MODEL CLERY ACT ASR TEMPLATE LANGUAGE TO COMPLY WITH VAWA SECTION 304

SEXUAL MISCONDUCT

[Most campuses will include or link to their sexual misconduct/Title IX policies in the ASR. This section supplements that disclosure].

[College’s/University’s] [insert name of student code of conduct] prohibits sexually violent acts, termed “Sexual Misconduct” by the [College/University], which can be crimes as well. Sexual misconduct includes non-consensual sexual intercourse, non-consensual sexual contact, sexual exploitation, interpersonal/relationship violence, sex/gender-based stalking, and sexual harassment. While [College/University] utilizes different standards and definitions than the [State] Code, sexual misconduct often overlaps with the crimes of rape, sexual assault, sexual harassment, stalking, dating violence, and domestic violence. Victims of these behaviors are protected by federal laws, specifically Title IX [link to campus Title IX website here], and the Clery Act, which mandates the contents of this report.

It is the policy of [College/University] to notify [local/campus] law enforcement when sexual misconduct occurs, typically without providing identifying information about the incident, unless a victim wishes that information to be shared, or an emergency requires disclosure. [Alt: It is the policy of the [College/University] not to notify local/campus law enforcement when sexual misconduct occurs, unless a victim wishes or there is an emergency threat to health or safety]. Victims have the option to notify law enforcement directly, or to be assisted in doing so by campus authorities. If requested, campus officials can facilitate reporting to campus or local law enforcement, but may also respect a victim’s request not to do so.

In an effort to reduce the risk of sexual misconduct as well as the crimes of rape, sexual assault, sexual harassment, stalking, dating violence, and domestic violence occurring among its students, the [College/University] utilizes a range of campaigns, strategies, and initiatives to promote awareness, educational, risk reduction, and prevention programming.

It is the policy of the [College/University] to offer programming to identify and prevent domestic violence, dating violence, sexual assault (including stranger and known offender assaults), and stalking each year. Educational programs are offered to raise awareness for all incoming students and employees, and are often conducted during new student and new employee orientation and throughout an incoming student’s first semester. Programs and other campaigns offered throughout the year to all students and employees include strong messages regarding not just awareness, but also primary prevention (including normative messaging, environmental management, and bystander intervention), and discuss institutional policies on sexual misconduct as well as the [State] definitions of domestic violence, dating
violence, sexual assault, stalking, and consent in reference to sexual activity. Programs also offer information on risk reduction that strives to empower victims, how to recognize warning signals and how to avoid potential attacks, and do so without victim-blaming approaches. [Insert examples, table, or list of annually-provided programs]. Programs are informed by evidence-based research and/or are assessed for their effectiveness.

Bystander engagement is encouraged through safe and positive intervention techniques and by empowering third-party intervention and prevention such as calling for help, using intervention-based apps, identifying allies, and/or creating distractions. Bystander empowerment training highlights the need for those who intervene to ensure their own safety in the intervention techniques they choose, and motivates them to intervene as stakeholders in the safety of the community when others might choose to be bystanders.

In the event that sexual misconduct, gender-based violence, or the crimes of sexual assault, stalking, dating violence, or domestic violence do occur, the [College/University] takes the matter very seriously. The [College/University] employs interim protection measures such as interim suspensions and/or no contact orders in any case where a student’s behavior represents a risk of violence, threat, pattern, or predation. If a student is accused of sexual misconduct, other gender-based violence, or the crimes of rape, sexual assault, sexual harassment, stalking, dating violence, or domestic violence, s/he is subject to action in accordance with the [insert name of student code of conduct] in the student handbook. A student wishing to officially report such an incident may do so by contacting [insert contact or contacts]. Anyone with knowledge about sexual misconduct, gender-based violence, or the crimes of rape, sexual assault, sexual harassment, stalking, dating violence, or domestic violence is encouraged to report it immediately. Protective measures for victims are available from the campus whether a victim chooses to report to local and/or campus law enforcement, and irrespective of whether a victim pursues a formal complaint through the [College/University] resolution process.

