

*Sexual
Misconduct
Policy*

Statement of Intent

The College of the Holy Cross is a community of trust in the Jesuit tradition whose very existence depends on strict adherence to standards of conduct set by its members. Among these are standards regarding human sexuality, any expression of which must affirm the integrity and dignity of oneself and others.

Sexual misconduct in all forms violates the sanctity of the human body and spirit and will not be tolerated within our community. Some forms of sexual misconduct, often referred to as sexual assault or rape, are punishable by both civil and criminal legal action. **Sexual misconduct is considered to be one of the most serious violations of the Community Standards of the College of the Holy Cross.**

Students at the College of the Holy Cross are responsible for being familiar with and abiding by the standards of conduct set forth herein.

Statement of Policy

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.

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.

- ◆ *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.

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.

SEXUAL HARASSMENT

- ◆ Any type of sexually oriented conduct, whether intentional or not, that is unwelcome and has the purpose or effect of creating an employment or academic environment that is hostile, offensive or coercive to a reasonable woman or man, as the case may be. For more information see the Sexual Harassment and Harassment Policies as published in the Student Handbook, which are available in the Office of Student Affairs, Hogan 109.

What Effective Consent Means:

The College of the Holy Cross strongly encourages students who choose to engage in sexual behavior to verbally communicate their intentions and consent as clearly as possible.

In the absence of mutually understandable words or actions, it is the responsibility of the initiator, or the person who wants to engage in the specific sexual activity, to make sure that he/she has the consent from his/her partner(s). **Consent to some form of sexual activity does not necessarily consent to other forms of sexual activity.** Mutually understandable consent must be obtained by the initiator at every stage of sexual interaction.

Consent is mutually understandable when a reasonable person would consider the words and/or actions of the parties to have expressed a mutually understandable agreement between them to do the same thing, in the same way, at the same time, with one another.

Consent which is obtained through the use of fraud or force (actual or implied), whether that force be physical force, threats, intimidation or coercion, is not effective consent.

Consent may never be given by minors (in Massachusetts, those not yet sixteen (16) years of age), those who are mentally disabled or by one who is incapacitated as a result of alcohol or other drug consumption (voluntary and involuntary) or those who are unconscious, unaware or otherwise physically helpless. **A person who knows or should reasonably have known that another person is incapacitated may not engage in sexual activity with that person.** Incapacitation means being in a state where a person lacks the capacity to appreciate the fact that the situation is sexual, or cannot appreciate (rationally and reasonably) the nature and/or extent of the situation.

Additional Clarifying Rules for Sexual Misconduct:

- ◆ A person who is the object of sexual aggression is not required to physically or otherwise resist a sexual aggressor;
- ◆ Silence, previous sexual relationships, and/or a current relationship with the initiator (or anyone else) may not, in themselves, be taken to imply consent;
- ◆ Intentional use of alcohol or other drugs does not excuse a violation of the Sexual Misconduct Policy;
- ◆ Attempts to commit sexual misconduct are also prohibited under this Policy, as is aiding the commission of sexual misconduct as an accomplice;
- ◆ Consent to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly (because you cannot be expected to read the mind of your sexual partner(s)), and all sexual activity must cease;
- ◆ An “intent to rape” is not required under the Sexual Misconduct I policy. Unlike murder, for which there must be intent to kill, Sexual Misconduct I is not an intent-based concept. The requisite intent for Sexual Misconduct I is demonstrated by engaging in the act of intercourse intentionally.
- ◆ Consent has an expiration date. Consent lasts for a reasonable time, depending on the circumstances.

A person’s state of incapacity is a subjective determination that will be made after the incident in light of all of the facts available because people reach incapacitation at different points and as a result of different stimuli. They exhibit incapacity in different ways. The following factors bear on incapacity:

- ◆ Body weight, height and size;
- ◆ Tolerance for alcohol and other drugs;
- ◆ Amount and type of alcohol or other drugs consumed, and the mixture taken;
- ◆ Amount of food intake prior to consumption;
- ◆ Voluntariness of consumption;

- ◆ Vomiting;
- ◆ Propensity for blacking out (mentally or physically);
- ◆ Genetics.

Alcohol related incapacity results from a level of alcohol ingestion that is more severe than impairment, being under the influence, drunkenness or intoxication. It is less severe than alcohol poisoning or overdose, which may lead to coma or death. Evidence of incapacity may be detected from context clues, such as:

- ◆ Slurred speech;
- ◆ Bloodshot eyes;
- ◆ The smell of alcohol on their breath;
- ◆ Shaky equilibrium;
- ◆ Vomiting;
- ◆ Outrageous or unusual behavior;
- ◆ Unconsciousness.

