

Title: Policy on Sexual Misconduct, Relationship Violence, and Stalking

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I. Scope

This policy applies to the College of William & Mary, including the Virginia Institute of Marine Science (the university). It applies to all members of the university community, including faculty and other employees and students.[1] This policy also applies to contractors, vendors, and other third parties.[2]

Officially recognized organizations, such as student organizations, are subject to this policy provided that, to the extent permitted by law, social organizations such as fraternities and sororities may restrict membership to members of the same sex, and organizations whose primary purpose is religious or political may restrict their membership to those members of the university community who have similar beliefs or political affiliations.[3]

This policy applies to misconduct by students, employees and third parties when such conduct:

- occurs on campus or property owned or controlled by the university (university property);
- occurs in the context of a university employment or educational program or activity including, but not limited to, university-sponsored study abroad, research, or internship programs;
- uses university resources, such as workplace telephones or e-mail; or
- has continuing adverse effects on or poses a substantial risk of creating a hostile environment for members of the campus community while on university property or in any university program or activity.

This policy is not intended, and may not be applied, to abridge free speech or other civil rights of any individual or group. Speech and expressive conduct may, however, violate this policy; for example, offensive speech that creates a hostile environment may be prohibited sexual harassment. This policy is not meant to prohibit academic freedom, including classroom discussion of controversial matters and research activities.

II. Purpose

Our community of trust requires that its members treat one another with respect, dignity, and fairness. This policy is designed to ensure a safe environment for the members of the William & Mary community.

This policy helps William & Mary comply with federal and state laws, including Title IX of the Higher Education Amendments of 1972,[4] which prohibits discrimination on the basis of sex (including sexual violence) in education programs or activities, Title VII of the Civil Rights Act of 1964,[5] which prohibits employment discrimination on the basis of sex, and the Violence Against Women Reauthorization Act of 2013 (VAWA), which amended the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the **Clery Act**) and requires institutions to prohibit dating violence, domestic violence, sexual

assault and stalking.[6] It also helps implement William & Mary's **Discrimination, Harassment and Retaliation Policy**, by defining in detail sexual violence and certain other types of sexual harassment, and the **Campus Violence and Threat Management Policy**.

III. Explanation and Definitions

The university is committed to maintaining an environment that is free from sex-based violence and in which the freedom to make individual choices regarding sexual behavior is respected by all. Sexual harassment or misconduct by anyone is unacceptable and will be addressed in a prompt, equitable fashion in accordance with this policy and the applicable procedure.

The university carefully defines the different types of sexual misconduct to help ensure compliance with VAWA, Title IX, and FERPA (the Family Educational Rights and Privacy Act) and the Code of Virginia. The federal laws work together to specify when and what information the university can or must provide to students experiencing or accused of sexual misconduct.[7] The Code of Virginia stipulates what information the university can share with local law enforcement, Commonwealth Attorneys, and on academic transcripts.

Sexual Harassment, as defined in the **Discrimination, Harassment & Retaliation Policy**, is unwelcome conduct based on sex that is either in the form of "quid pro quo" (this for that) or that creates a hostile environment. A hostile environment exists when harassment has the purpose or effect of unreasonably interfering with a person's work or educational performance or participation in university program or activity, or is sufficiently severe or pervasive to create an intimidating, hostile, or offensive work or educational environment. A hostile environment can arise from sexual harassment even if the conduct is not sexual in nature, so long as the conduct is based on sex. For example, a male student who regularly and severely criticizes female students in his study group because he believes women are less intelligent is harassing the female students because of their sex, even if the male student has no sexual or romantic interest in any of the women and is not engaging in sexual conduct.

Sexual Misconduct is a category of behavior that includes physical acts perpetrated against a person's will or where the person is incapable of giving consent and includes actual or attempted:

1. **Sexual assault**
2. **Non-consensual sexual contact**
3. **Relationship violence (domestic or dating violence)**
4. **Sexual exploitation**
5. **Stalking.**

Each of these types of sexual misconduct is defined below. In many cases, sexual misconduct is a form of sexual harassment.[8]

Certain forms of sexual misconduct constitute “sexual violence” for purposes of state laws requiring reporting and transcript notations.[9] And certain forms of sexual misconduct are also crimes. But this policy sets a standard above that demanded by the criminal law.

Sexual misconduct can occur between strangers or non-strangers, including people involved in an intimate or sexual relationship. Sexual misconduct may be committed by any person, and any person may be a victim of sexual misconduct, regardless of gender identification, or orientation.

For additional guidance regarding the types of misconduct prohibited by this policy, please review the examples provided in **Section V**.

