

The University of Toledo Sexual Misconduct Policy

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Name of Policy: Sexual Misconduct Policy Policy Number: 3364-50-01 Approving Officer: President Responsible Agent: Director, Title IX and Compliance Scope: All University of Toledo Campuses; see section (C)		 Revision date: August 9, 2018 Original effective date: December 1, 2007	
<input type="checkbox"/>	New policy proposal	<input checked="" type="checkbox"/>	Minor/technical revision of existing policy
<input type="checkbox"/>	Major revision of existing policy	<input type="checkbox"/>	Reaffirmation of existing policy

(A) Policy Statement**Title IX Notice of Non-Discrimination**

The University of Toledo (“University”) is committed to educational and working environments that are free from sex discrimination (including sexual harassment, sexual assault), and retaliation due to sex discrimination. Title IX of the Education Amendments of 1972 (“Title IX”) is a federal law that prohibits sex discrimination. This policy is consistent with the requirements of Title IX, Title VII, as well as relevant state laws.

The University encourages the reporting of sexual misconduct, sex discrimination, or retaliation related to a report of sexual misconduct or sex discrimination that may occur in its programs or activities. This is to ensure that the University has an opportunity to address prohibited conduct. Reports may be made online on the [University’s reporting website](#) or by contacting any of the resources identified in this policy.

Sexual misconduct includes sex discrimination, sexual harassment, sexual violence, sexual assault, conduct that exploits another person in a sexual and non-consensual way (such as voyeurism and non-consensual recording), stalking, interpersonal relationship violence, and indecent exposure.

The following individual has been designated to handle inquiries and reports concerning sexual misconduct (Title IX):

Donald Kamm
Director, Title IX and Compliance
Title IX Coordinator
Snyder Memorial Suite 1120
2801 W. Bancroft St. MS 137
Toledo, OH 43606
Phone: (419) 530-4191
Email: titleix@utoledo.edu

The Title IX Coordinator is assisted by investigators and other designees.

The Title IX Coordinator, investigators, and designees investigate allegations of sexual misconduct and sex discrimination, assist individuals who may require interim measures following a report of sexual misconduct, and provide information and resources to the campus community.

Inquiries regarding sex discrimination also may be directed to:

Office for Civil Rights
U.S. Department of Education
1350 Euclid Avenue, Suite 325
Cleveland, OH 44115-1812
Telephone: (216) 522-4970
TDD: (800) 877-8339
Email: OCR.Cleveland@ed.gov

The University is strongly committed to maintaining a safe campus and preventing unlawful discrimination and harassment in its programs and activities. Upon notice of possible sexual misconduct or sex discrimination, the University takes prompt and appropriate steps to determine what occurred through a fair and impartial process, end a hostile environment if one exists, and prevent recurrence.

The University utilizes fair and impartial processes that are mindful of the rights of individuals accused of sexual misconduct and sex discrimination, while taking steps to ensure equal treatment of complainants and provide necessary interim or protective measures for the parties involved. If the University finds that sexual misconduct occurred, it imposes appropriate sanctions, and provides remedies to complainants and the campus community, as appropriate. The University does not tolerate retaliation based on sexual misconduct, including retaliatory harassment, in its programs and activities.

(B) Purpose of the Policy

The University seeks, through this policy, to acknowledge and comply with its duties under federal and state laws and set forth a comprehensive framework for receiving, processing, investigating, and resolving complaints of sexual misconduct. This policy also provides the University community with necessary information regarding how to make complaints, receive assistance and support, and what to expect from the investigation process.

(C) Scope

This policy applies to all faculty, staff, students, student groups, student organizations, and third parties (i.e., individuals such as vendors and visitors), regardless of sexual orientation, gender identity, or gender expression. The policy covers sexual misconduct and retaliation for participating in an investigation based on sexual misconduct that occurs in University programs and activities, that is, on University property, or at University sponsored events, this includes instances where sexual misconduct or retaliation based on sexual misconduct occurs off-campus, but has an effect on-campus, on University property, or at a University-sponsored event.

All reports of alleged sexual misconduct in a University program, activity, department, or college will be investigated in the manner set forth in this Policy.

Claims that allege both “sexual misconduct” as defined by this policy and other unlawful discrimination or harassment covered by the [Nondiscrimination Policy](#) (Policy 3364-50-02), or by the [Nondiscrimination on the Basis of Disability Policy](#) (Policy 3364-50-03), will be addressed jointly by the Title IX investigation and the designated investigator(s) under the applicable policy with the investigator authorized for the respective policies.

The University upholds the requirements of the Constitution of the United States of America. This policy will not be interpreted to impinge upon any constitutionally protected rights or privileges, including those under the First or Fifth Amendments.

(D) Immediate Assistance and Reporting Options

The University is committed to educational and working environments that are free from sex discrimination, which includes sexual harassment, sexual assault, interpersonal relationship violence, stalking, or retaliation based on sex discrimination. Individuals who experience sexual misconduct in a University program or activity are encouraged to utilize one or more of the following options:

On-Campus:

(1) Medical Assistance (Confidential) (Available to students, faculty, staff, visitors, third parties)

The University of Toledo Medical Center (Enter through the Emergency Room entrance),
3000 Arlington Avenue, Toledo, Ohio 43614, 419.383.4000
[Sexual Assault Nurse Examiner (SANE) available – please ask for SANE nurse]

(2) Assistance from Law Enforcement (Non-Confidential) (Available to students, faculty, staff, visitors, third parties)

University of Toledo Police Department (UTPD) at 419.530.2600

Reports may be made to law enforcement and the university concurrently.

(3) Center for Student Advocacy and Wellness (CSAW) (Confidential) (Available to students, faculty, staff, visitors, third parties)

CSAW provides free and confidential counseling and advocacy services for students, staff, and faculty. Victim advocates are available to provide support services for victims of sexual assault, domestic violence, dating violence, stalking, education/training programs and wellness events related to sexual assault, sexual misconduct, interpersonal violence, /stalking, bystander intervention, and outreach and engagement regarding victim risk awareness programs. A full-time counselor is also available for any faculty, staff or student who wishes to schedule an appointment. CSAW is located in the College of Health and Human Services Room 3017. It can be reached by calling the sexual assault hotline at 419.530.3431 (Answered 24 hours a day / 7 days a week). This number may be forwarded to the YWCA HOPE Center for 24hour/7 day answering when CSAW staff is not available.

YWCA HOPE Rape Crisis Center Campus Outreach is located in CSAW. Monday – Thursday 8:30 a.m. to 5:00 p.m. and offer confidential individualized support services for survivors and co-survivors and medical, legal and Title IX assistance. Available to students, staff,

and faculty. College of Health and Human Services Room 3017. 24/7 Hotline 419.530.3431 or 1.866.557.7273. Instagram & Twitter: HOPEonCampus.