If you are the victim of sexual misconduct, gender-based violence, or the crimes of rape, acquaintance rape, sexual assault, sexual harassment, stalking, dating violence, or domestic violence, some or all of these safety suggestions may guide you after an incident has occurred:

1. Go to a safe place and speak with someone you trust. Tell this person what happened. If there is any immediate danger, contact [insert contact] if you are on campus or call 911 if you are off campus.

2. Consider securing immediate professional support (e.g., counseling, victim advocacy, medical services, etc.) to assist you in the crisis.

3. If you are on campus during regular business hours, you may go to [insert name and location for counseling services], as well as to [name and contact information for victim advocate] for support and guidance. These are both confidential resources. After regular
business hours, or in any situation where a victim wishes, local resources are also available and may be able to provide confidential assistance [list local resources and contact information here].

4. For your safety and well-being, immediate medical attention is encouraged. Further, being examined as soon as possible, ideally within 120 hours, is important in the case of rape or sexual assault. The hospital will arrange for a specific medical examination at no charge or can work with you to arrange state reimbursement.

☐ To preserve evidence, it is recommended that you do not bathe, shower, douche, eat, drink, smoke, brush your teeth, urinate, defecate, or change clothes before receiving medical attention. Even if you have already taken any of these actions, you are still encouraged to have prompt medical care, and evidence may still be recoverable.

☐ Typically, if police are involved or will be involved, they will obtain evidence from the scene, and it is best to leave things undisturbed until their arrival. They will gather bedding, linens or unlaunedered clothing, and any other pertinent articles that may be used for evidence. It is best to allow police to secure items in evidence containers, but if you are involved in transmission of items of evidence, such as to the hospital, secure them in a clean paper bag or clean sheet to avoid contamination.

☐ If you have physical injuries, photograph or have them photographed, with a date stamp on the photo.

☐ Record the names of any witnesses and their contact information. This information may be helpful as proof of a crime, to obtain an order of protection, or to offer proof of a campus policy violation.

☐ Try to memorize details (e.g., physical description, names, license plate number, car description, etc.), or even better, write notes to remind you of details, if you have time and the ability to do so.

☐ If you obtain external orders of protection (e.g., restraining orders, injunctions, protection from abuse), please notify [Campus Police/Public Safety] or the campus Title IX Coordinator so that those orders can be observed on campus.

5. Even after the immediate crisis has passed, consider seeking support from [insert name of counseling services], the [campus victim’s advocate], and/or the [local rape crisis center].

6. Contact the [insert contact and contact information] if you need assistance with
[College/University-related] concerns, such as no-contact orders or other protective measures. The [insert contact for Coordinator, Deputy and/or Advocate] will also assist in any needed advocacy for students who wish to obtain protective or restraining orders from local authorities. The [College/University] is able to offer reasonable academic supports, changes to living arrangements, transportation resources or modifications, escorts, no contact orders, counseling services access, and other supports and resources as needed by a victim. The [College/University] is able to offer information about legal assistance, visa/immigration assistance, and student financial aid considerations for victims.

LEGAL DEFINITIONS

Rape is generally defined by states as forced sexual intercourse. It may also include situations where the victim is incapable of giving consent due to incapacitation by means of disability or alcohol or other drugs. Many rapes are committed by someone the victim knows, such as a date or friend.

Under [State] law, rape is defined as [Example: sexual intercourse against the will of the victim that can occur under a variety of circumstances, including]:

• [Example: Where the victim is prevented from resisting due to alcohol or drugs.

• Where the assailant uses physical force or the threat of force to overpower and control the victim.

• Where the victim fears that s/he or another will be injured if the victim does not submit.

• Where the victim is at the time unconscious of the nature of the act, and this is known to the assailant.

• Where the victim is incapable of giving legal consent due to a mental disorder or developmental or physical disability, and this is known or reasonably should be known to the assailant.

• Where the act is accomplished by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another person.

• Where the assailant uses duress, such as a direct or implied threat of hardship or retribution, to coerce the victim.

• Where the assailant uses force, fear, or threats to accomplish sexual intercourse against the will of the spouse. This provision of the law is known as the “spousal rape law.”]
The complete [State] rape and sexual assault offense definitions are: [insert below or in appendix]

OTHER SEXUAL OFFENSES

[Use this generic text or copy in state law.] Other sexual offenses include the following: sodomy (forced anal intercourse); oral copulation (forced oral-genital contact); rape by a foreign object (forced penetration by a foreign object, including a finger); and sexual battery (the unwanted touching of an intimate part of another person for the purpose of sexual arousal).

