

OPINION

Stan Garnett: 'Shadow' campus system is no solution

By Stan Garnett

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"Fair, effective, sex assault investigations take time and cannot be handled by investigators under pressure to rush to a particular conclusion due to financial pressures on the university," writes Boulder DA Stan Garnett. (*Matthew Jonas / Staff Photographer*)

As a person who deals with the issue of sex assault on campus , it seems appropriate for me to offer some opinions in the context of Congressman Polis's remarks and the discussion they have engendered.

First, it is important that we be clear what is being discussed. Sex assault is a very serious crime. Most sex assaults in Colorado are at least class 4 felonies, potentially punishable by many years in prison, mandatory registration as a sex offender, court-ordered sex offender treatment and large fines, as well as the life-changing consequences of a felony conviction.

Our criminal justice system has developed effective protections and strategies to assure fair and honorable investigation, charging and prosecution of sex offenses, carefully balancing the rights of the accused with the rights of a victim. Though law enforcement sometimes fails to act quickly and appropriately (some cite the recent reported problems in Jon Krakauer's book, "Missoula"), a well-run district attorney's office is fully capable of reviewing, investigating, filing and prosecuting cases when a conviction is appropriate. Failure of law enforcement to handle these cases appropriately is normally due to one (or both) of two common problems:

1. Lack of commitment to sex assault prosecution by a district attorney's office (a problem most often solved through the political process of electing a different DA), or,

2. Lack of expert training in sex assault on the part of investigators and prosecutors.

In Boulder's 20th Judicial District, we have some of the best expert sex assault prosecutors in the USA, led by nationally-recognized Chief Trial Deputy Katharina Booth. Our lawyers, investigators and victim advocates not only receive regular training but help to train others around the country. Their trial record on tough sex assault prosecutions is second to none.

Although universities adjudicate student discipline, it is a serious mistake to equate investigation and resolution of felony sex assault with cheating on a test or drinking or smoking in a dorm room or the other normal fodder of the university discipline process, where due process on some level is important, but of an entirely different quality than the criminal justice system provides.

We should never tolerate the adjudication of serious felony behavior outside the criminal justice system. There are many reasons:

1. The risk of wrongful conviction is too great. The rigorous due process of the criminal justice system exists for mainly one reason: to make sure society can have confidence that one who is found guilty is, in fact, guilty. Relaxing due process, or having investigations not handled by well-trained professionals can lead to wrongful conviction.

2. The risk of traumatizing victims of sex assault. Interview and handling of victims and witnesses in sex crimes requires skill, sensitivity and time. Clumsy or repeated interviews can be traumatic for victims.

3. Those guilty of serious felony behavior present a societal risk, not just a campus risk. To suggest that sex assault on campus is primarily a campus problem is just plain wrong: it is a societal problem and deserves a societal response through the criminal justice system.

4. The criminal justice system is public and the public can observe, evaluate and criticize the proceedings. University conduct investigations carry the inherent secrecy of the discipline process, which can leave the public questioning the fairness of an investigation and the accuracy of the determinations.

The federal government's decision to tie campus funding to a one size fits all investigative approach can interfere with criminal investigations. Fair, effective, sex assault investigations take time and cannot be handled by investigators under pressure to rush to a particular conclusion due to financial pressures on the university. Also, "warning letters" or warning bulletins, or campus-based "stay away from each other" orders can, if issued prematurely, prevent law enforcement from determining the truth of alleged criminal behavior.

Because campus-based sex assaults are a serious problem, communities should demand that their criminal justice systems be up to the task of investigating and prosecuting these cases. It is no solution to put in place a secret, "shadow" adjudication system under the guise of student conduct investigations that does not have the protections and reliability of the American justice system.

Stan Garnett is district attorney of Colorado's 20th Judicial District, headquartered in Boulder.