

WEST TEXAS A&M UNIVERSITY

## Guide on Sexual Misconduct Campus Policies, Procedures and Victim Services for Faculty, Staff and Students



*January 1, 2016*



## YOUR RIGHTS

West Texas A&M University strives to provide members of the campus community with fair and equitable resolution processes that include both formal and informal options.

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### REPORTING

Any student who personally experiences sex discrimination, including but not limited to sexual harassment, sexual assault, sexual exploitation, and sexual violence by employees, students, and third parties is strongly urged to report the discrimination to:

- Any faculty member or other employee of WTAMU and seek immediate assistance
- Emergency – 911
- University Police Department – 806-651-2300
- Family Violence/Rape Crisis Line – 806-374-5433, or
- Title IX Coordinator 806-651-3199 or email [TitleIX@wtamu.edu](mailto:TitleIX@wtamu.edu).

Any faculty member or other employee of WTAMU who witnesses sexual discrimination of or receiving notification of alleged violation(s) should report the alleged violation to:

- Immediate supervisor
- University Police Department - 806-651-2300
- Director of Human Resources, or
- Title IX Coordinator 806-651-3199 or email [TitleIX@wtamu.edu](mailto:TitleIX@wtamu.edu). (\*All employees of WTAMU are considered “responsible employees”).

Any student of WTAMU who witnesses sexual discrimination of or receiving notification of alleged violation(s) should report the alleged violation to:

- Any faculty member or other employee of WTAMU
- University Police Department - 806-651-2300
- Vice President for Student Affairs,

- Director of Human Resources, or
- Title IX Coordinator 806-651-3199 or email [TitleIX@wtamu.edu](mailto:TitleIX@wtamu.edu).

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## **FAIRNESS**

- All members of the campus community have the right to have reported incidents addressed according to the published University procedures.
- All parties have equal opportunities to have a support person of their choosing present throughout all resolution proceedings (including intake, interviews, hearings, etc.). This person can be an advisor, advocate, attorney, family member, friend, faculty member, etc.
- All parties have the right to written notice of the outcome of sexual misconduct resolution proceedings.
- Reporting parties and witnesses will receive amnesty for minor infractions (e.g., alcohol and drug violations) that are secondary to incidents of sexual misconduct.
- Reporting parties, their supporters, and witnesses have a right to be free from retaliation.

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## **SUPPORT**

- Students have a right to be notified of their ability to access campus counseling and health services.
- Students and employees have a right to be notified of on-and off-campus supportive resources.
- All parties involved in sexual misconduct allegations will receive the information and assistance needed to effectively participate in all proceedings.
- Reporting parties have the right to seek orders of protection, no-contact orders, restraining orders, or similar lawful orders issued by criminal, or civil, courts, and may seek the help of University Police in requesting and/or enforcing.

## REMEDIES

WTAMU may take whatever steps are deemed necessary to appropriately respond to allegations of sexual misconduct, protect students' rights, and keep members of the campus community safe from further harm. Measures include, but are not limited to:

- Issuing interim suspensions pending an investigation.
- Reporting incidents to local police and/or prosecutors.
- Referring to counseling and health services.
- Referring to the Employee Assistance Program.
- Providing education to the community.
- Altering the housing situation of the reporting or responding party.
- Altering work arrangements for employees.
- Providing campus escorts.
- Providing transportation assistance.
- Implementing contact limitations between the parties.
- Offering adjustments to academic deadlines, course schedules, etc.
- These measures are available regardless of whether a reporting party seeks formal resolution or makes a crime report.

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## IF YOU HAVE EXPERIENCED SEXUAL MISCONDUCT

1. Go to a safe location as soon as you are able.
2. Seek immediate medical attention if you are injured, or believe you may have been exposed to an STI/STD or potential pregnancy.
3. Contact any of the following for immediate assistance:
  - a. Title IX Coordinator at 806.651.3199. Regular business hours, M–F
  - b. University Police at 806.651.2300 24 hours/7 days a week
  - c. UPD Victim Assistance Coordinator at 806.651.2300. Regular business hours, M–F\*
  - d. Student Medical Services, at 806.651.3287. Regular business hours, M–F\*
  - e. WTAMU Counseling Service at 806.651.2340. Regular business

hours, M–F\*

f. Office of Student Affairs, at 806.651.2050. Regular business hours, M–F

g. Rape Abuse and Incest National Network at 800.656.4673\*

h. Family Support Services of Amarillo, at 806.342.2500

Note that campus officials may contact on-call staff from other departments when their offices are closed or they are otherwise unavailable to assist immediately.