(4) UT Counseling Center (Confidential) (Available to students only)

The University Counseling Center (UCC) provides free and confidential counseling services to enrolled students. Counselors are available Monday through Friday during 8:15 am – 5:00 pm. Counselors are available for emergencies after hours by contacting the University of Toledo Police Department. Counselors are available to assist complainants who have an ongoing relationship with the UCC and respondents involved in sexual misconduct and interpersonal violence matters. To schedule an appointment during regular office hours, call 419.530.2426. To learn more about the programs and services available at the UT Counseling Center, visit http://www.utoledo.edu/studentaffairs/counseling/about_us.html. UCC is located in the Main Campus Medical Center, Room 1030.

(5) Report to the University Title IX Office (Non-Confidential) (Available to students, faculty, staff, visitors, third parties) (Anonymous reporting is available through website)

Donald Kamm
Director, Title IX and Compliance
Title IX Coordinator
2801 W. Bancroft Street
Snyder Memorial Suite 1120
Toledo, OH 43606
Phone: (419) 530-4191
Email: titleix@utoledo.edu
Mail Stop: 137

You may also report online through the Title IX website at <http://www.utoledo.edu/title-ix/>. *This report may be made anonymously or with identifying information.* To report anonymously, do not fill in your name, position, phone number, or email under “Reporters Information.”

(6) Employee Assistance Program (EAP) (Confidential) (Available to Faculty and Staff Only)

IMPACT Employee Assistance & Work/Life Program (24/7 Support)
1-800-227-6007
www.MyImpactSolution.com
Member Login: UT

Off-Campus:

(1) Medical Assistance (Confidential) (Available to students, faculty, staff, visitors, third parties)

The Toledo Hospital (Enter through the Emergency Room entrance),
2142 N Cove Boulevard, Toledo, Ohio 43606, 419.291.4600
[Sexual Assault Nurse Examiner (SANE) available – please ask for a SANENurse]

(2) Assistance from Law Enforcement (Non-Confidential) (Available to students, faculty, staff, visitors, third parties)

Dial 911 to reach local law enforcement.

Reports may be made to law enforcement and the university concurrently.

(3) Report to the University (Non-Confidential) (Available to students, faculty, staff, visitors, third parties) (Anonymous reporting available)

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You may also report online through our website at <http://www.utoledo.edu/title-ix/>. This report may be made anonymously or with identifying information. To report anonymously, do not fill in your name, position, phone number, or email under “Reporters Information.”

(4) Off-campus Resources (Confidential) (Available to students, faculty, and staff)

YWCA H.O.P.E. Center 24-hour Rape Crisis Hotline 419.241.7273

Y.W.C.A. Battered Women’s Shelter 419.241.7386

(5) Employee Assistance Program (EAP) (Confidential) (Available to Faculty and Staff Only)

IMPACT Employee Assistance & Work/Life Program (24/7 Support)

1-800-227-6007

www.MyImpactSolution.com

Member Login: UT

(E) Definitions and Examples

(Additional relevant definitions and examples, including state law definitions, are set forth in Appendices B and C to this policy. All definitions utilized in any section are valid for the purpose of a sexual misconduct investigation.)

Complainant: The individual alleged to have experienced sexual misconduct or retaliation in relation to this policy. There may be more than one complainant for an incident.

Consent: Consent requires unambiguous communication and mutual agreement concerning the act in which the participants are engaging. Consent must be informed, freely given, mutual, and can be withdrawn at any time. A person cannot give consent if they are mentally or physically incapacitated such that the person cannot understand the fact, nature, or extent of the sexual situation; this includes incapacitation due to age; alcohol or drug consumption; or, being asleep or unconscious. Similarly, a person cannot give consent if force, expressed or implied, is used; or if, duress; intimidation; threats; or deception are used on the complainant. Silence or the absence of resistance does not imply consent. Consent to some sexual acts does not imply consent to other acts, nor does prior consent to sexual activities imply ongoing future consent with that person or consent to that same sexual activity with another person. Whether an individual has taken advantage of a position of influence or authority over the complainant may be a factor in determining consent. Minors under the age of 16 are incapable of giving consent under Ohio law under any circumstances.

Days: Days are “Business Days” - Monday through Friday, excluding Saturday, Sunday, recognized University holidays, and approved University breaks.

Incapacitation: Incapacitation occurs when a person is unable to give consent, due to the use of drugs or alcohol, or a cognitive impairment. In considering whether a complainant is incapacitated due to the consumption of drugs or alcohol, the University will consider the circumstances, including factors such as whether there is evidence of slurred speech, vomiting, stumbling or the inability to walk, or periods of “blacking out.” The presence of only one of these factors may not be sufficient to establish incapacitation; the totality of the circumstances must be examined.

Indecent exposure: Recklessly exposing genitals in front of another person or engaging in masturbation or other sexual conduct in a place likely to be seen by other people.

Interpersonal Relationship Violence (also known as Intimate Partner Violence, Dating Violence, Domestic Violence, Interpersonal Violence, or Relationship Violence): Pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Interpersonal violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Interpersonal violence can occur in a domestic relationship (domestic violence) or a dating relationship (dating violence).¹

¹ Other forms of interpersonal relationship violence:

Physical Abuse: Hitting, slapping, shoving, grabbing, pinching, biting, hair pulling, etc. are types of physical abuse. This type of abuse also includes denying a partner medical care or forcing alcohol and/or drug use upon him or her.

Sexual Abuse: Coercing or attempting to coerce any sexual contact or behavior without consent. Sexual abuse includes, but is certainly not limited to, marital rape, attacks on sexual parts of the body, forcing sex after physical violence has occurred, or treating one in a sexually demeaning manner.

Emotional Abuse: Undermining an individual's sense of self-worth and/or self-esteem is abusive. This may include, but is not limited to constant criticism, diminishing one's abilities, name-calling, or damaging one's relationship with his or her children.

Economic Abuse: Is defined as making or attempting to make an individual financially dependent by maintaining total control over financial resources, withholding one's access to money, or forbidding one's attendance at school or employment.

Psychological Abuse: Elements of psychological abuse include - but are not limited to - causing fear by intimidation; threatening physical harm to self, partner, children, or partner's family or friends; destruction of pets and property; and forcing isolation from family, friends, or school and/or work.

- (1) A domestic relationship would be:
 - (a) By a current or former spouse or intimate partner of the victim;
 - (b) By a person with whom the victim shares a child in common;
 - (c) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - (d) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
 - (e) 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 in which the crime of violence occurred.

