

# SEXUAL MISCONDUCT



# WHAT IS SEXUAL MISCONDUCT?

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Sexual misconduct and assault, including rape, are violations of Ottawa University's Standards of Conduct for Students and its sexual misconduct policy.

Members of the University community, guests and visitors have the right to be free from sexual violence. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. When accused students are found to have violated this policy, serious sanctions will be imposed. This policy is intended to define community expectations and to establish a mechanism for determining when those

expectations have been violated. The sexual orientation and/or gender identity of individuals engaging in sexual activity is not relevant to allegations under this policy.

While there are a number of laws and regulations that mandate how universities handle allegations of sexual misconduct and assault, it is impossible to set forth every scenario that could be a violation of this policy. Ultimately, the University has the discretion to determine whether or not the policy has been violated and impose appropriate sanctions for infractions.

## 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 of experiencing a non-consensual sexual act. These 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.

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.

# A NOTE ON PRESERVING EVIDENCE

Evidence of a sexual assault and the attacker's identity may be left on the victim's body. Therefore do not wash in any way until you have been examined. Victims of sexual assault should go in for the exam as quickly as possible because the evidence deteriorates quickly and may be important in proving the assault in criminal proceedings. A sexual assault nurse examiner (SANE) is a hospital staff member who handles sexual assault and is specifically trained to: provide comprehensive care to sexual assault survivors; demonstrate competence in conducting a forensic examination; have the ability to testify as an expert witness; and show compassion and sensitivity to survivors of sexual assault.

# EVIDENCE

## REPORTING For Immediate Assistance

Go to a safe location and, if injured, seek immediate medical attention. If you are sexually assaulted, you may seek assistance by contacting any of the following:

Campus Security	623-233-7606
Residential Life	623-233-7611
Dean of Students	623-233-5166
Title IX Coordinator	785-248-2326

If you are off campus and in an emergency situation, call the Police Department (911).

When consulting campus resources, all parties should be aware of confidentiality, privacy, and mandatory reporting in order to make informed choices.

### To Discuss Confidentially

If one desires that details of the incident be kept confidential, he or she should speak with the on-campus mental health counselor, campus health service provider or the chaplain. Campus counselors are available to help free of charge and can be seen on an emergency basis. In addition, victims may speak on- and off-campus with members of the clergy and chaplains, as well as off-campus rape crisis resource people who can maintain confidentiality.

### To Discuss Safely/ Confidentially With Others

Students can seek advice from certain resources who are not required to tell anyone else his or her private, personally identifiable information unless there is cause for fear for his or her safety, or the safety of others. These are individuals who the University has not specifically designated as responsible employees for purposes of putting the institution on notice and for whom mandatory reporting is required, other than in the stated limited circumstances.

### Non-Confidential Reporting

Students are encouraged to speak to any employee of the institution to make a formal report of incidents. The University considers all employees to be "responsible employees." Notice to them is official notice to the institution. Students have the right and can expect to have incidents of sexual misconduct to be taken seriously by the institution when formally reported, and to have those incidents investigated and properly resolved through administrative procedures. Formal reporting means that only people who need to know will be told, and information will be shared only as necessary with investigators, witnesses, and the accused individual.

### Remediation

The University reserves sole discretion and 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 and the University community. Such measures include, but are not limited to, modification of living arrangements, reassignment of classes as available or

removal from classes, interim suspension from campus pending an investigation, and reporting the matter to law enforcement.

### Filing a Complaint

Victims of sexual misconduct usually have two avenues to consider in filing a complaint. These options are not mutually exclusive. The first offers a University process and the second a criminal process. One, both, or either, may be pursued:

1. An alleged victim who wishes to have his or her case reviewed administratively, within the institution, should contact the Title IX Coordinator, who will explain Ottawa University's procedures.
2. An alleged victim who wishes to have his or her case handled criminally should contact the Surprise Police Department. A University staff member will accompany an accusing student through this process as requested.

# STUDENT RIGHTS

## Reporting

- Accusing students have the right to notify law enforcement and to be assisted by campus authorities in doing so.
- Accusing students have the right to decline to report to law enforcement.
- Accusing students have the right to have their cases referred for administrative campus investigation and review.

## Fair Process

- All students have the right for reported grievances to be reviewed through the procedures outlined in this policy.
- Accused and accusing students have the same opportunity to have advocates of their choice present at any stage in the campus investigative and adjudicative process.
- Both the accused and the accusing students shall be informed of the outcome of any campus disciplinary hearing alleging sexual misconduct.
- Accusing students and witnesses will receive amnesty for minor student misconduct (such as alcohol or drug violations) that is secondary to the alleged incident.
- Accusing students and their supporters have the unfettered right to be free from retaliation.

## Advocacy and Support

- Students shall be notified of campus counseling services and off-campus resources.
- All parties in the administrative process are entitled to have others (support person, adviser, or advocate) present during investigatory interviews and hearings.

## Temporary Measures

Accusing students will be notified of, and have the right to receive, no-contact administrative orders and adjustments to academic and housing arrangements, whether or not there is a formal complaint.



# WHAT IS CONSENT?

Consent is knowing, voluntary, and clear permission by word or action to engage in mutually-agreed-upon sexual activity or contact.

- Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity.
- A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately. Continued pressure can be coercive, and is also a violation of this policy.
- Silence or the absence of resistance alone is not consent.
- Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse).
- A current or previous dating relationship is not sufficient to constitute consent.
- In order to give effective consent, one must be 18 in Arizona.

## Force as a Factor in Consent

Force is the direct or indirect use of physical violence and/or imposing on someone physically to gain sexual access. There is no

requirement that parties resist the sexual advance or request, but resistance is a clear demonstration of non-consent.