If you are off-campus and experiencing an emergency situation, you can call local police by dialing 911. You may also call the Canyon police department’s non-emergency line at 806.655.5005

4. It is important to preserve physical evidence that may include tissue and fluid samples, evidence of violence, sheets, towels, clothing, etc. You may choose to avoid washing, bathing, urinating, etc., until after being examined at the hospital, if possible. Because evidence of a sexual assault can deteriorate quickly, you may choose to seek a medical exam as soon as possible. Evidence collection should be completed within 120 hours of an assault, but fluids, hair samples, and DNA can be collected for a long time thereafter. Even if you have washed, evidence can often still be obtained. After 120 hours, it may still be helpful to have medical attention, even if you are not trying to obtain evidence of an assault. Sexual assault nurse examiners (SANE) are trained in the collection of forensic evidence, and can check for injuries and exposure to sexually transmitted diseases. If you are still wearing any clothes worn during the assault, wear them to the hospital, but bring a change of clothes, as the hospital will keep the clothes you are wearing as evidence. If you have changed clothes, bring the ones you were wearing during the assault to the hospital in a clean paper (not plastic) bag or a wrapped in a clean sheet. Leave sheets/towels at the scene of the assault. Police will collect them. Typically, police will be called to the hospital to take custody of the rape kit, but it is up to you whether you wish to speak with them or file a criminal complaint.

5. Choose how to proceed. You have options, and are encouraged to contact the Victim Assistance Coordinator to discuss your options: 1) Do nothing until you are ready; 2) Pursue resolution by the University; and/or 3) Initiate criminal proceedings; and/or 4) Initiate a civil process against the perpetrator. You may pursue whatever combination of options is best for you. If you wish to have an incident investigated and resolved by the University, students should contact the Title IX Office. Employees should contact Human Resources. University procedures will be explained. Those who wish incidents to be handled criminally should contact University Police or local police where the assault occurred. A campus official is available to accompany students in making such reports, if desired. Contact the Title IX office for more information.

\*Denotes that this resource is confidential

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## **ABOUT CONFIDENTIALITY**

***To make informed choices, be aware of confidentiality and privacy issues, as well as WTAMU's mandatory reporting requirements.***

## **CONFIDENTIAL REPORTING**

Only certain employees may keep reports of violations of this regulation confidential: licensed health care personnel and licensed sexual assault advocates, when acting in this capacity as part of their official employment. All other employees informed of possible violations of this regulation should advise the reporter that they cannot keep the information confidential and are required to report it. The employees should inform the reporter where confidential guidance can be obtained, such as the student counseling center or employee assistance program. To the extent possible the member will protect the privacy of all parties to the report.

## MANDATED REPORTING

- All West Texas A&M University employees who are not designated above as confidential, are mandated reporters and are responsible for ensuring their work and educational environments are free from illegal discrimination, sexual harassment and/or related retaliation. When alleged or suspected illegal discrimination, sexual harassment and/or related retaliation is experienced or observed by or made known to an employee, the employee is responsible for reporting that information.
- An individual's request to withhold his or her name, the name of the alleged violator, or a request not to investigate or seek action against the alleged violator will be considered in the context of the member's duty to provide a safe and nondiscriminatory work and educational environment. This may require that the member take actions when the reporter requests no action, if violence is involved, if the threat of violence exists, or when required by law, as in the case of elderly or child abuse. A request to withhold information or not to investigate the alleged misconduct may limit the member's ability to respond to a complaint.
- Reporters may, but cannot be required to, submit a complaint or report with any law enforcement authority. Employees receiving a report under this regulation may not disclose the identity of the individual subjected to the reported conduct to any law enforcement authority unless expressly authorized by the individual subjected to the alleged illegal discrimination, sexual harassment and/or related retaliation or when an imminent threat to health or safety may exist or when required by law. Employees receiving relevant information should inform the individual or office designated by the member per Section 1.1.
- Reporters may, at any time, file a complaint with any local, state or federal civil rights office, including the Equal Employment Opportunity Commission, the Texas 08.01.01 Civil Rights Compliance, Workforce Commission's Civil Rights Division and the U.S. Department of Education's Office of Civil Rights.