- (2) A dating relationship would be:
 - (a) Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; or
 - (b) The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Non-consensual recording: Sexual harassment by recording of a person while undressing, naked, or engaged in sexual behavior without their consent. Transmission of non-consensual recording(s) will be considered as a factor of sexual harassment.

Respondent: The individual alleged to have engaged in sexual discrimination, sexual misconduct or retaliation.

Retaliation: Retaliation occurs when an individual has engaged in a protected activity (such as filed a sexual misconduct complaint or participated in an investigation of alleged sexual misconduct), and adverse action is taken against the individual because of involvement in the protected activity related to sexual discrimination or misconduct. Retaliation can be committed by the complainant, respondent, or any other third party. The person accused of committing the retaliation may or may not be the same as the respondent. Retaliation may be a separate investigation from the sexual misconduct investigation with its own finding.

Example: A student files a sexual misconduct complaint against a professor. The professor gives the student a poor grade because the professor is upset that the student filed a complaint.

Example: A staff member files a complaint alleging sexual misconduct. The respondent's friends follow the staff member around campus every day and make verbal threats because the staff member filed a complaint.

Example: A student complainant files a complaint about another student respondent concerning gender-based comments that are inappropriate. The complainant or friends then send out posts on social media attacking the respondent and the respondent's friends and family.

Sexual Assault: Unwelcome physical conduct of a sexual nature, including unwanted kissing, touching, oral, vaginal, or anal sex, which occurs in the absence of consent. This includes non-consensual penetration, no matter how slight, of the vagina, anus, or of or by an oral cavity with any body part or an object used in lieu of a sex organ, this also includes placement of a sexual organ upon another person without consent, or ejaculating upon another person without consent. Sexual assault includes fondling:

the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of their youth or because of their temporary or permanent mental incapacity.

Sexual coercion: The act of using pressure, alcohol or drugs, or force to have sexual contact with someone against a person's will.

Sex discrimination: Negative or adverse treatment based on sex, sexual orientation, gender, gender expression, or gender identity.

Sexual Exploitation: An act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose. The act or acts of sexual exploitation are prohibited even though the behavior does not constitute one of the other sexual misconduct offenses.²

Examples of sexual exploitation include:

- (1) Observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- (2) Non-consensual streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
- (3) Prostituting another individual;
- (4) Exposing another's genitals in non-consensual circumstances;
- (5) Knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge;
- (6) Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

Sexual harassment: Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. A single instance of rape is sufficiently severe to create a hostile environment. Sexual harassment can occur in one of two forms:

Hostile environment: Exists if the conduct is sufficiently serious (severe or pervasive) that it interferes with or limits a student's ability to participate in or benefit from the University's program or an employee's ability to perform their job. The more severe the conduct, the less

² *Sexual exploitation occurs when a person abuses or exploits another person's sexuality without that person's consent. Sexual exploitation can look like:*

- **Recording images or audio** (without that person's consent) of sexual activity, intimate body parts, or nakedness.
- **Distributing images or audio** with the content above if the person distributing them does not have that person's explicit consent.
- **"Revenge pornography"** in which a person threatens to post, or actually does post, images, audio, or video of their partner participating in sexual activity.
- **Viewing another person's sexual activity, intimate body parts, or nakedness without their consent** in a place where that person would have a reasonable expectation of privacy
- **Exposing someone's genitals** without their consent

need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical.

Quid pro quo: Occurs when participation in or receipt of a benefit of the University's program is made contingent on the provision of sexual favors for or by a person who has the authority to make decisions about participation or receipt of benefits or when the rejection of a sexual advance or request for sexual favors results in the denial of participation in or receipt of a benefit of the University's program.

Examples of sexual harassment: (1) A student is sexually assaulted by another student; (2) A professor asks a student to have sex with in order to get a better grade; (3) students in a residence hall target another student by writing unwelcome sex-based comments on the student's door; making negative, sex-based comments to the student in class, and threatening physical harm to the student.

When the facts establish that an institutional power differential existed within the relationship and an allegation of sexual harassment results, the University will closely scrutinize a defense that the relationship was consensual.

Example: A person who asks another on a date is not responsible for sexual harassment if it occurs once or twice. If the conduct is repeated, unwelcome, severe, or pervasive, then it could become sexual harassment.

Example: An accidental touch of a body part or brushing against another person is not sexual harassment if the conduct was not of a sexual nature.

Sexual misconduct: Sexual misconduct includes sexual harassment, sexual violence, sexual assault, conduct that exploits another person in a sexual and non-consensual way (such as voyeurism and non-consensual recording), stalking, interpersonal relationship violence, and indecent exposure. Sexual misconduct may also be discrimination, harassment, or violence based on sexual orientation, gender identity, or gender expression.

Sexual violence: Sexual violence is physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (for example, due to the person's age or use of drugs or alcohol, or because an intellectual or other disability prevents the person from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including sexual assault, sexual battery, sexual abuse, and sexual coercion.

Sexual Voyeurism: Spying on people engaged in intimate behaviors, such as undressing, sexual activity, or other actions usually considered to be of a private nature. The person accused of voyeurism does not have to directly interact with the subject of interest. Voyeurism is frequently done secretly and may involve non-consensual recording or capturing of the intimate behaviors.

Stalking: Engaging in a course of conduct directed at a specific person that would: (1) cause a reasonable person to fear for their safety or the safety of others; or (2) suffer substantial emotional distress.

Written Notification: All correspondence will be sent via e-mail to your UT E-Mail Address. Should an individual not have a UT E-Mail Address, agreement will be made as to the best source of contact (other e-mail address provided in writing).

(F) Making a Report**(1) Where and how to file a complaint.**

Timeframe for filing: Complaints of sexual misconduct should be filed within 300 days of the last act of alleged discrimination or harassment. Individuals who file complaints after this timeframe may request a waiver, in writing, to the Title IX Coordinator University email for the right to file a claim. The request for a waiver should set forth the reason that the complaint was not filed within 300 days. The Title IX Coordinator will consider the request and issue a decision as to whether or not the claim may be filed within 10 days after approval. The University encourages timely reporting of complaints, as delays in filing may impair the University's ability to fully and adequately respond in a manner that is fair, impartial, and equitable to all parties. For example, memories fade over time and evidence may be lost, which may hamper an investigation.

Where to file: A complaint can be made by completing a Title IX Reporting/Complaint Form available on the University's website at <http://www.utoledo.edu/title-ix/>. The completed form also may be hand-delivered, emailed, or mailed to the Title IX Office. The complaint can be filed by any member of the University community or third party. Parties may also call the Title IX Office at 419.530.4191; the resulting information will be entered into the above referenced Title IX Reporting/Complaint Form.

