



Policy on Sexual Misconduct, Relationship Violence, and Stalking

Effective August 19, 2015

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I. INTRODUCTION

A. PURPOSE AND OVERVIEW

The University of Tennessee, Knoxville and the University of Tennessee Institute of Agriculture are committed to creating and maintaining a learning, living, and working environment free from Sexual Misconduct, Relationship Violence, Stalking, and Retaliation. Those prohibited types of conduct will not be tolerated and will be grounds for disciplinary action up to, and including, permanent dismissal from the University and termination of employment.

Sexual Misconduct, Relationship Violence, Stalking, and Retaliation are collectively referred to in this policy as Prohibited Conduct. This policy: describes Prohibited Conduct; explains multiple options for reporting Prohibited Conduct; sets forth the procedures the University will follow for promptly, thoroughly, and equitably investigating and resolving reports of Prohibited Conduct in order to eliminate Prohibited Conduct, prevent its recurrence, and address its effects on Complainants and/or the University community; identifies resources for Complainants; describes the University's prevention and awareness programs relating to Prohibited Conduct; and implements the requirements of Title IX, Title VII, and the Clery Act with respect to Prohibited Conduct.

B. SCOPE AND APPLICABILITY; DEFINITIONS

1. Individuals Covered by This Policy

This policy applies to the conduct of and protects:

- students of the University of Tennessee, Knoxville and the University of Tennessee Institute of Agriculture;
- employees of the University of Tennessee, Knoxville and the University of Tennessee Institute of Agriculture; and
- University volunteers, University contractors, and third parties participating in a University program or activity.

This policy applies regardless of the Complainant's or the Respondent's sex, sexual orientation, or gender identity. Prohibited Conduct can be committed by anyone (regardless of sex, sexual orientation, or gender identity), can occur between strangers or acquaintances, and can occur between people of the same or of different sexes, sexual orientations and/or gender identities.

2. Jurisdiction

The University's jurisdiction concerning misconduct by students committed away from University-controlled property is outlined in **Hilltopics**. With respect to employees and other non-students, this policy applies to conduct which: (i) occurs on University-controlled property; (ii) occurs in the context of a University employment or education program or activity; and/or (iii) occurs outside the context of a University employment or education program or activity, but has continuing adverse effects on University-controlled property or in any University employment or education program or activity.

3. Definitions

Key terms used in this policy (such as Sex Discrimination, Sexual Misconduct, and Relationship Violence) are defined in either **Section II** or **Appendix A** and are capitalized throughout this policy.

C. TITLE IX; TITLE IX COORDINATOR; DEPUTY TITLE IX COORDINATORS

The University is a recipient of federal financial assistance for education activities, and in accordance with the provisions of Title IX, all of its education programs and activities are subject to the prohibition against Sex Discrimination. The University's **Nondiscrimination Statement** (<http://oed.utk.edu/statement/>) prohibits Sex Discrimination in any University education program or activity, including employment and admissions. Title IX applies to all students, employees, applicants for admission or employment, volunteers and

visitors at the University and prohibits unequal treatment on the basis of sex including Sexual Harassment, Sexual Assault, and Sexual Exploitation, which are all types of Sex Discrimination.

Reports or complaints of Sex Discrimination or Prohibited Conduct, or questions about the University's policies, procedures, resources, or programs concerning any of those issues, may be directed to the University's Title IX Coordinator or one of the University's Deputy Title IX Coordinators. The responsibilities of the Title IX Coordinator and the Deputy Title IX Coordinators are summarized below and are described in more detail in other sections of this policy. The Title IX Coordinator and the Deputy Title IX Coordinators generally are available Monday – Friday on University business days from 8:00 a.m. to 5:00 p.m.

The University's Title IX Coordinator is:

Jennifer L. Richter
Title IX Coordinator
Director, Office of Equity and Diversity
1840 Melrose Avenue
Knoxville, TN 37996
865-974-2498 (phone)
865-974-0943 (fax)
jrichter@utk.edu
oed.utk.edu

The Title IX Coordinator's responsibilities include, without limitation:

- coordinating and maintaining ultimate oversight responsibility with respect to the University's compliance with Title IX;
- receiving, tracking, and monitoring reports of Sex Discrimination, including Prohibited Conduct, and maintaining records of such reports;
- interacting with the Sexual Assault Response Team;
- ensuring prompt, thorough, and equitable investigations and resolutions of reports of Sex Discrimination, including Prohibited Conduct, which are usually conducted by the Office of Equity and Diversity (if the Respondent is an employee or other non-student) or the Office of Student Conduct (if the Respondent is a student);
- identifying and addressing patterns or systemic problems concerning Prohibited Conduct;
- coordinating training, prevention, and awareness efforts concerning Prohibited Conduct;
- supporting the Deputy Title IX Coordinators;
- providing information to students, employees, and third parties concerning this policy;
- coordinating the provision of Interim Measures to students and employees;
- making appropriate reports (that do not personally identify Complainants) to UTPD for purposes of including incidents in the University's annual Clery Act crime statistics, if applicable; and
- being available to meet with students, employees, and others, including, without limitation, Complainants, Respondents, and Reporters of violations of this policy.