- In cases where your request for confidentiality is granted, the University will offer you available resources, supports, and remedies. You are not obligated to pursue formal resolution in order to access the resources that are available. If the University decides that it is obligated to pursue a formal resolution based on the notice you have given, you are not obligated to participate in the resolution process. However, the ability of the University to enforce its policies or provide some remedies may be limited as a result of your decision not to participate.

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## CONSENT

***Knowing, voluntary, and clear permission, through word or action, to engage in mutually agreed upon sexual activity or contact.***

Since different people may experience the same interactions differently, each party is responsible for making sure that partners have provided ongoing, clear consent to engaging in any sexual activity or contact.

A person may withdraw consent at any time during sexual activity or contact through words or actions. If that happens, the other party must immediately cease the activity or contact. Pressuring another person into sexual activity can constitute coercion, which is also considered to be sexual misconduct.

Silence or the absence of resistance alone does not constitute consent. A victim is not required to resist or say “no” for an offense to be proven.

Consent to some forms of sexual activity (e.g., kissing, fondling, etc.) should not be construed as consent for other kinds of sexual activities (e.g., intercourse).

Being or having been in a dating relationship with the other party does not mean that consent for sexual activity exists.

Previous consent to sexual activity does not imply consent to sexual activity in the future.

To legally give consent in Texas individuals must be at least 17 years old.

## **FORCE**

Force is defined as direct or indirect use of physical violence and/or imposing physically on someone to gain sexual access. Force, unless part of mutually-permissible kink, is a clear demonstration of a lack of consent.

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## **INCAPACITATION**

Incapacitation is defined as a state in which individuals are unable to make rational, reasonable decisions because they lack the capacity to understand the “who, what, when, where, why, or how” of a situation or interaction. Individuals cannot give sexual consent if they can’t understand what is happening, or if they are disoriented, helpless, asleep, or unconscious for any reason. That applies even if it is because they voluntarily consumed alcohol or drugs. Unless consent is “knowing,” it is not valid. Those engaging in sexual activity who know or should have known that the other party is incapacitated are engaging in sexual misconduct. The possession, use, distribution, and/ or administration of any incapacitating substances is prohibited.

The fact that a responding party was intoxicated, and thus did not realize the reporting party was incapacitated, does not excuse sexual misconduct.

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## **SEXUAL MISCONDUCT VIOLATIONS**

***The following are the definitions of conduct prohibited by the Code of Student Life and Civil Rights Compliance 08.01.01. All of the following carry sanctions ranging from warning through expulsion/termination.***

## **DATING VIOLENCE**

An act, other than a defensive measure to protect oneself, by an individual against a victim with whom there is or was a romantic or intimate relationship or marriage, and that is intended to result in physical harm, bodily injury assault, or sexual assault or that is a threat that reasonably results in a fear of such harm.

## **DOMESTIC OR FAMILY VIOLENCE**

An act against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault, or the threat of which reasonably causes fear of such harm.

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## **HOSTILE ENVIRONMENT**

A hostile environment is created when sexual harassment is sufficiently severe, or persistent or pervasive, and objectively offensive that it unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the institution's educational [and/or employment], social, and/or residential program.

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## **SEXUAL EXPLOITATION**

A situation in which an individual takes non-consensual or abusive sexual advantage of another for his or her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. For example, sexual exploitation could include such actions as secretly videotaping sexual activity, voyeurism, sexually-based stalking, invasion of sexual privacy, and knowingly transmitting a sexually transmitted infection to another person.

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## **SEXUAL HARASSMENT**

Unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal or physical conduct of a sexual nature constitute sexual harassment when this conduct is so severe, persistent or pervasive that it explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work or educational environment. Unwelcome means that an individual did not request or invite it and considers the conduct to be undesirable or offensive. Submission to the conduct or failure to complain does not always mean that the conduct was welcome. Sexual harassment includes non-consensual sexual con-

tact, non-consensual sexual intercourse, sexual exploitation, and stalking, dating violence, and domestic violence based on sex.