Anonymous complaints: Persons may also make anonymous complaints by completing the above referenced Title IX Reporting/Complaint Form available on the University's website at <http://www.utoledo.edu/title-ix/>. To report anonymously, do not fill in your name, position, phone number, or email under "Reporters Information." Anonymous complaints can also be made by calling the toll-free Anonymous Reporting Line at 1-888-416-1308.

(2) Confidentiality

The University takes seriously the need to respect the privacy of the parties in responding to reports and complaints of sexual misconduct. The University shares information on a limited, "need to know" basis, in accordance with federal and state law and the Ohio Public Records Act. Information may be shared on a need to know basis when the safety of others or the campus is at issue.

The University is required to share with the University of Toledo Police Department and the Clery Act Compliance Officer information regarding certain conduct (e.g., reports of sexual assault, dating violence, domestic violence, and stalking), unless the reports are made exclusively to confidential sources. To maintain the confidentiality of a report of sexual misconduct, complainants should utilize the resources identified in Section D (above) and in Appendix A as confidential. Contact information for confidential reporting resources is provided in Section D (above) and in Appendix A.

(3) Minors

Any information concerning a minor as a complainant or respondent will be provided to the parent/guardian of the minor by the Title IX Office as soon as practicable upon knowledge of a complaint concerning a minor. The University of Toledo has a [Minors on Campus Policy \(Policy 3364-10-17\)](#). Please review the policy for additional information.

(4) Amnesty

The [Amnesty Policy \(Policy 3364-30-03\)](#) may apply in certain circumstances. Please review the policy for additional information.

(5) Mandatory reporting

Who must report: Responsible Employees are required to immediately report to the Title IX Coordinator incidents of sexual misconduct in University programs and activities of which they are aware. Reports can be filed online at <http://www.utoledo.edu/title-ix/>

A Responsible Employee includes any employee: who has the authority to take action to redress sexual misconduct; who has been given the duty of reporting incidents of sexual misconduct or any other misconduct by students or employees to the Title IX coordinator or other appropriate school designee; or whom a student or employee could reasonably believe has this authority or duty.

Employees exempt from mandatory reporting: At the University of Toledo, all employees are responsible employees for Title IX purposes, with limited exceptions. These exceptions include the employees of the University Counseling Center, The Center for Student Advocacy and Wellness, and The University of Toledo Psychology Clinic, and Counselor Education. All employees working under their licensure as a counselor, psychologist, psychiatrist, or social worker, and those working for them under their licensure in a clinical or professional setting are exempt from reporting under Title IX. These employees may still be required to report aggregate data for the Clery Act, required information for timely warning notifications, and under the Ohio Revised Code.

This designation is consistent with certain state law requirements, including Ohio Revised Code § 2921.22, which, with certain exceptions, provides that “no person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities”.

What must be reported: When making a report of sexual misconduct, responsible employees must report to the Title IX Coordinator the details of the incident of which they are aware. This may include information such as the names of the complainant and respondent; the date, time, and location of the incident; and the nature of the incident, including available facts about what occurred. Responsible employees should not independently investigate, or conduct an inquiry into incidents of sexual misconduct.

(6) The University’s Police Department and Local Law Enforcement

Making reports to law enforcement: The University is committed to working cooperatively with UTPD as well as local law enforcement agencies. Individuals who experience sexual misconduct on University property may choose to make a report to UTPD by calling 419.530.2600. Individuals who experience sexual misconduct off University property may choose to make a report to local law enforcement by calling 911.

The University notes that reports of sexual misconduct made to the University of Toledo Police Department will be shared with the Title IX Coordinator. In turn, the Title IX Coordinator will share with the University of Toledo Police Department information regarding sexual misconduct cases to ensure compliance with the Clery Act, state law, and to maintain a safe campus community.

Coordination with law enforcement: In cases where a complainant makes a simultaneous report to law enforcement, the University will coordinate with law enforcement, as needed, to ensure that law enforcement has a reasonable time to complete its evidence-gathering. The University will promptly resume its investigation after a reasonable time.

Considerations in medical care: Individuals who experience sexual assault are encouraged to seek immediate medical attention. A complainant may wish to request a forensic examination from a Sexual Assault Nurse Examiner (SANE) at the University of Toledo Medical Center or other area hospitals. Complainants who choose to obtain a forensic examination should take a change of clothing, and try not to shower, drink, eat, douche, brush teeth or hair, or change clothes prior to the exam as this may help preserve evidence in the event of a criminal complaint. Free, emergency contraception is available through SANE nurses.

Obtaining protective measures from courts: In addition to the interim measures/accommodations specified below, a complainant may be able to obtain protective measures, such as civil protection orders through the local court. The University is not involved in such proceedings; however, information about interim remedies available through the University are provided below.

- (G) **Interim Measures/Accommodations.** Interim measures/accommodations are available to parties who are involved in reported sexual misconduct cases. Interim measures/accommodations will be coordinated by the Title IX Coordinator or designee, who may consult with other departments. Interim measures may include, but are not limited to, no contact directives, changes to academic, and/or living situations, disciplinary holds, interim sanctions, and other services. For employees, interim measures may include no contact directives, reassignment, leave, modification to the place or manner of performing one's position, or other actions. The University administers interim measures in a manner that minimizes the burden on the complainant, while taking into account due process considerations with regard to the respondent, and the potential impacts on the University community. For employees working under a collective bargaining agreement, the interim measures and accommodations are done in a manner consistent with the labor agreement.

Participants in an investigation of a complaint under this policy may contact the Title IX Coordinator or designee if they need interim measures or accommodations.

(H) **Complaint Investigation and Resolution Procedures**

- (1) **Standard of Review:** The University uses the preponderance of the evidence or "more likely than not" standard in the investigation and resolution of complaints of sexual misconduct.
- (2) **Title IX Coordinator's evaluation of the report:** Within 7 days of receiving a report of alleged sexual misconduct, the Title IX Coordinator will determine if the case falls under the scope of Title IX, and/or if an investigation will take place or if other actions will be taken. If the complainant wishes to proceed with an investigation, and it falls within the scope of this policy, or an investigation is otherwise necessary, the Title IX Coordinator or designee will assign the case to an investigator no later than 7 days after receiving the report of alleged sexual misconduct. In certain circumstances, the Title IX Coordinator may request an external investigator be appointed by the Office of Legal Affairs. This may require an extension of the 7 day assignment of the case. The Title IX Coordinator will document this step of the process in writing. The Title IX Office has the right to determine if a complaint

falls under the scope of sexual misconduct. If it is determined that an allegation does not fall under this policy, the Title IX Office shall reassign it to the appropriate office.