The Title IX Coordinator is assisted by two trained Deputy Title IX Coordinators, who also are accessible to members of the University community for consultation and assistance.

The University's Deputy IX Coordinator for Students is:

Ashley Blamey
Director, Center for Health Education and Wellness
1800 Volunteer Blvd., Suite 201
Knoxville, TN 37996
(865) 974-5725 or (865) 974-HELP
ashleyblamey@utk.edu
wellness.utk.edu

The Deputy Title IX Coordinator for Students assists with Title IX compliance for certain matters involving students, including, without limitation:

- coordinating the Sexual Assault Response Team;
- coordinating and maintaining oversight responsibility within the Division of Student Life with respect to compliance with Title IX;
- receiving, tracking, and monitoring reports of Prohibited Conduct involving students;
- identifying and addressing patterns or systemic problems concerning Prohibited Conduct involving students, in coordination with the Title IX Coordinator;
- coordinating training, prevention, and awareness efforts for students concerning Prohibited Conduct;
- assisting the Title IX Coordinator;
- providing information to students about this policy;
- coordinating the provision of Interim Measures to students; and
- being available to meet with students, including, without limitation, Complainants, Respondents, and Reporters of violations of this policy.

The University's Deputy Title IX Coordinator for Athletics is:

Mike Ward
Senior Associate Athletics Director for Administration and Sports Programs
Brenda Lawson Athletic Center
1551 Lake Loudon Boulevard
(865) 974-9190
mikeward@utk.edu

The Deputy Title IX Coordinator for Athletics assists with Title IX compliance for certain matters, including, without limitation:

- coordinating and maintaining oversight responsibility within the Department of Intercollegiate Athletics with respect to compliance with Title IX, including gender equity;
- receiving reports of Sex Discrimination, including Prohibited Conduct, involving student-athletes, and referring those reports to the Title IX Coordinator, Deputy Title IX Coordinator for Students, or the Sexual Assault Response Team;
- identifying and addressing any patterns or systemic problems concerning Prohibited Conduct committed by or against student-athletes, in coordination with the Title IX Coordinator;
- coordinating training, prevention, and awareness efforts for students and employees involved in intercollegiate athletics concerning Prohibited Conduct;
- assisting the Title IX Coordinator and the Deputy Title IX Coordinator for Students;
- providing information to students and employees involved in intercollegiate athletics on this policy;
- coordinating the provision of Interim Measures to students and employees involved in intercollegiate athletics; and
- being available to meet with students and employees involved in intercollegiate athletics, including, without limitation, Complainants, Respondents, and Reporters of violations of this policy.

Inquiries or complaints concerning Title IX also may be referred to the United States Department of Education:

United States Department of Education
Office for Civil Rights
61 Forsyth Street, S.W., Suite 19T10
Atlanta, GA 30303-8927
(404) 974-9406 (phone)
(404) 974-9471 (fax)
OCR.Atlanta@ed.gov

D. SEXUAL ASSAULT RESPONSE TEAM

The Sexual Assault Response Team (S.A.R.T.) is a multidisciplinary team of University employees who work collaboratively to address situations involving Prohibited Conduct in which a student is a Complainant and/or a Respondent by:

- serving as a primary option for reporting Prohibited Conduct for which a student is a Complainant and/or a Respondent;
- utilizing a victim-centered approach to create a support network for Complainants and focusing on minimizing the trauma experienced by Complainants in a sensitive and proficient manner;
- assisting the Complainant in accessing the support resources identified in **Section V**, including Interim Measures, and informing the Complainant of the right to report a crime to campus or local law enforcement and provide the Complainant with assistance in reporting if requested by the Complainant;
- coordinating the provision of Interim Measures to students;
- providing reports to UTPD for Clery Act reporting in a manner that does not personally identify Complainants;
- promoting the consistent application of this policy to all students and enabling the University to respond promptly, thoroughly, and equitably to eliminate Prohibited Conduct, prevent its recurrence, and eliminate its effects; and
- answering questions about the University's policies, procedures, or programs concerning Prohibited Conduct.