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## **STALKING**

Knowingly engaging in conduct, including following a person, that one reasonably believes is threatening the bodily injury or death of themselves, a member of their family or household, or their property, (Texas Penal Code 42.072)

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## **QUID PRO QUO SEXUAL HARASSMENT**

“This” for “that”; i.e., unwelcome sexual advances, requests for sexual favors or other verbal, physical, or non-physical conduct of a sexual nature, the submission to or rejection of which may results in an adverse educational or employment action.

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## **INCIDENTS INVOLVING MINORS**

Please be aware that institutional duties with respect to minors (those under the age of 18) may require reporting sexual misconduct incidents to state agencies and/or local law enforcement. As a result, confidentiality cannot be guaranteed in sexual misconduct incidents involving minors.

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## **RISK REDUCTION**

### **RISK REDUCTION FOR INTIMATE PARTNER VIOLENCE, STALKING, SEXUAL HARASSMENT, AND SEXUAL VIOLENCE**

While victim-blaming is never appropriate and WTAMU fully recognizes that only those who commit sexual misconduct are responsible for their actions, WTAMU provides the suggestions that follow to help individuals reduce their risk of being victimized and their risk of committing acts of sexual misconduct.

## **REDUCING THE RISK OF VICTIMIZATION**

- ✓ Make any limits/boundaries you may have known as early as possible.
  - ✓ Clearly and firmly articulate consent or lack of consent.
  - ✓ Remove yourself, if possible, from an aggressor's physical presence.
  - ✓ Reach out for help, either from someone who is physically nearby or by calling someone. People around you may be waiting for a signal that you need help.
  - ✓ Take affirmative responsibility for your alcohol and/or drug consumption. Alcohol and drugs can increase your vulnerability to sexual victimization.
  - ✓ Look out for your friends, and ask them to look out for you. Respect them, and ask them to respect you, but be willing to challenge each other about high-risk choices.
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## **REDUCING THE RISK OF BEING ACCUSED OF SEXUAL MISCONDUCT**

- ✓ Show your potential partner respect if you are in a position of initiating sexual behavior.
- ✓ If a potential partner says "no," accept it and don't push. If you want a "yes," ask for it, and don't proceed without clear permission.
- ✓ Clearly communicate your intentions to your potential sexual partners, and give them a chance to share their intentions and/or boundaries with you.
- ✓ Respect personal boundaries. If you are unsure what's OK in any interaction, ask.
- ✓ Avoid ambiguity. Don't make assumptions about consent, about whether someone is attracted to you, how far you can go with that person, or if the individual is physically and mentally able to consent. If you have questions or are unclear, you don't have consent.

- ✓ Don't take advantage of the fact that someone may be under the Show your potential partner respect if you are in a position of initiating sexual behavior.
- ✓ If a potential partner says "no," accept it and don't push. If you want a "yes," ask for it, and don't proceed without clear permission.
- ✓ Clearly communicate your intentions to your potential sexual partners, and give them a chance to share their intentions and/or boundaries with you.
- ✓ Respect personal boundaries. If you are unsure what's OK in any interaction, ask.
- ✓ Avoid ambiguity. Don't make assumptions about consent, about whether someone is attracted to you, how far you can go with that person, or if the individual is physically and mentally able to consent. If you have questions or are unclear, you don't have consent.
- ✓ Don't take advantage of the fact that someone may be under the influence of drugs or alcohol, even if that person chose to become that way. Others' loss of control does not put you in control.
- ✓ Be on the lookout for mixed messages. That should be a clear indication to stop and talk about what your potential partner wants or doesn't want to happen. That person may be undecided about how far to go with you, or you may have misread a previous signal.
- ✓ Respect the timeline for sexual behaviors with which others are comfortable, and understand that they are entitled to change their minds.
- ✓ Recognize that even if you don't think you are intimidating in any way, your potential partner may be intimidated by or fearful of you, perhaps because of your sex, physical size, or a position of power or authority you may hold.
- ✓ Do not assume that someone's silence or passivity is an indication of consent. Pay attention to verbal and non-verbal signals to avoid misreading intentions.
- ✓ Understand that consent to one type of sexual behavior does not automatically grant consent to other types of sexual behaviors. If you are unsure, stop and ask.
- ✓ Understand that exerting power and control over another through

## **PROCEDURES**

*WTAMU's procedures are detailed fully at: <http://www.wtamu.edu/administration/human-resources-title-ix.aspx>*

## **INTAKE**

The Title IX Coordinator will assist the reporting party with making choices and accessing resources. Assuming the reporting party chooses to move forward with a campus resolution, the next step is a preliminary inquiry.

