

*A Guide  
for  
Students*

## INTRODUCTION

This guide is intended to help you further understand the Sexual Misconduct Policy of the College of the Holy Cross. The following examples contained in the Sexual Misconduct Guide for Students are provided for informational purposes only and are neither intended nor should be construed to be an official statement of the College.

## WHAT IS SEXUAL MISCONDUCT?

### Sexual Misconduct

The College of the Holy Cross strictly prohibits sexual misconduct in all forms. Sexual misconduct includes the following:

#### Sexual Misconduct I:

- ◆ Any sexual penetration (anal, oral or vaginal), however slight, with any object or sexual intercourse by a man or woman upon a man or woman without effective consent. *Sexual penetration* includes vaginal or anal penetration by a penis, object, tongue or finger and oral copulation by mouth to genital contact or genital to mouth contact.
- ◆ *Effective consent* is informed, freely and actively given mutually understandable words or actions which indicate a willingness to participate in mutually agreed upon sexual activity. **Consent may never be given by minors (in Massachusetts, those not yet sixteen (16) years of age), mentally disabled persons and those who are incapacitated as a result of alcohol or other drug consumption (voluntary or involuntary) or those who are unconscious, unaware or otherwise physically helpless.** Consent as a result of coercion, intimidation, threat of force or force is not effective consent.

**Example No. 1:** Denise and Bruce met at a movie. They started to date on and off. One night, Denise and Bruce went out drinking. After the bars closed, they went to Denise's room in her hall. Bruce was very drunk, and engaged in sex with Denise, despite her protests. Bruce argues that even if he might have had nonconsensual sex with Denise, it's not his fault because of how drunk he was. He believes he was so drunk he didn't even know he was having sex with her, let alone that it was something she did not want. *Bruce has committed a violation of the Sexual Misconduct I policy. Intoxication of a party is no excuse for violation of the Sexual Misconduct Policy. If it were, drunken people could be excused for drunk driving, because they were so drunk they didn't realize they were driving. Further, Sexual Misconduct I is not an intent-based infraction. Whether or not Bruce intended to commit Sexual Misconduct I is irrelevant. The fact that he had sex with her without her consent is sufficient to satisfy the elements of the offense.*

**Example No. 2:** When Mark and Lynn first met, their relationship was tumultuous. At first, Lynn didn't want to have sex with Mark because she felt like too many people would find out. He kept trying to convince her. He implied that if Lynn didn't sleep with him, he would break up with her. Lynn finally gave in, and had sex with Mark. Several months later, after speaking with friends she realized that she had been coerced. *Lynn did not consent to Mark of her own free will. Whenever a threat is used to make someone consent, it is an invalid consent because it is forced. Consent should be given when the parties want to have sex with each other. Lynn consented not because she wanted to have sex with Mark, but because she feared that he would breakup with her. Mark has committed a violation of the Sexual Misconduct I policy.*

**Example No. 3:** John is a third-year student, Jodie is a second year student. John comes to Jodie's room in her hall with some mutual friends to watch a movie. John and Jodie, who have never met before, are attracted to each other. After the movie, everyone leaves, and John and Jodie are alone. They hit it off, and are soon becoming more intimate. They start to make out. John verbally expresses his desire to have sex with Jodie. Jodie, who was abused by a baby sitter when she was five, and has not had sexual relations, is shocked at how quickly things are progressing. As John takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Jodie has a severe flashback to her childhood trauma. She wants to tell John to stop, but cannot. Jodie is stiff and unresponsive during the intercourse. *John has committed a violation of the Sexual Misconduct I policy. It is the duty of the sexual initiator, John, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, John had no verbal or non-verbal mutually understandable indication from Jodie that she consented to sexual intercourse. Of course, wherever possible, students should attempt to be as clear as possible as to whether or not sexual contact is desired, but students must be aware that for psychological reasons, or because of alcohol or drug use, your partner may not be in a position to provide as clear an indication as the College's Policy requires.*

