security/privacy are advisable.



- The reported circumstances do not suggest an imminent threat to Anne or the campus community. Unless state/local law mandates a timely warning, the circumstances do not appear to justify one.
- What are Anne’s options under institutional policy? What should she be aware of?
  - Anne may ask the institution to formally resolve the allegations under the appropriate sexual misconduct resolution procedures.
  - Anne may request informal resolution pending the Title IX Coordinator’s approval.
  - Anne may request administrative resolution through the use of no contact orders and campus/class/residence reassignment.
  - Anne’s hesitance to engage in a possible hearing should be assessed. Is she afraid of the confrontation? Does she not want formal resolution? Is she aware her written statement will be shared with the responding parties if she chooses to move ahead with formal resolution?
  - Anne should be advised of the institution’s commitment to privacy, a small circle of informed administrators during formal/informal resolution, and the institution’s prohibition of retaliation.
- What other steps should you consider?
  - Campus policy, IFC bylaws, and/or the fraternity’s national chapter bylaws may address allegations of sexual misconduct or alcohol consumption at fraternity houses.
  - There may be some policy implications to possessing, consuming, and providing alcohol at university athletic events.
  - Anne has not yet described an impact that indicates discriminatory effect. More information is needed.

## Jeremy

### For Discussion:

- What are the first steps of the institution’s response to this report?
  - Jeremy should understand the institution’s obligation to act and commitment to protect his safety and privacy, including nonretaliation.
  - Jeremy should understand the allegation will be shared with Prof. Sanchez, including his identity.
  - If available, Jeremy should provide documentary evidence of the conversations with Prof. Sanchez.
  - In the immediate interval, Jeremy should be excused from attending class and offered on-campus counseling and other support.
- What policy and/or process applies to this report?
  - Consensual relationships.
  - Sexual misconduct (“she needs something from him in return”).
  - Faculty Code of Ethical Standards.
- What additional information from Jeremy would help assess the situation?
  - Appears at first blush to be consensual.
  - Power imbalance may negate or strain consent.
  - Prof. Sanchez made a quid pro quo offer.

- Encourage conversation regarding Jeremy's level of perceived consent or perceived coercion.
- What interim measures would you take? Would the additional information from Jeremy help inform those interim measures?
  - The allegation appears plausible and provides enough specificity to consider placing Prof. Sanchez on paid administrative leave.
  - Jeremy may be moved to another section of the class, continue under a substitute faculty in the same class, or allowed to drop without penalty based in part on his preference and part on the university's ability to provide alternative arrangements.

## Academic Accommodations for Reporting Party

### For Discussion:

- We are prepared to offer the typical accommodations such as an incomplete — ability to withdraw from the class etc. However, should we be doing something more?
  - The Title IX Coordinator could speak with the professor about paths to completion, particularly here where the professor did not advise the Coordinator that the student had fallen behind.
  - If the student can withdraw from the class, a tuition waiver for the course should also be considered.
  - The Coordinator should determine whether the student needs the course to graduate. If so, the student could walk in graduation but retake the course over the summer.
- It seems clear that the issues that are the basis of the complaint have led to this downward spiral, but does it matter that we set the stage for this student to succeed in this class and she did not follow through with communication to the faculty member?
  - Sure. However, where reasonable accommodations can still be made and are in the best interest of the student, we can continue to offer support.
  - The faculty member also did not follow up to indicate the student may have been struggling.
  - Even when academic accommodations are made, we should continue to assess whether the accommodations have been effective.



## **ATIAd VAWA SECTION 304-COMPLIANT PROCESS ADVISOR MODEL LANGUAGE**

### **OVERVIEW OF LEGAL RIGHTS AND ADVISOR-RELATED ISSUES**

Effective March 7<sup>th</sup>, 2014, participants in campus resolution processes for stalking, domestic violence, dating violence and sexual assault have a federally-guaranteed right to an “advisor of their choice” to accompany them throughout all steps of the campus resolution process. Here are some key points to understand about this change:

- The law is in effect now. The Department of Education (DOEd) is tolling enforcement until July 2015, but expects campuses to make a good faith efforts to comply until then. Denying access to an advisor of their choice is not a good faith effort.
- In July 2015, failure to fully accord this right becomes a fineable offence under the Clery Act, enforceable by the DOEd. The Clery Act does not create a private right of action to sue to enforce this right, but some courts have already done so.
- The law is broad enough to afford access to any advisor, including a parent, sister, roommate or attorney.
- The law provides the right to one advisor, only, but a campus can allow more than one.
- The law provides this right to all parties (complainants and respondents), but not to witnesses.
- The law provides this right to both student and employee parties.
- The law affords the right to an advisor in all phases of the process, including all intake meetings, interviews, hearings and appeals.
- The law permits campuses to limit the role of the advisor.
- Special rules that distinguish attorneys from other non-attorney advisors are not recommended.
- It will be difficult to justify allowing advisors for only the four behaviors covered by VAWA Section 304 (sexual assault, dating violence, domestic violence, stalking), but not for all behaviors covered by Title IX (sexual harassment, sex/gender-based bullying, hazing and other forms of sex/gender-based discrimination).
- Once the right to an advisor is afforded to students and employees, it will be difficult to justify why that right applies to some behaviors and not others. Many campuses will therefore want to implement this right across resolution processes more broadly than VAWA Section 304 contemplates.
  - Not doing so could give rise to Equal Protection lawsuits against public universities.
- A right to an advisor is afforded in campus stalking allegations, whether or not the stalking is related to sex/gender.

- Unless a campus prefers a broader role for an advisor, the advisor is only present to guide their advisee, not to represent them, speak for them, or play an active role of any kind in the process.
  - Advisors should be permitted to speak with their advisee as necessary, privately or during campus meetings to fully perform their advising role.
- A campus is not required to provide a student or employee with an advisor, only to allow the student or employee to select one.
  - This will give rise to cases where one party has access to an attorney and another does not.
  - Campuses are not required and should not force either party to utilize an “assigned” advisor- the law guarantees an advisor of the party’s choosing.
  - Relatedly, Title IX does not require institutions to provide the same type of advisor to both parties, merely that the parties have the option to have an advisor.
- Many campuses are wisely choosing to train a pool of campus advisors who can be offered to the parties. The parties are not obligated to choose campus advisors, and may choose advisors who are not a part of the campus community.
  - Students should execute FERPA consents as appropriate to allow the campus to communicate with an advisor, if desired.
  - Campuses should develop clear rules on disclosure of education and/or employment records to advisors, and the obligations of advisors to maintain the confidentiality/privacy of those records.
- If an advisor quits, is disqualified, or is removed for interference with the process, policy should clarify how (or if) a substitute will be afforded.
- If a party selects an advisor who does not wish to serve as an advisor, the law does not obligate them to serve.
- Policy should clarify that certain individuals are disqualified from serving as advisors, including administrators over the process, anyone in the administration who supervises a participant in the process as an employee, any witness, anyone who is being strategically chosen to deprive another party of their likely advisor, etc.
- Universities should resist the urge to automatically ante up their legal counsel simply because one party or both parties of the resolution process elect to be advised by attorneys. Increasing the legalistic and/or adversarial nature of campus proceedings is not advisable, unless there is a compelling reason for the university to choose to have its counsel present.



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## **ATIXA Position Statement on the Need for Victim Advocates on College Campuses**

*Founded in 2011, ATIXA is the nation's only membership association dedicated solely to compliance with Title IX and the support of our more than 4,000 administrator members who hold Title IX responsibilities in schools and colleges. ATIXA is the leading provider of Title IX training and certification, having certified more than 2,500 Title IX Coordinators and more than 5,000 Title IX investigators since 2011. ATIXA releases position statements on matters of import to our members and the field, as authorized by the ATIXA Board of Advisors. For more information, visit [www.atixa.org](http://www.atixa.org).*

This statement affirms ATIXA's strong position endorsing the need to provide free and confidential support and advocacy to college students and employees who have experienced sexual assault, sexual harassment, or other gender-based or sex-based harassment or violence. ATIXA encourages every college and university to provide a designated, trained Victim Advocate who is exempt from the duty to report sexual misconduct to the college or to law enforcement.

Students and employees who experience sexual assault, sexual harassment, or other gender-based or sex-based harassment or violence often experience trauma and significant disruption to their lives. Research from the Bureau of Justice Statistics (BJS) and several recent studies show that the majority of rapes and sexual assaults are not reported to the police<sup>1</sup> and we see a similar trend in reporting to colleges. Reporting rates are not correlating to the prevalence of sexual harassment and violence on college campuses.