A. Definitions of the Different Types of Sexual Misconduct:[10]

☐1. **Sexual Assault** most commonly is non-consensual sexual intercourse or fondling. Certain sexual acts prohibited by Virginia law -- namely, statutory rape[11] and incest[12] – also are sexual assault. **Non-Consensual Sexual Intercourse** is anal or vaginal penetration, no matter how slight, by a penis, tongue, finger, or object, without effective consent, or oral penetration by a penis, without effective consent. **Fondling** is touching of a person’s intimate body parts (including genitalia, groin, breast or buttocks, or clothing covering any of those areas) for the purpose of sexual gratification, without effective consent.

☐2. **Non-Consensual Sexual Contact** is either of the following without effective consent:

- Deliberately touching a person’s intimate parts (including genitalia, groin, breast or buttocks,[13] or clothing covering any of those areas); or
- Using force or threat of force to cause a person to touch that person’s own or another person’s intimate parts.

Non-consensual sexual contact is similar to fondling; the main difference is whether the person who engages in the non-consensual touching did so for the purpose of sexual gratification (in which case it is fondling) or for some other purpose, such as humiliation (in which case it is non-consensual sexual contact).

☐3. **Relationship violence** is violence between people who are in or have been in a romantic, intimate, or familial relationship. **Domestic violence**[14] and **dating violence**[15] are the two forms of relationship violence. Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

☐4. **Sexual Exploitation** is taking sexual advantage of another person without effective consent and includes causing the incapacitation of another person for a sexual purpose; causing the prostitution of another person; electronically recording, photographing, or transmitting intimate or sexual information about a person; allowing third parties to observe sexual acts; engaging in voyeurism; distributing intimate

or sexual information about another person; exposing one's genitals; inducing another to expose their genitals; and/or knowingly transmitting a sexually transmitted infection, including HIV, to another person.

☐ **5. Stalking** is defined as 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. Such distress does not have to be severe enough to require medical or other professional treatment or counseling in order to be substantial emotional distress.

Stalking requires two or more acts, including but not limited to, acts in which the stalker directly, or through third parties, by any action, method, device, or means follows, monitors, surveils, threatens, or communicates, to or about, a person, or interferes with a person's property. Examples of behaviors that may, by themselves or with other behaviors, constitute stalking include:

- following or pursuing
- waiting or showing up uninvited at a person's workplace or home
- surveillance, whether physically or through electronic means
- non-consensual communications including social networking site postings.

B. Important Related Definitions: Consent and Incapacitation

Members of the university community choosing to engage in any form of sexual activity – from touching or kissing to intercourse – must obtain consent from their partner(s) prior to engaging in such activity.

☐ **Consent is:**

- Active – through clear words or actions, a person has indicated permission to engage in mutually agreed upon sexual activity.
- Voluntary – freely given.
- Informed – knowing and aware.

Consent is NOT:

- Merely a lack of protest or lack of resistance. Silence and/or passivity also do not convey consent.
- Something to be assumed. Consent to sexual activity once does not imply consent another time. Nor does consent to one type of sexual activity mean consent to another.
- Forced. If any force is used, consent is invalid.
- Valid if the person consenting is incapacitated. Someone who is incapacitated cannot consent.

- Irrevocable. Consent may be withdrawn at any time and for any reason.

A person's belief that another person consented is **not** valid where:

1. The belief arose from the person's own intoxication or recklessness; or
2. The person knew or a reasonable person, in the circumstances, should have known that the other person was incapacitated (as defined below).

It is important to actively evaluate, obtain and communicate consent. A person who wants to engage in a specific sexual activity is responsible for obtaining consent for that activity. In situations where both parties raise concerns regarding consent, the university will evaluate which person was the initiator of a particular sexual activity, was the more aggressive pursuer of that activity, or was in a position of greater control or capacity, as well as factors such as when and in what context the concerns were raised.

It is important not to make assumptions about whether a potential partner is consenting. Communication, especially verbal communication, helps avoid confusion or ambiguity. People are encouraged to talk to one another before and during sexual activity. If confusion or ambiguity arises during sexual activity, we advise the participants to pause and clarify what they and their partner want. Relying solely on non-verbal communication before or during sexual activity can lead to misunderstanding and may result in a violation of this Policy. Sexual activity among people who do not know each other well and/or are have been drinking (alcohol) carries inherent and significant risks, as one may not understand non-verbal signals from the other, and if alcohol or other substances are involved, one may not appreciate the extent of the partner's state of intoxication. Relying on assumptions will not be a defense to allegations of sexual misconduct. We encourage members of the community to exercise caution in encounters with people whom they do not know well and people whom they should reasonably believe may have consumed alcohol or other substances. Further policy guidance regarding the relationship between alcohol consumption and consent is provided below.

