



04.130 SEXUAL ASSAULT POLICY

Authority: Chancellor

History: Reformatted July 18, 2005; Revised August 4, 2011

Source of Authority: 20 U.S.C. §1092(f) (also known as The Clery Act)

Related Links: [Harassment Prevention](#); [Harassment Resolution Procedures](#), [UNCW Police](#) (<http://www.uncw.edu/ba/police/>)

Responsible Office: Dean of Students

I. Purpose

The university takes all forms of sexual violence very seriously. In order to provide a safe campus community within which all members are valued and respected, policies and procedures for addressing sexual violence have been established and are detailed in the following pages. Acts of sexual violence carried out by and/or against university community members will not be tolerated and are punishable under university policies and North Carolina law.

II. Services

To appropriately address sexual violence, the university provides comprehensive services including:

- A. Educational programs, awareness events and print and video resources addressing a variety of topics related to sexual violence.
- B. Policies addressing sexual assault behaviors.
- C. Counseling and intervention services for those who have been assaulted or who have concerns regarding sexual violence.
- D. Referral to off-campus agencies that provide services for persons who have been sexually assaulted.
- E. Procedures for assisting persons who have been sexually assaulted in obtaining medical and counseling services.
- F. Procedures for campus conduct action when persons who have been assaulted wish to pursue campus disciplinary action against the assailant.

- G. Procedures for assisting persons who have been sexually assaulted in pursuing criminal action against their assailants.

III. Definition of Terms

- A. For the purpose of this policy, the terms “sexual violence” and “sexual assault” are used interchangeably.
 - 1. Sexual Assault - Any attempted or actual sexual activity that is unwanted or nonconsensual including oral or anal penetration, sexual touching, fondling, rape and a variety of other acts. Sexual assault is a crime under North Carolina law.
 - 2. Rape - Under North Carolina law is defined as:
 - a. Vaginal intercourse
 - b. By force
 - c. Against a person’s will
 - 3. Stranger Rape - Rape in which the victim does not know the rapist. This type of rape occurs the least often of the three types listed here, but is the one most often reported.
 - 4. Acquaintance Rape - Rape in which the victim knows or is acquainted with the rapist. Ninety percent of college rapes occur between people who know each other. This type of rape occurs the most often, but is least often reported.
 - 5. Gang Rape - Rape in which there are two or more rapists involved.
- B. Other definitions regarding what sexual assault is are necessary to ensure that the university policies are clearly understood.
 - 1. Any sexual behavior to which all persons involved do not clearly, verbally, and freely consent **may** be considered sexual assault or sexual violence.
 - a. Any sexual behavior in which a person engages because of coercion, threats, emotional or verbal abuse, physical force or threat, intimidation, incapacitation or other instances in which consent CANNOT be freely given constitutes sexual assault.
 - b. A person who is incapacitated because of their use of alcohol or other drugs is assumed to be unable to give consent.
 - c. Consent requires that the person has:
 - i. Adequate and correct information for decision-making,
 - ii. The power to freely choose and
 - iii. The freedom to have their choice respected by others.

2. Behaviors that are considered sexual assault and which can result in criminal, civil or campus conduct action include (but are not limited to) any of the following to which all parties involved **do not** or **cannot** freely consent (as defined above) are:
 - a. Any touching of a sexual nature
 - b. Penetration of the vagina by the penis (the definition of “rape” according to North Carolina law)
 - c. Any sexual activity with a person who is too-incapacitated by alcohol or other drugs to meet the above definition of consent
 - d. Any sexual activity with a person who is mentally defective, mentally incapacitated or physically helpless
 - e. Oral, anal or vaginal penetration with the penis, fingers or any object

IV. If you are sexually assaulted:

- A. Get to a safe place, one that is well-lit and where there are other people, preferably people you know and trust.
- B. Do not bathe, douche, brush your teeth, drink, change clothing or even comb your hair before seeking medical attention. It is only natural to want to do so, but you may be destroying physical evidence that could be needed later if you decide to prosecute.
- C. Call for help! People who care and who will provide you with support and information are available 24 hours a day via UNCW CARE at 910-512-4821 or at the Rape Crisis Center at 910-392-7460. Staff members at both centers can help you consider your reporting options, decide what to do next, and accompany you through the process.
- D. To report the assault, call UNCW Police at 910-962-2222 or ext. 911 on-campus. See the next section for more on reporting options.
- E. Get immediate medical attention. You may have injuries of which you are unaware.
 1. Evidence collection and emergency treatment is available 24 hours a day at the local emergency rooms.
 2. The Abrons Student Health Center can provide students with immediate needs or subsequent follow-care.
 3. The North Carolina Rape Victims Assistant Program and Crime Victims Compensation Act covers most, if not all, medical costs related to rape.
- F. If you wish, call a friend, family member, or other trusted person to be with you.