In [State], sexual consent is defined as: [insert definition]

[Insert campus policy definitions of sex offenses here.]

[Link to campus policies and procedures here.]

Sexual Harassment [use university policy here.]

Sexual harassment is a form of misconduct that undermines the integrity of the academic environment. It is the policy of the [College/University] that sexual harassment is prohibited. All members of the [College/University] community, especially officers, faculty, and other individuals who exercise supervisory authority, have an obligation to promote an environment that is free of sexual harassment. Sexual harassment is defined as:

[Insert campus policy here.]

Any complaints or inquiries regarding sexual harassment of a student by an officer, faculty member, or staff member should be brought to the immediate attention of [insert contact]. Any complaints or inquiries regarding sexual harassment of a student by another student should be brought to the immediate attention of [insert contact]. The [College/University] will investigate such claims promptly and thoroughly. If, for any reason, a student wishes to complain or inquire regarding sexual harassment, but feels it would not be appropriate to raise such issues with the [positions named above], the student may inquire or complain to any Department Chair or any officer of the [College/University] at the level of Vice President or above, and such inquiries or complaints will receive a prompt and thorough investigation. If harassment is established, the [College/University] will discipline the offender. Disciplinary action for violations of this policy can range from verbal or written warnings, up to and including immediate termination from employment or dismissal from the [College/University] for serious or repeated violations.

Sex Offenders
In accordance to the Campus Sex Crimes Prevention Act of 2000, which amends the Jacob
Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, the Jeanne Clery Act and the Family Educational Rights and Privacy Act of 1974, the [College/University] is providing a link to the [State] State Sex Offender Registry. All sex offenders are required to register in the state of [State] and to provide notice of each institution of higher education in [State] at which the person is employed, carries out a vocation, or is a student. [Insert link here.]

In addition to the above notice to the State of [State], all sex offenders are required to deliver written notice of their status as a sex offender to the [College/University’s] [insert position] no later than three (3) business days prior to their enrollment in, employment with, volunteering at, or residence in the [College/University]. Such notification may be disseminated by the [College/University] to, and for the safety and well-being of, the [College/University] community, and may be considered by the [College/University] for enrollment and discipline purposes.

[Insert state definitions of domestic violence, dating violence, and stalking here or in appendix.]

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**CAMPUS PROCEDURES FOR ADDRESSING SEXUAL MISCONDUCT, DATING VIOLENCE, DOMESTIC VIOLENCE, STALKING, SEXUAL HARASSMENT, AND OTHER ACTS OF SEX AND GENDER DISCRIMINATION**

For offenses including sexual misconduct or other gender based violence, which typically include the crimes of domestic violence, dating violence, sexual harassment, sexual misconduct, and stalking, sanctions range from warning to expulsion. Serious and violent incidents and acts of non-consensual sexual intercourse (the policy equivalent to the crime of rape) usually result in suspension, expulsion, or termination of employment. Lying to investigators (and/or failing to participate in an investigation) can results in additional consequences under the Code of Student Conduct. [Link to College/University sanction statement here.]

Procedurally, when the [College/University] receives a report of sexual misconduct, gender-based violence, or other sex or gender discrimination, the campus Title IX Coordinator is notified. If the victim wishes to access local community agencies and/or law enforcement for support, the [College/University] will assist the victim in making these contacts. The Title IX Coordinator will offer assistance to victims in the form of interim or long-terms measures such as opportunities for academic accommodations; changes in housing for the victim or the responding student; visa and immigration assistance; changes in working situations; and other assistance as may be appropriate and available on campus or in the community (such as no contact orders, campus escorts, transportation assistance, targeted interventions, etc.). If the victim so desires, that individual will be connected with a counselor on- or off-campus, as well as an on-or off-campus victim’s advocate. No victim is required to take advantage of these services and resources, but the [College/University] provides them in the hopes of offering help and support without condition or qualification. A summary of rights, options, supports, and
procedures, in the form of this document, is provided to all victims, whether they are students, employees, guests, or visitors.