Consent is specific. Consent to one form of sexual activity does not constitute consent to another form of sexual activity. For example, one should not presume that consent to oral-genital contact constitutes consent to vaginal or anal penetration. Or that consent to take one's clothing off indicates consent to sexual intercourse. Consent to sexual activity on one occasion does not, by itself, constitute consent to future sexual activity.

Consent cannot be obtained by force. If force is used, consent is invalid. Force includes physical violence, threats, intimidation and/or coercion.

Physical violence includes hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon.

Threats are words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include threats to harm oneself or another person physically, to reveal private

information to harm a person's reputation, or to cause a person academic or economic harm.

Intimidation is an implied threat that causes reasonable fear in another person. A person's size, alone, does not constitute intimidation; however, a person's size may be used in a way that constitutes intimidation (e.g., blocking access to an exit).

Coercion is an unreasonable amount of pressure on someone to:

- participate in a particular form of sexual activity,
- change their mind after they asked to stop or have indicated lack of consent previously,
- change their mind about what point of sexual activity they are stopping at.

Coercion is more than an effort to persuade, entice, or attract another person to have sex. In evaluating whether coercion was used, the university will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, (iv) the duration of the pressure, and (v) any power differential between the parties.

☐ A person who is incapacitated is unable to give consent. **Someone who is incapacitated – such as by alcohol or drugs – cannot give consent.** Incapacitation means that a person lacks the ability to make informed, rational judgments about whether or not to engage in sexual activity. A person may be incapacitated because of mental or physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place. A person may be incapacitated due to a temporary or permanent physical or mental health condition. Alcohol or drug consumption may lead to incapacitation.

Although a person who has been drinking or using drugs is not necessarily incapacitated, people should be cautious before engaging in sexual contact or activity when either party has been drinking heavily or using other drugs. **If one has doubt about either party's level of intoxication, the safe thing to do is to forego sexual activity.**

Alcohol or drugs can lead to a blackout state in which a person appears to be giving consent but does not actually have conscious awareness or the ability to consent. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication due to alcohol and/or drug use. If one encounters another in a setting where one knows, or reasonably should know, that the other has engaged in significant alcohol consumption, it is possible that the other is in a blackout state and therefore incapacitated. Be aware that persons in a blackout state do not always exhibit clear signs of incapacity.

If someone is incapacitated, any initiation of sexual activity by this person does not constitute consent.

In evaluating consent in cases of alleged incapacitation, the university asks two questions: (1) *Did the respondent know that the reporting party was incapacitated?* **and if not,** (2) *Would a sober, reasonable*

person in the same situation have known that the reporting party was incapacitated? If the answer to either of these questions is “YES,” consent was absent and the conduct is likely a violation of this policy.

There are warning signs that someone is incapacitated. People are not expected to be medical experts in assessing incapacitation. But there are common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. Although people may manifest incapacitation differently, typical signs include

- slurred or incomprehensible speech,
- unsteady gait,
- combativeness,
- emotional volatility,
- reckless or outrageous behavior,
- vomiting, and, in extreme cases, incontinence.

It can be helpful to ask some questions, to get a sense of how much the person has had to drink, how much they are able to recall about their recent activities, or how much they understand about their current situation, for example.

Consent may be withdrawn. People may change their minds. Consent may be withdrawn at any time, even after sexual activity has begun. Previously-given consent may be withdrawn by communicating through clear words or actions a decision to stop (or not engage in) the sexual activity. Once consent is withdrawn, the other person must cease sexual activity immediately and may not apply undue pressure on the person who withdrew consent (coercion).

IV. Reporting Matters

This Section covers:

A. Support for Reporting Parties and Interim Measures

B. Obligations of Faculty and Staff to Report Sexual Misconduct

C. How and Where to File an Internal Report or Complaint – Options for People Who Have Experienced Misconduct

D. How and Where to File an External Grievance

E. Confidential Resources – How and Where to Receive Resources and Support Without Making a Report

F. Confidentiality and Anonymity and Requests Not to Take Action

G. Amnesty from Student Discipline for the Reporting Party and Witnesses

A. Support for Reporting Parties and Interim Measures. William & Mary encourages members of the campus community who experience or witness any form of sexual misconduct discussed in this policy to

explore reporting options, including reporting to law enforcement. Reporting misconduct allows the university to assist the reporting party. Interim measures the university may take to help the reporting party include:

- Orders barring further contact (no-contact orders)
- Providing the reporting party with an escort to ensure that he or she may move safely between classes and activities
- Providing counseling or medical services, including, for students free services from the university **Counseling Center** or **Student Health Center**
- Making academic accommodations
- Relocation or rescheduling of classes
- Additional supervision or monitoring of respondent
- Changing residence or working locations (reporting parties will not be moved without their consent)
- Restrictions limiting the respondent's presence on campus or to certain areas of campus
- Interim suspension from residence, from the campus, and/or from any activities of the university.

