



**Utah State University:
Evidence Collection
March 8, 2023**



Reminder

- It is the University that bears the burden to collect evidence, not the parties.
- We can ask parties and witnesses nicely, but we have no subpoena power.
- Evidence may be in the possession of non-witnesses.

Concurrent Criminal Investigation?

- Do the allegations involve a concurrent criminal investigation?
 - If so, coordinate with police and document interactions in your notes.
- What information can be obtained from the criminal investigation, and when can it be requested?

Security Information

- Is there security camera footage?
- Is there card swipe information?

Electronic Communications

- Text messages and voicemails
- Social media – posts and private messages
- E-mails
- Cell phone call logs
- FaceTime call logs
- Snapchat

Preserving Texts

- Screenshots
- Screen recordings → Transcripts

Ask parties/witnesses to capture the information in a way that preserves date and timestamps.

Text Message Comparisons

- Obtain messages from both parties.
- If there is a discrepancy, ask why.
- If one party doesn't have the messages anymore, ask if the messages produced by the other party appear to be accurate.

Translations

- If messages are in another language, obtain a translation.
- Make sure the parties have the opportunity to review and respond to the translation.
- (This should also be a sign that you should check with the parties to see if they require interpreter assistance for the grievance process.)

Incapacitation Cases

- The goal is to put together a detailed timeline of the evening.
 - Text messages, photographs, videos, audio recordings
 - Social media posts
 - Credit card receipts
 - Rideshare receipts
- These all help document intoxication levels and who was present to observe those levels.
- Timestamps and metadata are helpful!

Prior Complaints

- By complainant against others: typically not relevant (unless complainant was found responsible for a false report).
- By someone else against respondent: might be relevant, but it depends on whether the behavior alleged in the prior complaint is substantially similar to that alleged here.

DNA and Fingerprints

- If you are working with physical evidence and think, “I should wear gloves for this,” that’s a sign you should be working in conjunction with the police to collect the evidence.
- Even if there is not a concurrent criminal investigation, police may be willing to work with you if the allegations suggest potential criminal implications.
- Chain of custody is incredibly important with physical evidence.

Medical/Counseling Records

- You must have the written consent of the patient to include these in the evidence file.
- You may request consent from the patient to obtain the record from the medical professional. Typically, two forms are required:
 - The professional’s own release form
 - Your form to include in the evidence file
- Think about whether any redactions are appropriate.

Upcoming Free Webinars (10:00 MT)



- March 15: Athletic Compliance Update
- May 17: Title IX Litigation Update
- June 6: Whistleblowers and Retaliation Claims

Register for all at www.bricker.com/events.