

## **Transylvania University Sexual Misconduct Policy**

**Effective:** September 1<sup>st</sup> 2017

**Purpose:** Transylvania University is committed to providing members of the campus community with an educational and working environment free of discrimination, harassment, and retaliation.

**Title IX Policy Statement:** Transylvania University is committed to complying with [Title IX](#) of the Education Amendments of 1972, which prohibits sex- and gender- based discrimination in educational programs that receive federal funds. Sexual misconduct is a form of gender discrimination that, like other forms of unlawful discrimination, the University will not tolerate. The Title IX Coordinator for Transylvania University oversees the investigation of all sexual misconduct complaints filed with the University. In addition, there are trained Title IX Investigators and Process Advisors (found [here](#)). This policy provides information about the definitions of prohibited behaviors that constitute sexual misconduct, as well as resources, reporting, and resolution procedures for incidents covered by this policy.

Persons whom the University determines more likely than not have violated this policy are subject to sanctions up to and including dismissal or separation from the University, regardless of whether they are also facing criminal or civil charges before a government agency or a court of law. The University will respond promptly and effectively to reports of sexual misconduct and will take appropriate action to prevent, to correct and, when appropriate, to discipline behavior that violates this policy. The University will also take steps in the event of sexual misconduct to remedy its discriminatory effects on the victim and others, if appropriate. Nothing contained in this policy should be construed to supplant or modify existing laws of the Commonwealth of Kentucky and the United States.

**Equal Opportunity Policy Statement:** Transylvania University's Title IX policies exist as part of its broader commitment to equal opportunity for all, which states "Transylvania University is committed to ensuring that the institution is free of harassment and discrimination on the basis of race, color, citizenship status, sex, age, disability, pregnancy, creed, sexual orientation, gender identity, gender expression, marital status, national or ethnic origin, religion or religious belief, veteran's status, or any other category protected by applicable state or federal law or local ordinance. This policy applies to, but is not limited to, recruitment and admission of students, recruitment and employment of faculty and staff, the operation of any of its programs, promotion, demotion, transfer, position advertising, reduction in force, termination, rates of pay, and selection for training. Consistent with this policy, the University does not tolerate discrimination or harassment of employees, students or other individuals associated with the University. In addition, the University prohibits unprofessional and discourteous actions that may affect a professional and congenial work environment. For this reason, derogatory racial, ethnic, religious, ageist, sexual, or other inappropriate remarks, slurs, or jokes will not be

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tolerated. This policy applies to all faculty, staff, administration, supervisors, employees, students, applicants, volunteers, and visitors to campus, including guests, patrons, independent contractors, vendors or clients of Transylvania University.” (Cabinet approved 4/27/16)

**Jurisdiction/Application:**

This policy applies to all University students, faculty, and staff, as well as third parties who interact with members of the University community, and all University-sponsored programs, events, and activities, regardless of where the alleged sexual misconduct occurs.

In some cases the University’s ability to take action as to some persons or situations covered by this policy (such as guests, independent contractors or vendors, or situations occurring off-campus) may be limited; however, the University will make a good faith effort to adequately investigate and address such cases.

The University will take steps to make this policy available to all students, faculty and staff through annual distribution. Upon request, this policy can be translated for those with disabilities and/or for whom English language is a second language.

**Statement of Rights for Complainants and Respondents**

As described in further detail below, parties involved in incidents and proceedings covered by this policy will be afforded the following rights:

- Both the complainant and the respondent have the right to be treated with respect by University officials.
- Both the complainant and the respondent have the right to take advantage of campus support resources (such as Counseling Services and University Health Services for students, or Employee Assistance Provider services for employees).
- The complainant has the right to pursue criminal and legal action, in addition to or in lieu of pursuing University proceedings under this policy. In no case should a complainant be dissuaded from reporting sexual misconduct to law enforcement. The University will conduct an investigation under its own policy regardless of whether a complainant elects to file a criminal report. If the respondent is someone outside the campus community, such as student or faculty member from another institution, the University reserves the right to contact that institution for further investigation.
- Both the complainant and the respondent have the right to experience a safe educational and work environment. Remedial accommodations can be provided through the Title IX Coordinator.

- The complainant has the right to choose whether or not to file a complaint with the University. However, when the University is made aware of an allegation of sexual misconduct, it may have to investigate and take action to protect the complainant or other members of the University community.
- Both the complainant and the respondent have the right to have an advisor present throughout the process; however, advisors may not directly participate in hearings.
- Both the complainant and the respondent have the right to speak on his/her own behalf. Invoking the right not to speak will not be considered an admission of responsibility.
- Both the complainant and the respondent have the right to a formal resolution process using a preponderance of evidence standard for determining the outcome of investigations.
- Both the complainant and the respondent have the right to notice of the specific allegations at issue in a case, including notice of anticipated witnesses and evidence to be addressed in a hearing under this policy.
- Both the complainant and the respondent have the right to access information and evidence directly related to them within a reasonable time before a hearing under this policy.
- Both the complainant and the respondent have the right to attend a hearing conducted under this policy. The University may proceed with a hearing even if a party declines to exercise his or her right to attend.
- Both the complainant and the respondent have the right to introduce evidence and question witnesses at a hearing conducted under this policy; provided, however, that the complainant and the respondent will not be allowed to directly question each other.
- The complainant and the respondent have the right to be free from retaliation.

**If someone experiences sexual misconduct (immediate steps):**

A person who experiences sexual misconduct may respond to the experience in many different ways, including feeling confused, vulnerable, out of control, embarrassed, angry, or depressed. The University and community provide a variety of resources to assist individuals who have experienced sexual misconduct; both to address the effects of the incident, and to help them identify the options available to them for making a complaint about the incident and offer assistance if requested.

1. Go to a safe place and speak with someone you trust. Tell this person what happened. If there is any immediate danger, call the University's [Department of Public Safety](#) if you are on-campus and/or 911 if you are not.
2. Consider contacting the [Bluegrass Rape Crisis Center](#) for professional support to assist you in the crisis. [On-campus counseling](#) is also available to all current students M-F 9am-5pm and can be reached by emailing [counseling@transy.edu](mailto:counseling@transy.edu). The Woodland Group is available to employees and can be reached

by calling 1-800-350-6438. Additional resources are available through any of the before mentioned contacts.

3. For your safety and well-being, immediate medical attention is encouraged. The medical centers, both on and off campus, provide treatment of injuries, STI screenings, and pregnancy testing. If you wish to have an evidence kit collected (“rape kit”), you can do so at any local hospital. If possible, do not shower, brush your teeth, urinate, eat, drink or change clothes until after evidence is collected.

4. Evidence of violence, such as bruising or other visible injuries, should be documented by taking photographs. Evidence of stalking or exploitation, including communications such as written notes, emails, voice mails, or other electronic communications sent by the alleged stalker or exploiter, should be saved and not altered in any way.