Most of these interim measures may be taken even if the reporting party does not want to initiate a university administrative process or a criminal process.

□B. Obligations of Faculty and Staff to Report

With a very few exceptions, W&M faculty and staff (employees) are considered “responsible employees.” When a responsible employee becomes aware of sexual harassment or sexual misconduct involving a student or occurring on campus or other W&M-related property,^[16] the employee is required to report the matter promptly to the **Title IX Coordinator**. Responsible employees who are supervisors or managers are also required to report sexual harassment of employees when they become aware of it. This reporting obligation is explained in the **Policy on Discrimination, Harassment and Retaliation**, and reflects federal and state laws.

If the person who experienced the misconduct (or who is reported, alleged, or suspected to have experienced the misconduct) wants to remain anonymous or does not want any action to be taken relating to the matter, the university will carefully consider this as described in **Paragraph F** below.

□C. How and Where to File an Internal Report or Complaint

This reporting information (in this Paragraph C) is primarily for

- students and
- other people who have themselves experienced misconduct.

Employees (faculty and staff) who are required to report as described in **Paragraph B** must report directly to the **Title IX Coordinator**.

Reporting sexual misconduct allows William & Mary to take prompt, interim measures, to protect students. A confidential **Title IX Review Team** carefully considers each report. More information about how reports are handled is provided in **Appendix C**.

All types of sexual misconduct may be reported to the Title IX Coordinator:

Kiersten L. Boyce, J.D., CCEP
Chief Compliance Officer
108 James Blair Hall
College of William & Mary
Williamsburg, VA 23185
757-221-3146
[[klboyc]]

Students, faculty, staff and other individuals may also chose from one or more of these options:

- **Online reporting**
- **In-person reporting**
- **Paper reporting (including email)**
- **Anonymous reporting**
- **Criminal reporting**

☐ Online reporting

William & Mary's online reporting portal provides options for anyone to report a Title IX concern relating to a student, at <http://www.wm.edu/titleix/form>. Reports also may be emailed to [[reportconcern]]

☐ In-person reporting

Reports relating to students:

Dean of Students
Campus Center, Room 109
757-221-2510

Any type of Title IX report:

Title IX Office (Compliance)
James Blair Hall Suite 110
757-221-3146

☐ Paper reporting - providing a written report by mail or email

Reports relating to students:

Dean of Students
Campus Center, Room 109
College of William & Mary
P.O. Box 8795
Williamsburg, Virginia 23187
[[deanofstudents]]

Any type of Title IX report:
Title IX Office (Compliance)
James Blair Hall Suite 110
College of William & Mary
P.O. Box 8795
Williamsburg, Virginia 23187
[[reportconcern]]

☐ Anonymous reporting options

Anonymous reports as well as partial disclosure reports of incidents involving students may be made **online**.

Anonymous reports may be **filed physically** using the secure dropbox located outside of the Title IX Office on the first floor of James Blair Hall.

William & Mary Police may accept anonymous reports of sexual assault, which will be included in the university's crime statistics if appropriate under the **Clery Act**. The Police can also assist students with the **process of having physical evidence collected (PERK)**, anonymously, and maintained. This gives students the options of later deciding whether and how to use such evidence. Please note that if you provide the Police with specific information, such as names, they will be obligated to share that information with the Title IX Coordinator. (757) 221-4596.

Information about confidential resources – people and places you can go without triggering a report or an investigation – is provided below.

☐ Reporting for criminal prosecution -- reporting to the police

Sexual assault and some other forms of sexual misconduct are crimes, and may be reported to law enforcement for investigation.

William & Mary staff members can help students file a criminal complaint, if desired.

Students and staff may report to the police and also report internally. **You do not need to choose one or the other.**

- The **William & Mary Police** generally have jurisdiction over incidents occurring on W&M's campus.
- The **Williamsburg City Police** generally have jurisdiction over incidents occurring in the city of Williamsburg.
- The **James City County Police** generally have jurisdiction over incidents occurring in James City County.