All resolutions will be conducted by campus officials who receive annual training on issues related to domestic violence, dating violence, sexual assault, and stalking, and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

The resolution process is confidential. The institution will protect the confidentiality of victims, consistent with federal law. Title IX-related resolutions are not subject to publicly available recordkeeping provisions. Any release of information about a resolution will be accomplished without the inclusion of identifying information about the victim, to the extent permissible by law.

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## **PRELIMINARY INQUIRY**

An initial determination is made about the allegations and whether to move them forward to a formal investigation. This decision is made by the Title IX coordinator, taking into account the nature of the allegations and the reporting party's wishes. If the decision is made to move forward, the coordinator refers the allegations to investigators.

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## **INVESTIGATIONS**

An investigative model is used to resolve allegations. Trained investigators will provide an investigation that is prompt, thorough, reliable,

equitable, fair, and impartial. They will interview reporting and responding parties and witnesses, and prepare reports with their findings and sanctioning recommendations. Information about all the steps in the investigative process is available at: <http://www.wtamu.edu/administration/human-resources-title-ix.aspx>.

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## **STANDARD OF EVIDENCE**

The University uses a preponderance of evidence standard. Decision-makers consider whether, given the available credible evidence, it is more likely than not that a violation occurred.

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## **PAST HISTORY**

The past sexual history or character of an individual is not considered unless it is determined to be highly relevant. All such information sought to be entered for consideration by a party or the University will be presumed irrelevant until evidence of its relevance is offered. The existence of a pattern of behavior by a responding party may be relevant to the finding and sanction imposed. Both parties will be notified in advance if such information has been deemed relevant and will be considered during the process.

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## **FINAL DETERMINATION**

The parties will be informed in writing of the outcome of the resolution, without significant delay between the notifications to each party. This notice will include the procedures for appealing the decision, any change to the results that occurs prior to the time that such results become final, and when results are considered to be final.

## **APPEALS**

All [student, faculty, staff] parties involved in sexual misconduct proceedings may appeal decisions in accordance with their appropriate appeals policy.

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## **PROGRAMS**

### **BYSTANDER INTERVENTION**

West Texas A&M offers bystander intervention programming to all new students in an effort to ensure that each member of the campus community is invested in creating a safe campus environment for themselves and others. Program participants are instructed on safe options for preventing harm and intervening when a risk of sexual misconduct exists.

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### **VAWA/CLERY TRAINING**

Incoming students are provided with education and training on awareness and risk reduction of sexual violence, dating violence, domestic violence, stalking, and consent in compliance with the Violence Against Women Act and the Clery Act.

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### **ONGOING CAMPAIGNS**

Ongoing awareness and prevention campaigns are provided throughout the school year to students, faculty, and staff.

**Title IX Coordinator** Becky Lopez, 806.651.3199 [titleix@wtamu.edu](mailto:titleix@wtamu.edu)  
Killgore Research Center Room 147

WTAMU Counseling Service at 806.651.2340. Regular business hours, M–F\*  
Office of Student Affairs, at 806.651.2050. Regular business hours, M–F  
Rape Abuse and Incest National Network at 800.656.4673\*  
Family Support Services of Amarillo, at 806.342.2500

West Texas A&M University will provide equal opportunity to all employees, students, applicants for employment and admission and the public.

**OTHER RESOURCES (\* Denotes that resource is confidential.)**

University Police at 806.651.2300 24 hours/7 days a week  
UPD Victim Assistance Coordinator at 806.651.2300.  
Regular business hours, M–F\*  
Student Medical Services, at 806.651.3287. Regular business hours, M–F\*