5. You may request police to remain at the scene of an incident until your safety is otherwise secured. You can also request that a police officer assist you by arranging transportation or by taking you to a safe place such as a shelter or a family member or friend’s residence.

6. You may obtain a copy of the police report from your incident at no cost from the police department.

7. Consider your reporting and support options. No survivor of sexual misconduct is required to make a report or take legal action. However, you can choose to report to the Title IX Coordinator and/or local law enforcement. If you contact the Title IX Coordinator, that person can assist you with University concerns, such as no-contact orders or other protective measures on campus, and/or provide you with a full list of support services and options both on campus and in the community. Either the Title IX Coordinator or the Department of Public Safety can assist you in contacting law enforcement, if you desire.

## **I. Definitions of Prohibited Conduct**

### **A. Discrimination (In General)**

Sexual misconduct is a form of gender discrimination prohibited by Title IX. Acts of discrimination constituting sexual misconduct covered by this policy are defined below. The determination of what constitutes sexual misconduct will vary with the facts and circumstances of each case. For acts of discrimination that are not addressed in this policy, including gender discrimination that does not involve sexual misconduct, please see the University's other policies on discrimination.

### **B. Sexual Misconduct**

#### **1. Sexual Harassment**

Sexual harassment can take one of two forms; the first form involves unwelcome verbal, electronic, physical and/or visual conduct based on sex, which both (1) unreasonably interferes with a person's work or educational performance, and (2) creates an environment that both a reasonable person and the specific person being harassed would find intimidating, hostile or objectively offensive. This form may come from a supervisor, an educator or from any other person at the University. The second form involves either (1) submission to unwelcome advances of a supervisor or educator as an express or implied condition of receiving work or educational benefits, or (2) a tangible work or educational detriment resulting from a person's failure or refusal to submit to a sexual demands of a supervisor or educator. The more severe the conduct, the less need there is to show repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. A single or isolated incident of sexual violence may create a hostile environment. Examples of sexual harassment include (but are not limited to):

- Unwelcome sexual flirtation or advances
- Offering employment, promotions, grades or other benefits in exchange for sexual favors.
- Making or threatening reprisals for refusing sexual advances.
- Unwelcome visual and/or electronic conduct such as leering; making sexual gestures; displaying sexually suggestive objects or pictures, cartoons or posters; and suggestive or obscene letters, notes or invitations.
- Unwelcomes verbal or electronic conduct such as derogatory comments; epithets; slurs; sexual innuendo; sexual jokes; graphic verbal commentaries about a person's body; and sexually degrading words used to describe a person.
- Unwelcome physical conduct such as unwarranted, suggestive or offensive touching; and impeding or blocking movement.

## 2. Sexual Assault

Sexual assault refers to any sexual act directed against another person, forcibly and/or against the person's will; or not forcibly or against the person's will where the survivor is incapable of giving consent, as well as incest or statutory rape. Examples of sexual assault for purposes of this policy include but are not limited to:

- Intentional touching of another person's intimate part's without that person's consent.
- Coercing, forcing, or attempting to coerce or force a person to touch another person's intimate parts without that person's consent.
- Rape, which is penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object; or (2) the mouth of a person by a sex organ of another person, without that person's consent.

## 3. Sexual Exploitation occurs when:

One person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses.

Examples of sexual exploitation include, (but are not limited to):

- Invasion of sexual privacy.
- Non-consensual digital, video, or audio recording of nudity or sexual activity.
- Unauthorized sharing or distribution of digital, video, or audio recording of nudity or sexual activity.
- Engaging in voyeurism.
- Going beyond the boundaries of consent.
- Knowingly exposing someone to or transmitting an STI, STD, or HIV to another person.
- Intentionally or recklessly exposing one's genitals in non-consensual circumstances, or including another to expose their genitals.
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

## 4. Stalking

Stalking means 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.

In Kentucky, stalking means an intentional "course of conduct" towards a "specific person" that

1. Does not serve an legitimate purpose,
2. Seriously alarms, annoys, intimidates or harasses that person and
3. Would cause a reasonable person to suffer substantial mental distress.

- (a) Course of conduct is defined as 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.
- (b) Substantial emotional distress is defined as significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- (c) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

### **5. Relationship/Dating Violence**

Relationship/Dating Violence is any pattern of behavior used to establish power and control over another person within the context of a current or previous intimate relationship. Categories can include but are not limited to: physical battering, sexual assault, emotional or psychological abuse.

- (a) Dating Violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
- (b) Relationship shall be 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.
- (c) 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.

### **6. Domestic Violence**

Domestic Violence means violence committed by:

- (a) A person who is a current or former spouse or intimate partner with the victim;
- (b) A person with whom the victim shares a child in common;
- (c) A person who is cohabitating with or who has cohabitated with the victim as a spouse or intimate partner; or
- (d) Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws where the violence occurred.

## 7. Consent

Consent is **informed**. Consent is an affirmative, knowing unambiguous, and conscious decision by each participant to engage in mutually agreed-upon sexual activity.

Consent is **voluntary**. Consent must be given without coercion, force, threats, or intimidation. Consent means a positive cooperation in the act or expression of intent to engage in the act pursuant to an exercise of free will. Even though consent does not necessarily need to be verbal, relying purely on non-verbal communication can lead to misunderstandings. So, a spoken agreement is the most clearly indicated form of consent. It may not, in any way, be inferred from silence, passivity, lack of resistance or lack of an active response alone. Assuming that consent was given by the absence of a “no” is wrong.

Consent is **revocable**. Consent to some form of sexual activity does not imply consent to other forms of sexual activity. Consent to sexual activity on one occasion is not consent to engage in sexual activity on another occasion. A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be mutual consent to engage in sexual activity. Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Once consent is withdrawn, the sexual activity must stop immediately.

Consent cannot be given when a person is **incapacitated**. A person cannot consent if they are unconscious or coming in and out of consciousness. A person cannot consent if they are under the threat of violence, bodily injury or other forms of coercion. A person cannot consent if their understanding of the act is affected by a physical or mental impairment. Consent must be given with rational and reasonable judgement, so if the individual were physically incapacitated from the consumption of alcohol or other drugs, unconsciousness, or any other kind of inability, consent cannot be obtained.

**Unwelcome Conduct** does not have to include intent to harm, be directed at a specific target or involve repeated incidents, and can involve persons of the same or opposite sex. Participation in conduct or the failure to complain does not always mean the conduct was welcome. The fact that a person has welcomed some conduct does not necessarily mean a person welcomed other conduct. Similarly, the fact that a person may have invited, requested or otherwise consented to conduct on one occasion does not necessarily mean the conduct is welcome on a later occasion.

