

## Appendix A

### Guidance on Obtaining Consent and Exercising Caution when Consumption of Alcohol or Drugs Occurs

#### I. *Obtaining Consent*

***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.

***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.

#### II. *Exercising caution when consumption of alcohol or drugs occurs*

***Difficulty in distinguishing between intoxicated and incapacitated.*** 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.** Be aware that alcohol or drugs can lead to a state in which a person appears to be giving consent but may not actually have conscious awareness or the ability to consent.

***Reasonable Person Standard.*** 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 invalid 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.

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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.