## Incapacitation as a Factor in Consent

Consent must be "knowing" to be valid. A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to voluntary or involuntary use of alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is incapacitated has violated this policy.

Incapacitation is defined as 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).

Possession, use and/or distribution and/or administration of any incapacitating drugs, is prohibited and is a violation of this policy.

It is not an excuse that the accused party of sexual misconduct was intoxicated, and, therefore, did not realize the incapacity of the other.

# SEXUAL MISCONDUCT VIOLATIONS

## Sexual Harassment

Sexual harassment includes any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature including when:

- submission to such conduct is made either explicitly or implicitly a term or condition of instruction, employment, or participation in other University activities;
- submission to or rejection of such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions affecting the individual; or such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive University environment.

## Non-consensual Sexual Contact

Non-consensual sexual contact is defined as:

- any intentional sexual touching
- however slight
- with any object
- by a person upon another person
- that is without consent and/or is conducted by force

Sexual touching includes, but is not limited to, any bodily contact with breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

## Non-consensual Sexual Intercourse

Non-consensual sexual intercourse is defined as:

- any sexual penetration or intercourse (anal, oral, or vaginal)
- however slight
- with any object
- by a person upon another person
- that is without consent and/or is conducted by force

Sexual intercourse includes, but is not limited to, vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.

## Sexual Exploitation

Sexual exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-consensual Sexual Contact, and Non-consensual Sexual Intercourse.

Examples of sexual exploitation include, but are not limited to, engaging in the following activities without the other person's consent:

- Sexual voyeurism (such as watching a person undressing, using the bathroom, or engaging in sexual acts without the consent of the person observed).
- Taking pictures or recording another in a sexual act, or in any other private activity (such as allowing another person to hide in a closet to observe sexual activity, or disseminating sexual pictures without the photographed person's consent).
- Exposing one's genitals or breasts in non-consensual circumstances or inducing another to expose his or her genitals or breasts.
- Prostitution.
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) and without informing the other person of the infection.
- Administering alcohol or drugs (such as "date rape" drugs) to another person.

## Dating Violence

Dating violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where the existence of such a relationship shall be determined based on consideration of the following factors: the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

## Domestic Violence

"Domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of a victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse or the victim under the domestic or family violence laws of the jurisdiction, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

## Stalking

Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her own safety; or the safety of others, or suffer substantial emotional duress.

## Retaliation

Accusing students and their supporters have the unfettered right to be free from retaliation. Retaliation is defined as any adverse reaction taken against a person for alleging harassment, supporting a party bringing a grievance, or for assisting in providing information relevant to a claim of harassment. Retaliation will be investigated immediately and adjudicated separately. Retaliation includes, but is not limited to, intimidation, threats or menacing behavior, coercion, or discriminatory actions. Retaliation is a serious violation and may result in immediate removal from the University.

# PROCEDURES

## Initial Review

The Title IX Coordinator will explain Ottawa University's conduct procedures, including: the difference between the administrative procedure and criminal reporting, no-contact orders and remedial action, and confidentiality and privacy. Generally, the next step will be for the staff member to meet with the accused student (at a different time) to notify him or her of the allegation and possible remedial actions.

Reports will be shared confidentially with the Surprise Police Department per federal reporting requirements (Clery Act). All personally identifiable information is kept confidential. The University has an obligation to investigate allegations of sexual misconduct as provided for in this policy.

## Investigation

In cases involving student grievances referred for administrative action, the University will use an investigative model. This model allows much of the investigation to be completed prior to a finding. Trained faculty and staff investigators will interview accusing and accused students and witnesses, share the reports with the accused and accusing students, and allow for one or more responses from each.

Investigators will prepare a summary report with findings and sanctioning recommendations for the Title IX Coordinator.

## Standard of Evidence

The standard of proof is the "preponderance of the evidence," whether it is more likely than not that a violation occurred.

## Past History

The past sexual history or sexual character of a party will not be considered in investigations unless such information is determined to be highly relevant by the Title IX Coordinator. All such information sought to be admitted by a party or the University will be presumed irrelevant until a determination of relevance is made. Demonstration of pattern, repeated, and/or predatory behavior by the responding student, including in the form of previous findings in any legal or campus proceeding, may be relevant to the finding, not just the sanction. The parties will be notified in advance if any such information is deemed relevant and will be considered in the investigation.

## Sanction Statement

Not all forms of sexual misconduct are 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 accusing party and the person accused of sexual misconduct.

- Any student 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 campus conduct code violations.
- Any student found responsible for violating the policy on Non-consensual or Forced Sexual Intercourse will likely receive a sanction of suspension or expulsion.
- Any student found responsible for violating the policy on Sexual Exploitation or Sexual Harassment (and related violations) will likely receive a sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.
- Any student found responsible for violating policies on Dating Violence, Domestic Violence, or stalking will likely receive a sanction of suspension or expulsion.

## Final Outcome

Accused and accusing students may see the investigation report and view and respond to written appeals.

## Appeals

All parties in a sexual misconduct hearing have the opportunity to appeal within a specific time limit. Students found responsible may appeal without concern that appeal will issue a harsher finding or sanction. Reporting parties may appeal the decision and the sanction.

## Bystander Intervention

Ottawa University provides a Bystander Intervention program to all new students to enhance sexual assault awareness and prevention. The Bystander Intervention program instructs participants on safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking.

## SaVE Act Training

Incoming students will participate in an online Web-based course that is in compliance with the Campus SaVE Act and informative in relation to the law.

# PROGRAMS



## Contact Us

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