**Consensual Relationships**. The Office of Civil Rights dictates that consensual romantic and/or sexual relationships where a power differential exists, whether real or perceived, will be assumed nonconsensual when a complaint is filed. The effect of such a relationship may render an individual's



work, academic, or social environment intimidating, offensive, or hostile. Hence, all University employees are strongly discouraged from entering into romantic and/or sexual relationships which could lead to the creation of a hostile educational, social, and/or work environment for other members of the University community.

## **8. Criminal Definitions**

Section 304 of the Violence Against Women Reauthorization Act (VAWA), known as the SaVE Act provisions, obligates the University's policy to include the definitions used by Kentucky's penal code (KRS Chapters 500 to 534) for "domestic violence," "dating violence," "sexual assault," "stalking," and "consent" with respect to sexual offenses. Kentucky's penal code does not define domestic violence or dating violence, although other crimes may apply to those circumstances. Kentucky's penal code defines sexual abuse in lieu of sexual assault, stalking, and lack of consent, which are set forth in Appendix A. Please note that the Kentucky penal code definitions are for your information only as required by federal law. For purposes of applying the University's policy, the definitions for this policy, set out above, will govern.

A complete list of all applicable Kentucky penal codes can be found in **Appendix A**.

## **II. Reporting**

Any person may file a complaint of sexual misconduct at any time. Early reporting is encouraged to preserve evidence and provide alleged victims of sexual misconduct with information about rights, options, and resources available under this policy and state/federal laws.

The Title IX Coordinator will provide alleged victims of sexual misconduct with information about available services and resources, and also assist alleged victims in notifying law enforcement, including local police, if the alleged victim elects to do so. Victims are not required to report to area law enforcement in order to receive assistance from or pursue options within the University. Reporting sexual misconduct to the police does not commit an alleged victim to further legal action. However, the sooner an incident is reported, the easier it will be for the police to investigate if the alleged victim decides to proceed with criminal charges.

### **Responsible Employees**

Transylvania University encourages all employees to report known or suspected incidents of sexual misconduct to the Title IX Coordinator. In addition, Transylvania University requires such reporting of all "Responsible Employees" at the University. Responsible Employees include the President, Vice

Presidents and Members of the Cabinet, Directors, Student Affairs Professional Staff members, Athletic administrators and coaching staff, faculty, and Resident Advisors. Members of the campus community who wish to report an incident of sexual misconduct are encouraged to speak either to the Title IX Coordinator or to a Responsible Employee, who in turn will promptly notify the Title IX Coordinator. Details of a report can include but may not be limited to the names of the alleged perpetrator(s), complainant(s), witnesses; and facts such as date(s), time(s), and location(s). However, as explained below, Campus Mental Health Counselors in Health and Wellness, and Health Professionals in Health Services are not considered Responsible Employees for purposes of this policy.

### Direct Reporting Options

- 1. Direct/Formal Reporting:** Complainants are strongly encouraged to report sexual misconduct directly to the Title IX Coordinator or to a Responsible Employee. Responsible Employees must promptly report known or suspected incidents of sexual misconduct to the Title IX Coordinator. Formal reports initiate a direct course of immediate action. Complainants have the right, and can expect, to have complaints taken seriously by the University when formally reported and to have those incidents investigated and addressed through these procedures. Formal reporting still affords privacy to all those involved as information will be shared on a need-to-know basis with a small group of officials, witnesses, and the respondent(s). The number of people with this knowledge will be kept as low as reasonably possible to preserve the privacy of those involved.

If a person decides to make a formal complaint, a detailed (written, typed, emailed, or handwritten) statement of the alleged incident(s) should be submitted to the Title IX Coordinator. This statement should be signed and dated, and should be specific as possible, including dates, times, locations, a description of the alleged misconduct and the name(s) of the respondent(s), and further include a list of persons who may have information that may be helpful to the University's investigation of the matter.

- 2. Police Reporting:** Reports may also be made to the police, especially if a crime is or may be involved, by calling the following numbers:
  - Emergency 9-1-1  
Lexington Police Department- [Special Victims Services](#)  
Sheriff's Office: 859-252-1771
  - [Department of Public Safety](#) 859-233-8118 (on-campus incidents)

Individuals are encouraged to call 9-1-1, if someone is in immediate danger. Allegations of possible criminal conduct can be reported to law enforcement even when it is not clear whether the conduct

rises to the level of a crime. Regardless, law enforcement can assist with obtaining medical care, getting immediate law enforcement response and protection, connecting the individual with victim advocate services and counseling support, initiating a criminal investigation as appropriate, and answering questions about the criminal process. The result of an external criminal investigation does not impact whether a violation of University policy has occurred, and therefore will not take the place of a University investigation. The University will not wait for the conclusion of a criminal investigation to begin conducting its own independent investigation, take interim measures to protect the University or any member of the University community, or when necessary, to initiate formal resolution options outlined below.

### Indirect Reporting Options

1. **Anonymous and Third Party Reporting:** The Title IX Coordinator accepts anonymous and third-party reports of conduct alleged to violate this policy and will follow up on such reports in a timely manner. The individual making the report is encouraged to provide as much detailed information as possible to allow the Title IX Coordinator or designee to investigate and respond as appropriate. The University may be limited in its ability to investigate an anonymous or third party report unless sufficient information is provided. To file an anonymous Title IX complaint go [here](#).
2. **Confidential Disclosure:** If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with personnel not designated as a Responsible Employee, including counselors, health service providers, [victim services advocates](#), [domestic violence resources](#), local or state assistance agencies, or members of the clergy who are permitted by law to maintain confidentiality (except in extreme cases of immediate threat or danger or abuse of a minor). Such resources may submit anonymous statistical information without identifying information to our reporting bodies to permit the University to send out a timely warning and for Clery Act reporting purposes. If a reporting party is unsure of a resource's ability to maintain confidentiality, the reporting party is advised to ask the individual before talking to them. [On-Campus Counseling](#) is available for students and/or the [Employee Assistance Program](#) is available to employees both free of charge.
3. **Red Flag Reporting** is available to the campus community as a reporting method for those that are not comfortable with existing internal reporting channels. To file a report using Red Flag Reporting go to [www.redflagreporting.com](http://www.redflagreporting.com) or call 1-877-64-RedFlag (1-877-647-3335).

### **Confidentiality**

Reports and personal information will be kept as confidential as possible to the extent the law allows and to the extent confidentiality is consistent with the University's need to protect the safety of the University community. Requests for confidentiality will be evaluated by the Title IX Coordinator. Complete confidentiality cannot be promised as the University will need to thoroughly investigate the case, and may need to share some information with relevant administrators of the University in order to further protect and prevent incidents. Reports to law enforcement may be shared with the University's Title IX Coordinator. The University may be required by law to publish non-identifying information in campus crime statistics.