- (3) **Title IX Office's response:** Within 7 days of the assignment of an investigator, the Title IX Coordinator or designee will contact the complainant to schedule an interview. Within this timeframe, the Title IX Coordinator or designee will provide the complainant with written information about the investigatory process, available resources, accommodations, interim measures, and how to raise and resolve concerns about interim measures or conflicts of interest. After the interview with the complainant, the Title IX Coordinator or designee will contact the respondent and witness(es) as appropriate.

The Title IX Coordinator or designee will provide the respondent and witnesses with written information about the investigatory process, available resources, accommodations, interim measures, and how to raise and resolve concerns about interim measures or conflicts of interest.

- (a) University-provided email will be the primary means of communication used. complainants, respondents, and witnesses are advised to regularly check their University-provided email. The University will take appropriate action to address alleged sexual misconduct, including instances where a party does not respond to communication from the University. This may include moving forward with the disciplinary process if it does not receive a response from a party within a reasonable timeframe. Should a party not have university-assigned email, agreement will be made as to the best source of contact for an individual. Preferred contact methods for sharing of documents or information other than in-person interviews are (1) University-assigned email; (2) Other email provided by party in writing; (3) telephonic to best available number provided; and, (4) United States Postal Service mail.
- (b) As part of the investigation, the Title IX Coordinator or designee will interview witnesses, and review available evidence, as appropriate.
- (c) The Title IX Coordinator's or designee's investigation generally will be concluded by 60 days after the complaint was received. This timeframe may be extended if necessary.
- (d) At the conclusion of the investigation, the Title IX Coordinator or designee will prepare a written investigatory report that summarizes the facts presented during investigation. Based on the facts presented and after review by the Title IX Coordinator, a letter and the investigatory report will be sent concurrently to the appropriate parties in the investigation.
 - (i) For student respondent cases, which will be forwarded to the Office of Student Conduct and Community Standards, the finding will read as follows:
 - (a) There appears to be sufficient evidence based on this investigation to refer this matter to the Office of Student Conduct and Community Standards for handling under the [Student Code of Conduct \(Policy 3364-30-04\)](#).

- (b) There does not appear to be sufficient evidence based on this investigation for this to be considered a violation of the Sexual Misconduct Policy. This matter is being referred to the Office of Student Conduct and Community Standards for handling under the [Student Code of Conduct \(Policy 3364-30-04\)](#).
 - (ii) In cases involving a faculty or staff respondent, a determination of whether or not a violation of the policy occurred will be included. The decision may include recommendations regarding appropriate next steps. No appeal of this decision is allowed, except through processes in the individual's collective bargaining agreement. The complainant and respondent will have simultaneous, timely notice of the investigation report. The report will be shared with the relevant University administrators. If there is insufficient evidence to support a conclusion that the behavior at issue was based on sex or of a sexual nature, the letter will include that conclusion, and no appeal is permitted on the determination.
- (4) **Adjudication/Resolution:** The University generally will conclude the investigation within 60 days of receiving a complaint of sexual misconduct, but reserves the right to extend based on complexity of case and relevant factors to each individual case.
 - (a) **Cases where the respondent is a student:** The process set forth in the [Student Code of Conduct \(Policy 3364-30-04\)](#) applies. However, any change in sanction must be provided to complainant and respondent simultaneously.
 - (b) **Cases where the respondent is an employee:** The disciplinary process outlined in the applicable collective bargaining agreement or applicable policy will be followed, subject to (e) below.
 - (i) Regular employee disciplinary policies or procedures provide the procedures that will be followed for disciplinary matters; however, all applicable Title IX requirements outlined in this policy will be followed during any disciplinary process relating to a finding of sexual misconduct. Employee discipline will be pursued, if the administrator with authority over the responsible party(ies) concludes that disciplinary action is necessary. Should a decision not to move forward with disciplinary action be reached, the complainant and respondent will be notified of that decision in writing by the appropriate administrator with a copy provided to the Title IX Coordinator.
 - (c) **Cases where the respondent is a third party:** Within 14 days of the conclusion of the investigation, the Title IX Coordinator or designee will review the investigatory report and determine the appropriate outcome. Where the respondent is not a University student or employee, the range of sanctions available to the University may be limited. However, the University may impose sanctions such as restrictions on contact with the complainant on University property and may provide remedies to the complainant (e.g., academic accommodations), as appropriate.
 - (d) **Written notice of the outcome of resolution process:** The complainant and respondent will receive written notice of the outcome concurrently after the sanction or discipline is determined by the responsible party.

- (e) In the event of an appeal of the sanction, notice of the appeal decision shall be sent concurrently to the complainant, respondent and Title IX Coordinator.
 - (5) **Witnesses and evidence.** The parties have an equal opportunity to present relevant witnesses and evidence during the investigation of sexual misconduct complaints.
 - (6) **Participation of advisors.**
 - (a) Respondents and complainants may elect to have an Advisor throughout the investigation process. The Advisor can assist the complainant and respondent with interview preparations, and can accompany them to all interviews and meetings.
 - (b) The Advisor may not speak or participate in the interviews or meetings, but may consult with their respective advisee(s) verbally or in writing in a quiet non-disruptive manner. If the Advisor becomes disruptive after being warned two times by the Title IX investigator, they will be asked to leave.
 - (c) Respondents and complainants whose Advisors are attorneys are required to notify the Title IX Investigator at least three business days before the interview or meeting.
 - (7) **Advisors within the University community.** The University has advisors who are available to assist complainants and respondents during sexual misconduct investigations. To utilize an advisor, parties may contact the Title IX Coordinator. This information will be provided at the beginning of the investigation and upon request.
 - (8) **Timeframes.** The investigation of the complaint generally will be completed within 60 days, absent extenuating circumstances. The Title IX Coordinator, or designee, may provide the parties with updates regarding the status of the case at regular intervals. Updates are available by contacting the appropriate party.
 - (9) **Conflicts of interest and fairness of process.** This procedure provides for the prompt, reliable, impartial investigation and adjudication of complaints of sexual misconduct. The parties will receive similar, timely access to information throughout the process. Any concerns regarding real or perceived conflicts of interest regarding the participation of anyone in the process should immediately be brought to the attention of the Title IX Coordinator or designee. If the conflict of interest involves the Title IX Coordinator, the conflict should be brought to the attention of the Vice-President of Student Affairs.
 - (10) **Mediation.** Mediation will not be used in cases where sexual violence has been alleged, or in cases where the accused is in a position of authority over the accuser. In these cases, a complainant will not be required to work out an issue directly with a respondent, even on a voluntary basis.
 - (11) **Recordkeeping.** The University maintains records related to sexual misconduct proceedings in accordance with federal and state law requirements.
 - (12) **Training.** The Title IX Coordinator, Investigator(s) Designee(s), Office of Student Conduct and Community Standards Professional Staff, Adjudicator(s), and any administrators with responsibilities under this policy will receive training, on at least an annual basis.
- (I) **Sanctions and Remedies.** The sanctions and remedies that may be imposed or available depend on the nature of the party's relationship to the University.

