



# CALIFORNIA STATE UNIVERSITY, FULLERTON

Division of Human Resources, Diversity and Inclusion

Human Resources

P.O. Box 6806, Fullerton, CA 92834-6806 / Tel 657-278-2425 / Fax 657-278-7188

**Executive Order 1095**  
**Revised June 23, 2015**  
**Attachment B**

## Myths and Facts about Sexual Misconduct

### Common Myths and Facts about the Causes of Sexual Misconduct

- 1) **Myth**: Victims provoke Sexual Assaults when they dress provocatively or act in a promiscuous manner.<sup>1</sup>

**Fact**: Rape and Sexual Assault are crimes of violence and control that stem from a person's determination to exercise power over another. Neither provocative dress nor promiscuous behaviors are invitations for unwanted sexual activity. Forcing someone to engage in non-consensual sexual activity is Sexual Assault; regardless of the way that person dresses or acts.

- 2) **Myth**: If a person goes to someone's room or house or goes to a bar, s/he assumes the risk of Sexual Assault. If something happens later, s/he can't claim that s/he was raped or sexually assaulted because s/he should have known not to go to those places.

**Fact**: This "assumption of risk" wrongfully places the responsibility of the offender's action with the victim. Even if a person went voluntarily to someone's home or room and consented to engage in some sexual activity, it does not serve as blanket consent for **all** sexual activity. University policy defines Sexual Misconduct to include any sexual activity that is engaged in without Affirmative Consent. Affirmative Consent means informed, affirmative, voluntary, and mutual agreement to engage in sexual activity. Each person involved is responsible to ensure that they have the Affirmative Consent of the other participant(s). When in doubt if the person is comfortable with an elevated level of sexual activity, stop and ask. When someone says "no" or "stop," that means "STOP!" Sexual activity forced upon another without valid consent is Sexual Assault.

- 3) **Myth**: It is not Sexual Misconduct if it happens after drinking or taking drugs.

**Fact**: Being under the influence of alcohol or drugs is not an invitation for sexual activity. A person under the influence does not cause others to assault her/him; others choose to take advantage of the situation and sexually assault her/him because s/he is in a vulnerable position. **A person who is incapacitated due to the influence of alcohol or drugs is not able to consent to sexual activity.**

- 4) **Myth**: Most Sexual Assaults are committed by strangers. It's not rape if the people involved know each other.

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<sup>1</sup> Key capitalized terms are defined on pp. 6 - 11.

**Fact:** Most Sexual Assaults and Rape are committed by someone the victim knows. A study of sexual victimization of college women showed that about 90% of victims knew the person who sexually victimized them. Most often, a boyfriend, ex-boyfriend, classmate, friend, acquaintance or co-worker sexually victimized the person. It is important to remember that Sexual Misconduct can occur in both heterosexual and same-gender relationships.

- 5) **Myth:** Rape can be avoided if women avoid dark alleys or other “dangerous” places where strangers might be hiding or lurking.

**Fact:** Rape and other Sexual Misconduct can occur at any time, in many places, to anyone.

- 6) **Myth:** A person who has really been sexually assaulted will be hysterical.

**Fact:** Victims of Sexual Assault exhibit a spectrum of responses to the assault which can include: calm, hysteria, withdrawal, anxiety, anger, apathy, denial, and shock. Being sexually assaulted is a very traumatic experience. Reaction to the assault and the length of time needed to process through the experience vary with each person. There is no “right way” to react to being sexually assaulted. Assumptions about the way a victim “should act” may be detrimental to the victim because each victim copes in different ways.

- 7) **Myth:** All victims will report the crime immediately to the police. If they do not report it or delay in reporting it, then they must have changed their minds after it happened, wanted revenge or didn’t want to look like they were sexually active.

**Fact:** There are many reasons why a victim may not report the assault to the police or campus officials. It is not easy to talk about being sexually assaulted and can feel very shameful. The experience of retelling what happened may cause the person to relive the trauma. Another reason for delaying a report or not making a report is the fear of retaliation by the offender. There is also the fear of being blamed, not being believed and being required to go through judicial proceedings. Just because a person does not report the incident does not mean it did not happen.