D. How and Where to File an External Grievance

Individuals experiencing harassment or discrimination also have the right to file a formal grievance with government authorities. Information about the different state and federal governmental agencies, which laws they enforce, and what types of complaints they handle is provided in **Appendix A**.

E. Confidential Resources – How and Where to Receive Resources and Support without Making a Report

For students:

Students who are not sure whether they want to make a complaint or report are encouraged to seek help from **the Haven**. **The Haven** can provide non-judgmental support and information to help the person decide what is best while the person recovers.

The Haven

Campus Center 166
(757) 221-2449
[[thehaven]]

Liz Cascone, Director, the Haven

Campus Center 167
(757) 221-7478
[[lizcascone]]

Other confidential resources for students on campus are:

William & Mary Counseling Center

Blow Hall 240
(757) 221-3620

Student Health Center

Gooch Drive

(757) 221-4386

Graduate Ombuds (for graduate students)

Dr. Peter Vishton

Integrated Science Center 1089

(757) 221-3879

[[pmvish]]

International Travel & Security Manager (for international students or students participating in international programs; not a confidential resource for sexual violence)

Nick Vasquez

Reves Center 222

(757) 221-1146

[[snvasquez]]

For staff:

The University Ombuds

Tatia Granger

Hornsby House 336

(757) 221-1941

[[ombuds]]

F. Confidentiality and Anonymity and Requests Not to Investigate

The university makes every effort to protect the privacy and confidentiality of people who report or are named in a report of sexual misconduct. Information reported will be shared only on a need-to-know basis. The university also takes steps to protect members of its community against further misconduct, including retaliation. Confidentiality and retaliation protections exist in part to help encourage people who experience misconduct to come forward and to permit an investigation to proceed. For people who remain concerned about their identities being known or who do not want investigation to occur, however, there are options:

- If you have experienced misconduct yourself, you can make a report without giving your name (see reporting options under **Paragraph C** above).
- If you are a student reporting misconduct that happened to someone else, you may report without disclosing the name of the victim (see reporting options under **Paragraph C** above).
- A person may report sexual misconduct with names, but may request that the name of the victim of the misconduct remain confidential and not be shared, as would be required in an investigation.
- A person may also request that the university not take action in response to a sexual misconduct incident of which it becomes aware. The university will consider this request carefully.[17]

Typically, the university will not begin an internal administrative investigation or make a referral to law enforcement without the consent or involvement of the reporting party, but the university must consider its obligation to other students or staff and the campus community.^[18] In addition, Virginia law requires the university to report sexual violence incidents to law enforcement and/or the relevant prosecutor, in certain circumstances. The **Title IX Review Team** will decide whether an investigation or referral is required after evaluating various factors and laws. The factors considered by the Title IX Review Team and its process for deciding what action to take on a report are detailed in **Appendix B**.

□G. Amnesty from Student Discipline for the Reporting Party and Witnesses

Assisting people who are reporting sexual misconduct is the university's primary interest. In order to facilitate reporting, the Dean of Students does not charge students who report sexual misconduct and any material witnesses with **Code of Conduct** violations for behavior that would otherwise be considered violations (for example consuming alcohol underage or consuming illegal drugs).

□V. Examples of Sexual Misconduct^[19]

A. Joel is a junior at the College. Beth is a sophomore. Joel comes to Beth's room with some mutual friends to watch a movie. Joel and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Joel and Beth are alone. They hit it off and are soon becoming more intimate. They start to make out. Joel verbally expresses his desire to have sex with Beth. Beth, who has suffered from trauma since being sexually abused by a baby-sitter when she was five, is shocked at how quickly things are progressing and says nothing. As Joel takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Joel to stop, but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation? *This is a policy violation. Joel would be held responsible in this scenario for Non Consensual Sexual Intercourse. It is the duty of the sexual initiator, Joel, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Joel had no verbal or non-verbal mutually-understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, students should attempt to be as clear as possible as to whether or not sexual contact is desired, but students must be aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.*

B. Kristen and Myra have been intimate for a few weeks. One night, Myra calls Kristen and asks her to come over. When she arrives, Myra kisses Kristen passionately and leads her into the bedroom. They each express their excitement and desire to "hook up," and are soon making out heavily in Myra's bed. After a while, Kristen tries to engage in oral sex with Myra. Myra tells Kristen that she really likes her, but that she doesn't feel ready for that. Kristen tells Myra she's just being shy, and ignores her when she repeats that she doesn't feel ready. Finally, Kristen threatens to reveal on the Internet that Myra is a lesbian. Because