When appropriate upon receipt of notice, the Title IX Coordinator will cause a prompt, fair, and impartial process to be initiated, commencing with an investigation, which may lead to the imposition of sanctions based upon a preponderance of evidence (what is more likely than not), upon a responding student or other accused individual. Procedures detailing the investigation and resolution processes of the [College/University] can be found online here: [Insert link]. The Coordinator is ultimately responsible for assuring in all cases that the behavior is brought to an end, the [College/University] acts to reasonably prevent its recurrence, and the effects on the victim and the community are remedied. The Coordinator is also responsible for assuring that training is conducted annually for all advocates, investigators, hearing officers, panelists, and appeals officers that encompass a hearing process that protects the safety of victims and promotes accountability. Training will focus on sexual misconduct, domestic violence, dating violence, sexual assault, stalking, sexual harassment, retaliation, and other behaviors that can be forms of sex or gender discrimination covered by Title IX and Clery Act. Training will help those decision-makers in the process of protecting the safety of victims and promoting accountability for those who commit offenses.

The investigation and records of the resolution conducted by the [College/University] are maintained confidentially. Information is shared internally between administrators who need to know, but a tight circle is kept. Where information must be shared to permit the investigation to move forward, the person bringing the accusation will be informed. Privacy of the records specific to the investigation is maintained in accordance with [State] law and the federal FERPA statute. Any public release of information needed to comply with the open crime logs or timely warning provisions of the Clery Act will not include the names of victim or information that could easily lead to a victim’s identification. Additionally, the [College/University] maintains privacy in relation to any accommodations or protective measures afforded to a victim, except to the extent necessary to provide the accommodations and/or protective measures. Typically, if faculty members or administrators are asked to provide accommodations for a specific student, they are told that such accommodations are necessary under Title IX or the Clery Act, but they are not given any details of the incident, or what kind of incident it is. Irrespective of state law or public records access provisions, information about victims is maintained privately in accordance with Title IX and FERPA.

In any complaint of sexual misconduct, sexual assault, stalking, dating violence, domestic violence, or other sex or gender-based discrimination covered under the federal law, Title IX, the person bringing the accusation and the responding party are entitled to the same opportunities for a support person of their choice throughout and to fully participate in the process, including any meeting, conference, hearing, appeal, or other procedural action. The role of advisors is described in detail here [link]. Once complete, the parties will be informed, in writing, of the outcome, including the finding, the sanctions (if any), and the rationale therefor. Delivery of this outcome to the parties will occur without undue delay between
notifications. All parties will be informed of the [College/University’s] appeal processes, and their rights to exercise a request for appeal. Should any change in outcome occur prior to finalization, all parties will be timely informed in writing, and will be notified when the results of the resolution process become final.

Both Title IX and the Clery Act provide protections for whistleblowers who bring allegations of non-compliance with the Clery Act and/or Title IX to the attention of appropriate campus administrators. The [College/University] does not retaliate against those who raise concerns of non-compliance. Any concerns should be brought to the immediate attention of the campus Title IX Coordinator [name/title] and/or to officials of the U.S. Department of Education.

[If your ASR lists all Clery Act crime definitions in one location, these should be incorporated into that section. Otherwise, they can be listed here.]

Reporting of statistics under the Clery Act uses federal offenses definitions that allow comparability across campuses, regardless of the state in which the campus is located. These definitions are as follows:

**Sex Offenses:** Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

A. *Fondling* — The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

B. *Incest* — Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.

**Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

A. The existence of such a relationship shall be determined 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.

B. For the purposes of this definition:

i. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
ii. Dating violence does not include acts covered under the definition of domestic violence.

C. For the purposes of complying with the requirements of this section and § 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

**Domestic Violence:** A felony or misdemeanor crime of violence committed:

A. By a current or former spouse or intimate partner of the victim;

B. By a person with whom the victim shares a child in common;

C. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;

D. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or

E. By any other person against an adult or youth victim who is protected

**Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

A. Fear for the person’s safety or the safety of others; or

B. Suffer substantial emotional distress.

C. For the purposes of this definition, *course of conduct* means 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.