- (1) Students found responsible for sexual misconduct may be subject to discipline as explained in the [Student Code of Conduct \(Policy 3364-30-04\)](#).
- (2) Employees found responsible for sexual misconduct may be subject to discipline as explained in the applicable collective bargaining agreement, University policy, or state law.

The University provides remedies to individuals who experience sexual misconduct and the campus community, as appropriate. Remedies may include educational programming, changes to policies and procedures, counseling, and opportunities to change educational, work, or living situations.

- (J) Appeal Process.** Both the complainant and respondent will be provided equitable appeal rights, consistent with applicable policy or collective bargaining agreements. Appeals are not available to any party until such time as a decision is reached on responsibility and sanction or discipline is determined, or if the respondent is found not responsible.

For students, the appeal process is set forth in the [Student Code of Conduct \(Policy 3364-30-04\)](#).

For employees, the bases for appeal are set forth in the applicable collective bargaining agreement or policy.

(K) Resources

A list of University and local resources for those who have experienced sexual misconduct is available on the Title IX website and in Appendix A to this policy.


(L) Prevention and Awareness Programs

All members of the University community play a role in preventing sexual misconduct. The University is committed to delivering annual sexual misconduct prevention and awareness training to all new students and employees. These programs specifically address sexual assault, dating violence, domestic violence, and stalking, among other topics. Information about the University's Sexual Misconduct Prevention Education may be found at <http://www.utoledo.edu/title-ix/>.

Online training for faculty and staff can be found at MyUT under the "Training and Career Development" tab.

Additionally, sexual misconduct, prevention, and awareness programming is available at <http://www.utoledo.edu/title-ix/>.

- (M) This policy will be reviewed annually.**

<p>Approved by:</p> <p></p> <hr/> <p>Sharon L. Gaber, Ph.D. President</p> <p><u>August 9, 2018</u> Date</p> <p><i>Review/Revision Completed by: Senior Leadership Team; Office of Legal Affairs; Office of Student Conduct and Community Standards; Internal Audit and Compliance</i></p>	<p>Policies Superseded by This Policy:</p> <ul style="list-style-type: none">• <i>Previous 3364-50-01 Sexual harassment and other forms of harassment, effective February 6, 2014</i>• <i>Policy 3364-61-02, Sexual assault response/prevention, effective date July 25, 2012</i> <p>Initial effective date: December 1, 2007</p> <p>Review/Revision Date: April 29, 2011; October 22, 2012; April 2, 2013; February 6, 2014; August 31, 2015; September 25, 2017, August 9, 2018</p> <p>Next review date: August 9, 2021</p>
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Appendix A

Resources – The following is a list of some of the resources available following an incident of sexual misconduct. A more comprehensive list is available at: <http://www.utoledo.edu/title-ix/>

On-Campus

1. Medical Assistance (Confidential) (Available to students, faculty, staff, visitors, third parties)

The University of Toledo Medical Center (Enter through the Emergency Room entrance),
3000 Arlington Avenue, Toledo, Ohio 43614, 419.383.4000
[Sexual Assault Nurse Examiner (SANE) available – please ask for SANE nurse]

2. Assistance from Law Enforcement (Non-Confidential) (Available to students, faculty, staff, visitors, third parties)

University of Toledo Police Department (UTPD) at 419.530.2600

Reports may be made to law enforcement and the university concurrently.

3. Center for Student Advocacy and Wellness (CSAW) (Confidential) (Available to students, faculty, staff, visitors, third parties)

CSAW provides free and confidential counseling and advocacy services for students, staff, and faculty. Victim advocates are available to provide support services for victims of sexual assault / domestic violence / dating violence / stalking, education/training programs and wellness events related to sexual assault / sexual misconduct / interpersonal violence / stalking / bystander intervention, and outreach and engagement regarding victim risk awareness programs. A full time counselor is also available for any faculty, staff or student who wishes to schedule an appointment. CSAW is located in the College of Health and Human Services Room 3017 or can be reached by calling the sexual assault hotline at 419.530.3431 (Answered 24 hours a day / 7 days a week). This number may be forwarded to the YWCA HOPE Center for 24hour/7 day answering when CSAW staff is not available.

YWCA HOPE Rape Crisis Center Campus Outreach is located in CSAW. Monday – Thursday 8:30 a.m. to 5:00 p.m. and offer confidential 1:1 supportive services for survivors and co-survivors and medical, legal and Title IX assistance. Available to students, staff, and faculty. College of Health and Human Services Room 3017. 24/7 Hotline 419.530.3431 or 1.866.557.7273. Instagram & Twitter: HOPEonCampus.

4. UT Counseling Center (Confidential) (Available to students only)

The University Counseling Center (UCC) provides free and confidential counseling services to enrolled students. Counselors are available Monday through Friday during 8:15 am – 5:00 pm. Counselors are available for emergencies after hours by contacting the University of Toledo Police Department. Counselors are available to assistant complainants with an ongoing

relationship with the UCC and respondents involved in sexual misconduct and interpersonal violence matters. To schedule an appointment during regular office hours, call 419.530.2426. To learn more about the programs and services available at the UT Counseling Center, visit http://www.utoledo.edu/studentaffairs/counseling/about_us.html. UCC is located in the Main Campus Medical Center, Room 1030.

5. **Report to the University Title IX Office (Non-Confidential) (Available to students, faculty, staff, visitors, third parties) (Anonymous reporting is available through website)**

Donald Kamm
Director, Title IX and Compliance
Title IX Coordinator
2801 W. Bancroft Street
Snyder Memorial Suite 1120
Toledo, OH 43606
Phone: (419) 530-4191
Email: titleix@utoledo.edu
Mail Stop: 137

You may also report online through our website at <http://www.utoledo.edu/title-ix/>. This report may be made anonymously or with identifying information. To report anonymously, do not fill in your name, position, phone number, or email under “Reporters Information.”

6. **Employee Assistance Program (EAP) (Confidential) (Available to Faculty and Staff Only)**

IMPACT Employee Assistance & Work/Life Program (24/7 Support)
 1-800-227-6007
www.MyImpactSolution.com Member Login: UT

Off-Campus:

1. **Medical Assistance (Confidential) (Available to students, faculty, staff, visitors, third parties)**

The Toledo Hospital (Enter through the Emergency Room entrance),
 2142 N Cove Boulevard, Toledo, Ohio 43606, 419.291.4600
 [Sexual Assault Nurse Examiner (SANE) available – please ask for SANE nurse]

2. **Assistance from Law Enforcement (Non-Confidential) (Available to students, faculty, staff, visitors, third parties)**

Dial 9-1-1 to reach local law enforcement.

