

UNIVERSITY OF HAWAI'I

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EXECUTIVE POLICY – ADMINISTRATION

January 2006

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E1.XXX SEXUAL ASSAULT POLICY AND PROCEDURAL GUIDELINES

I. INTRODUCTION AND POLICY STATEMENT

The University of Hawai'i ("University") is committed to creating a community free from violence. Sexual assault is prohibited by law and is a serious offense that violates the basic standards of behavior expected of members of the University community. The University will not tolerate acts of sexual assault. The University will take appropriate action to prevent sexual assault and will correct and discipline behavior that is found to violate this policy. This policy reflects the University's systemwide commitment to creating an environment that is free from harassment, exploitation, intimidation or assault.

II. OBJECTIVE

The purpose of this policy is to provide an understanding of sexual assault, establish procedural guidelines for responding to complaints, and provide guidance for campuses regarding compliance with the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (part of the Higher Education Act of 1965), which is referred to as the "Clery Act."

III. RESPONSIBILITY

The Chancellors are charged with the responsibility and authority to implement this policy for their campuses.

IV. SCOPE

A. Sex Offenses

The scope of "sex offenses" covered by this policy is mandated by the Clery Act [34 CFR 668.46]. Sex offenses covered by this policy include rape, acquaintance rape, and other sexual acts directed against another person, 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 his or her youth or because of his or her

temporary or permanent mental or physical incapacity (including incapacity due to drugs or alcohol).

Examples of sex offenses include but are not limited to:

- Acts of sexual intercourse where such an act is accomplished against a person's consent by means of force or threat of harm to the complaining party.
- Nonconsensual intercourse by a friend or acquaintance.
- Acts of sexual fondling or other sexual assault where the person is prevented from resisting or giving consent as a result of intoxication or is unconscious at the time of the act, and this fact is known or reasonably should be known to the person committing the act.
- Acts of sexual intercourse where the person is incapable of giving consent because of his or her youth; or where the victim is incapable of giving legal consent because of mental, developmental, or physical disability, and this fact is known or reasonably should be known to the person committing the act.

## B. Related Policies

### 1. Sexual Harassment Policy

UH Executive Policy E1.203 – *Policy on Sexual Harassment and Related Conduct* is the systemwide policy prohibiting sexual harassment within the University. The policy prohibits conduct that may involve sexual assault. Accordingly, victims of sexual assault who wish to file an administrative complaint with the University have the option of using campus procedures for sexual assault or procedures for sexual harassment.

### 2. Workplace Nonviolence Policy

UH Executive Policy E9.210 – *Workplace Non-violence* is the systemwide policy prohibiting violence in the workplace. The policy affirms the University's commitment to maintaining a safe and secure environment for students, employees, visitors, and other members of the University community. Victims of sexual assault who wish to file an administrative complaint with the University have the option of using campus procedures for sexual assault or procedures for workplace nonviolence.

### C. Clery Act Reporting

Cases of sexual assault will be reported in accordance with the Clery Act [34 CFR 668.46] and the Federal Bureau of Investigation's Uniform Crime Reporting Program definitions and classifications of sex offenses.

## V. PROCEDURAL GUIDELINES

### A. Prevention

Chancellors or their designees are charged with implementing education programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses. Education and information should be available through multiple sources. Examples include: campus security, new student and new employee orientations, campus women's centers, residence halls, and campus health and counseling services.

### B. Guidelines for campus procedures

Chancellors or their designees must implement procedures for their respective campuses for responding to reports of sexual assault. Chancellors shall use this Executive policy and procedure as a guide to develop a similar protocol tailored to the organizational structure of their respective campus. Such a protocol must contain certain elements in accordance with the Clery Act:

1. Procedures concerning whom to contact, the importance of preserving evidence, and to whom the alleged offense should be reported
2. Victim's option and right to notify law enforcement, including on-campus and local police, and the option and right to be assisted by campus authorities, if the person so chooses
3. Information regarding on- and off-campus counseling, mental health, and other student services for victims of sex offenses
4. Notice to students regarding the options to change the victim's academic and living situations after an alleged sex offense, if requested and reasonably available
5. On-campus procedures for disciplinary action in cases of alleged sexual offenses. Both the accuser and accused must be notified of:
  - a) the opportunity to have a representative or support person present during an on-campus disciplinary proceeding
  - b) the outcomes of any on-campus disciplinary proceeding (in a manner consistent with Chapter 92F HRS)

6. Notice of possible sanctions that may be imposed following a final determination of an on-campus disciplinary procedure relating to sexual assault offenses

### C. Protocol

The University's first responsibility in responding to reports of sexual assault is attending to the needs of the person(s) affected by the offense (e.g., the individual who reports being sexually assaulted, roommates, and/or family members). All reports of sexual assault are taken with utmost seriousness, and the student or employee will be referred to appropriate persons or units for assistance.