All University employees (with the exception of those who may be bound by confidentiality laws or privileges as further addressed in this policy) should share information that they learn of regarding a report of sexual misconduct with the Title IX Coordinator so they can investigate the matter and determine whether steps are needed to ensure the safety of the University community.

It is the complainant's choice as to whether he/she participates in an investigation; however, the University may proceed with an investigation without the complainant's participation.

### **III. Retaliation**

The University seeks to create an environment where its students and employees are free, without fear of reprisal, to use its procedures to determine if there has been a violation of their rights under this policy. Any act of retaliation for reporting sexual misconduct or participating in an investigation or proceeding under this policy will result in appropriate disciplinary action.

Retaliation is defined as any materially adverse action taken against a person based upon their participation in a protected activity. Retaliation against an individual for alleging a violation of this policy, supporting a complainant, or for assisting in providing information relevant to a claim, is a serious violation of the this policy. Retaliatory behavior is not limited to behavior by the respondent, and covers behavior by their associates, as well as third parties. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator. Retaliation is considered an independent allegation that may lead to interim measures and/or disciplinary action if found responsible. Reports of retaliation in violation of this policy will be processed under this policy the same as other alleged violations of this policy.

### **IV. Following the Report Filed**

Subject to the parties' respective rights and the University's obligation to investigate and redress violations, every reasonable effort will be made to maintain the confidentiality of all those involved in complaints under this policy. In all cases, the University will give consideration to the complainant with respect to whether the complaint is pursued but reserves the right, when necessary to protect the community, to investigate and to pursue a resolution when a complainant chooses not to initiate or participate in a formal complaint. In cases where a complainant advises that he or she does not want to

pursue a complaint, the ability of the University to investigate and address the situation may be limited. Even if a complainant does not want to pursue a complaint, under some circumstances the University may have an obligation to pursue it anyway. When determining whether to go forward with a complaint, the Title IX Coordinator may consider factors such as the seriousness of the allegations, the age of the respondent, and the rights of the respondent to receive information about the complainant and the allegations if a hearing and possible sanctions may result from pursuing a complaint. The University will evaluate a person's request that his or her name not be revealed in the context of its responsibility to provide a safe and nondiscriminatory environment for members of the campus community. In the event a complainant requests that the University inform the respondent asked the University not to investigate or seek discipline, the University will honor this request and inform the respondent that the University made the decision to go forward.

From the time of the initial complaint, the Title IX Coordinator will make every effort to resolve the complaint within 60 days.

#### **A. Role of the Title IX Coordinator and/or designee**

The Title IX Coordinator is charged with coordinating the University's response to reports of sexual misconduct under this policy. At times a trained designee may be appointed to investigate complaints filed with the University.

The role of the Title IX Coordinator or designee is a complex role that

- Works to ensure a fair and neutral process for all parties;
- Explains options for resolution, both formal and informal to both parties;
- Communicates the provisions for confidentiality;
- Provides both parties information on options for obtaining advocacy, medical and counseling services, and remedial actions available;
- Assists with making criminal reports;
- Coordinates with other campus officials to take appropriate interim actions such as no contact orders, academic accommodations, and rearrangement of housing, dining, and work assignments.
- Monitors outcomes of sexual misconduct complaints.
- Identifies and addresses patterns and assesses effects of sexual misconduct on the campus climate so the University can address issues that affect the wider University community.
- Monitors compliance with the reporting, complaint, investigation, hearing, and appeals processes outlined in this policy.

- Determines whether campus-wide remedies are needed in response to sexual misconduct complaints, including but not limited to revision of policies, increased monitoring, supervisions, or security, and increased education and prevention efforts.
- Reviews sanctions issued under this policy to ensure that they, along with any remedial accommodations made, are reasonably calculated to stop the sexual misconduct and prevent their reoccurrence.

**Remedial Accommodations:** Several remedial accommodations are available to the complainant, including but not limited to, classroom accommodations, no contact orders, no trespass orders, counseling services, residential living accommodations, and/or other accommodations that can help create an increased sense of safety. In addition, if the University feels that the respondent is a continued threat on our campus, the University has the right to temporarily suspend until resolution of the investigation. The Title IX Coordinator determines which accommodations are appropriate on a case-by-case basis. The Title IX Coordinator may ask a complainant or his/her counselor, provider, or advisor what accommodations, if any, are sought. If the complainant seeks an accommodation that is not already provided by the University, the Title IX Coordinator will consider whether the request can be granted. In those situations where an accommodation affects both the complainant and the respondent, the Title IX Coordinator will seek to minimize the burden on the complainant where appropriate.

The University is also committed to ensuring that orders of protection issued by courts are upheld on all University-owned, used, and controlled property, as well as properties immediately adjacent to the University. Therefore, if any member of the University community obtains an order of protection or restraining order, he or she should promptly inform the Title IX Coordinator and provide him/her with a copy of that order so the University can enforce it.

#### **B. Federal Timely Warning Obligations**

Complainants of sexual misconduct should be aware that University administrators must issue crime alerts for incidents reported to them that represent a serious or continuing threat to students or employees. Should University administrators judge that a crime alert is warranted, the University will withhold a victim's name and other identifying information while providing enough information for community members to make safety decisions in light of the potential danger. For more information about the Clery Act go [here](#).

### **C. Reporting of Offenses—Drug and Alcohol Amnesty**

The University will not pursue disciplinary action for improper use of alcohol or other drugs against a complainant of sexual misconduct or against another student who shares information as either a witness to or as a reporter of sexual misconduct as long as the report is made in good faith. The University may, however, refer the student to counseling services.

Deliberately false and/or malicious accusations of discrimination, harassment, or retaliation, (as opposed to complaints which, even if erroneous, are made in good faith) are just as serious an offense as discrimination, harassment, or retaliation and will be subject to appropriate disciplinary action.

### **D. Role of the Advisor**

Individuals involved in a Title IX investigation regardless if they choose to go through the informal or formal resolution processes described below are permitted to utilize an advisor of their choice. A [Faculty/Staff Process Advisor](#) is a Transylvania administrator or faculty member who is trained to support and assist both complainants (alleged victims) and respondents (alleged perpetrators) throughout the University Process. Individuals can choose from a diverse [list](#) of potential Process Advisors and may switch Process Advisors at any point should they choose. Those choosing to use an outside advisor should be reminded that only one advisor is allowed to be present and the advisor is only permitted to serve as a silent support person and may not speak on their behalf.