Reports may be made to law enforcement and the university concurrently.

3. **Report to the University (Non-Confidential) (Available to students, faculty, staff, visitors, third parties) (Anonymous reporting available)**

Donald Kamm
Director, Title IX and Compliance
Title IX Coordinator
2801 W. Bancroft Street
Snyder Memorial Suite 1120
Toledo, OH 43606
Phone: (419) 530-4191
Email: titleix@utoledo.edu
Mail Stop: 137

You may also report online through our website at <http://www.utoledo.edu/title-ix/>. This report may be made anonymously or with identifying information. To report anonymously, do not fill in your name, position, phone number, or email under “Reporters Information.”

4. Off-campus Resources (Confidential) (Available to students, faculty, and staff)

YWCA H.O.P.E. Center 24-hour Rape Crisis Hotline 419.241.7273

Y.W.C.A. Battered Women’s Shelter 419.241.7386

5. Employee Assistance Program (EAP) (Confidential) (Available to Faculty and Staff Only)

IMPACT Employee Assistance & Work/Life Program (24/7 Support)

1-800-227-6007

www.MyImpactSolution.com

Member Login: UT

Appendix B

The University is making these definitions and terms available pursuant to the Violence Against Women Act Amendments to the Clery Act

1. Sexual Assault: An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting program.

2. Sex Offenses: Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

- Rape- The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- Fondling – The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- Incest – Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory Rape – Sexual intercourse with a person who is under the statutory age of consent.

3. Domestic Violence: A felony or misdemeanor crime of violence committed:

- (a) By a current or former spouse or intimate partner of the victim;
- (b) By a person with whom the victim shares a child in common;
- (c) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- (d) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
- (e) 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 in which the crime of violence occurred.

4. Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

- The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- Dating violence does not include acts covered under the definition of domestic violence.
- Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

5. Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to

- Fear for the person's safety or the safety of others; or
- Suffer substantial emotional distress.

For the purposes of this definition:

- Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

6. Programs to prevent dating violence, domestic violence, sexual assault, and stalking: Comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault, and stalking that:

- Are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome; and
- Consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels

Programs to prevent dating violence, domestic violence, sexual assault, and stalking include both primary prevention and awareness programs directed at incoming students and new employees and ongoing prevention and awareness campaigns directed at students and employees.

7. Awareness programs: Community-wide or audience specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce perpetration

8. Bystander intervention: 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

Bystander intervention includes:

- Recognizing situations of potential harm
- Understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking actions to intervene

9. Ongoing prevention and awareness campaigns: Programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault, and stalking, using a range of strategies with audiences throughout the institution

10. Primary prevention programs: Programming, initiatives, and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe direction.

11. Risk reduction: Options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence.

12. Prompt, fair, and impartial proceeding: A proceeding that is completed within reasonably prompt timeframes designated by an institution's policy, including a process that allows for the extension of timeframes for good cause and with written notice to the accuser and the accused of the delay and the reason for the delay;

Conducted in a manner that:

- Is consistent with the institution's policies and transparent to the accuser and accused;
- Includes timely notice of meetings at which the accuser or accused, or both, may be present; and
- Provides timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings; and
- Conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused

13. Advisor: Any individual who provides the accuser or accused support, guidance, or advice

14. Proceeding: All activities related to a non-criminal resolution of an institutional disciplinary complaint, including, but not limited to, fact finding investigations, formal or informal meetings, and hearings. Proceeding does not include communications and meetings between officials and victims concerning accommodations or protective measures to be provided to a victim.

15. Result: Any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within the institution. The result includes any sanctions imposed by the University.

Appendix C

The University is making the following state law definitions available pursuant to the Violence Against Women Act amendments to the Clery Act.

State law definitions as of June 2018.

(State law definitions may be revised periodically. Please consult <http://codes.ohio.gov/orc> to determine whether there have been updates to the definitions below)

Section 2907.03 of the Revised Code: Sexual battery.

(A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply: (1) The offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution. (2) The offender knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired. (3) The offender knows that the other person submits because the other person is unaware that the act is being committed. (4) The offender knows that the other person submits because the other person mistakenly identifies the offender as the other person's spouse. (5) The offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the other person. (6) The other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person. (7) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school. (8) The other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution. (9) The other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person. (10) The offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes. (11) The other person is confined in a detention facility, and the offender is an employee of that detention facility. (12) The other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric. (13) The other person is a minor, the offender is a peace officer, and the offender is more than two years older than the other person.

Ohio Rev. Code Ann. § 2907.03 (available at <http://codes.ohio.gov/orc/2907>).

Section 2907.02 of the Revised Code: Rape.

(A) (1) No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies: (a) For the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception. (b) The other person is less than thirteen years of age, whether or not the offender knows the age of the other person. (c) The other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age. (2) No

person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force.

Ohio Rev. Code Ann. § 2907.02 (available at <http://codes.ohio.gov/orc/2907>).

Section 2903.11 of the Revised Code: Felonious assault.

(A) No person shall knowingly do either of the following: (1) Cause serious physical harm to another or to another's unborn; (2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance.

(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall knowingly do any of the following: (1) Engage in sexual conduct with another person without disclosing that knowledge to the other person prior to engaging in the sexual conduct; (2) Engage in sexual conduct with a person whom the offender knows or has reasonable cause to believe lacks the mental capacity to appreciate the significance of the knowledge that the offender has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome; (3) Engage in sexual conduct with a person under eighteen years of age who is not the spouse of the offender.

Ohio Rev. Code Ann. § 2903.11 (available at <http://codes.ohio.gov/orc/2903.11>).

Section 3113.31 of the Revised Code: Domestic violence definitions - hearings.

(A) As used in this section: (1) "Domestic violence" means the occurrence of one or more of the following acts against a family or household member: (a) Attempting to cause or recklessly causing bodily injury; (b) Placing another person by the threat of force in fear of imminent serious physical harm or committing a violation of section [2903.211](#) or [2911.211](#) of the Revised Code; (c) Committing any act with respect to a child that would result in the child being an abused child, as defined in section [2151.031](#) of the Revised Code; (d) Committing a sexually oriented offense.

Ohio Rev. Code Ann. § 3113.31 (available at <http://codes.ohio.gov/orc/3113.31v2>).

Section 2903.211 of the Revised Code: Menacing by stalking.

(A) (1) No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person or a family or household member of the other person or cause mental distress to the other person or a family or household member of the other person. In addition to any other basis for the other person's belief that the offender will cause physical harm to the other person or the other person's family or household member or mental distress to the other person or the other person's family or household member, the other person's belief or mental distress may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs.