**Example No. 4:** Pat, a first year student, and Chris, a fourth-year student, are best friends. Pat has always been attracted to Chris, but was already in a relationship. Shortly after breaking up with Robin, Pat was very upset. Pat went to Chris's room crying and clearly intoxicated, mumbling the need to have sex. Chris was confused because Pat was not acting normally. Chris told Pat that the desire to have sex was not mutual and cited their age difference. Pat maneuvered Chris into the corner, pinning Chris to the wall. Feeling intimidated and that Pat would never leave the room, Chris had sex with Pat. *Pat has not*

*directly threatened Chris, but a case could be made that Pat coerced Chris. There is also a strong argument that Pat intimidated Chris. Although Chris might have felt coerced, Pat didn't really say anything that would have been coercive. Pat might argue that Chris consented to having sex. Physical coercion did exist, and it is correctly called intimidation. An intimidated consent is forced because it is not freely given. It is an invalid consent. Pat has committed a violation of the Sexual Misconduct I policy.*

## **Sexual Misconduct II:**

- ◆ Any intentional sexual touching, however slight, with any object by a man or woman upon a man or woman without effective consent. Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another or any other bodily contact in a sexual manner.
- ◆ Any disrobing of another or exposure to another by a man or woman without effective consent.

Example: Jane and John meet at a party. They spend the evening dancing and getting to know each other. John convinces Jane to come up to his room. From 11:00 PM until 3:00 AM, John uses every line he can think of to convince Jane to have sex with him, but she adamantly refuses. John tells Jane he has had feelings for her for quite a while, and that he sees her refusal to have sex as meaning that she must not like him. John then tells Jane that if she does not have sex with him he'll tell everyone they had sex anyway. In response to this threat, Jane concedes to give him a "hand job." Jane would never have done it but for John's incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. John asks himself why else would she have come up to his room alone after the party? He believes that if she really didn't want it, she could have left. *John has committed Sexual Misconduct II. John coerced Jane into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not effective when forced. Sex without effective consent is sexual misconduct.*

## **Sexual Exploitation:**

- ◆ Any conduct in which a student takes advantage of another without his/her consent for his/her own advantage or benefit or to benefit or advantage anyone other than the one being exploited and that behavior does not constitute Sexual Misconduct I or II or Sexual Harassment.

Examples of Sexual Exploitation include prostituting another student, nonconsensual video or audiotaping of sexual activity, going beyond

the boundaries of consent (such as letting your friends surreptitiously watch you having consensual sex), engaging in Peeping Tommerly, knowingly transmitting an STD or HIV to another student and inducing incapacitation with the intent to rape or sexually assault another student (whether or not sexual contact actually takes place).

**Example:** Sean is a third year student. Elizabeth is a second year student. Sean comes to Elizabeth's room in the Residence Hall with some mutual friends to watch a movie. Sean and Elizabeth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Sean and Elizabeth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Sean verbally expresses his desire to have sex with Elizabeth. Elizabeth consents and they have sex. The next night, at a party at Sean's apartment, a group of Elizabeth's friends view a videotape of Sean and Elizabeth having sex. When the friends confront Elizabeth about her behavior, she is shocked and explains that she knew nothing about the tape. Elizabeth files a complaint alleging that Sean violated the Sexual Misconduct policy. *Sean has committed Sexual Exploitation. While Elizabeth consented to having sex with Sean, she did not consent to creating a tape and allowing it to be viewed by others.*

### **Sexual Harassment:**

- ◆ Any type of sexually oriented conduct, whether intentional or not, that is unwelcome and has the purpose or effect of creating an environment that is hostile, offensive or coercive to a reasonable woman or man, as the case may be.

For more information see the Harassment Policy in the Student Handbook.



## SAMPLE FORMS

The following pages are samples of forms that may be used in the reporting of an incident of sexual misconduct.

The first, Report of Incident of Sexual Misconduct, is an anonymous report which can be completed by any individual who receives a report of sexual misconduct. It will be used to collect information about incidents of sexual misconduct on campus. It is not an official complaint form. A student who wishes to file an official complaint of sexual misconduct should contact the Judicial Affairs Director at 793-2669, Hogan 109, or any of the college personnel listed in the resource list on pages 46 and 47 of this booklet.