### **E. Investigation and Resolution Process**

The University will respond to any alleged violation of this policy received by the Title IX Coordinator. The Title IX Coordinator will initially review all filed complaints to ensure the complaint states a violation of this policy. Each complaint will be evaluated on a case-by-case basis, taking into account the account the relevant circumstances of each case. Any complaint that concerns alleged conduct covered by this policy will be assigned to a trained investigator. The investigation process may include interviews, reviewing student/employee files, and gathering and examining other relevant evidence. Both parties may present witnesses or evidence during the investigation process. The investigation process will be balanced and fair giving both the complainant and the respondent a chance to discuss their involvement in the reported incident. An investigative report will document information gathered throughout the process and will be made available to both parties.

If the investigation concludes that evidence exists to suggest that a violation of this policy more likely than not occurred, the investigator along with the Title IX Coordinator will refer the case to a hearing before the Sexual Misconduct Hearing Board. If, however, the investigation concludes that sufficient evidence does not exist, the matter will be closed without further proceedings under this policy. Allegations of sexual assault will not be referred to the informal resolution process. Regardless of the outcome, the complainant and the respondent will be notified of the finding in writing. If the individual

being charged is an employee, the respondent's department head/director, Dean, Vice President, and the President will also be notified of the finding.

**Informal Resolution Process:** Informal resolution is a process overseen by the Title IX Coordinator, the primary goal of which is to end sexual misconduct, prevent the reoccurrence, and remedy any known impact on the campus community. The Title IX Coordinator will determine if informal resolution is appropriate, based on the willingness of the parties, the information gathered during the investigation, and the nature of the alleged conduct. **Allegations of sexual assault cannot be resolved in the informal resolution process.** Sanctions are generally not pursued as the result of an informal resolution process, though the parties may agree to appropriate remedies.

Anyone participating in the informal resolution process can stop that process at any time and request to continue through the formal resolution process. In addition, the University reserves the right to change an informal resolution process to a formal resolution process if informal resolution efforts are not feasible or productive, or if sufficient evidence suggests the need to do so. However, it is not necessary to pursue an informal resolution process first in order to initiate a formal resolution process.

#### **Sexual Misconduct Hearing Board:**

If the investigation concludes that evidence exists to suggest that a violation of this policy more likely than not occurred, the investigator along with the Title IX Coordinator will refer the case to a hearing before the Sexual Misconduct Hearing Board. For those cases brought before a sexual misconduct hearing board the following procedures outline the process.

**Notice of Hearing:** If a matter is referred to a hearing before the Sexual Misconduct Board, the Dean of Student's office and/or the Title IX Coordinator will send both the complainant and the respondent a written notice of hearing. The notice will address the following: (1) the specific allegations, witnesses, and evidence to be addressed at the hearing, including a copy of the investigative summary; (2) the date, time, and location for the hearing; (3) the parties' right to attend the hearing, although the University may proceed with a hearing even if a party declines to exercise his or her right to attend; (4) the parties' right to access information and evidence directly related to them at a pre-hearing meeting (below) to be held within a reasonable time before the hearing; (5) the parties' right to have an advisor of their choosing present at the hearing, as well as access to the University's advisor list; (6) the parties' right to speak out on their own behalves, although invoking the right not to speak will not be considered an admission of responsibility; and (7) the parties' right to introduce evidence and present/question witnesses at the hearing, provided that the complainant and respondent will not be allowed to directly question each other.



**Pre-Hearing Meeting:** Following the delivery of the notice of hearing, the Title IX Coordinator along with a representative from the Dean of Student's office will meet with the complainant and respondent separately to: (1) review the investigative report; and (2) discuss the hearing process. Any witnesses and evidence that a party may wish to present that are not already listed in the notice of hearing must be received by the Title IX Coordinator no later than one (1) business day following the pre-hearing meetings. A respondent may choose to accept responsibility and proposed sanctions from the Title IX Coordinator for the alleged policy violations at the prehearing meeting or any other time prior to hearing. In preparing proposed sanctions, the Title IX Coordinator may confer with the parties prior to finalizing them. There is no right of appeal if a respondent accepts responsibility and proposed sanctions prior to hearing.

**Witness(es):** Any persons having specific knowledge of the matter may be called as witnesses by either the complainant or the respondent. Disclosure of witnesses and evidence will be handled through the pre-hearing process outlined above and/or in a supplemental letter sent to both parties prior to the hearing date. No surprise witnesses and/or guests will be permitted at the hearing. Witnesses' testimony must be relevant to the issues for hearing.

Once all witness lists and documentary evidence have been shared among both the complainant and the respondent, both are invited to submit questions in writing for the sexual misconduct hearing board to consider asking during the hearing. These questions are due one (1) business days before the hearing. Whether these questions will be introduced at the hearing is at the discretion of the board. In addition, both parties will also be given the opportunity at the hearing to propose questions to the sexual misconduct hearing board for consideration.

**Sexual Misconduct Hearing Board:** The Title IX Coordinator and the Dean of Student's Office will convene a Sexual Misconduct Hearing Board consisting of three Transylvania community members to conduct a closed hearing. More specifically, the board will consist of current faculty/staff Judicial Council members. Members of the sexual misconduct hearing board will not all be of the same gender. All hearing board members are required to receive annual training on all issues related to domestic violence, dating violence, sexual assault, stalking, and exploitation, and how to conduct a hearing process that protects the safety of the complainants and promotes accountability. All involved parties will be informed of the composition of the board at least five (5) business days prior to the hearing, and can object to any member of the board for cause. Replacement of any hearing board member is at the Title IX Coordinator's and the Dean of Student's office discretion. Any misconduct concurrent with Title IX will also be adjudicated through the Title IX resolution process.

**The Hearing:** With the exception of an advisor/advocate, hearings are closed meetings. All hearings will be recorded by a transcriber.

The order of the hearing will typically be as follows:

1. Introduction and reading of the alleged violations
2. Opening statement by complainant
3. Opening statement by respondent
4. Presentation of witnesses by complainant
5. Presentation of witnesses by respondent
6. Questions from the hearing board
7. Closing statement by the respondent
8. Closing statement by the complainant
9. Closed deliberation by the hearing board
10. Rendering of decision by the hearing board

The Title IX Coordinator or designee will ensure both parties, as well as, the Dean of Student's office, and the sexual misconduct hearing board receive all evidence through Maxient before the hearing. As with all University judicial system cases, a hearing may proceed even if, one or both parties fail to attend the hearing.

**Special Accommodations:** Either party may request to present their case outside the physical presence or line of sight of the other party. Every effort will be made to accommodate such requests. Either party wishing to make a request for special accommodations must submit in writing their request at least two (2) business days prior to the hearing to the Title IX Coordinator and/or the Dean of Student's office. Some examples of special accommodations are the use of telephonic hearings and/or skype.

