

To: The University Senate
From: Purdue Student Government
Purdue Graduate Student Government
Subject: Resolution Calling for Clarification of the Incapacitation Definition
in the Title IX and Anti-Harassment Policy
Reference: PSG / PGSG Joint Resolution 22-JR003
[Title IX Harassment \(III.C.4\)](#)
[Anti-Harassment \(III.C.1\)](#)
Disposition: University Senate for Discussion and Adoption
Rationale: [Title IX is a federal law](#) given to universities that protects
individuals from discrimination based on sex in educational
programs, including but not limited to sexual harassment and
sexual violence. 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.

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

After a thorough review of the [Code of Federal Regulations, Title 34,
Subtitle B, Chapter 1, Part 106](#), it appears there is no set definition
of incapacitation by the federal government, making the definition
up to the interpretation of the university.

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. Ball State University
in Muncie, IN has a thorough and clear definition of incapacitation
that could be modeled by Purdue University. Ball State University
receives federal financial assistance in Indiana; therefore, their
definition would fit all state and federal guidelines.

Proposal: That Purdue reevaluate the “Incapacitated/Incapacitation” section of both the Title IX Harassment (III.C.4) and Anti-Harassment policy (III.C.1).

The current policy will 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 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.