In the event a member of the University community reports being sexually assaulted, the following steps should be taken:

#### 1. Seek medical treatment

Any person who reports being sexually assaulted is urged to seek medical treatment for injuries, sexually transmitted diseases, and possible pregnancy from the campus's student health service or at the emergency room of any local hospital.

A forensic medical exam to preserve evidence of an assault can be performed within 72 hours of a sexual assault by a certified agency. Victims of sexual assault should be informed that they have the option of undergoing an exam even if, at the time of the exam, they are not certain they will formally report the assault. To preserve as much evidence as possible, victims should not perform any personal hygiene until the exam is done.

#### 2. Report incidents of sexual assault to law enforcement officials

- a) Any member of the University community who is sexually assaulted is encouraged, and has the option and right, to report the incident to local police and/or with Campus Security. Campus Security will inform individuals of their options to notify proper law enforcement authorities, including local police, and the option to be assisted by Campus Security in notifying such authorities, if the individual so chooses.
- b) Persons who report being sexually assaulted may contact their campus Dean/Vice Chancellor of Students or Equal Employment Opportunity/Affirmative Action ("EEO/AA") Officer. These offices will inform individuals of their options and rights to notify local police or Campus Security and the option and right to be assisted by campus personnel in notifying such authorities, if the individual so chooses. They can also provide referrals to on- and off-campus resources such as campus women's centers, campus counselors, and off-campus sex abuse treatment centers.

Incidents reported to the University under this policy will be addressed promptly. The University has the right to proceed with an investigation of the complaint at any time. University proceedings need not await the disposition of any related criminal investigation or prosecution.

3. Students may use on-campus procedures and file complaints with the Dean of Students or other designated Complaint Officer

Students may file formal complaints of sexual assault with the campus Dean of Students or designated Complaint Officer. The Dean of Students or designated Complaint Officer is responsible for ensuring that the complaint is investigated promptly.

Appropriate predecisional relief may be granted the victim in changing academic, student employment, or campus residence situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available.

- a) Both the complainant and the individual charged with sexual assault are entitled to have a representative or observer present during an on-campus student disciplinary proceeding.
- b) The individual charged with sexual assault is entitled to due process and will be given an opportunity to respond to the allegations.
- c) Both the complainant and the individual charged will be informed of the outcome of any on-campus student disciplinary proceeding brought alleging a sexual assault.

4. Employees may use on-campus procedures and file complaints with the EEO/AA Officer or other designated Complaint Officer.

Employees may file formal sexual assault complaints with the campus EEO/AA Officer or designated Complaint Officer. The EEO/AA Officer or designee is responsible for investigating the complaint.

Appropriate predecisional relief may be granted the victim in changing the employment situation after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available.

- a) Both the complainant and the individual charged with sexual assault are entitled to representation throughout the process.
- b) The individual charged with sexual assault is entitled to due process and will be given an opportunity to respond to the allegations.

- c) Both the complainant and the individual charged will be informed of the decision maker's determination. Information regarding the outcome will be handled according to applicable policies and collective bargaining agreements.

#### D. Confidentiality

Efforts to maintain confidentiality will be exercised to the greatest extent possible; however, appropriate members of the University community will be informed that an incident of sexual assault has been reported. Certain information may need to be disclosed to appropriate administrators, the respondent, and witnesses in order to conduct the investigation. Information may also be disclosed if required by law, rule, regulation, or by order of the court or arbitrator pursuant to the appropriate collective bargaining agreement.

### VI. RIGHT TO ALTERNATIVE PROCEDURES

It is the right of any individual to pursue other avenues of recourse which may include initiating civil action or seeking redress under state criminal statutes (e.g., the Hawai'i Penal Code, Chapter 707, Part V. Sexual Offenses, §707-730 to 707-733) and/or federal law. These avenues of complaint may be pursued concurrently without jeopardizing an individual's right to use on-campus complaint procedures, including student judicial and disciplinary procedures.

### VII. VICTIM ASSISTANCE AND SUPPORT

The Chancellors or their designees are charged with identifying and developing a protocol for on-campus units to provide assistance and support to victims of sexual assault. Each campus shall also develop and make available a list of appropriate off-campus resources for sexual assault victims.

### VIII. SANCTIONS

Sanctions may be imposed, in accordance with applicable conduct codes, policies and procedures, collective bargaining agreements or other provisions, against any individual who is found to have violated this policy. Possible sanctions include, but are not limited to, suspension or dismissal from campus for students, suspension or termination from employment for excluded employees, and disciplinary actions pursuant to collective bargaining agreement provisions for included employees.

IX. NONRETALIATION POLICY

The University prohibits and will not tolerate retaliation against persons who report sexual assault or otherwise exercise their rights under this policy. Retaliation is a separate complaint and will be investigated accordingly.

The right of individuals to use lawful means to defend themselves against charges of sexual assault is not abridged by this policy. Such a right and the prohibition against retaliation are not mutually exclusive.

X. POLICY DISSEMINATION

The Chancellors or their designees shall be responsible for distributing this policy and making it accessible to students and employees.