V. REPORTING ALTERNATIVES

It is important to report ANY sexual assault. To do so does not obligate a person to prosecute their assailant. There are several ways to take action- Confidential Notification, Adjudication through the UNCW University Conduct System, Criminal Prosecution. In any case, we recommend that victims report the crime to the UNCW Police or local law enforcement officials as soon as possible to ensure proper evidence collection and investigation. This will be of great importance should the person choose later to prosecute. Reporting options may be discussed with any of the university resources listed under “Filing an Confidential Notification” later in this policy.

A. Confidential Notification

A confidential notification may be filed with any of the university resources listed in Section VII below. In this notification your identity will remain confidential. By using this reporting option, you can provide the university or law enforcement agencies with important information that may prevent other assaults or may alert police and others to specific high risk areas while maintaining your anonymity.

B. Campus Conduct System

Whether or not you choose to pursue criminal prosecution, if the assailant is a UNCW student, you may file a report through the Campus Conduct System in the Office of the Dean of Students. A hearing may be conducted by an administrative hearing officer, Campus Conduct Board or the Committee on Extraordinary Disciplinary Emergencies. If the assailant is found responsible, sanctions may range from probation to expulsion from the university. For more information, contact the Office of the Dean of Students, Suite 2017, Fisher University Union, 910-962-3119.

C. Criminal Prosecution

If you decide to pursue formal prosecution, local law enforcement officials will need assistance in identifying and apprehending the assailant. Information concerning the time and location of the assault, as well as a complete description of the assailant (if possible) will be important. The more information and details you can provide, the better the chances of identification and prosecution. If the assailant is identified, the New Hanover County District Attorney’s Office will determine if there is sufficient evidence to prosecute. Be aware that your past sexual history cannot be discussed except for past relations with the assailant.

VI. UNIVERSITY RESPONSE TO A SEXUAL ASSAULT REPORT

- A. The university takes all incidents of sexual violence very seriously. Persons who have been assaulted are encouraged to report the incident to someone, whether it is a friend, parent, spouse, counselor or any other trusted individual. This is an important step in the healing process.
 1. The university provides confidential consultation and victim advocacy services to students who have experienced sexual violence at UNCW CARE. Victim advocates provide support, information, and assist students in utilizing campus and community resources. Students can also access victim advocacy via the Rape Crisis Center. Advocates assist students, but the choice of what actions to pursue belongs solely to the victim.
 2. The university also encourages those assaulted to report the incident to university or local law enforcement officers or to university administrators. Even if that person chooses not to pursue charges against the assailant, reporting the incident enables the university administrators to have a clearer understanding of what our students are experiencing and what services are needed.

VII. FILING A CONFIDENTIAL NOTIFICATION

- A. Designated university employees are required by law to notify UNCW Police of any alleged sexual assault that occurs on designated university property. This is only a notification that an incident has occurred. However, information shared with counselors in the Counseling Center will not be forwarded unless the victim consents, because confidentiality laws protect information shared with these staff members. The university member to whom the report is made will aid the person reporting in obtaining care and assistance.
 1. University Resources
 - UNCW CARE 910-962-2273 or 910-512-4821 after hours
 - UNCW Police 911 or 910-962-2222
 - UNCW Counseling Center 910-962-3746
 - Student Health Center 910-962-3280
 - Office of the Dean of Students 910-962-3119
 - Housing and Residence Life 910-962-3241
 2. Local Resources
 - Rape Crisis Center 910-392-7460 or (800) 672-2903
 - Domestic Violence Shelter 910-343-0703
 - New Hanover Regional Medical Center 910-343-7799

Cape Fear Memorial Hospital 910-452-8100

- B. A Confidential Notification contains information required by state and federal law, and in compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. The Confidential Notification is then forwarded to UNCW Police where it is filed and used for compiling the *UNCW Police Department Yearly Report*.
- C. Use of Assault Notification Information
Confidential information regarding sexual assaults is used for compiling the UNCW Campus Crime and Security Report (Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act) and for purposes of advising the campus community of any potential safety risks or concerns.