A member of the S.A.R.T. may be contacted by calling **(865) 974-HELP (4357)**, Monday-Friday on University business days from 8:00-5:00 p.m. More information about the S.A.R.T. can be found at: wellness.utk.edu/sexual-assault-2/sexual-assault-response-team-sart/. Members of the S.A.R.T. have received training to work with Complainants.

E. QUESTIONS ABOUT THIS POLICY; ADDITIONAL INFORMATION ABOUT PROHIBITED CONDUCT

Questions about this policy should be directed to the Title IX Coordinator or a Deputy Title IX Coordinator. Additional information about the University's procedures and programs relating to Prohibited Conduct can be found online at: sexualassault.utk.edu.

II. PROHIBITED CONDUCT

This policy prohibits the following conduct defined below:

- Sexual Misconduct
 - Sexual Assault
 - Sexual Harassment
 - Sexual Exploitation
 - Sex Offense Crime
- Relationship Violence
 - Dating Violence
 - Domestic Violence
 - Relationship Violence Crime
- Stalking
- Retaliation

A. DEFINITIONS OF PROHIBITED CONDUCT

1. **Sexual Misconduct:** A term that encompasses Sexual Harassment, Sexual Assault, Sexual Exploitation, and all other words and/or conduct that would constitute a Sex Offense Crime.
 - (i) **Sexual Assault:** Engaging in Sexual Contact or Sexual Intercourse with another person without the Consent of that person.
 - (1) **Sexual Contact:** The intentional touching of another person (including another person's clothing) in a sexual manner with any part of one's body or with any object. Sexual Contact also includes intentionally causing another person to touch themselves (including their clothing) in a sexual manner. Whether a touching was done in a sexual manner is determined from the perspective of a sober, objectively reasonable person in the same situation and with the same sex, gender identity, and sexual orientation as the person who was touched.
 - (2) **Sexual Intercourse:** The penetration, no matter how slight, of the vagina or anus with any body part or object; or oral penetration by a sex organ of another person.
 - (ii) **Sexual Harassment:** Sexual Harassment is a form of Sex Discrimination. To determine whether conduct constitutes Sexual Harassment, consideration shall be given to the totality of the circumstances, including without limitation: the context in which the conduct and/or words occurred; and the frequency, nature, and severity of the conduct and/or words.
 - (1) With respect to an employee's conduct directed toward another employee, Sexual Harassment means: "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature . . . when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment." (*The source of this definition is: **University of Tennessee System Human Resources Policy 0280** ("Sexual Harassment") (http://policy.tennessee.edu/hr_policy/hro280/)*)
 - (2) With respect to an employee's conduct directed toward a student or another non-employee, Sexual Harassment means: "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (1) submission to such conduct is made either explicitly or implicitly a term or

condition of an individual's participation in an educational program; (2) submission to or rejection of such conduct by an individual is used as the basis for evaluation or advancement in an educational program; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's educational performance or creates an intimidating, hostile or offensive educational environment.” *(This definition is based on: **University of Tennessee System Human Resources Policy 0280** (“Sexual Harassment”) (http://policy.tennessee.edu/hr_policy/hro280/))*

(3) With respect to the conduct of a student or other non-employee, Sexual Harassment is defined as unwelcome conduct of a sexual nature that is so severe or pervasive, and objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall the term “Sexual Harassment” be construed to prohibit speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech). Sexual Harassment may include, for example, unwelcome sexual advances, requests for sexual favors, and acts of Sexual Assault. *(This definition is based on **Standard of Conduct Number 6** for students, a copy of which can be found in **Hilltopics**.)*

(iii) Sexual Exploitation: An act or attempted act by a person for the purpose of sexual arousal or gratification, financial gain, or other personal benefit through the abuse or exploitation of another person’s sexuality. Examples of Sexual Exploitation include, without limitation: observation of a person who is undressed or engaging in Sexual Contact or Sexual Intercourse, without the Consent of all persons being observed (in a place where a person has a reasonable expectation of privacy); creation or distribution of images, photography, an audiotape, or videotape of Sexual Contact, Sexual Intercourse, or a person’s intimate parts (i.e., genitalia, groin, breasts, buttocks) without the Consent of all persons being recorded or photographed; prostituting another person; allowing others to observe, either in person or electronically, Sexual Contact or Sexual Intercourse without the Consent of all persons involved in the Sexual Contact or Sexual Intercourse (in a place where a person has a reasonable expectation of privacy); and knowingly exposing another person to a sexually transmitted infection without informing the other person that one has a sexually transmitted infection.