**Hearing Board Outcome:** Following the hearing, the decision of whether a policy violation has occurred will be determined by using a **preponderance of the evidence** standard. A finding of a policy violation by a preponderance of the evidence means that it is more likely than not that the policy violation occurred. If, following the hearing, the decision is that the evidence does not support a finding that a policy violation has occurred the process will end. Regardless of the outcome, the complainant, the respondent, and the Title IX Coordinator will be notified of the finding in writing once the findings letter is generated.

If an individual is found in violation of University policy, the sexual misconduct hearing board will recommend appropriate disciplinary sanctions to be considered by the Dean of Students or designee. The Dean of Students or designee will notify the respondent, the complainant, and the Title IX Coordinator in writing of the outcome.

**PLEASE NOTE:** To ensure all things are considered, some sanctions might take up to seven (7) business days to fully define and to determine the parameters of the particular sanction given.

**Student Withdrawal While Charges Pending:** Should a responding student decide to withdraw from the University and/or not participate in the investigation and/or hearing. The individual charged will not be permitted to return to the University unless any and all sanctions have been satisfied. The Title IX Coordinator will continue to act to promptly and effectively remedy the effects of the conduct upon the complainant and the community.

**Employee Resignation While Charges Pending:** Should a responding employee resign while charges are pending, the records of the Title IX Coordinator will reflect that status, as will University responses to any future inquiries regarding employment references for that individual. Should an employee decide to leave and not participate in the investigation and/or hearing, that employee will not be permitted to return to the University unless any and all sanctions have been satisfied. The Title IX Coordinator will continue to act to promptly and effectively remedy the effects of the conduct upon the complainant and the community.

## F. Recommended Sanctions

What sanctions are appropriate will depend on the individual circumstances of each case, but all sanctions should be reasonably calculated to stop the sexual misconduct at issue; prevent its re-occurrence; and remedy its effects on the complainant and, where appropriate, the campus community.

1. **Common Student Sanctions:** Sanctions for a student who has violated the Title IX Policy may include, but are not limited to, verbal or written warning; required educational program; social probation; loss of privileges; counseling; no contact order; residence hall relocation, suspension or expulsion; limited access to campus; service hours; online education; parental notification; alcohol and drug assessment/counseling; discretionary sanctions; academic suspension, and/or academic expulsion.

2. **Common Employee Sanctions:** Sanctions for an employee who has violated the Title IX Policy may include, but are not limited to, verbal or written warning; probation; performance improvement/management process; educational training; mental health counseling; loss of privileges, reduction in pay, loss of annual raise; discretionary sanctions; loss of supervisory or oversight of responsibilities; paid or unpaid leave; suspension; and/or termination.

**Failure to Complete Sanctions:** All respondents are expected to comply with conduct sanctions within the time frame specified in their written notice. The Dean of Student's office or designee will monitor the completion of sanctions. Failure to follow through on conduct sanctions by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanctions and/or suspension,

expulsion, and/or termination from the University. For students, failure to comply may result in suspension and/or hold to prevent future registration.

### **G. Appeals**

Appeals of the decision will go before the Hearing Appeals Officer. The Hearing Appeals Officer for students is the VP for Student and/or Academic Affairs or designee and for employees is the Vice President/President or designee. An appeal of the decision may be filed by the complainant or the respondent or both. All requests for appeal considerations must be submitted in writing to the Title IX Coordinator within **five (5) business days from delivery of the decision letter**. The Title IX Coordinator will share the appeal with the appropriate office (VP for Student and/or Academic Affairs or designee for students) or (Vice President/President or designee for employees) for consideration. The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed below, and such a finding and sanction/responsive action(s) are final. The Title IX Coordinator or designee will ensure the appeal meets the following criteria to permit the appeal to move forward.

Appeals must be based on one of the following grounds:

- A procedural error or omission occurred that could have significantly impacted the outcome.
- There is new evidence, unknown or unavailable at the time of hearing, which could have substantially impacted the finding or sanction. A summary of this new evidence and its potential impact upon the investigation must be included in the appeal.
- The sanctions imposed are substantially disproportionate to the severity of the violation.

When a party requests an appeal, the other party (parties) will be notified and given **three (3) business days** to respond in writing to the Title IX Coordinator.

Where the Hearing Appeals Officer finds that at least one of the grounds is met, and proceeds with the appeal, additional principles governing the hearing of appeals include the following:

- All parties will be informed of the grounds for which the appeal has been accepted.
- Interim and/or protective actions will be imposed and/or continued as appropriate.
- Hearing Appeal Officer: Appeals are not intended to be full re-hearings of the complaint. Appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the grounds for appeal.

Upon review of all of the information, the Hearing Appeal Officer has the authority to do one of the following:

- (1) Uphold, reverse, or modify the sanctions recommended by the Hearing Board;
- (2) Remand the case back to a Hearing Board. An appeal can only be remanded to a Hearing Board due to a procedural error or new information.

Appeal Officer Decision:

The Hearing Appeal Officer will generally render a decision within **five (5) business days** to the Title IX Coordinator. The Hearing Appeals Officer or designee will communicate the outcome to all involved parties and all University personnel that need to know in a timely manner. Once an appeal is decided, the outcome is final; further appeals are not permitted under this policy.

## V. Records

In implementing this policy, records of all complaints, resolutions, and hearings will be kept by the Title IX Coordinator indefinitely in the Title IX Office.

## VI. Bystanders

The University strongly encourages bystanders to “step up” on behalf of another person’s wellbeing and safety. The reporting options listed in this policy are available for bystanders as well. There are also safe and positive options for bystanders who intervene during an incident in order to prevent harm when there was a risk or act of violence. These options include:

**Be aware** of what is going on around you. Trust your instincts. Assume personal responsibility and say or do something – don’t assume that someone else will help.

**Assess the situation.** You have to decide what the safest way is for you and others involved to help. Gauge whether the situation requires calling authorities. When deciding to intervene, your personal safety should be the #1 priority. When in doubt, call for help. Other possible people to reach out to for assistance in helping are faculty, staff, supervisors, counselors, etc.

**Decide** whether to use direct or indirect action to resolve the problem. For example:

- **Direct Actions:** Point out someone’s behavior in a manner that will help de-escalate the situation, talk to a friend to ensure he/she is okay, call the police.
- **Indirect Action:** Make up an excuse to help someone get away from a potential offender, and call the local authorities.

**Intervene** – with reinforcements. If you gauge it is safe to intervene, you’re likely to have a greater influence on the parties involved when you work together with someone or several people. Your safety is increased when you stay with a group of friends that you know well.

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- Remember to intervene in a compassionate, non-threatening manner.
- Be aware of available resources for assisting persons on campus and in the community.
- Encourage them to seek assistance and offer them resources for assistance.