Myra has not yet come out to her friends and family, she becomes frightened and relents. Kristen proceeds with oral sex. *This is a policy violation. Because of Kristen's manipulative and threatening arguments, Myra was afraid and unable to freely give her consent. Consent must be given freely and without undue pressure or threat. Kristen threatened Myra and therefore did not receive effective consent from Myra.*

C. Liz and Kwan have been together for six months. She often tells her friends stories of Kwan's sexual prowess, and decided to prove it to them. One night, she and Kwan engage in consensual sexual intercourse. Without Kwan's knowledge, Liz sets up her digital camera to videotape them having sex. The next evening, she uploads the video to an online video-sharing site and discusses it with her friends online. *This is a policy violation. Kwan's consent to engage in sexual intercourse with Liz did NOT mean Liz had obtained his consent to videotape it. This is a form of sexual exploitation.*

D. Andrew and Felix have been flirting with each other all night at a party. Andrew notices Felix slurring his speech when he goes to the bathroom and wonders if Felix went there to vomit. When Felix returns, the two begin flirting more heavily, and as the conversation continues, the two become more physically affectionate. Andrew soon suggests they go back to his room, and Felix agrees. As they walk, Andrew notices that Felix looks unstable and offers his arm for support and balance. When they get back to his room, Andrew leads Felix to the bed and they begin to become intimate. Felix becomes increasingly passive and appears disoriented. Andrew soon begins to have sexual intercourse with him.

The next morning, Felix thinks they had sex but cannot piece together the events leading up to it. *This is a policy violation. Felix was clearly under the influence of alcohol and thus unable to freely consent to engage in sexual activity with Andrew. Although Andrew may not have known how much alcohol Felix had consumed, he saw indicators from which a reasonable person would conclude that Felix was intoxicated, and therefore unable to give consent. Andrew in no way obtained consent from Felix for sexual intercourse.*

E. Denise is an undergraduate teaching assistant in Paul's economics class. She notes that he has not been performing well on take-home assignments and exams. Both of them have come to tailgate, each with their own group of friends. Denise has one beer, while Paul is rather intoxicated. Denise sees Paul and approaches him. She flirts with him, telling him that she can help him improve his grades if he will hook up with her. As Paul turns to walk away, Denise grabs his buttocks and squeezes them. *This is a policy violation. Denise, in a position of power over Paul as his teaching assistant, attempted to arrange a quid pro quo sexual relationship. Additionally, she did not seek consent from Paul to touch him, even if a reasonable person could conclude that Paul was not too intoxicated in order to provide consent. Denise has sexually harassed Paul.*

F. Jeff and Michael are neighbors in their dorm. Michael soon realizes that Jeff is undergoing the transition from identifying as male to female and prefers to be called Becca. Becca begins wearing women's clothing and starts applying makeup on a regular basis. This is alien to Michael's experience and makes him uncomfortable. Michael begins muttering slurs whenever they pass each other in the dorm. Additionally, Michael starts telling his friends on other floors about the "freak living next door," and tells them to take a

look for themselves. They do, a few individually, a few as groups that murmur and snicker to each other when they see Becca.

Becca begins to dread leaving or returning to her room and starts to isolate herself to avoid Michael and his associates. It gets to the point that Michael invites people to his room specifically for the purpose of showing them Becca when she passes by so they can have a laugh at her expense. *This is a policy violation. Not only have Michael and his associates created a hostile environment for Becca based on her identification, they also have stalked her.*

G. At a university social function, Jennifer, a campus employee, spends some time talking with her supervisor, Scott. At one point in the conversation, Scott reaches out and puts his hand on Jennifer's hip. Jennifer freezes, completely uncomfortable but is not sure how to proceed. After a few minutes, Scott takes his hand away and Jennifer ends the conversation and moves away. Now Jennifer is scared that Scott may make further overtures. Is this a policy violation? *A single act of unwelcome sexual conduct can constitute sexual harassment. This particular act is not the most severe, but the power differential is an aggravating factor. Unquestionably, it is inappropriate for a supervisor to touch an employee in this manner and the behavior needs to be stopped. Depending on where Scott touched Jennifer, this may be non-consensual sexual contact and depending on the purpose of Scott's contact, it may be fondling.*

H. Shawn is a faculty member in the Biology department and Monica, a currently unemployed IT specialist, is his fiancée. Monica comes to the department chair, whom she has met socially, distraught by Shawn's recent behavior. Monica says that Shawn has been losing his temper with her, to the point several times of throwing objects angrily. Last night, she says, Shawn "lost it" and slammed her back against a wall, banging her head and wrenching her neck. She is scared and doesn't know what to do. Has a policy violation occurred? *This behavior violates the policy definition of dating violence, but may have occurred outside of the scope of the policy. If Shawn slammed her against the wall on university property, it would be covered by the policy. Regardless, the conduct as described is criminal.*