(iv) Sex Offense Crime: This term is defined in **Appendix A**.

2. Relationship Violence: A term that encompasses Dating Violence, Domestic Violence, and all other words and/or conduct that would constitute a Relationship Violence Crime. Relationship Violence may be a form of Sex Discrimination prohibited by federal and state antidiscrimination laws, such as Title VII and Title IX.

(i) 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 of the violence. The existence of such a relationship shall be determined based on the reporting party’s statement and with consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship. 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.

(ii) Domestic Violence: A felony or misdemeanor crime of violence committed: (1) by a current or former spouse or intimate partner of the victim; (2) by a person with whom the victim shares a child in common; (3) by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; (4) 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 (5) by any other person against an

adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

(iii) **Relationship Violence Crime:** This term is defined in **Appendix A**.

3. **Stalking:** Stalking includes both the crime of stalking in Tennessee and the crime of stalking defined by the Clery Act:

(i) **Tennessee Crime:** The crime of stalking in Tennessee is defined in Tennessee Code Annotated § 39-17-315.

(ii) **Clery Act Crime:** Engaging in a Course of Conduct directed at a specific person that would cause a reasonable person to: (1) fear for the person's safety or the safety of others; or (2) suffer Substantial Emotional Distress. 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 another person, or interferes with another person's property;
- "reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim; and
- "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Stalking may be a form of Sex Discrimination prohibited by federal and state antidiscrimination laws, such as Title VII and Title IX.

4. **Retaliation:** An act or attempted act taken because of a person's participation in a protected activity that would discourage a Reasonable Person from engaging in protected activity. Protected activity includes a person's Good Faith: (1) opposition to Prohibited Conduct; (2) report of Prohibited Conduct to the University; (3) participation (or reasonable expectation of participation) in any manner in an investigation, proceeding, hearing, or Interim Measure under this policy; or (4) exercise of rights or responsibilities under any provision of the Clery Act. Retaliation is a violation of this policy regardless of whether the underlying allegation of a violation of this policy is ultimately found to have merit. Retaliation should be reported in the same manner in which Prohibited Conduct is reported under this policy (**Section III**). When the University receives notice of alleged Retaliation, the University will take immediate and appropriate steps to investigate the alleged Retaliation. The University will take strong responsive action if it determines that Retaliation occurred, which may include disciplinary action independent of any sanction or Interim Measures imposed in response to the underlying allegation of misconduct. The University generally will investigate and resolve reports of Retaliation in the same manner in which it handles reports of other Prohibited Conduct under this policy (**Section V**).

B. RELATED DEFINITIONS: CONSENT; COERCION; INCAPACITATION; GOOD FAITH; REASONABLE PERSON

1. **Consent (or Consensual):** Consent is an affirmative and voluntary agreement by a person to engage in a specific sexual act.¹

¹ The definition of Consent for the purposes of criminal law in the State of Tennessee is explained in **Appendix F**. The information provided in this policy concerning Tennessee law is provided in accordance with the Clery Act. It is not intended, nor should it be construed, as legal advice.

Consent Must Be Obtained

Consent must be obtained, and the responsibility for obtaining Consent rests with the individual who voluntarily and physically initiates a specific sexual act, even if the other person initiated the sexual encounter. One's own use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain Consent from the other person. Moreover, another person's use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain Consent from that person.

Consent Must Be Affirmative

Consent must be affirmative, which means that Consent is communicated only through words and/or non-verbal actions that convey a clear agreement to engage in a specific sexual act. Whether person has communicated an agreement to engage in a specific sexual act generally is evaluated from the perspective of what a Reasonable Person who perceived the individual's words and/or non-verbal actions would have understood; however, in the context of a long-term relationship between persons that has involved sexual activity and a pattern of communicating consent, whether Consent has been communicated may be evaluated based on a subjective standard (i.e., what did the specific person who initiated the specific sexual act conclude?). A verbal "no" (or words equivalent to "no") or the nonverbal communication of "no," even if it sounds or appears insincere or indecisive, always means that Consent has not been communicated, or if previously communicated has been withdrawn. The absence of a verbal "no" or the absence of a nonverbal communication of "no" does not necessarily mean that Consent has been communicated. Because interpreting non-verbal actions may lead to misunderstanding and a violation of this policy, persons subject to this policy are strongly encouraged to err on the side of caution and not rely solely on the non-verbal actions of another person in concluding that the other person has communicated Consent. The University urges persons subject to this policy to communicate with one another before engaging in a sexual act to ensure that they both wish to engage in the same sexual act.

