



# Bryan University

## Sexual Misconduct Prevention and Response Policy

### Title IX

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#### **INTRODUCTION**

Members of the Bryan University (“University”) community, guests and visitors have the right to be free from all forms of gender and sex-based discrimination, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community, both online and on-campus, are expected to conduct themselves in a manner that does not infringe upon the rights of others. The University believes in a zero tolerance policy for gender-based misconduct. When an allegation of misconduct is brought to an appropriate administration’s attention, and a responding party is found to have violated this policy, serious sanctions will be used to reasonably ensure that such actions are never repeated. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

#### **OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO PHYSICAL SEXUAL MISCONDUCT**

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don’t. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Silence--without actions demonstrating permission--cannot be assumed to show consent.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, “No” always means “No,” and “Yes” may not always mean “Yes.” Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a “no.”

#### **OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS**



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There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of the faculty/staff handbooks. The university does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the university. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the student out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes RAs and students over whom they have direct responsibility. While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

#### **SEXUAL VIOLENCE -- RISK REDUCTION TIPS**

Risk reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to victim-blame, and with recognition that only those who commit sexual violence are responsible for those actions, these suggestions may nevertheless help you to reduce your risk experiencing a non-consensual sexual act. Below, suggestions to avoid committing a non-consensual sexual act are also offered:

- If you have limits, make them known as early as possible.
- Tell a sexual aggressor “NO” clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.



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If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. If there are any questions or ambiguity then you DO NOT have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves.
- Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

In campus disciplinary proceedings, legal terms like “guilt, “innocence” and “burdens of proof” are not applicable, but the university never assumes a student is in violation of university policy. Campus disciplinary proceedings are conducted to take into account the totality of all evidence available, from all relevant sources.

The university reserves the right to take whatever measures it deems necessary in response to an allegation of sexual misconduct in order to protect students' rights and personal safety. Such measures include, but are not limited to, modification of living arrangements, no contact orders, interim suspension from campus pending a resolution, and reporting the matter to the local police. Not all forms of sexual misconduct will be deemed to be equally serious offenses, and the university reserves the right to impose different sanctions, ranging from verbal warning to expulsion, depending on the severity of the offense. The university will consider the concerns and rights of both the reporting party and the responding party.

**SEXUAL MISCONDUCT OFFENSES INCLUDE, BUT ARE NOT LIMITED TO:**



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1. Sexual Harassment
2. Non-Consensual Sexual Contact (or attempts to commit same)
3. Non-Consensual Sexual Intercourse (or attempts to commit same)
4. Sexual Exploitation

#### 1. SEXUAL HARASSMENT

Sexual Harassment is:

- Unwelcome, gender-based verbal or physical conduct that is,
- Sufficiently severe, persistent or pervasive that it,
- Unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the university's educational program and/or activities, and is
- Based on power differentials (quid pro quo), the creation of a hostile environment<sup>1</sup>, or

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<sup>1</sup> Examples of Harassment:

Not all workplace or educational conduct that may be described as "harassment" affects the terms, conditions or privileges of employment or education. For example, a mere utterance of an ethnic, gender-based or racial epithet which creates offensive feelings in an employee or student would not normally affect the terms and conditions of their employment or education.

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor's office, on the exterior of a residence hall door or on a computer monitor in a public space.
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in discussions in class about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus
- Male students take to calling a particular brunette student "Monica" because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, "sexual relations" and Weight Watchers.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it.



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retaliation.<sup>2</sup>

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; gender-based bullying.

#### 2. NON-CONSENSUAL SEXUAL CONTACT

Non-Consensual Sexual Contact is: any intentional sexual touching, however slight, with any object of a person upon another person that is without consent and/or by force.

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#### <sup>2</sup> Three Types of Sexual Harassment—Legal Constructs

A. Hostile Environment includes any situation in which there is harassing conduct that is sufficiently severe, pervasive and objectively offensive that it alters the conditions of employment or limits, interferes with or denies educational benefits or opportunities, from both a subjective (the alleged victim's) and an objective (reasonable person's) viewpoint.