I. Riley and Elena live on the same hall. Riley is attracted to Elena, but Elena doesn't feel the same way. Riley pays attention to Elena and eventually asks her if she wants to grab a pita for lunch. Elena tells him she's busy, hoping he will take the hint. The next week, Riley texts Elena saying he's getting a coffee and asks does she want one? Elena ignores the text. A few days later, a few residents including Elena and Riley are in the residence lounge, watching videos and studying, and Riley leans in to Elena, as if for a kiss. Elena pulls back and puts a hand up, a stop gesture. Riley seems embarrassed and backs off. Elena raises the situation with their RA, a little concerned. Is this a policy violation the RA needs to report? *No. Unwelcome sexual overtures can violate university policy, but not if someone stops when asked, as Riley appears to have done. If Riley continues in his overtures, they could become pervasive enough to create a hostile environment for Elena. Before that happens, the RA or an Area Director could intervene to help Elena and make sure Riley understands he needs to respect her choices. Riley's behavior also didn't constitute stalking, because they didn't cause Elena (or a reasonable person in her position) to fear for her safety or suffer severe emotional distress.*

❑VI. Enforcement; Complaint/Investigation Procedures

Any person who violates this policy is subject to discipline, up to and including permanent dismissal or termination. Disciplinary action (sanctions) will be taken in accordance with the applicable procedure:

- For students, the **Student Sexual Harassment and Misconduct Grievance/Complaint Procedure**
- For faculty, staff, and third parties, the **Employee Discrimination Grievance/Complaint Procedure** and the applicable policy relating to discipline.[20]

Both procedures provide for a thorough investigation with equitable rights for all parties to the process. Both procedures use a preponderance of the evidence (more likely than not) standard. **Appendix C** provides important summary information about these procedures.

❑VII. Approval and Amendment

This document was amended effective February 6, 2015 to (1) separate the policy from the procedure; (2) incorporate new definitions of certain types of sexual misconduct to comply with the Violence Against Women Reauthorization Act of 2013 (VAWA); and (3) make other revisions and improvements to the definitions of consent and the examples of sexual misconduct.

This policy was amended in interim form by the President effective August 17, 2015, to (1) expand its application to faculty and staff and certain third parties, (2) make minor revisions to the definitions of sexual misconduct including changes to clarify the relationship of the policy definitions to VAWA offenses, (3) modify the definition of incapacitation to make it easier to understand, (4) make changes relating to the initial review of reports and employee reporting obligations, to comply with state law effective July 1, 2015, (5) update contact information and other reporting provisions, and (6) make the policy easier to read through changes to format and organization. The policy was finalized by the President effective August 19, 2016, with (1) revisions to the scope section conforming to amendments made to the **Policy on Discrimination, Harassment, and Retaliation**, (2) simplifying revisions to the definitions of the forms of sexual misconduct, (3) expanded and revised definitions of consent and incapacitation; (4) updates to the list of confidential resources; (5) additions of examples; and (6) conforming changes to references to other policies and procedures.

The Title IX Coordinator is authorized to make minor, technical amendments to this policy, such as to update contact information.

❑VIII. Related Documents, Policies, and Procedures

Appendix A: External Reporting Options (government agencies with which students or employees or others may file a complaint or grievance)

Appendix B: Title IX Review Team Initial Assessment Process

Appendix C: How Complaints and Reports are Handled – Investigation Procedures

William & Mary's **Sexual Violence website** collects resources and information relating to the prevention and response to sexual harassment and sexual violence.

[1] Except as noted, in this policy “faculty” has the meaning provided in the **Faculty Handbook**, and does not include professional faculty, and “student” has the meaning provided in the **Student Code of Conduct**, and includes any person taking courses at the university whether full-time, part-time, degree-seeking or not, undergraduate or graduate.

[2] Examples of other third parties include

- University agents or volunteers
- Visiting scholars or scientists or others formally affiliated with William & Mary
- Visitors and guests, while on university property or engaged in or attending university activities, events, or programs.

See **Section IV** for enforcement of the policy against third parties.

[3] This provision reflects the rights granted by Section II of the Statement of Rights and Responsibilities and complies with Section 23.1-400 of the Code of Virginia.

[4] Title IX appears in volume 20 of the U.S. Code, beginning at section 1681. Implementing regulations are found in Title 34 of the Code of Federal Regulations, Part 106 and are enforced by the U.S. Department of Education’s Office of Civil Rights.