(2) No person, through the use of any form of written communication or any electronic method of remotely transferring information, including, but not limited to, any computer, computer network, computer program, r-computer system, or telecommunication device shall post a message or use any intentionally written or verbal graphic gesture with purpose to do either of the following:

(a) Violate division (A)(1) of this section:

(b) Urge or incite another to commit a violation of division (A)(1) of this section.

(3) No person, with a sexual motivation, shall violate division (A)(1) or (2) of this section.

(B) Whoever violates this section is guilty of menacing by stalking.

(1) Except as otherwise provided in divisions (B)(2) and (3) of this section, menacing by stalking is a misdemeanor of the first degree.

(2) Menacing by stalking is a felony of the fourth degree if any of the following applies:

(a) The offender previously has been convicted of or pleaded guilty to a violation of this section or a violation of section [2911.211](#) of the Revised Code.

(b) In committing the offense under division (A)(1), (2), or (3) of this section, the offender made a threat of physical harm to or against the victim, or as a result of an offense committed under division (A)(2) or (3) of this section, a third person induced by the offender's posted message made a threat of physical harm to or against the victim.

(c) In committing the offense under division (A)(1), (2), or (3) of this section, the offender trespassed on the land or premises where the victim lives, is employed, or attends school, or as a result of an offense committed under division (A)(2) or (3) of this section, a third person induced by the offender's posted message trespassed on the land or premises where the victim lives, is employed, or attends school.

(d) The victim of the offense is a minor.

(e) The offender has a history of violence toward the victim or any other person or a history of other violent acts toward the victim or any other person.

(f) While committing the offense under division (A)(1) of this section or a violation of division (A)(3) of this section based on conduct in violation of division (A)(1) of this section, the offender had a deadly weapon on or about the offender's person or under the offender's control. Division (B)(2)(f) of this section does not apply in determining the penalty for a violation of division (A)(2) of this section or a violation of division (A)(3) of this section based on conduct in violation of division (A)(2) of this section.

(g) At the time of the commission of the offense, the offender was the subject of a protection order issued under section [2903.213](#) or [2903.214](#) of the Revised Code, regardless of whether the person to be protected under the order is the victim of the offense or another person.

(h) In committing the offense under division (A)(1), (2), or (3) of this section, the offender caused serious physical harm to the premises at which the victim resides, to the real property on which that premises is located, or to any personal property located on that premises, or, as a result of an offense committed under division (A)(2) of this section or an offense committed under division (A)(3) of this section based on a violation of division (A)(2) of this section, a third person induced by the offender's posted message caused serious physical harm to that premises, that real property, or any personal property on that premises.

(i) Prior to committing the offense, the offender had been determined to represent a substantial risk of physical harm to others as manifested by evidence of then-recent homicidal or other violent behavior,

evidence of then-recent threats that placed another in reasonable fear of violent behavior and serious physical harm, or other evidence of then-present dangerousness.

(3) If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, menacing by stalking is either a felony of the fifth degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree.

(C) Section [2919.271](#) of the Revised Code applies in relation to a defendant charged with a violation of this section.

(D) As used in this section:

(1) "Pattern of conduct" means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents, or two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents, directed at one or more persons employed by or belonging to the same corporation, association, or other organization. Actions or incidents that prevent, obstruct, or delay the performance by a public official, firefighter, rescuer, emergency medical services person, or emergency facility person of any authorized act within the public official's, firefighter's, rescuer's, emergency medical services person's, or emergency facility person's official capacity, or the posting of messages, use of intentionally written or verbal graphic gestures, or receipt of information or data through the use of any form of written communication or an electronic method of remotely transferring information, including, but not limited to, a computer, computer network, computer program, computer system, or telecommunications device, may constitute a "pattern of conduct."

(2) "Mental distress" means any of the following:

(a) Any mental illness or condition that involves some temporary substantial incapacity;

(b) Any mental illness or condition that would normally require psychiatric treatment, psychological treatment, or other mental health services, whether or not any person requested or received psychiatric treatment, psychological treatment, or other mental health services.

(3) "Emergency medical services person" is the singular of "emergency medical services personnel" as defined in section [2133.21](#) of the Revised Code.

(4) "Emergency facility person" is the singular of "emergency facility personnel" as defined in section [2909.04](#) of the Revised Code.

(5) "Public official" has the same meaning as in section [2921.01](#) of the Revised Code.

(6) "Computer," "computer network," "computer program," "computer system," and "telecommunications device" have the same meanings as in section [2913.01](#) of the Revised Code.

(7) "Post a message" means transferring, sending, posting, publishing, disseminating, or otherwise communicating, or attempting to transfer, send, post, publish, disseminate, or otherwise communicate, any message or information, whether truthful or untruthful, about an individual, and whether done under one's own name, under the name of another, or while impersonating another.

(8) "Third person" means, in relation to conduct as described in division (A)(2) of this section, an individual who is neither the offender nor the victim of the conduct.

(9) "Sexual motivation" has the same meaning as in section [2971.01](#) of the Revised Code.

(10) "Organization" includes an entity that is a governmental employer.

(11) "Family or household member" means any of the following:

(a) Any of the following who is residing or has resided with the person against whom the act prohibited in division (A)(1) of this section is committed:

(i) A spouse, a person living as a spouse, or a former spouse of the person;

(ii) A parent, a foster parent, or a child of the person, or another person related by consanguinity or affinity to the person;

(iii) A parent or a child of a spouse, person living as a spouse, or former spouse of the person, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the person.

(b) The natural parent of any child of whom the person against whom the act prohibited in division (A)(1) of this section is committed is the other natural parent or is the putative other natural parent.

(12) "Person living as a spouse" means a person who is living or has lived with the person against whom the act prohibited in division (A)(1) of this section is committed in a common law marital relationship, who otherwise is cohabiting with that person, or who otherwise has cohabited with the person within five years prior to the date of the alleged commission of the act in question.

(E) The state does not need to prove in a prosecution under this section that a person requested or received psychiatric treatment, psychological treatment, or other mental health services in order to show that the person was caused mental distress as described in division (D)(2)(b) of this section.

(F) (1) This section does not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information, and that do not include the creation of the content of the material that is the subject of the access or connection. In addition, any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control shall not be liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of this section.

(2) Division (F)(1) of this section does not create an affirmative duty for any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of this section except as otherwise provided by law.

(3) Division (F)(1) of this section does not apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of this section or who knowingly advertises the availability of material of that nature.

Amended by 131st General Assembly File No. TBD, HB 151, §1, eff. 8/16/2016.

Amended by 130th General Assembly File No. TBD, HB 129, §1, eff. 9/17/2014.

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Ohio Rev. Code Ann. § 3113.31 (available at <http://codes.ohio.gov/orc/2903.211>).