



## **04.130      SEXUAL ASSAULT POLICY**

Authority:      Chancellor

History:        Reformatted July 18, 2005

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

Related Links: Harassment Prevention; Harassment Resolution Procedures, University Police

Responsible Office: Dean of Students

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### **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 judicial 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. Also called “date rape” when the victim is or has been dating 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, intoxication or other instances in which consent CANNOT be freely given constitutes sexual assault.
  - b. A person who is impaired 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 judicial 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 impaired 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
  - f. Any sexual behavior with a person under the age of 16 (according to North Carolina law)

#### **IV. Reporting Policy Violations**

If you are raped or 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 at the Rape Crisis Center at 392-7460. Or, call the UNCW Counseling Center at 962-3746. Staff members at both centers can help you consider your reporting options and decide what to do next.
- D. To report the assault, call University Police at 962-3184 or ext. 4911 on-campus. Reporting does not mean that you have to prosecute. See the next section for more on reporting options.
- E. Get immediate medical attention. You may have injuries of which you are unaware.
- 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-Anonymous Notification, Adjudication through the UNCW University Judicial System, Criminal Prosecution. In any case, we recommend that victims report the crime to the University 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 Anonymous Notification” later in this policy.

### **A. Anonymous Notification**

An anonymous notification may be filed with any of the university resources listed in Part II below. In this notification your identity will remain anonymous. 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. UNCW University Judicial System**

Whether or not you choose to pursue criminal prosecution, if the assailant is a UNCW student, you may file a report through the UNCW Campus Judicial System. A hearing will be conducted by an administrative hearing officer, Campus Judicial Board or the Committee on Problem Admissions and Extraordinary Disciplinary Emergencies. If the assailant is found responsible,

sanctions can range from probation to suspension from the university. For more information, contact the Office of the Dean of Students, Room 214 - University Union, 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.
- B. The university also encourages those assaulted to report the incident to university or local law enforcement officers or to university administrators. Reporting the assault does not automatically require prosecution. To request that the case be adjudicated, either through the campus judicial system or through the criminal or civil justice system, is a decision that only the person assaulted can make. 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 an Anonymous Notification**

- A. Designated university employees are required by law to notify University 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 University Police 4911 or 962-3184
  - UNCW Counseling Center 962-3746
  - Student Health Center 962-3280
  - Office of the Dean of Students 962-3119
  - Housing and Residence Life 962-3241
2. Local Resources
  - Wilmington City Police Emergency 911 or 343-3600
  - Rape Crisis Center 392-7460
  - Domestic Violence Shelter 343-0703
  - Sheriff's Department 341-4200
  - Wilmington Health Access for Teens 790-9949
  - New Hanover Regional Medical Center 343-7799
  - Cape Fear Memorial Hospital 452-8100

- B. An Anonymous 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 Anonymous Notification is then forwarded to University Police where it is filed and used for compiling the *University Police Department Yearly Report*.

### **VIII. Use of Assault Notification Information**

Anonymous information regarding sexual assaults is used for compiling the *University Police Department Yearly Report* in accordance with state and federal law and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.

### **IX. Pursuing Legal and/or Judicial Action**

- A. The university cannot initiate disciplinary/judicial or criminal action unless the person who has been assaulted chooses to do so even if the alleged assailant is named in the Anonymous Notification.
- B. If you are interested in pursuing legal action, you should contact University Police at 962-3184, emergency 4911. University Police will also discuss other options that include, but are not limited to, confidentiality issues and judicial action through the Office of the Dean of Students.
- C. Statement of the Right of Victims of Sexual Violence Who Pursue Campus Judicial Action.

1. The right to have a person or persons of her/his choice to accompany her/him throughout the disciplinary hearing.
2. The right to remain present during the entire proceeding, excluding deliberation.
3. The protection afforded by NC Shield Law in effect at the time of the hearing, currently codified as NCGS8 C-1, Rule 412 (1983).
4. 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.
5. The right to be informed immediately of the outcome of the hearing.
6. The victim may request of the Office of the Dean of Students a change in living arrangements.