Although formal reporting to the college can be empowering and healing for some individuals, many will choose to not report. ATIXA supports the right of the victim/survivor to maintain autonomy in making this choice, recognizing that how and when a person heals from a traumatizing event is highly individualized. In those cases, the Victim Advocate can play an important role in providing emotional support and assistance with navigating school or work.

For individuals who do consider reporting, the myriad reporting options and available processes can be confusing, stressful, time-consuming, and unpredictable, and in some cases individuals may distrust the ability of their own institution to equitably, impartially, and effectively address a report. In those cases, a

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<sup>1</sup> Rennison, C.M. *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992–2000*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, August 2002, NCJ 194530.  
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Victim Advocate is an essential conduit for information about options while still allowing for autonomy.<sup>2</sup> Advocates are able to provide support as victims/survivors decide upon and navigate through these options.

When students or employees do report to the college, the role of the Victim Advocate is crucial, both in allowing the personnel resolving the report to maintain impartiality and in providing emotional support and assistance to the reporting party. Our experience from over 20 years of work in the field clearly shows that in the vast majority of cases, the college's resolution process is optimized for victims/survivors when a trained, confidential Victim Advocate is involved, regardless of the ultimate outcome of the process. The Victim Advocate can offer not only emotional support, but can also advocate on behalf of the victim/survivor's needs. Their role strengthens the ability of the Title IX Coordinator or Investigator to be both present and equitable in their job duties.

Pending federal legislation addresses the role of the Victim Advocate in a college's response to a report. The Survivor Outreach and Support on Campus Act (S.O.S. Campus Act) would require colleges receiving federal funding to appoint a confidential, independent advocate to assist victims/survivors of sexual assault. The advocate would help to facilitate and provide options for access to medical care and forensic exams, to ensure victims/survivors are aware of their options for reporting sexual assault to law enforcement, to help victims/survivors connect with counseling and crisis intervention services, and to guide victims/survivors who have reported being sexually assaulted through the disciplinary process.

The legislation would require that the advocate be appointed based on experience and a demonstrated ability to effectively provide sexual assault victim/survivor services. Importantly, the legislation provides that the advocate represents the interests of the victim/survivor even when in conflict with the institution, and contains a provision that the advocate may not be retaliated against by the institution for doing so. ATIXA supports this aspect of the legislation and calls on colleges and universities to voluntarily provide this resource now, well before it is legally mandated, because it is the right thing to do.

A second piece of legislation, the Campus Accountability and Safety Act (CASA), would extend the designation of confidential advisors to cases of alleged sexual harassment, domestic violence, dating violence, sexual assault, and stalking. ATIXA recommends that colleges and universities extend confidentiality to Victim Advocates as permitted under current federal guidance, to allow them to perform their responsibilities freely and to remove the burden of being the sole confidential reporting option from licensed counselors and medical providers. ATIXA supports this aspect of the CASA legislation, as well, to the extent that it would not require mandated reporting by advocates.

ATIXA strongly encourages Congress and colleges to create a clear delineation between the role of the advocate and the role of the investigator. Advocates should have no institutional role in the investigation

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<sup>2</sup> Research also establishes that victims/survivors who work with an advocate experience less distress, are less likely to experience certain negative outcomes (such as self-blame, guilt, and depression), and are less reluctant to seek further help, such as medical care or assistance from law enforcement. (Campbell, 2006; Wasco et al., 1999).

except to support and advocate for the victim/survivor. ATIXA also calls on colleges and universities to recognize that process advisors and Victim Advocates serve different functions, though a victim/survivor may choose to use their Victim Advocate as their advisor. In any case, victims/survivors should have access to a Victim Advocate irrespective of their choice of process advisor. Using one should not preclude access to the other.

Many colleges have resisted providing victim advocacy based on a misunderstanding that doing so would obligate them to provide an advocate for an individual accused of sexual misconduct as well. Although the reauthorization of the Violence Against Women Act (VAWA - 2013) requires that all parties have the same opportunities to have others present at any institutional disciplinary meeting or proceeding, and to have the same opportunity to be accompanied by an advisor of their choosing, nothing in the law or in the concept of equity would require colleges to provide an advocate to the individual accused of misconduct. Rather, equity requires that an advocate be provided regardless of the gender of the victim/survivor.