None of these facts, except for unconsciousness, will constitute – in and of itself – incapacitation. **Indications of consent are irrelevant if the initiator knows or should reasonably have known of the incapacity of another person.**

Statement on Confidentiality

The Holy Cross community understands that all parties involved in the report of a violation of the sexual misconduct policy experience significant distress, whether they be the victim, the accused or any other individual associated with the report. All parties involved are expected to be treated with respect and dignity and the community will provide a safe place where the individuals may receive appropriate personal support.

If any person involved in the report of sexual misconduct desires confidential support, they should speak with professional staff in the Counseling Center, Chaplain's Office or Health Services. Staff in Health Services are required by federal law to pass along nonpersonally identifiable statistical information to Public Safety. The only information that will be released is that an incident was reported, the type of incident and the general location of the incident (i.e., "on campus" or "off campus"; no address will be given). Statistics given to Public Safety will be made available through publication in the Annual Campus Security Report.

Students have the right under federal law (Title IX) to expect that reports of sexual misconduct will be taken seriously by the College of the Holy Cross. At the request of the student making the report, or when deemed necessary to protect the interests of the College community, reports will be investigated and properly resolved through administrative procedures. Officials of the College, such as the

Residence Life staff, deans or other administrators, shall be available to any student seeking information or wishing to report an incident of sexual misconduct.

For An Individual Reporting Sexual Misconduct

The College of the Holy Cross recognizes that a student reporting an incident of sexual misconduct may desire confidentiality and may not want the College or Public Safety to investigate and attempt to resolve the incident. For any student who so requests, officials of the College will maintain confidentiality to the extent permitted by law. However, the College reserves the right to investigate and pursue resolution when it is deemed necessary to protect the interests of the College community.

A student who initially requests confidentiality and who requests that the College not investigate or pursue resolution may later request that the College investigate and pursue resolution. Reports filed with Public Safety will be noted in a log that is made public within two (2) business days of the date of the report. No names or other information that could reveal the identity of the individuals involved will be made public in the Public Safety log.

Students should be aware that administrators (with the exception of Chaplains and Counseling Center Staff) must fulfill separate requirements as a matter of law. All personally identifiable information shall be kept confidential, but statistical information must be passed along to Public Safety regarding the type of the incident and its general location for publication in the Annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime to ensure greater community safety. In addition, College administrators must issue timely warnings for incidents reported to them that continue to pose a substantial threat to bodily harm or danger to members of the campus community.

For An Individual Accused of Sexual Misconduct

Confidentiality with respect to a person accused of having violated the sexual misconduct policy is governed by the Family Educational Rights and Privacy Act (FERPA), also known as the Buckley Amendment. FERPA provides that personally identifiable information maintained in the educational records of an institution shall not be disclosed, except as otherwise specified by law.

Jurisdiction

College jurisdiction and discipline shall be limited to conduct which occurs on College premises or which occurs off College premises and adversely affects members of the College community and/or pursuit of the College's mission.

Period of Limitation

Any member of the College community may file a complaint against a student for allegedly violating the sexual misconduct policy. The term “student” includes all persons (other than faculty, staff or administrators) taking or auditing courses at the College, either full-time or part-time. Persons who are not officially enrolled for a particular term but who have a continuing relationship with the College are considered students. The term “member of the College community” includes any person who is a student, faculty member, administrator/staff member or any other person employed by the College. A person’s status in a particular situation shall be determined by the Vice President for Student Affairs.

Statement of Rights

It is the goal of the College of the Holy Cross to ensure that students have access to needed resources, services and information.

Normally, the College assures all students the following:

- ◆ To be treated with respect by College officials.
- ◆ To be notified of available spiritual and personal counseling, mental health, medical or student services, both on campus and in the community.
- ◆ To receive notification of options for and available assistance in changing academic and living situations after an alleged incident of sexual misconduct, if so requested and if such changes are reasonably available (no charges or investigation, campus or criminal, need occur before this option is available).
- ◆ To have an advisor present during a Community Standards Board hearing.
- ◆ To be informed of the outcome and sanction of any disciplinary hearing involving sexual misconduct.
- ◆ To not have irrelevant prior sexual history admitted in a Community Standards Board hearing.
- ◆ To elect not to have reports of sexual misconduct resolved through the informal resolution.
- ◆ To be free from any behavior that may be construed by the College to be intimidating or harassing.

For an Individual Reporting Sexual Misconduct:

- ◆ To have reports of sexual misconduct responded to in accordance with Community Standards and Judicial Procedures for Students.
- ◆ To appeal the finding and sanction of the Community Standards Board in accordance with the standards for appeal established in the Addendum to the Student Handbook.

- ◆ To not have a report investigated unless the College deems it necessary to protect the interests of the College community.

For An Individual Accused of Sexual Misconduct:

- ◆ To be notified of a report of sexual misconduct in accordance with Community Standards and Judicial Procedures for Students.
- ◆ To be heard in accordance with the Community Standards and Judicial Procedures for Students.