VIII. PURSUING LEGAL ACTION

- A. If you are interested in pursuing legal action, you should contact UNCW Police at 910-962-2222, emergency 911. UNCW Police will also discuss other options that include, but are not limited to, confidentiality issues and conduct action through the Office of the Dean of Students.

Students can also directly contact local police agencies regarding off-campus sexual violence.

Wilmington City Police - Emergency 911 or 910-343-3600
New Hanover County Sheriff's Office - 910-341-4200

IX. PURSUING CAMPUS CONDUCT ACTION

- A. The university may be required to initiate disciplinary/conduct or criminal action unless the person who has been assaulted chooses to do so if a responsible party has been notified of a sexual misconduct allegation.
- B. Pursuant to the Campus Security Act, in cases of alleged sexual assault, the accuser and the accused are entitled to have the same opportunities to have an advisor/advocate and one support person present during a disciplinary proceeding. The support person(s) may not participate in any way in the hearing.
- C. Mediation is not an appropriate route to resolution of sexual assault

cases and will not be used by the university to resolve sexual assault cases.

- E. Retaliation toward a student who reports a sexual assault is strictly prohibited. Any act by a student, or their agent, of reprisal, interference, restraint, discrimination, coercion or harassment against any person using these procedures shall constitute a policy violation and shall be subject to prompt and appropriate disciplinary action.

X. STATEMENT OF THE RIGHT OF VICTIMS OF SEXUAL ASSAULT WHO PURSUE CAMPUS CONDUCT ACTION

- A. The right to have both a victim advocate and one support person of her/his choice to accompany her/him throughout the disciplinary hearing. (Professional victim advocates are available to students through UNCW CARE and the Rape Crisis Center).
- B. The right to remain present during the entire proceeding, excluding deliberation.
- C. The protection afforded by NC Shield Law in effect at the time of the hearing, currently codified as NCGS8 C-1, Rule 412 (1983).
- D. If the accused is found in violation of the *Code of Student Life*, the victim has the right to make a “victim impact statement” and to suggest an appropriate penalty.
- E. The right to be informed of the outcome of the hearing.
- F. The victim may request a change in living or academic arrangements through the Office of the Dean of Students, if reasonably available.

XI. APPEAL PROCESS

Both the complainant (victim) and the respondent have the right to appeal in cases that involve violations of the sexual assault policy.

The complainant and respondent will follow the established policy for appeals of Campus Conduct Board, Committee on Extraordinary Disciplinary Emergencies or administrative hearings. The grounds for appeal in cases involving sexual offenses are listed below:

Respondent:

- A) an alleged violation of the rights guaranteed the accused has occurred
- B) the sanction is too severe for the violation; or

C) new evidence has developed which has bearing on the outcome.

Complainant:

A) an alleged violation of the rights guaranteed the complainant has occurred;

B) the sanction did not represent the severity of the violation committed;

C) new evidence has developed which has bearing on the outcome.

In administrative hearings, the complainant and/or respondent may appeal to the Campus Conduct Board by using the grounds for appeal listed above. The decision by the Campus Conduct Board will be final and no additional appeals may be filed except in cases of suspension or expulsion where an additional appeal may be made to the Board of Trustees. When the sanction is expulsion, the final campus decision is appealable to the Board of Governors.

In Campus Conduct Board or Committee on Extraordinary Disciplinary Emergencies hearings the complainant and/or respondent may appeal to the Chancellor by using the grounds for appeal listed above. The decision by the Chancellor will be final and no additional appeals may be filed except in cases of suspension or expulsion where an additional appeal may be made to the Board of Trustees. When the sanction is expulsion, the final campus decision is appealable to the Board of Governors.

Both the Complainant and the Respondent will be simultaneously notified of the outcome of the hearing and any subsequent appeals.