The determination of whether an environment is “hostile” must be based on all of the circumstances. These circumstances could include:

1. The frequency of the conduct;
2. The nature and severity of the conduct;
3. Whether the conduct was physically threatening;
4. Whether the conduct was humiliating;
5. The effect of the conduct on the alleged victim's mental or emotional state;
6. Whether the conduct was directed at more than one person;
7. Whether the conduct arose in the context of other discriminatory conduct;
8. Whether the conduct unreasonably interfered with the alleged victim's educational or work performance;
9. Whether the statement is a mere utterance of an epithet which engenders offense in an employee or student, or offends by mere discourtesy or rudeness
10. Whether the speech or conduct deserves the protections of academic freedom or the 1<sup>st</sup> Amendment.

B. Quid pro quo sexual harassment exists when there are:

1. unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and
2. submission to or rejection of such conduct results in adverse educational or employment action

C. Retaliatory harassment is any adverse employment or educational action taken because of the person's participation in an investigation or resolution of discrimination or sexual misconduct.



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Sexual Contact includes:

- Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

### 3. NON-CONSENSUAL SEXUAL INTERCOURSE

Non-Consensual Sexual Intercourse is: any sexual intercourse however slight with any object of a person upon another person that is without consent and/or by force.

Intercourse includes: vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

### 4. SEXUAL EXPLOITATION

Occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting another student;
- Non-consensual video or audio-taping of sexual activity;
- Going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- Engaging in voyeurism;
- Knowingly transmitting an STI or HIV to another student;
- Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation

### ADDITIONAL APPLICABLE DEFINITIONS:



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- Consent: Consent is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.
  - Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
  - Previous relationships or prior consent cannot imply consent to future sexual acts.
  
- Force: Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent (“Have sex with me or I’ll hit you. Okay, don’t hit me, I’ll do what you want.”).
  - Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
  - NOTE: There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.
  - In order to give effective consent, one must be of legal age.
  - Sexual activity with someone who one should know to be -- or based on the circumstances should reasonably have known to be -- mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy.
    - Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
    - This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of rape drugs. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketomine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>



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- Use of alcohol or other drugs will never function as a defense for any behavior that violates this policy.
- The sexual orientation and/or gender identity of individuals engaging in sexual activity is not relevant to allegations under this policy. For reference to the pertinent state statutes on sex offenses, please see [insert reference here].

#### **SANCTIONING FOR SEXUAL MISCONDUCT**

- Any person found responsible for violating the policy on Non-Consensual or Forced Sexual Contact (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary violations.\*
- Any person found responsible for violating the policy on Non-Consensual or Forced Sexual Intercourse will likely face a recommended sanction of suspension or expulsion (student) or suspension or termination (employee).\*
- Any person found responsible for violating the policy on sexual exploitation or sexual harassment will likely receive a recommended sanction ranging from warning to expulsion or termination, depending on the severity of the incident, and taking into account any previous disciplinary violations.\*

\*The decision-making body reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

#### **OTHER MISCONDUCT OFFENSES (WILL FALL UNDER TITLE IX WHEN SEX OR GENDER-BASED)**

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of gender;
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
4. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to the



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admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);

5. Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally (that is not speech or conduct otherwise protected by the 1<sup>st</sup> Amendment).
6. Violence between those in an intimate relationship to each other;
7. Stalking, defined as repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of a member of the community; or the safety of any of the immediate family of members of the community.

#### **SANCTIONS**

The following sanctions may be imposed upon any member of the community found to have violated the Gender-based Misconduct Policy (also see ranges above for violations of the sexual misconduct policy). Factors considered in sanctioning are defined in the Course Catalog. The following are the typical sanctions that may be imposed upon students or organizations singly or in combination:

#### **Student Sanctions**

- Warning
- Probation
- Suspension
- Expulsion
- Withholding Diploma
- Revocation of Degree
- Organizational Sanctions
- Other Actions

#### **Employee Sanctions**

- Warning - Written or Verbal
- Performance Improvement Plan
- Required Counseling
- Required Training or Education
- Demotion
- Loss of Annual Pay Increase
- Suspension without Pay
- Suspension with Pay
- Termination

#### **CONFIDENTIALITY, PRIVACY AND REPORTING POLICY**



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#### Confidentiality and Reporting of Offenses Under This Policy

All university employees (faculty, staff, administrators) are expected to report actual or suspected discrimination or harassment to appropriate officials, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality - meaning they are not required to report actual or suspected discrimination or harassment to appropriate university officials - thereby offering options and advice without any obligation to inform an outside agency or individual unless you have requested information to be shared. Other resources exist for you to report crimes and policy violations and these resources will take action when you report victimization to them. The following describes the two reporting options at university:

#### Confidential Reporting

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

- Campus Victim Advocates
- Well-Connect, Student Resource Services (1-866-640-4777 or [wellconnectbysrs.com](http://wellconnectbysrs.com), school code: S784)
- Off-campus:
  - Licensed Professional Counselors
  - Local rape crisis counselors
  - Domestic violence resources,
  - Local or state assistance agencies
  - Well-Connect, Student Resource Services

All of the above employees will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. Student Resource Services are available to help free of charge and can be accessed 7 days a week, 24 hours a day. These resources will submit timely anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient or parishioner.

#### Formal Reporting Options

All university employees have a duty to report, unless they fall under the “Confidential Reporting” section above. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator and/or VP of Employee Excellence. Otherwise, employees must share all details of the reports they receive. If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or



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does not want a formal resolution to be pursued, the reporting party may make such a request to the Title IX Coordinator or VP of Employee Excellence, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law.

In cases indicating pattern, predation, threat, weapons and/or violence, the University will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow the University to honor that request, the University will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have reports taken seriously by University when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: Campus President, Immediate supervisor, and local police. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy.

Reports to the Title IX Coordinator can be made via email, phone or in person at the contact information below:

#### **Title IX Coordinator**

##### **For Students:**

Jennifer Brock, Ph.D.  
Vice President of Academic Affairs  
350 W. Washington Street, Suite 100  
Tempe, AZ 85281  
602-384-2536  
Jennifer.brock@bryanuniversity.edu

**Duties and Responsibilities:** Monitoring and oversight of overall implementation of Title IX compliance at the University, including coordination of training, education, communications, and administration of grievance procedures for faculty, staff, students, and other members of the University community.

#### **Deputy Title IX Coordinator**

##### **For employees:**

Julie Phillips  
Vice President, Employee Excellence  
350 W. Washington Street, Suite 100  
Tempe, AZ 85281  
602-384-2516  
Julie.phillips@bryanuniversity.edu



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Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex or gender harassment or discrimination of which they become aware, is a violation of university policy and is subject to disciplinary action ranging from a warning up to and including termination of employment.

#### **Federal Statistical Reporting Obligations**

Certain campus officials have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

#### **Federal Timely Warning Reporting Obligations**

Victims of sexual misconduct should also be aware that university administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The university will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

#### **QUESTIONS AND ANSWERS**

Here are some of the most commonly asked questions regarding the University's sexual misconduct policy and procedures.

*Does information about a report remain private?*

The privacy of all parties to a report of sexual misconduct must be respected, except insofar as it interferes with the university's obligation to fully investigate allegations of sexual misconduct. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. Dissemination of information and/or written materials to persons not involved in



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the resolution process is not permitted. Violations of the privacy of the reporting party or the responding party may lead to conduct action by the university.

In all resolutions of sexual misconduct, all parties will be informed of the outcome. In some instances, the administration also may choose to make a brief public announcement of the nature of the violation and the action taken, without using the name or identifiable information of the alleged victim. Certain university administrators are informed of the outcome within the bounds of student privacy (e.g., the President of the university, VP of Academic Affairs, Director of Security). [If there is a report of an act of alleged sexual misconduct to a conduct officer of the university and there is evidence that a felony has occurred, local police will be notified. This does not mean charges will be automatically filed or that a victim must speak with the police, but the institution is legally required to notify law enforcement authorities]. The institution also must statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an “Annual Security Report” of campus crime statistics. This statistical report does not include personally identifiable information.

*Will my parents be told?*

No, not unless you tell them. Whether you are the reporting party or the responding party, the University’s primary relationship is to the student and not to the parent. However, in the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents. University officials will directly inform parents when requested to do so by a student, in a life-threatening situation, [or if an individual has signed the permission form at registration which allows such communication].

*Will the responding party know my identity?*

Yes, if the university determines there is reasonable cause to believe a violation has occurred and investigates the matter. Sexual misconduct is a serious offense and the responding party has the right to know the identity of the reporting party. If there is a hearing, the university does provide options for questioning without confrontation, including closed-circuit testimony, Skype, using a room divider or using separate hearing rooms.