**Remember, 911 is often the best way to intervene if there is a question of safety for anyone.**

## VII. Resources and Training

### A. Resources

#### On campus Resources:

Title IX Coordinator

Ashley Hinton-Moncer

859-233-8854

[ahinton@transy.edu](mailto:ahinton@transy.edu)

Department of Public Safety

Located in Back Forrer Lobby

859-233-8118 (24hrs)

Confidential Resources

Health and Wellness

Health Services and Counseling Services

859-281-3682

[counseling@transy.edu](mailto:counseling@transy.edu)

#### Community Resources:

Lexington Metro Police

911 or 859-258-3600

Bluegrass Rape Crisis Center

859-253-2615

Bluegrass Domestic Violence Program-

Greenhouse 17

1-800-544-2022

### B. Training and Education

All students, faculty, and staff must annually complete University-sponsored training on sexual misconduct issues within the dates and times arranged by the Title IX Coordinator. Failure to do so may result in corrective action. Annual training will, at minimum, cover the following:

- University policies and procedures for reporting and addressing sexual misconduct;
- Reminders that the University prohibits the offenses of domestic violence, dating violence, sexual assault, sexual exploitation, and stalking;
- The definitions for domestic violence, dating violence, sexual assault, sexual exploitation, stalking, and consent;

- Training on safe and positive options for bystander intervention that may be carried out by a person to prevent harm or to intervene when there is a risk of sexual misconduct against a person other than such person;
- Information on risk reduction to recognize warning signs of abusive behavior and harm reduction;
- Possible sanctions or protective measures that may be imposed following a finding of determination of an institutional disciplinary procedure regarding sexual misconduct;
- Procedures survivors should follow if sexual misconduct has occurred;
- Procedures for institutional disciplinary action in cases of alleged sexual misconduct;
- Information about existing counseling, health, mental health, survivor advocacy, legal assistance, and other services available both on campus and in the community; and
- Information about survivor options for, and available assistance in, changing academic, living, transportation, and working situations, if so requested by the survivor and if such accommodations are reasonably available, regardless of whether the survivor chooses to report the crimes to campus police or local law enforcement.

The Office of Interpersonal Violence Prevention Programming organizes training and awareness programs for the Transylvania community. Awareness programs include, but are not limited to, increased understanding of sexual misconduct, stalking, partner violence, and consent. Students are required to complete Everfi's Haven prior to their arrival on campus. Haven provides a brief overview of the effects of trauma and the role alcohol and other drugs can play in sexual violence. Students are also required to attend mandatory orientation sessions for Title IX and Green Dot. The Title IX orientation program helps students understand the school's grievance procedures and reporting options including both formal and confidential disclosure options. The training also provides students with an understanding of what constitutes a hostile environment and encourages students to report without the need of determining what does and does not create a hostile environment. Students are also informed of the confidential reporting resources both on and off campus. All employees are required to complete several online trainings provided by Workplace Answers. The Title IX Coordinator is also available for on-demand training to answer any additional questions. Failure to complete training required under this policy may result in disciplinary or corrective action consistent with University policy.

For more information about the primary prevention programs and Green Dot bystander intervention can be found [here](#).

A complete list of trainings provided can be found [here](#).

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**C. Additional Resources**

Some forms of harassment and discrimination may violate federal and state laws, and a Complainant or Respondent may choose to contact the following agencies regarding their complaint:

**Philadelphia Office for Civil Rights**

U.S. Department of Education

The Wanamaker Building

100 Penn Square East, Suite 515

Philadelphia, PA 19107-3323

Phone: (215) 656-8541

TDD: 1-877-521-2172

Email: OCR.Philadelphia@ed.gov

**Revisions:** These policies and procedures will be reviewed and updated regularly by the Title IX Coordinator. The Title IX Coordinator may make minor modifications to procedure that do not materially change the process. However, the Title IX Coordinator may also vary procedures materially with notice (on the University's policy website, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure. Policy in effect at the time of the offense will apply even if the policy is changed subsequently, unless the parties consent to be bound by the current policy or applicable law requires otherwise.



## **APPENDIX A: STATE LAW DEFINITIONS**

*These state law definitions are for informational purposes only. For purposes of the University's Sexual Misconduct Policy, the University will follow its own definitions as set out in that policy.*

### **Domestic Violence**

#### **KRS 403.720 Definitions for KRS 403.715 to 403.785 (effective January 1, 2016)**

(1) "Domestic violence and abuse" means physical injury, serious physical injury, stalking, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple;

(2) "Family member" means a spouse, including a former spouse, a grandparent, a grandchild, a parent, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim;

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(5) "Member of an unmarried couple" means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together;

### **Dating Violence**

#### **KRS 456.010 Definitions for chapter (effective January 1, 2016)**

(1) "Dating relationship" means a relationship between individuals who have or have had a relationship of a romantic or intimate nature. It does not include a casual acquaintanceship or ordinary fraternization in a business or social context. The following factors may be considered in addition to any other relevant factors in determining whether the relationship is or was of a romantic or intimate nature:

- (a) Declarations of romantic interest;
- (b) The relationship was characterized by the expectation of affection;
- (c) Attendance at social outings together as a couple;
- (d) The frequency and type of interaction between the persons, including whether the persons have been involved together over time and on a continuous basis during the course of the relationship;
- (e) The length and recency of the relationship; and
- (f) Other indications of a substantial connection that would lead a reasonable person to understand that a dating relationship existed;

(2) "Dating violence and abuse" means physical injury, serious physical injury, stalking, sexual assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault occurring between persons who are or have been in a dating relationship;

### **Sexual Assault**

#### **KRS 456.010 Definitions for chapter (effective January 1, 2016)**

(6) "Sexual assault" refers to conduct prohibited as any degree of rape, sodomy, or sexual abuse under KRS Chapter 510 or incest under [KRS 530.020](#);

#### **KRS 510.040 Rape in the first degree**

(1) A person is guilty of rape in the first degree when:

- (a) He engages in sexual intercourse with another person by forcible compulsion; or
- (b) He engages in sexual intercourse with another person who is incapable of consent because he:
  - 1. Is physically helpless; or
  - 2. Is less than twelve (12) years old.

(2) Rape in the first degree is a Class B felony unless the victim is under twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.

#### **KRS 510.050 Rape in the second degree**

(1) A person is guilty of rape in the second degree when:

- (a) Being eighteen (18) years old or more, he engages in sexual intercourse with another person less than fourteen (14) years old; or
- (b) He engages in sexual intercourse with another person who is mentally incapacitated.

(2) Rape in the second degree is a Class C felony.

#### **KRS 510.060 Rape in the third degree**

(1) A person is guilty of rape in the third degree when:

- (a) He or she engages in sexual intercourse with another person who is incapable of consent because he or she is an individual with an intellectual disability;
- (b) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than sixteen (16) years old;

(c) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in [KRS 600.020](#);

(d) Being a person in a position of authority or position of special trust, as defined in [KRS 532.045](#), he or she engages in sexual intercourse with a minor under eighteen (18) years old with whom he or she comes into contact as a result of that position; or

(e) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in [KRS 520.010](#), or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual intercourse.