The second is a statement which allows a reported survivor of an act of sexual misconduct to request that the College not pursue an investigation and resolution of the report. This is intended to be used only after the survivor has had the opportunity to consider all options and to consult those individuals they have chosen for advice and counsel. The third is the Third Party Reporting Form. The purpose of this form is to ensure that the Vice President for Student Affairs/Dean of Students has been duly notified of any and all acts of sexual misconduct reported. This reporting form is solely for the purpose of collecting data for statistical reporting required by the Jeanne Clery Act as amended by the Higher Education Amendments of 1998. The implementation of the attached reporting form allows the College of the Holy Cross to accurately account for all cases reported to College officials involving acts of sexual misconduct (sexual assault and dating violence). However, more importantly, this reporting form also serves as a guideline to assist the victim/survivor in reporting their experience as well as providing them with important information on options and possible resources to access with the understanding that the name of the victim/survivor of the incident may be anonymous in this report unless determined otherwise by the Vice President for Student Affairs/Dean of Students.



## Report of Incident of Sexual Misconduct

This form has been designed to collect relevant information about reported acts of Sexual Misconduct that affect members of our community. It is an anonymous report to be completed by any individual who receives a report of Sexual Misconduct. The location and date of the reported Sexual Misconduct are the coordinating pieces of information. A generic location description is acceptable, e.g., Residence Hall, rather than a specific hall and room number.

1. Date of Report: \_\_\_\_\_

2. Date of Reported Incident: \_\_\_\_\_

3. Location of Incident: \_\_\_\_\_

4. Gender of the Survivor: \_\_\_\_\_

Residence Hall: \_\_\_\_\_ Off-Campus: \_\_\_\_\_

Student:  Faculty:  Staff:  Other:

5. Gender of the Assailant: \_\_\_\_\_

Relationship to Survivor: Acquaintance:  Stranger:

Student:  Faculty:  Staff:  Other:

6. Type of Reported Act of Sexual Misconduct:

Sexual Misconduct I: \_\_\_\_\_ (Oral, vaginal, anal)

Sexual Misconduct II: \_\_\_\_\_

Sexual Exploitation: \_\_\_\_\_

Sexual Harassment: \_\_\_\_\_

7. Reported to Public Safety/Police: Yes: \_\_\_\_\_ No: \_\_\_\_\_

8. Report submitted by: \_\_\_\_\_

9. Title: \_\_\_\_\_

10. Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Send the completed form marked CONFIDENTIAL to: Dean of Students/  
Vice President of Student Affairs.



## College of the Holy Cross

### STATEMENT

I \_\_\_\_\_ understand that the College of the Holy Cross has offered to me as a reported survivor of an act of sexual misconduct a full investigation and resolution of my report.

Having had a full opportunity to consider the ramifications of such a request, and after consulting those of my choice for advice and counsel in this matter, I freely and voluntarily choose to request that the College of the Holy Cross NOT pursue a full investigation and resolution of my report.

Furthermore, I refuse and decline to provide sufficient information on which the College could act. I further understand that by preventing the College from acting at this time, the College may not be able to provide a remedy at such later time, if any, that I may change my mind and request a full investigation and resolution of this matter.

I understand fully the College's obligations under federal law to investigate and resolve all reported acts of sexual misconduct to the extent possible and absolve the College of any liability to me, my agents, heirs, successors and assigns.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at Worcester, MA

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Witnessed:

Signature: \_\_\_\_\_ Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Printed Name: \_\_\_\_\_



**College of the Holy Cross**  
**Third Parting Reporting Form: Sexual Assault/Harassment**

Name of Victim/Survivor: \_\_\_\_\_ Today's Date: \_\_\_\_\_

Victim/Survivor Wishes to Remain Anonymous

**Incident Report Profile**

Is this the first time the victim/survivor is reporting this incident to a Holy Cross employee?

Yes       No       Don't Know

Did the incident occur while the victim/survivor was affiliated with Holy Cross College?

