

**PURDUE UNIVERSITY
STUDENT GOVERNMENTS**



Joint Resolution 22-JR003

**Resolution Calling for Clarification of the Incapacitation Definition in the
Title IX and Anti-Harassment Policy**

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WHEREAS, Title IX is a federal law given to universities which protects individuals from discrimination based on sex in educational programs, including but not limited to sexual harassment and sexual violence; and

WHEREAS, Despite the fact that this regulation is given to the university, each educational institution has the ability to create policy within these guidelines to best serve students; and

WHEREAS, After the decision of *Roe v. Purdue*, it can be seen that the current definition of incapacitation is not clear, and without clear and consistent guidelines there is more room for error in the system¹; and

WHEREAS, Without clarifying the definition of incapacitation, all students may not understand what qualifies, leading to more confusion and perpetuating underreporting; and

¹ <https://www.courtlistener.com/docket/8172103/doe-v-purdue-university/#entry-144>

WHEREAS, After a thorough review of the Code of Federal Regulations, Title 34, Subtitle B, Chapter 1, Part 106, there is no set definition of incapacitation by the federal government, making the definition up to the interpretation of the university²; and

WHEREAS, It was found by reviewing the definitions of incapacitation of other peer and non-peer institutions that while definitions are similar, there was no one definition of incapacitation; and

WHEREAS, Ball State University in Muncie, IN has a thorough and clear definition of incapacitation that could be modeled by Purdue University; and

WHEREAS, Ball State University received federal financial assistance in Indiana, therefore their definition would fit all state and federal guidelines.

NOW, THEREFORE, BE IT RESOLVED, that Purdue reevaluate the “Incapacitated/Incapacitation” section of both the Title IX Harassment (III.C.4) and Anti-Harassment policy.

BE IT FURTHER RESOLVED That the current policy be rewritten to state the following, taken from the Ball State University Title IX Policy:

“Incapacitation is a state where someone cannot make informed, rational judgments and cannot consent to sexual activity. States of incapacitation can be temporary or permanent and include, but are not limited to unconsciousness, sleep, mental disability, or any other state in which a person is unaware that sexual activity is occurring.

Where alcohol or other drugs are involved, incapacitation is defined with respect to how the alcohol or other drugs consumed affected a person’s decision-making capacity, awareness of consequences, ability to make fully informed judgments, the capacity to appreciate the nature and quality of the act, or level of consciousness. In other words, a person may be considered unable to give effective consent due to incapacitation if the person cannot appreciate or understand the "who, what, when, where, why, and/or how" of a sexual interaction.

Incapacitation is a state beyond “under the influence,” drunkenness, or intoxication. The impact of alcohol and other drugs varies from person to person. However, warning signs that a person is approaching or has become incapacitated may include slurred speech, vomiting, walking with difficulty or with assistance, falling/stumbling, odor of alcohol, combativeness, or emotional

² <https://www.ecfr.gov/current/title-34/subtitle-B/chapter-I/part-106>

volatility. Evaluating incapacitation also requires an assessment of whether a respondent was aware or should have been aware of the complainant's incapacitation based on objectively and reasonably apparent indications of impairment when viewed from the perspective of a sober, reasonable person in the respondent's position.

In determining whether consent has been given, the university will consider both (1) the extent to which a complainant affirmatively gives words or performs actions indicating a willingness to engage in sexual activity, and (2) whether the respondent knew or reasonably should have known the complainant's level of alcohol consumption and/or level of impairment. A respondent is not excused from responsibility under the influence of alcohol or other drugs and, therefore, did not realize the incapacity of the other person.

An individual who engages in sexual activity with someone the individual knows or reasonably should know is incapable of making a rational, reasonable decision about whether to engage in sexual activity is in violation of this policy.”

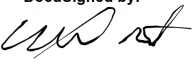
BE IT FURTHER RESOLVED That this resolution be considered a joint resolution of the Purdue Student Government and the Purdue Graduate Student Government.

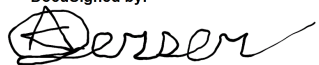
BE IT FURTHER RESOLVED That Purdue Student Government shall deliver this resolution to the University Senate for consideration.

BE IT FURTHER RESOLVED That this Resolution be delivered to the Purdue Office of Legal Counsel to verify that the enclosed policies are both legal and ethical.

BE IT FURTHER RESOLVED That Purdue Student Government shall deliver this resolution to Mitch Daniels, President of Purdue University; Jay Akridge, Provost of Purdue University; Dr. Beth McCuskey, Vice Provost for Student Life; Todd Wetzel, Assistant Vice Provost for Student Life.

BE IT FURTHER RESOLVED That Purdue Student Government shall deliver this resolution to the Title IX office within the Office of Institutional Equity.

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President, PGSG

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President, PSG

Legislation History

Purdue Student Government (PSG) Passage Date: November 9, 2022

PSG President: Andrew Jensen

PSG Senate President: Izzy Webber

Purdue Graduate Student Government (PGSG) Passage Date: November 16, 2022

PGSG President: Alex Seto

PGSG Senate Chair: Josiah Davidson