*Do I have to name the responding party?*

Yes, if you want formal disciplinary action to be taken against the responding party. You can report the incident without the identity of the responding party, but doing so may limit the institution’s ability to respond comprehensively.



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*What do I do if I am accused of sexual misconduct?*

DO NOT contact the reporting party. You may immediately want to contact someone who can act as your advisor; anyone may serve as your advisor. You may also contact the Student Conduct Office, which can explain the university's procedures for addressing sexual misconduct reports. You may also want to talk to a confidential counselor at the counseling center or seek other community assistance. See below regarding legal representation.

*Will I (as a victim) have to pay for counseling/or medical care?*

Not typically, if the institution provides these services already. If a victim is accessing community and non-institutional services, payment for these will be subject to state/local laws, insurance requirements, etc. [In this state, victims may be ineligible for state-based assistance if they were engaged in any illegal activity during the assault or if they fail to cooperate with criminal prosecution].

*What about legal advice?*

Victims of criminal sexual assault need not retain a private attorney to pursue criminal prosecution because representation will be handled by the District Attorney's [Prosecutor's] office. You may want to retain an attorney if you are considering filing a civil action or are the responding party. The responding party may retain counsel at their own expense if they determine that they need legal advice about criminal prosecution and/or the campus conduct proceeding. Both the responding party and the reporting party may also use an attorney as their advisor during the campus' resolution process. Attorneys are subject to the same restrictions as other advisors in the process as described here [LINK].

*What should I do about preserving evidence of a sexual assault?*

Police are in the best position to secure evidence of a crime. Physical evidence of a criminal sexual assault must be collected from the alleged victim's person within 120 hours, though evidence can often be obtained from towels, sheets, clothes, etc. for much longer periods of time. If you believe you have been a victim of a criminal sexual assault, you should go to your local Hospital Emergency Room, before washing yourself or your clothing. The Sexual Assault Nurse Examiner (a specially trained nurse) at the hospital is usually on call 24 hours a day, 7 days a week (call the Emergency Room if you first want to speak to the nurse; ER will refer you). A victim advocate from the institution can also accompany you to Hospital and law enforcement or Security can provide transportation. If a victim goes to the hospital, local police will be called, but s/he is not obligated to talk to the police or to pursue prosecution. Having the



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evidence collected in this manner will help to keep all options available to a victim, but will not obligation him or her to any course of action. Collecting evidence can assist the authorities in pursuing criminal charges, should the victim decide later to exercise it.

For the Victim: the hospital staff will collect evidence, check for injuries, address pregnancy concerns and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If you have not changed clothes, bring a change of clothes with you to the hospital, if possible, as they will likely keep the clothes you are wearing as evidence. You can take a support person with you to the hospital, and they can accompany you through the exam, if you want. Do not disturb the crime scene—leave all sheets, towels, etc. that may bear evidence for the police to collect.

*Will a victim be sanctioned when reporting a sexual misconduct policy violation if he/she has illegally used drugs or alcohol?*

No. The severity of the infraction will determine the nature of the university's response, but whenever possible the university will respond educationally rather than punitively to the illegal use of drugs and/or alcohol. The seriousness of sexual misconduct is a major concern and the university does not want any of the circumstances (e.g., drug or alcohol use) to inhibit the reporting of sexual misconduct.

*Will the use of drugs or alcohol affect the outcome of a sexual misconduct conduct resolution?*

The use of alcohol and/or drugs by either party will not diminish the responding party's responsibility. On the other hand, alcohol and/or drug use is likely to affect the reporting party's memory and, therefore, may affect the resolution of the reported misconduct. A reporting party must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence and/or witnesses to prove that policy was violated. If the reporting party does not remember the circumstances of the alleged incident, it may not be possible to impose sanctions on the responding party without further corroborating information. Use of alcohol and/or other drugs will never excuse a violation by an responding party.

*Will either party's prior use of drugs and/or alcohol be a factor when reporting sexual misconduct?*



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Not unless there is a compelling reason to believe that prior use or abuse is relevant to the present matter.

*What should I do if I am uncertain about what happened?*

If you believe that you have experienced sexual misconduct, but are unsure of whether it was a violation of the institution's sexual misconduct policy, you should contact the institution's student conduct office (not confidential) or victim advocate's office (confidential). The institution provides non-legal advisors who can help you to define and clarify the event(s), and advise you of your options.