Yes       No

Victim/Survivor's sex:     female       male

Victim/Survivor's Current Age: \_\_\_\_\_

Victim/Survivor's Age at Time of Incident: \_\_\_\_\_

Victim's current academic status:

part-time     full-time     alumni     Class of \_\_\_\_\_

Date of the Incident: \_\_\_\_\_      Location of the Incident:     on campus     off campus  
 Where: \_\_\_\_\_

Type of Assault/Incident (if not listed, describe):

- Sexual Misconduct I
- Sexual Misconduct II
- Sexual Exploitation
- Sexual Harassment
- Other: \_\_\_\_\_

*Refer to Sexual Misconduct Definition Sheet*

Type of Coercion/Force Used (check all that apply):

- Verbal
- Physical
- Weapon
- Life Threatening
- Abduction
- Other: \_\_\_\_\_

Was the victim/survivor under the influence of alcohol or other drugs at the time of incident?     Yes     No     Unknown

Was the offender under the influence of alcohol or other drugs at the time of incident?     Yes     No     Unknown

Number of offenders: \_\_\_\_\_

Sex of offenders:

- Male
- Female
- Multiple Male
- Multiple Female
- Male and Female

Offenders' affiliation to the College of the Holy Cross

- Student
- Faculty
- Staff
- Alumni
- None
- Don't Know

Reporter's Printed Name: \_\_\_\_\_ Signature: \_\_\_\_\_

On Campus Extension: \_\_\_\_\_ Date: \_\_\_\_\_

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## Intervention and Follow-up

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**What counseling services has the victim/survivor already used?**

- Holy Cross Counseling Center
- Holy Cross Chaplains' Office
- Other: \_\_\_\_\_
- None

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**Has the victim/survivor received medical treatment?**     Yes     No     Don't Know

(If yes, please note name of treatment facility.) \_\_\_\_\_

**Was sexual assault evidence collected?**

- 
- Yes
- 
- No
- 
- Uncertain
- 
- Don't Know

**Does the victim/survivor plan to take action against the offender(s)?**

- 
- Yes
- 
- No
- 
- Uncertain
- 
- Don't Know

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**If yes, check all actions planned:**

- Anonymous Report     Office of Judicial Affairs
- Report to Legal Authorities: check one...     Public Safety     Worcester Police Department

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**Please check options provided below:**

- Referral to Counseling Center: 508.793.3363
- Referral to Health Services: 508.793.2276
- Referral to Chaplains' Office: 508.793.2448
- Referral to Office of Student Affairs: 508.793.2414
- Referral to Office of Judicial Affairs: 508.793.2669
- Referral to Public Safety: 508.793.2224
- Referral to Worcester Police Dept. and/or Sexual Assault Line: (8am-Midnight) 508.799.8661 or (Midnight-8am) 508.799.8600
- Referral to District Attorneys, *Child Abuse and Sexual Assault Unit*: 508.792.0214
- Referral to Daybreak, Resources for Women & Children Hotline
- Referral to UMASS Health Care, Memorial and/or University Campus: 508.334.1000
- Referral to Worcester Medical Center: 508.363.5000
- Worcester Pastoral Counseling Center: 508.757.0376
- Provided Phone #'s to Rape Crisis Center of Central Massachusetts / 24 hour hotline:  
508.799.5700 or 1.800.870.5905 or 1.800.223.5001 (Español) or 1.800.688.4889 (TTY)
- Provided Educational Materials
- Helped to Contact Family or Friend
- Other: \_\_\_\_\_

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**Suggested Supportive Comments (Check all that apply):**

- Told survivor it wasn't their fault
- Told survivor that you are glad they told you
- Told survivor they have a lot of courage to come forward
- Encouraged survivor to seek medical attention if they haven't yet
- Encouraged survivor to seek counseling if they haven't yet
- Encouraged survivor to seek support from friends, family and/or other agencies

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**Rape Trauma Syndrome Assessment (Check all observed):**

- Reported guilt
- Reported sleep/eating disturbances
- Reported and/or observed depression
- Reported difficulties with relationships
- Reported difficulties in concentration
- Reported difficulties with classes and/or job
- Reported and/or observed fear
- Reported and/or observed flashbacks
- Other: \_\_\_\_\_

*Submit this document in a sealed envelope marked confidential to the Dean of Students, located in 109 Hogan Campus Center.*