Victim Advocates should not be tasked with the responsibility of serving responding parties based on the potential for conflict of interest, as well as safety and confidentiality concerns. While the law does not mandate that colleges provide an advocate for the accused party, honoring the equal dignity of all members of the college community suggests that accused individuals would benefit from advice and guidance as well.

ATIXA strongly supports the provision of a Victim Advocate to any student or employee who has experienced gender-based or sex-based harassment or violence. Institutions such as the University of Colorado Boulder and the University of California Santa Barbara are good examples of successful in-house victim advocacy centers, and colleges with more limited resources may provide these services through the creation of a cooperative agreement or MOU with a local victim advocacy agency. Local agencies should be trained in institutional processes and procedures, though many colleges will ultimately be best served by hiring one or more employees to serve as advocates for the campus community.

*Ratified and adopted by the ATIXA Advisory Board, August 10<sup>th</sup>, 2015.*

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**ATIXA Tip of the Week  
Newsletter  
May 8<sup>th</sup>, 2014**

**Advocates and Advisers**

*Part 1 of a two-part series*

**Authored by Sandra K. Schuster, Esq., ATIXA Advisory Board Member**

Our clients frequently ask, “What is the role of a sexual assault advocate in relation to our grievance process?” In response, we ask, “What are they trained to do?”. If we are relying on them to serve as advisers during our institutional grievance processes, we should be training them accordingly.

Let’s begin with reviewing the role of a sexual assault advocate. Too often this role is viewed as an individual whose sole role is “advocating” for the victim and advising them in the course of the institution’s grievance proceedings much in the way that an attorney advocates for a client. While this may be part of a sexual advocate’s role, it is not the primary one and is often not one for which they are adequately trained. Institutions should recognize that sexual assault advocates and sexual assault grievance procedure advisers do not fulfill the same function and meet very different needs.

Sexual assault advocates are trained, oftentimes through extensive certification and licensure, to provide emotional support, to assist in healing, and to provide guidance in understanding trauma. Support is key to assisting a victim of sexual misconduct in understanding the degrees of anger, guilt, fear and mistrust that they experience. A sexual assault advocate is a steady, guiding force in the midst of a tumultuous sea.

Sexual assault grievance procedure advisers, however, use their knowledge and training on an institution’s policies and procedures to help guide parties through the myriad of policies, procedures, meeting, hearings and appeals. This function requires a very different skill-set and an array of additional training. Often institutions assume that sexual assault advocates already know how to perform this function, but often that assumption is incorrect.

Victims often develop a unique, trusting bond with their advocates; accordingly, victims often want those advocates to serve as their sexual assault grievance process advisor. This is both understandable and expected. With that in mind, institutions should thoroughly and annually train their campus’ advocates in all institutional grievance policies, procedures and protocols.

Next week we address a related question: “If we provide sexual assault advocates and advisers for a complainant, must we do the same for the accused individual in order to honor the concept of equity?”





**ATIXA Tip of the Week  
Newsletter  
September 17<sup>th</sup>, 2015**

## **Allowing an Advisor of Choice**

Authored by Daniel C. Swinton, J.D., Ed.D., Senior Associate Executive Director, ATIXA

**What are the requirements regarding allowing an "advisor of choice" for cases of sexual assault, relationship violence and stalking? What about other violations of policy, such as sexual harassment?**

The requirement stems from the amendments to Clery made by VAWA Section 304. The requirement to allow an "advisor of their choice" is for "allegation[s] of dating violence, domestic violence, sexual assault, or stalking". Specifically the language reads, *"(iii) Provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. (iv) Not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; however, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings as long as the restrictions apply equally to both parties."*

That said, I would recommend allowing an advisor of their choice for all disciplinary issues – why carve out one segment of issues when they so often overlap with other violations and issues. Sometimes we do not know prior to conducting an investigation whether issues are one type of violation or the other. If you begin an investigation without allowing an advisor of their choice, then realize it is necessary halfway through, you have significantly breached your own policies. Over the last few years, I have not seen carve-outs for these four issues (Domestic Violence, Dating Violence, Stalking and Sexual Assault) work well - especially because there are often conflicting definitions between federal and state laws and institutional policies. These are also complex cases that often overlap with other areas such as alcohol, drugs, vandalism, theft, etc. so we are rendering findings on those allegations using a different process than on allegations that do not cross into one of the four crimes.