Consent cannot be obtained by or inferred from:

- silence that is not accompanied by non-verbal actions conveying a clear agreement to engage in a particular sexual act;
- Consent communicated by the other person on a previous occasion;
- Consent communicated to another person;
- the other person's failure to resist physical force (however, for purposes of this policy, the other person's resistance to physical force will be viewed as a clear demonstration that the person has not communicated Consent);
- the sexual arousal of the other person;
- a current or previous dating, romantic, intimate, or sexual relationship with the other person;
- currently or previously cohabitating with the other person;
- the other person's attire;
- the other person's reputation;
- the other person's giving or acceptance of gifts; or
- the other person's extension or acceptance of an invitation to go to a private residence, room, or other location.

Consent Must be Voluntary

Consent is not voluntary if it is obtained by Coercion. Nor is Consent voluntary if it is obtained from a person who is Incapacitated if one knows (or a Reasonable Person would know) that the other person is Incapacitated. Because the Incapacitation of another person may be difficult for one to discern, persons subject to this policy are strongly encouraged to err on the side of caution (i.e., when in doubt, assume that the other person is Incapacitated and therefore unable to give Consent.)

Consent Must be Continual

Consent must be continual, which means that consent must exist from the beginning to the end of each sexual encounter and for each specific sexual act that occurs during a sexual encounter. A person has a right to change his/her mind; thus, Consent to engage in a specific sexual act may be withdrawn by a person at any time. A withdrawal of Consent is communicated through clear

words and/or clear non-verbal actions that indicate that a person no longer agrees to engage in a specific sexual act. Once a person's withdrawal of Consent has been communicated, the other person must cease the specific sexual act and must obtain Consent before reinitiating the specific sexual act or any other sexual act. Consent is automatically withdrawn when a person becomes Incapacitated. Consent to one type of Sexual Contact or Sexual Intercourse (e.g., oral intercourse) does not constitute or imply Consent for another type of Sexual Contact or Sexual Intercourse (e.g., vaginal intercourse), whether during a sexual encounter or during a previous sexual encounter. The University urges persons subject to this policy to communicate with one another throughout a sexual encounter to ensure that any progression of sexual activity is done with Consent.

2. **Coercion:** Words and/or conduct that, viewed from the perspective of a Reasonable Person, substantially impair(s) a person's ability to voluntarily choose whether to engage in a particular sexual act (e.g., Sexual Contact or Sexual Intercourse). Coercion is something more than mere seduction or persuasion.

Coercion includes, without limitation:

1. physical force; and
2. words and/or conduct that would cause a Reasonable Person to fear imminent: harm to the person's health, safety, or property or that of a third person; threat of the loss or impairment of a job benefit; threat of the loss or impairment of an academic benefit; kidnapping of the person or a third person; or disclosure of sensitive personal information (e.g., disclosure of a person's sexual orientation, gender identity, or gender expression).

3. **Incapacitated (or Incapacitation):** A temporary or permanent physical or mental state in which a person cannot make informed, rational judgments (e.g., judgments concerning Sexual Contact, Sexual Intercourse, or Sexual Exploitation) because: the person lacks the physical or mental capacity to understand the nature or consequences of their words and/or conduct; and/or the person is unable to physically or verbally communicate Consent. Incapacitation can be voluntary or involuntary. Incapacitation is determined based on the totality of the circumstances.

Incapacitation may result from: sleep; unconsciousness; intermittent consciousness; temporary or permanent physical or mental disability; involuntary physical restraint; or the influence of alcohol, drugs, or other substances, including, without limitation, substances used to facilitate Sexual Assault (e.g., Rohypnol, Ketamine, GHB, and Burundanga).

Alcohol and drugs are common causes of Incapacitation. When alcohol or drugs are involved, Incapacitation is a state beyond mere drunkenness or intoxication. The impact of alcohol and drugs varies from person to person; however, warning signs of Incapacitation may include, without limitation: lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; vomiting; unresponsiveness; and inability to communicate coherently.

A person who is under the age of eighteen (18) (i.e., a minor) is incapable of giving Consent; however, a person who is at least the age of thirteen (13) and less than the age of eighteen (18) is capable of giving Consent to sexual acts with another person who is less than four (4) years older than them.