- 8) **Myth:** Only young, pretty women are assaulted.

**Fact:** The belief that only young, pretty women are sexually assaulted stems from the myth that Sexual Misconduct is based on sex and physical attraction. Sexual Assault is a crime of power and control. Offenders often choose people whom they perceive as most vulnerable to attack or over whom they believe they can assert power. Men and boys are also sexually assaulted, as well as persons with disabilities. Assumptions about the “typical” victim might lead others not to report the assault because they do not fit the stereotypical victim profile.

- 9) **Myth:** It’s only Rape if the victim puts up a fight and resists.

**Fact:** Many states do not require the victim to resist in order to charge the offender with Rape or Sexual Assault. Those who do not resist may feel if they do so, they will anger their attacker, resulting in more severe injury. Many assault experts say that victims should trust their instincts and intuition and do what they believe will most likely keep them alive. Not fighting or resisting an attack does not equal consent.

10) **Myth:** Someone can only be sexually assaulted if a weapon was involved.

**Fact:** In many cases of Sexual Assault, a weapon is not involved. The offender often uses physical strength, physical violence, intimidation, threats or a combination of these tactics to overpower the victim. Although the presence of a weapon while committing the assault may result in a higher penalty or criminal charge, the absence of a weapon does not mean that the offender cannot be held criminally responsible for a Sexual Assault.

### What You Can Do To Help Stop Sexual Misconduct

- Sexual contact requires mutual and Affirmative Consent. An incapacitated person (for example, a person under the influence of drugs or alcohol) may be incapable of giving consent. Whether an *intoxicated* person (as a result of using alcohol or other drugs) is *incapacitated* depends on the extent to which the alcohol or other drugs impact the person's decision-making capacity, awareness of consequences, and ability to make fully informed judgments.
- No one deserves to be sexually assaulted, stalked or victimized in any way.
- Don't engage in any behavior that may be considered Sexual Assault, Domestic Violence, Dating Violence, Stalking or any other form of Sexual Misconduct or violence.
- Never use force, coercion, threats, alcohol or other drugs to engage in sexual activity.
- Take responsibility for your actions.
- Avoid alcohol and other drugs.
- Remember "no" means "No!" and "stop" means "Stop!"
- Report incidents of violence (including coercion) to law enforcement and campus authorities.
- Discuss Sexual Misconduct, Domestic Violence, Dating Violence, and Stalking with friends—speak out against non-consensual sex or violence and clear up misconceptions.
- Don't mistake submission or silence for Affirmative Consent.

### What You Can Do To Help Minimize Your Risk of Becoming a Victim

- Be aware. Does your partner: Threaten to hurt you or your children? Say it's your fault if he or she hits you and then promises it won't happen again (but it does)? Put you down in public? Force you to have sex when you don't want to? Follow you? Send you unwanted messages and gifts?
- Be assertive. Speak up.
- Stay sober and watch out for dates and/or anyone who tries to get you drunk or high.
- Clearly communicate limits to partners, friends, and acquaintances.
- Never leave a party with someone you don't know well and trust.
- Trust your feelings; if it feels wrong, it probably is.
- Learn all you can and talk with your friends. Help them stay safe.
- Report incidents of violence to law enforcement and campus authorities.

### **What You Can Do If You Are a Victim, in General**

- Go to a safe place as soon as possible.
- Preserve evidence.
- Report the incident to University Police or local law enforcement.
- Report the incident to your campus Title IX Coordinator.
- Call/visit the campus Sexual Assault Victim's Advocate
- Call a Domestic Violence, Sexual Assault or Stalking hotline.
- Call a friend or family member for help.
- Know that you are not at fault. You did not cause the abuse to occur and you are not responsible for someone else's violent behavior.