(2) Rape in the third degree is a Class D felony.

#### **KRS 510.070 Sodomy**

(1) A person is guilty of sodomy in the first degree when:

(a) He engages in deviate sexual intercourse with another person by forcible compulsion; or

(b) He engages in deviate sexual intercourse with another person who is incapable of consent because he:

1. Is physically helpless; or
2. Is less than twelve (12) years old.

(2) Sodomy in the first degree is a Class B felony unless the victim is under twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.

#### **KRS 510.110 Sexual abuse in the first degree**

(1) A person is guilty of sexual abuse in the first degree when:

(a) He or she subjects another person to sexual contact by forcible compulsion; or

(b) He or she subjects another person to sexual contact who is incapable of consent because he or she:

1. Is physically helpless;
2. Is less than twelve (12) years old; or
3. Is mentally incapacitated; or

(c) Being twenty-one (21) years old or more, he or she:

1. Subjects another person who is less than sixteen (16) years old to sexual contact;
2. Engages in masturbation in the presence of another person who is less than sixteen (16) years old and knows or has reason to know the other person is present; or
3. Engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate; or

(d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she, regardless of his or her age, subjects a minor who is less than eighteen (18) years old, with whom he or she comes into contact as a result of that position, to sexual contact or engages in masturbation in the presence of the minor and knows or has reason to know the minor is present or engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate.

#### **KRS 510.120 Sexual abuse in the second degree**

(1) A person is guilty of sexual abuse in the second degree when:

- (a) He or she subjects another person to sexual contact who is incapable of consent because he or she is an individual with an intellectual disability;
- (b) He or she is at least eighteen (18) years old but less than twenty-one (21) years old and subjects another person who is less than sixteen (16) years old to sexual contact; or
- (c) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who is at least eighteen (18) years old and who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual contact.

(2) In any prosecution under subsection (1)(b) of this section, it is a defense that:

- (a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and
- (b) The other person was at least fourteen (14) years old; and
- (c) The actor was less than five (5) years older than the other person.

#### **KRS 510.130 Sexual abuse in the third degree**

Last updated: August 20, 2017

(1) A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent.

(2) In any prosecution under this section, it is a defense that:

(a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and

(b) The other person was at least fourteen (14) years old; and

(c) The actor was less than eighteen (18) years old.

### **KRS 530.020 Incest**

(1) A person is guilty of incest when he or she has sexual intercourse or deviate sexual intercourse, as defined in [KRS 510.010](#), with a person whom he or she knows to be an ancestor, descendant, uncle, aunt, brother, or sister. The relationships referred to herein include blood relationships of either the whole or half blood without regard to legitimacy, relationship of parent and child by adoption, relationship of stepparent and stepchild, and relationship of step-grandparent and step-grandchild.

(2) (a) Incest is a Class C felony if the act is committed by consenting adults.

(b) Incest is a Class B felony if committed:

1. By forcible compulsion as defined in [KRS 510.010\(2\)](#); or

2. On a victim who is:

a. Less than eighteen (18) years of age; or

b. Incapable of consent because he or she is physically helpless or mentally incapacitated.

(c) Incest is a Class A felony if:

1. Committed on a victim less than twelve (12) years of age; or

2. The victim receives serious physical injury.

### **Stalking**

#### **KRS 456.010 Definitions for chapter (effective January 1, 2016)**

(7) "Stalking" refers to conduct prohibited as stalking under [KRS 508.140](#) or [508.150](#);

#### **KRS 508.130 Definitions for KRS 508.130 to 508.150**

As used in KRS 508.130 to 508.150, unless the context requires otherwise:

(1) (a) To “stalk” means to engage in an intentional course of conduct:

1. Directed at a specific person or persons;
2. Which seriously alarms, annoys, intimidates, or harasses the person or persons; and
3. Which serves no legitimate purpose.

(b) The course of conduct shall be that which would cause a reasonable person to suffer substantial mental distress.

(2) “Course of conduct” means a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose. One (1) or more of these acts may include the use of any equipment, instrument, machine, or other device by which communication or information is transmitted, including computers, the Internet or other electronic network, cameras or other recording devices, telephones or other personal communications devices, scanners or other copying devices, and any device that enables the use of a transmitting device. Constitutionally protected activity is not included within the meaning of “course of conduct.” If the defendant claims that he was engaged in constitutionally protected activity, the court shall determine the validity of that claim as a matter of law and, if found valid, shall exclude that activity from evidence.

(3) “Protective order” means:

(a) An emergency protective order or domestic violence order issued under KRS 403.715 to 403.785;

(b) A foreign protective order, as defined in KRS 403.7521(1);

(c) An order issued under KRS 431.064;

(d) A restraining order issued in accordance with KRS 508.155; and

(e) Any condition of a bond, conditional release, probation, parole, or pretrial diversion order designed to protect the victim from the offender.

#### **KRS 508.140 Stalking in the first degree**

(1) A person is guilty of stalking in the first degree,

(a) When he intentionally:

1. Stalks another person; and
2. Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:

- a. Sexual contact as defined in KRS 510.010;
  - b. Serious physical injury; or
  - c. Death; and
- (b)
1. A protective order has been issued by the court to protect the same victim or victims and the defendant has been served with the summons or order or has been given actual notice; or
  2. A criminal complaint is currently pending with a court, law enforcement agency, or prosecutor by the same victim or victims and the defendant has been served with a summons or warrant or has been given actual notice; or
  3. The defendant has been convicted of or pled guilty within the previous five (5) years to a felony or to a Class A misdemeanor against the same victim or victims; or
  4. The act or acts were committed while the defendant had a deadly weapon on or about his person.

#### **KRS 508.150 Stalking in the second degree**

(1) A person is guilty of stalking in the second degree when he intentionally:

- (a) Stalks another person; and
- (b) Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:
  1. Sexual contact as defined in KRS 510.010;
  2. Physical injury; or
  3. Death.

### **Consent**

#### **KRS 510.020 Lack of consent**

(1) Whether or not specifically stated, it is an element of every offense defined in this chapter that the sexual act was committed without consent of the victim.

(2) Lack of consent results from:

- (a) Forcible compulsion;
- (b) Incapacity to consent; or

(c) If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.

(3) A person is deemed incapable of consent when he or she is:

(a) Less than sixteen (16) years old;

(b) An individual with an intellectual disability or an individual that suffers from a mental illness;

(c) Mentally incapacitated;

(d) Physically helpless; or

(e) Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency.

(4) The provisions of subsection (3)(e) of this section shall not apply to persons who are lawfully married to each other and no court order is in effect prohibiting contact between the parties.

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