

A Plain Language Explanation of Distinctions Between the New York State Penal Law and the Cornell Disciplinary Processes¹

	Criminal Justice System	Cornell University Disciplinary System
Goals.	Public safety, deterrence, and punishment.	Cornell University is committed to providing a safe, inclusive, and respectful learning, living, and working environment for its students, faculty, and staff members. To this end, Cornell will not tolerate sexual and related misconduct. Through Cornell University Policy 6.4 , and the applicable procedures for students , staff , and faculty , the university provides means to address bias, discrimination, harassment, and sexual and related misconduct, including gender-based harassment, sexual harassment, sexual assault, domestic and dating violence, stalking, and sexual exploitation.
Governing Law.	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.	Title IX; The Clery Act as amended by the Violence Against Women Act; NYS Education Law sections 129-A and 129-B. More specific rules govern particular colleges and universities.
How to report and whether there must be action once a report is made.	Crimes involving sexual violence may be reported to campus police (if the campus has police officers), 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.	<p>All members of the Cornell community have the right to make a report to the Cornell University Police Department, local law enforcement, and/or state police or choose not to report; to report the incident to Cornell; to be protected by Cornell from retaliation for reporting an incident; and to receive assistance and resources from Cornell.</p> <p>For sexual and related misconduct—including gender-based harassment, sexual harassment, sexual assault, domestic and dating violence, stalking, sexual exploitation, or other forms of sexual misconduct—report the incident through the following options:</p> <ul style="list-style-type: none"> • By contacting the University’s Title IX Coordinator or any Deputy Title IX Coordinator by telephone, email, or in person during regular office hours. See contact information for Title IX staff. • By emailing: titleix@cornell.edu • Submit an incident report online. • By contacting the Cornell University Police Department (CUPD) at (607) 255-1111 or 911 for emergency assistance. <p>The University strongly supports a complainant’s desire for confidentiality or decision not to pursue resolution under Policy 6.4. If the complainant decides not to</p>

¹ Based on “A Plain Language Explanation of Distinctions Between the New York State Penal Law and the College Disciplinary Processes,” Published by the State University of New York, October 28, 2015.

		<p>pursue resolution under Policy 6.4, the University will honor the complainant's request if doing so does not impact the University's ability to provide a safe and non-discriminatory environment for all members of the University community, including the complainant.</p> <p>The university offers a number of Confidential Resources for individuals who are unsure whether to report misconduct or who seek counseling or other emotional support in addition to, or without, making a report to the University. All Cornell offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a nonconfidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.</p>
Who investigates?	Police or other law enforcement officials.	Investigators employed or retained by the university.
Procedures	See Governing Law. Procedures established by police departments, prosecutors' offices, etc.	Through Cornell University Policy 6.4 , and the applicable procedures for students , staff , and faculty , the university provides means to address bias, discrimination, harassment, and sexual and related misconduct, including gender-based harassment, sexual harassment, sexual assault, domestic and dating violence, stalking, and sexual exploitation.
Standard of Evidence.	Crimes must be proven "Beyond a Reasonable Doubt"	A violation of disciplinary rules must be found by a "Preponderance of the Evidence" (more likely than not)
Confidentiality.	Law enforcement agencies offer some confidential assistance, but a criminal charge and trial must be public.	The university offers Confidential Resources . A disciplinary proceeding, i.e. a formal complaint under Policy 6.4, requires that relevant information be shared with the complainant and the respondent.
Privacy.	Criminal trials must be public.	<p>To ensure the integrity of Policy 6.4 and its applicable Procedures, and to encourage parties and witnesses to participate in matters under this policy, the university recognizes that participants should be protected from unreasonable disclosure of their involvement in processes under any of the applicable procedures, and of any information they reveal during their participation. However, the university also recognizes that there are legal mandates that govern disclosure and afford participants certain rights to disclose information related to matters under this policy.</p> <p>See Policy 6.4, page 17, "Process Privacy in Applicable Procedures Under this Policy."</p>
Who are the parties?	The prosecution and defendant. The victim/survivor is <u>not</u> a party, but often the critical witness for the prosecution.	A person who is the subject of a report or initiates a Formal Complaint of prohibited conduct under these procedures will be designated as the "complainant." A student against whom such a report or Formal Complaint

		has been made will be designated the “respondent.” Both the complainant and respondent are referred to as “party” or “parties.”
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.	Both the complainant and the respondent may decline to participate in the investigation and/or hearing. However, the University may continue without a party’s participation, reaching findings and issuing sanctions. Additionally, a party’s decision not to participate in the investigation will limit the party’s ability to participate in the hearing, as explained below.
Who initiates the proceedings?	A prosecutor, acting on behalf of the state (or the United States in federal cases).	The Complainant or the Title IX Coordinator (on behalf of the university) can initiate the resolution process under the procedures by making a signed, written Formal Complaint.
Testimony.	In a court, testimony is generally public. Other parties are, through counsel, entitled to cross-examine witnesses.	The parties are entitled to provide an interview to the investigator and to testify at the hearing. At the hearing, all questioning is by the panel. The parties may submit questions and topics for the panel to ask the parties and witnesses. Throughout the hearing, the parties with their advisor(s) and support person, if applicable, will be in separate rooms. The parties will participate remotely, except when they testify.
Role of attorneys.	Both the state and the defendant are represented by counsel; counsel may question witnesses.	At all stages, both the complainant and respondent will be afforded the assistance of an advisor provided by the University to assist and advise the party. As an alternative or in addition to utilizing an advisor offered by the University, each party has the right to select and consult with an advisor of their own choosing. This advisor may be any person, including an attorney, who is not a party or witness or otherwise involved in the case. An advisor may accompany the party to all meetings, such as investigative interviews, and proceedings, but may not speak on the party’s behalf or otherwise interfere with meetings or proceedings.
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.	Prior Sexual History: Generally, during both the investigation and any hearing to determine responsibility, both parties may exclude evidence of their own prior sexual history with anyone other than the other party. Mental Health History: Generally, during both the investigation and any hearing to determine responsibility, both parties may exclude evidence of their own mental health diagnosis and/or treatment.
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) 	The respondent may be found “responsible” or “not responsible” for violations of prohibited conduct or the matter may be “dismissed.”

	<ul style="list-style-type: none"> • be found “guilty” or “not guilty” by a judge or jury 	
Sanctions.	An individual found guilty may be fined, imprisoned, or both. In some courts, alternative sanctions are sometimes used.	An individual found responsible may be given a range of sanctions (depending on the severity of the conduct and other factors, such as prior misconduct), ranging from a warning to suspension or dismissal from the university.