### **Sexual Misconduct - Risk Reduction Tips**

All sexual activity between members of the CSU community must be based on Affirmative Consent.<sup>2</sup> Engaging in any sexual activity without first obtaining Affirmative Consent to the specific activity is Sexual Misconduct, whether or not the conduct violates any civil or criminal law.

Sexual activity includes, but is not limited to, kissing, touching intimate body parts, fondling, intercourse, penetration of any body part, and oral sex. It also includes any unwelcome physical sexual acts, such as unwelcome sexual touching, Sexual Assault, Sexual Battery, Rape, and Dating Violence. When based on Gender, Domestic Violence and Stalking also constitute Sexual Misconduct. Sexual Misconduct may include using physical force, violence, threat, or intimidation, ignoring the objections of the other person, causing the other person's intoxication or incapacitation through the use of drugs or alcohol, or taking advantage of the other person's incapacitation (including voluntary intoxication) to engage in sexual activity. Men as well as women can be victims of these forms of Sexual Misconduct. Sexual activity with a minor is never consensual when a person is under 18 years old, because a minor is considered incapable of giving legal consent due to age.

***“What can I do in order to help reduce my risk of being a victim of Sexual Misconduct?”***

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<sup>2</sup> See definition of Affirmative Consent below.

Risk reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to victim-blame and with recognition that only those who commit Sexual Misconduct are responsible for those actions, these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act:

- If you have limits, make them known as early as possible.
- Tell a sexual aggressor “NO” clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.
- ***In an emergency, call 9-1-1***

***“What can I do in order to help reduce my risk of being an initiator of Sexual Misconduct?”***

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk of being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- **DON’T MAKE ASSUMPTIONS** about consent, about someone’s sexual availability, about whether they are attracted to you, about how far you can go or about whether they are physically and/or mentally able to consent. If there are any questions or ambiguity then you **DO NOT** have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don’t take advantage of someone’s drunkenness or drugged state, even if they did it to themselves. **Incapacitation means a person is unable to give valid consent.**

- Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

### **Rape, Acquaintance Rape, Sexual Assault, Sexual Battery**

**Rape** is a form of Sexual Misconduct and is non-consensual sexual intercourse that may also involve the use of threat of force, violence, or immediate and unlawful bodily injury or threats of future retaliation and duress. Any sexual penetration, however slight, is sufficient to constitute Rape. Sexual acts including intercourse are considered non-consensual when a person is incapable of giving consent because s/he is incapacitated from alcohol and/or drugs, is under 18 years old, or if a mental disorder or developmental or physical Disability renders a person incapable of giving consent. The Respondent's relationship to the person (such as family member, spouse, friend, acquaintance or stranger) is not determinative.<sup>3</sup> (See complete definition of Affirmative Consent below.)

**Acquaintance Rape** is a form of Sexual Misconduct committed by an individual known to the victim. This includes a person the victim may have just met; i.e., at a party, introduced through a friend, or on a social networking website.

**Sexual Assault** is a form of Sexual Misconduct and is an attempt, coupled with the ability, to commit a violent injury on the person of another because of that person's gender or sex.<sup>4</sup>

**Sexual Battery** is a form of Sexual Misconduct and is any willful and unlawful use of force or violence upon the person of another because of that person's gender or sex as well as touching an intimate part of another person against that person's will and for the purpose of sexual arousal, gratification, or abuse.<sup>5</sup>

In order for a sexual act to be considered Rape or Sexual Assault, the act must be non-consensual.

Crimes of a sexual nature may be reported to campus or local law enforcement in addition to being reported administratively on campus to the Title IX Coordinator. **Both men and women can be victims of Rape or Sexual Assault.**

### **Affirmative Consent**

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<sup>3</sup> See Cal. Penal Code §§ 261, 263.

<sup>4</sup> See Cal. Penal Code § 240.

<sup>5</sup> See Cal. Penal Code § 242.

