

Texas Association of Community College Business Officers

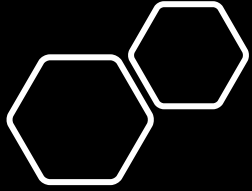
June 2021 – Virtual Annual Conference

School Campus Sexual Assault & Active Shooter Insurance Issues

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And

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Campus Sexual Assault: CBS News Update February 2021

[Hundreds protest campus sexual assault at universities across the U.S. - CBS News](#)

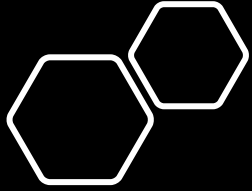
Hundreds protest campus sexual assault at universities across the U.S.

BY HALEY OTT

UPDATED ON: FEBRUARY 10, 2021 / 6:06 AM / CBS NEWS



According to the advocacy group RAINN, more than 1 in 4 undergraduate female students and 1 in 15 undergraduate male students experience sexual assault or rape through physical force, incapacitation, or violence while in college. Reporting levels on college campuses are low: Only 20% of female college student victims tell the police when they are assaulted, according to RAINN.



School Shooting Tracker: NBC News Update May 2021

[School Shooting Tracker: Counting school shootings since 2013
\(nbcnews.com\)](https://www.nbcnews.com/health/school-shooting-tracker-counting-school-shootings-since-2013)

Feb. 11, 2019, 11:51 AM CST / Updated May 6, 2021, 1:49 PM CDT

By Nigel Chiwaya, Polly DeFrank and Jeremia Kimelman

Since 2013, 66 people have been killed and 110 injured in 44 school shootings, according to a school shooting tracker NBC News is making public. As of June 7, 2021, it has been 32 days since the last school shooting.



Report: Virginia Tech massacre cost \$48.2 million

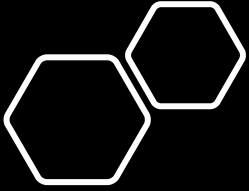
How are Colleges Held Liabile?

Colleges can be held liable for sexual assaults or gun violence under a number of legal theories:

- **Failure to Supervise** – including supervision of students, dorms, and events, as well as supervision of employees who may be responsible for reporting incidents
- **Failure to Protect** – campus security should be adequately staffed and trained
- **Failure to Train** – students as well as staff should be trained on campus violence, including best practices (such as walking in groups at night), emergency procedures during an active shooter event, and reporting procedures
- **Inadequate Reporting/Investigation** – any report of violence must be escalated and investigated properly
- **Insufficient employment screenings**



It's covered
...right?



Educator's E&O Policy

...will not typically provide coverage for these events

A typical insuring agreement for an Educator's E&O policy will state:

- *"We will pay on behalf of the Insureds that amount of Loss that exceeds the Self-Insured Retention up to the Limit of Liability as a result of a Wrongful Act anywhere for which a Claim is first made against an Insured during the Policy Period and reported to us as required by this Policy."*
- A common definition of "wrongful act" is "any actual or alleged error, omission, act, misstatement, neglect or breach of duty in the discharge of duties to or on behalf of an Included Entity."

Arguably, the above wording would provide coverage for sexual assaults or active shooters. However, **exclusion** clauses will often deny all liability for any "wrongful act" resulting in **injury**. A common exclusion would read as follows:

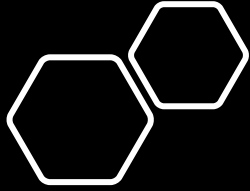
- *"This policy does not apply to, and we will not be liable for Loss related to or arising out of: . . . bodily injury, death, mental injury or emotional distress, shock, sickness, disease or disability from any cause including but not limited to assault and battery, sexual harassment, rape, molestation or any negligence such as negligent hiring, training, retention, supervision or referral of employees, or negligent supervision of students."*

General Liability Policy

.....may provide coverage for injuries arising from Active Shooter and/or Sexual Assault incidents

General Liability policies provide broader **coverage** for incidents of “**bodily injury**” or “property damage”

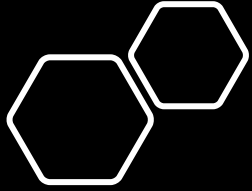
- Insured Defined: Typically includes the named organization (ie: college), its **employees**, volunteers, executive officers and/or managers.
- Coverage generally triggered by service of a suit (often defined as “a civil proceeding”). Insurers will often, but are not required to, engage defense counsel upon receipt of a pre-suit demand letter.
- There must be a covered “*occurrence*” under the policy, usually defined as “*an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage **neither expected nor intended** from the standpoint of the insured.*”
- “*Bodily injury*” is often defined as “*bodily injury, sickness or disease sustained by any person which occurs during the policy period, including death at any time resulting therefrom.*”