4. **Good Faith:** Having a belief in the truth of information that a Reasonable Person in the same situation could have, based on the information known to the person communicating the information at the time the information was communicated by that person. A report or other information communicated during an investigation, hearing, or other proceeding under this policy is not made in good faith if made with knowing or reckless disregard for information that would negate the report or information.

5. **Reasonable Person:** A sober, objectively reasonable person in the same situation, and with the same sex, gender identity, and sexual orientation as the person whose words and/or conduct are being evaluated.

C. DISCIPLINE FOR PROHIBITED CONDUCT

Prohibited Conduct committed by students violates the University's Standards of Conduct for students, which can be found in *Hilltopics*. The disciplinary penalties that may be imposed on students who violate the Standards of Conduct also can be found in *Hilltopics*.

Prohibited Conduct committed by employees violates standards of conduct that have been established in existing University policies, including without limitation, the University's **Nondiscrimination Statement** (<http://oed.utk.edu/statement/>), **University of Tennessee Human Resources Policy 0280** (Sexual Harassment) (http://policy.tennessee.edu/hr_policy/hro280/), and **University of Tennessee System Human Resources Policy 0580** (Code of Conduct) (http://policy.tennessee.edu/hr_policy/hro580/). This policy supplements existing University standards of conduct in order to be more specific concerning the University's prohibition of Sexual Misconduct, Relationship Violence, Stalking, and Retaliation.² Employees who violate this policy will be subject to disciplinary action, up to, and including, termination of employment, in accordance with University policies, including, without limitation, **University of Tennessee System Human Resources Policy 0525** (Disciplinary Action), **University of Tennessee System Human Resources Policy 0640** (Grievances), and the **University of Tennessee, Knoxville Faculty Handbook**.

² For example, **University of Tennessee Human Resources Policy 0280** (Sexual Harassment) also prohibits an employee from engaging in the Sexual Harassment of another employee. Sexual Assault is an extreme type of Sexual Harassment.

III. REPORTING PROHIBITED CONDUCT

The University encourages Complainants of Prohibited Conduct, and others who are aware of Prohibited Conduct, to promptly report the incident to the University and/or to law enforcement.³

This policy describes three options for informing someone about Prohibited Conduct:

1. Report Prohibited Conduct to a University “Mandatory Reporter” (described in **Section III.A**);
2. Report Prohibited Conduct to UTPD or local law enforcement (described in **Section III.B**); and/or
3. Confide in a University “Confidential Employee” and/or a confidential resource external to the University (described in **Section IV.A**).

Those options are not mutually exclusive; in other words, a Complainant may pursue one, two, or all three of those options. This policy describes all three options in detail so that members of the University community can make informed choices about whether and how to inform someone about Prohibited Conduct.

A. REPORTING PROHIBITED CONDUCT TO A UNIVERSITY MANDATORY REPORTER

Complainants⁴ are not required to report Prohibited Conduct to the University if they do not want the University to respond to the incident or assist with Interim Measures. However, reporting a violation of this policy to the University empowers Complainants to obtain the support they need and enables the University to respond appropriately, including conducting a prompt, thorough, and equitable investigation and, if warranted, taking disciplinary action against a Respondent. **If a person reports an incident of Prohibited Conduct to the University, there is no requirement that the Complainant pursue criminal prosecution or University discipline against a Respondent.** The University recognizes that a Complainant’s decision on how to proceed after a report is filed is a process that may unfold over time; thus, at the time a report is made to the University, a Complainant does not have to decide whether to request any particular course of action.

This policy requires certain University employees, called Mandatory Reporters, to report information they receive concerning Prohibited Conduct to the University in accordance with Section VI. Not all University employees are Mandatory Reporters.⁵ Some University employees are encouraged but are not obligated to disclose Prohibited Conduct to the University. Other University employees, called Confidential Employees (**Section IV.A.1**), are legally or ethically prohibited from disclosing Prohibited Conduct to the University.

The only way for a Complainant (or any other person) to provide notice to the University of an incident of Prohibited Conduct is to report the incident to a Mandatory Reporter. A Complainant may opt to report an incident of Prohibited Conduct to a Mandatory Reporter but decline to disclose the identity of the Respondent; in that case, the University will offer the Complainant Interim Measures, but the University’s ability to investigate the incident and pursue disciplinary action against the Respondent or take other remedial action will be limited. If an incident is not reported to a Mandatory Reporter, then the University will not be able to take steps to: identify resources for the Complainant, such as Interim Measures; or promptly, thoroughly, and equitably investigate the incident and/or resolve the situation in order to eliminate the Prohibited Conduct, prevent its recurrence, and address its effects on the Complainant or the University community.