Affirmative Consent means an informed, affirmative, conscious, voluntary, and mutual agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the Affirmative Consent of the other participant(s) to engage in the sexual activity. Lack of protest or resistance does not mean Affirmative Consent, nor does silence mean Affirmative Consent. Affirmative Consent must be voluntary, and given without coercion, force, threats, or intimidation.

The existence of a dating or social relationship between those involved, or the fact of past sexual activities between them, should never by itself be assumed to be an indicator of Affirmative Consent. A request for someone to use a condom or birth control does not, in and of itself, constitute Affirmative Consent.

Affirmative Consent can be withdrawn or revoked. Consent to one form of sexual activity (or one sexual act) does not constitute consent to other forms of sexual activity. Consent given to sexual activity on one occasion does not constitute consent on another occasion. There must always be mutual and Affirmative Consent to engage in sexual activity. Consent must be ongoing throughout a sexual activity and can be revoked at any time, including after penetration. Once consent is withdrawn or revoked, the sexual activity must stop immediately.

Affirmative Consent cannot be given by a person who is incapacitated. A person is unable to consent when s/he is asleep, unconscious, or is incapacitated due to the influence of drugs, alcohol or medication so that s/he could not understand the fact, nature, or extent of the sexual activity. A person is incapacitated if s/he lacks the physical and/or mental ability to make informed, rational decisions.

Whether an intoxicated person (as a result of using alcohol or other drugs) is incapacitated depends on the extent to which the alcohol or other drugs impact the person's decision-making ability, awareness of consequences, and ability to make informed judgments. A person's own intoxication or incapacitation from drugs or alcohol does not diminish that person's responsibility to obtain Affirmative Consent before engaging in sexual activity. A person with a medical or mental disability may also lack the capacity to give consent.

Sexual activity with a minor (a person under 18 years old) is never consensual, because a minor is considered incapable of giving consent due to age.

It shall not be a valid excuse that a person affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the person was unable to consent to the sexual activity under any of the following circumstances:

- The person was asleep or unconscious;
- The person was incapacitated due to the influence of drugs, alcohol, or medication, so that the person could not understand the fact, nature, or extent of the sexual activity;
- The person was unable to communicate due to a mental or physical condition.

It shall not be a valid excuse to alleged lack of Affirmative Consent that the Respondent believed that the person consented to the sexual activity under either of the following circumstances:

- The Respondent's belief in Affirmative Consent arose from the intoxication or recklessness of the Respondent;
- The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the person affirmatively consented to the sexual activity.

### **What is Dating Violence or Domestic Violence?**

**Domestic Violence** is abuse committed against someone who is a current or former spouse; current or former cohabitant; someone with whom the abuser has a child; someone with whom the abuser has or had a dating or engagement relationship; or a person similarly situated under California domestic or family violence law. Cohabitant means two unrelated persons living together for a substantial period of time, resulting in some permanency of relationship. It does not include roommates who do not have a romantic, intimate, or sexual relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship. For purposes of this definition, "abuse" means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another. Abuse does not include non-physical, emotional distress or injury.<sup>6</sup>

**Dating Violence** is abuse committed by a person who is or has been in a social or dating relationship of a romantic or intimate nature with the victim.<sup>7</sup> This may include someone the victim just met; i.e., at a party, introduced through a friend, or on a social networking website. For purposes of this definition, "abuse" means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another. Abuse does not include non-physical, emotional distress or injury.

### **Types of Dating/Domestic Violence That Constitute Sexual Misconduct**

There usually is a pattern or a repeated cycle of Dating Violence, starting with the first instance of abuse.

#### ***General Pattern of Behavior:***

- **Tension Building:** Relationship begins to get strained or tense between partners.

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<sup>6</sup> See Cal. Penal Code § 13700(b) and Cal. Family Code § 6211.

<sup>7</sup> See Cal. Penal Code § 13700(b).

- **Explosion:** Outburst that includes verbal, emotional, or physical abuse.
- **Honeymoon:** Apologies where the abuser tries to re-connect with his/her partner by shifting the blame onto someone or something else.