[5] Title VII appears in volume 42 of the U.S. Code, beginning at section 2000e.

[6] VAWA is known as Public Law 113-4. The Clery Act is found in volume 20 of the U.S. Code, section 1092(f). Implementing regulations are enforced by the U.S. Department of Education and will be published in Title 34 of the Code of Federal Regulations, part 668.46.

[7] VAWA establishes rights for the “accuser and accused” in disciplinary proceedings relating to sexual assault, dating and domestic violence, and stalking. These rights includes the right to notification of final results including any sanction(s) and the rationale. Title IX establishes rights for “parties” to grievance procedures for resolving complaints of sex-based discrimination, including sexual harassment. See **footnote 8** for explanation of which forms of sexual misconduct constitute sexual harassment.

[8] Non-consensual sexual intercourse is a form of sexual harassment. Non-consensual sexual contact and sexual exploitation may, depending on the circumstances, the severity and frequency, and any other

unwelcome conduct, constitute sexual harassment. Domestic violence may constitute sexual harassment, if the criminal conduct is based on sex. Dating violence typically will constitute sexual harassment. Stalking may constitute sexual harassment, depending on the severity or frequency and whether the conduct was based on sex.

[9] Code of Virginia Section 23.1-806 defines sexual violence as physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. Sexual assault is a form of sexual violence. Domestic violence may constitute sexual violence, if the criminal conduct is based on sex. Dating violence typically will constitute sexual violence. Non-consensual sexual contact may, but typically will not, constitute sexual violence. Sexual exploitation and stalking typically are not sexual violence.

[10] Dating violence, domestic violence, and stalking are defined in accordance with the Clery Act, as amended by VAWA, and implementing regulations, and with Virginia law.

[11] Sexual assault is a VAWA offense. Statutory rape is defined under VAWA as “sexual intercourse with a person who is under the statutory age of consent.” In Virginia, statutory rape is not a legal term. There are several statutes that apply. While the penalties vary depending on the age difference between the parties and the age of the younger party, these laws criminalize sexual intercourse between someone who is 18 years of age or older and someone who is younger than 18.

[12] Incest is defined under VAWA as “sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.”

[13] A pat, slap, or touch on a student’s buttocks that is not made on the basis of sex may not be sexual misconduct; for example, an unwanted slap on a teammate’s rear. The nature, purpose and context will be considered in determining whether to address such conduct as sexual misconduct or as a violation of the rights of others under the **Student Code of Conduct**.

[14] Domestic violence is violence committed by:

- A current or former spouse or intimate partner of the victim or by someone else who has or had an intimate or familial relationship with the victim;
- A person with whom the victim shares a child in common;
- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- A parent, child, step-parent or step-child, sibling (full or half), grandparent or grandchild of the victim;
- The victim’s mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, if he or she resides in the same home with the victim; or
- Any other person who cohabits or, within the previous 12 months, cohabitated with the victim. Va. Dep’t of Criminal Justice Servs, An Informational Guide for Domestic Violence Victims in Virginia, DCJS.Virginia.Gov, available at

<https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/victims/informational-guide-domestic-violence-victims-virginia-english.pdf> (last visited Nov 1, 2016).

□[15] Dating Violence is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, other than Domestic Violence. The existence of such a relationship is 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.

□[16] The reporting obligation relates to incidents occurring (or reported or suspected to have occurred) on William & Mary's Clery Act geography, which is its:

1. campus
2. public property bordering campus, and
3. non-campus areas leased or otherwise controlled by the university. This includes (for example) the Gloucester campus of VIMS, the William & Mary in Washington physical areas, the William & Mary Peninsula Center, and the university offices located in New Town.

Further information is provided in the Discrimination, Harassment, and Retaliation Policy, the Crime Reporting Policy and the Clery Act Guidance for Campus Security Authorities.

□[17] For example, if a student tells a faculty member that she has been assaulted and the faculty then reports this as required to the Title IX Coordinator, but the student did not want any investigation.

□[18] "Reporting party" typically refers to the victim or person experiencing the sexual misconduct, but may be a third party. If it is a third party, the wishes of the victim/person experiencing the sexual misconduct will also be considered.

□[19] Certain examples are adapted with permission from Duke University's Sexual Misconduct Policy.

□[20] For classified and operational staff, the **State Standards of Conduct (DHRM Policy 1.60)**; for professional staff, the **Policy on Appointments and Termination for Professionals and Professional Faculty**; for executive employees, the **Employment Policy for Executives**.