Because Mandatory Reporters have an obligation to report information they receive about Prohibited Conduct (and take other responsive actions), one of the purposes of this **Section III.A** is to inform students, employees

³ Mandatory Reporters are required to report information they receive about Prohibited Conduct. The University strongly encourages employees and students who are not Mandatory Reporters to report information about Prohibited Conduct to one of the reporting options described in **Section III.A**.

⁴ The reporting options in this section also are available to a Reporter who is not a Complainant.

⁵ However, all employees are required to report suspected child abuse or child sexual abuse (**Section VII.A**).

and other persons about which University employees are Mandatory Reporters so that students, employees and other persons can make informed decisions about whether to disclose information to those University employees. Whether an employee is a Mandatory Reporter will vary based on factors such as the status of the Complainant and the Respondent (i.e., whether they are students, employees, and/or persons who are neither students nor employees) and the employee's authority to address violations of this policy. **Appendix B and Appendix C identify the University's Mandatory Reporters.** Questions concerning whether a particular employee is a Mandatory Reporter should be directed to the Title IX Coordinator.

Mandatory Reporters are not confidential University resources like the Confidential Employees identified in Section IV.A.1. However, subject to a Complainant's request for confidentiality (**Section III.A.5**) and applicable legal disclosure obligations (**Section III.E**), information communicated to a Mandatory Reporter will initially be shared only within the limited circle of those University employees whom the University reasonably needs to involve in the University's response to an incident of Prohibited Conduct. Subsequently, information about the report will be shared only as reasonably necessary with investigators, witnesses, and the Respondent, subject to a Complainant's request for confidentiality and applicable legal disclosure obligations. **In accordance with FERPA, Mandatory Reporters who are not employees of UTPD will not share personally identifiable information with UTPD or any other law enforcement agency without a Complainant's written consent or unless required by law.**

A report of Prohibited Conduct that alleges Sex Discrimination generally must be filed within 300 days of the alleged discriminatory action. In certain circumstances, however, at the discretion of the Title IX Coordinator, such as when the Complainant is a student, a report communicated to the University outside of that time limit may be investigated. The University does not limit the time frame for reporting an incident of Prohibited Conduct committed by a Respondent who is not an employee, although a delay in reporting may impact the University's ability to: obtain evidence; conduct a prompt, thorough, and equitable investigation; and/or otherwise respond and take appropriate action.

1. Mandatory Reporters When the Complainant is a Student

This Section III.A.1 describes the non-law enforcement options for a Complainant who is a University student to report Prohibited Conduct to the University.

A Complainant who is a student is encouraged to report Prohibited Conduct to one of the following University employees, who are Mandatory Reporters:

- Title IX Coordinator or the Office of Equity & Diversity
- Deputy Title IX Coordinators
- Sexual Assault Response Team

A Complainant who is a student may also report Prohibited Conduct to one of the University's other non-law enforcement Mandatory Reporters, who are identified in **Appendix B**.

Questions about how to contact any of the individuals identified above may be directed to the Title IX Coordinator.

2. Mandatory Reporters When the Complainant is an Employee

This Section III.A.2 describes the non-law enforcement options for a Complainant who is a University employee to report Prohibited Conduct to the University.

A Complainant who is a University employee is encouraged to report Prohibited Conduct to one of the following University employees, who are Mandatory Reporters:

- Title IX Coordinator or the Office of Equity & Diversity
- The Executive Director or the Director of Human Resources Employee Relations
- The immediate supervisor of the Complainant
- The immediate supervisor of the Respondent (if the Respondent is a University employee)

A Complainant who is a University employee may also report Prohibited Conduct to one of the University's other non-law enforcement Mandatory Reporters, who are identified in **Appendix C**.

Questions about how to contact any of the individuals identified above may be directed to the Title IX Coordinator.

3. Reporting Options for a Complainant Who is Neither a Student Nor an Employee

The Title IX Coordinator (the Office of Equity & Diversity) is the only non-law enforcement option for a Complainant who is neither a University student nor a University employee to report a violation of this policy to the University.