### What Dating/Domestic Violence Looks Like

- **Physical Abuse:** any use of physical force with the intent to cause injury (i.e. grabbing in a way to inflict pain, hitting, shoving, strangling, kicking)
- **Sexual Abuse:** any action that impacts the partner's ability to control his/her sexual activity or the circumstance in which sexual activity occurs, including Rape, coercion or restricting access to birth control

### Warnings or Signs of Potential Dating/Domestic Violence

- Any actions used for the intent of gaining power and control over a person. Checks my cell phone or email without my permission.
- Monitors where I'm going, who I'm going with, what I'm doing.
- Repeatedly says or does things to make me feel inadequate or inferior to him/her.
- Extreme jealousy or insecurity.
- Isolates me from my friends and family.
- Explosive temper.
- Mood swings.
- Assumes control over my access to financial resources.
- Tells me what to do.
- Possessiveness.
- Physically hurts me in any way.

### Stalking

**Stalking** means a repeated course of conduct directed at a specific person (when based on gender or sex) that places that person in reasonable fear for his/her or others' safety, or to suffer substantial emotional distress.<sup>8</sup>

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<sup>8</sup> See Cal. Penal Code § 646.9.

Stalking is a pattern of behavior that makes you feel afraid, nervous, harassed or in danger. It is when someone repeatedly contacts you, follows you, sends you things, talks to you when you don't want them to or threatens you. Stalking behaviors can include:

- Damaging your property.
- Knowing your schedule.
- Showing up at places you go.
- Sending mail, e-mail, texts and pictures.
- Creating a website about you.
- Sending gifts.
- Stealing things that belong to you.
- Calling you repeatedly.
- Any other actions that the stalker takes to contact, harass, track or frighten you.

You can be stalked by someone you know casually, a current boyfriend or girlfriend, someone you dated in the past or a stranger. Getting notes and gifts at your home, on your car or other places might seem sweet and harmless to other people, but if you don't want the gifts, phone calls, messages, letters or e-mails, it doesn't feel sweet or harmless. It can be scary and frustrating.

Sometimes people stalk their boyfriends or girlfriends while they're dating. They check up on them, text or call them all the time, expect instant responses, follow them, use GPS to secretly monitor them and generally keep track of them, even when they haven't made plans to be together. These Stalking behaviors can be part of an abusive relationship. If this is happening to you or someone you know, you should talk to a trusted person.

Stalking is a crime and can be dangerous. California Penal Code section 646.9, in part, states, "Any person who willfully, maliciously and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking....."

### **How You Can Help Yourself**

Think about ways you can be safer. This means thinking about what to do, where to go for help and who to call ahead of time:

- Where can you go for help?
- Who can you call?
- Who will help you?

- How will you escape a violent situation?

### Other Things You Can Do

- ***In an emergency, call 911*** or University Police or the local police department.
- Let friends or family members know when you are afraid or need help.
- Be aware of your surroundings. Knowing where you are and who is around you may help you find a way to get out of a bad situation.
- Avoid isolated areas.
- Avoid putting headphones in both ears so you can be more aware of your surroundings.
- Trust your instincts. If a situation or location feels unsafe or uncomfortable, remove yourself.
- Vary your routine, your driving routes and where you park your car.
- When you go out, tell someone where you are going and when you'll be back.
- Memorize the phone numbers of people to contact or places to go in an emergency.
- Don't load yourself down with packages or bags restricting your movement.
- Keep your cell phone handy; check to see that you have reception and that your cell phone is charged, but, then pay attention to your surroundings instead of the phone.
- Have money for a cab or other transportation.
- Save notes, letters or other items that the stalker sends to you. Keep a record of all contact that the stalker has with you; these items will be very useful in an investigation.

### How You Can Help Someone Else

If you know someone who is being stalked, you can:

- Encourage your friend to seek help.
- Be a good listener.
- Offer your support.
- Ask how you can help.
- Educate yourself about stalking.

- Avoid any confrontations with the stalker; this could be dangerous for you and your friend.