General Liability Policy

....common exclusions

- **EXCLUSION - Expected Or Intended Injury** – Coverage does not apply to “bodily injury” or “property damage” expected or intended from the standpoint of the insured. **Was the assault intended by the insured (ie: employee)?**
- **EXCLUSION - Contractual Liability** – Coverage does not apply to “bodily injury” or “property damage” for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. **Did the college agree to accept liability as a condition of hosting an event?**
- **EXCLUSION - Liquor Liability** – Coverage does not apply to “bodily injury” or “property damage” for which any insured may be held liable by reason of: (1) Causing or contributing to the intoxication of any person; (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages. **Did a campus sponsored event with alcohol contribute to an incident?**
 - Any act or omission by any insured, any employee of any insured, patrons, members, associates, volunteers or any other persons as respects providing or failing to provide transportation, detaining or failing to detain any person, or any act of assuming or not assuming responsibility for the well being, supervision or care of any person allegedly under or suspected to be under the influence of alcohol.
 - This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in: (a) The supervision, hiring, employment, training or monitoring of others by that insured; or (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol; if the “occurrence” which caused the “bodily injury” or “property damage”, involved that which is described in Paragraph (1), (2) or (3) above.
- **LIMITATION - Coverage Territory** – Coverage territory may be as broad as the entire United States, or as limited as the college campus only. **Did the incident happen on or off campus?**



General Liability Policy

.....negotiating affirmative coverage

- **Expected or Intended Exclusion Modification**: Institutions should negotiate GL policies that include an exception or “carve out” from this common policy exclusion to provide clear coverage for claims alleging the college is vicariously liable in the negligent hiring or supervision of an individual (ie: employee) who commits a sexual assault.
- **SAM Enhancement Endorsements**: Many GL insurance carriers offer endorsements specifically designed to provide affirmative coverage for Sexual Assault & Molestation (SAM) incidents – ask!
- **Joint Loss Agreement Endorsements**: An endorsement that is attached to both a General Liability and Educator’s E&O policy that states the two insurers agree to pay the loss - debating between themselves who is responsible for what portion of the damage amounts *after making the insured “whole.”*
- **Wrap or Companion Policies**: A few specialty insurers offer “wrap” or “companion” policies designed to coordinate with a General Liability policy to include seamless coverage for sexual assault & molestation coverage.

Specialty Policies

- Sexual Assault & Molestation

Coverage specifically designed to provide coverage for SEXUAL ASSAULT & MOLESTATION incidents:

- **Coverage Structure:** Stand-Alone policy or by endorsement to the General Liability policy.
- **Insuring Agreement:** Typically pays legal expenses that may be associated with defending a claim brought against an employee, a contractor, or the employer by another employee, clients, or other individuals that are associated with the organization.
- **Incident Defined:** Generally includes actual or alleged abuse, molestation, mistreatment or maltreatment of a sexual nature, including but not limited to any sexual involvement, sexual assault, misconduct or sexual contact, regardless of consent.
- **Broadened Services Cover:**
 - Crisis communications services
 - Crisis management services
 - Forensic and investigatory services
 - Legal services
 - Government relations services
 - Victim support service

Specialty Policies

- Active Shooter

Policies that are specifically designed to provide coverage for ACTIVE SHOOTER incidents.

- **Insuring Agreement** – Pays sums the Insured becomes legally obligated to pay as Damages because of Bodily Injury or Property Damage.
- **Incident:** A physical attack at a Covered Location by an Assailant who is armed with a Weapon which occurs during the Policy Period, causes direct physical loss, damage or destruction to Insured Property and/or Bodily Injury or death, affecting one or more persons physically present during such attack (excluding the Assailant).
- **Bodily Injury:** Bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time; mental anguish, shock or trauma resulting from bodily injury.

Specialty Policies

- Active Shooter

Generally provide **BROADER COVERAGE:**

- Cover for first party property losses as well as third party liability
- Business interruption losses
- Public relations expenses associated with restoring public confidence in the college's safety
- Cost of an incident response consultant
- Cost of additional security personnel for a limited time post-incident
- Funeral expenses for victims
- Costs to lease or rent a temporary premises
- Cost of psychiatric/counseling services for those present during an incident

Specialty Policies

- Active Shooter

Usually include certain RISK PREVENTION Benefits:

- Security vulnerability assessments
- On-site review and inspection to analyze and evaluate the current security protocols
- A full risk analysis report highlighting any current exposures, threats and dangers posed by a potential active shooter event
- with recommendations to improve security and safety
- Assistance with training and preparing a Deadly Weapon Safety Action Plan, covering such issues as
 - General Assailant awareness
 - Incident response
 - Profile of an Assailant
 - How to respond to a Deadly Weapon Event
 - Scenario training for an Assailant situation
 - Raising awareness of key behaviors that represent pre-incident indicators and characteristics of Assailant(s).