4. What to Expect after Reporting Prohibited Conduct to a Mandatory Reporter

After receiving a report of Prohibited Conduct (either directly from a Reporter or indirectly from a Mandatory Reporter), the Title IX Coordinator, a Deputy Title IX Coordinator, and/or a member of the S.A.R.T. will initiate immediate and appropriate steps by the University to: have an appropriate University employee offer to meet with, or otherwise communicate with, the Complainant; in cases of Sexual Assault, Relationship Violence, or Stalking, provide a Complainant with a copy of this policy and/or another written publication approved by the Title IX Coordinator to inform the Complainant of the Complainant's rights under this policy (if that has not already been done by a Mandatory Reporter); evaluate whether Interim Measures need to be implemented and assist with the implementation of Interim Measures; and, subject to a Complainant's request for confidentiality (**Section III.A.5**), initiate the investigation and resolution procedures outlined in **Section V** of this policy if, based on an initial assessment, the alleged conduct meets the definition of Prohibited Conduct. The Title IX Coordinator, a Deputy Title IX Coordinator, and/or a member of the S.A.R.T. also can assist a Complainant in reporting the incident to law enforcement.

5. If the Complainant Requests Confidentiality: How the University Will Weigh the Request and Respond

If a Complainant discloses an incident of Prohibited Conduct to a Mandatory Reporter but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, the University will seriously weigh that request against the University's obligation to provide a safe, non-discriminatory environment for all members of the University community, including the Complainant.

If the University honors the Complainant's request for confidentiality, the University's ability to meaningfully investigate the incident and pursue disciplinary action against the Respondent or take other remedial action may be limited. There are times when the University may not be able to honor a Complainant's request in order to provide a safe, non-discriminatory environment. For example, if the University has credible information that the Respondent has committed one or more other acts of Prohibited Conduct, then the balance of factors might compel the University to investigate the allegation, and, if appropriate, pursue disciplinary action in a manner that may make known the Complainant's identity to the Respondent.

The Title IX Coordinator typically is the University official who evaluates requests by Complainants for confidentiality. When weighing a Complainant's request for confidentiality or that no investigation or discipline be pursued, the University will consider a range of factors, including, without limitation, the following factors:

- the risk that the Respondent will commit additional acts of Prohibited Conduct, such as:
 - whether there have been other Prohibited Conduct reports concerning the same Respondent;
 - whether the Respondent has a history of Prohibited Conduct;
 - whether the Respondent threatened further Prohibited Conduct or other misconduct against the Complainant or others; and
 - whether the Prohibited Conduct was committed by multiple perpetrators;
- the nature and scope of the Prohibited Conduct, including whether the Prohibited Conduct was perpetrated with a weapon;
- the ages and roles of the Complainant and the Respondent;
- whether the University can pursue the investigation without the participation of the Complainant (e.g., whether there are other available means to obtain relevant evidence of the Prohibited Conduct such as security cameras or physical evidence);

- whether the Complainant's report reveals a pattern of perpetration (e.g., perpetration involving illicit use of drugs or alcohol) at a given location or by a particular group; and
- the University's commitment to providing a safe, non-discriminatory environment, including the risk posted to any individual or to the campus community by not proceeding with an investigation.

The presence of one or more of those factors could lead the University to investigate and, if appropriate, pursue disciplinary action. If none of those factors is present, then the University will likely respect the Complainant's request for confidentiality. If the University determines that it can respect a Complainant's request for confidentiality, then the University will take reasonable steps to respond to the report consistent with the Complainant's request for confidentiality and will take prompt actions that the University determines are necessary to protect and assist the Complainant while keeping the Complainant's identity confidential (e.g., providing the Complainant with Interim Measures).

If the University determines that it cannot maintain a Complainant's confidentiality, then the University will inform the Complainant prior to starting an investigation and will, to the extent possible and unless otherwise required by law, only share information with people responsible for handling the University's response. If the University determines that it must disclose the Complainant's identity to the Respondent, then the University will inform the Complainant of that determination prior to the disclosure. The University will honor a request by the Complainant that the University inform the Respondent that the Complainant asked the University not to investigate or seek discipline. The University will take ongoing steps that it determines are reasonable and appropriate to protect the Complainant from Retaliation or harm and may work with the Complainant to create a safety plan. Retaliation against the Complainant, whether by students or University employees, will not be tolerated. The University will also assist the Complainant to access the support resources identified in **Section IV**, including Interim Measures, and inform the Complainant of the right to report a crime to campus or local law enforcement (and provide the Complainant with assistance in reporting if the Complainant requests it).

The University will not require a Complainant to participate in any investigation or disciplinary proceeding.

Because the University is under a continuing obligation to address the issues of Prohibited Conduct campus-wide, reports of Prohibited Conduct (including non-identifying reports) may also prompt the University to consider broader remedial action – such as increased monitoring, supervision or security at locations where the reported Prohibited Conduct occurred; increasing education and prevention efforts, including to targeted population groups; conducting additional climate assessments/victimization surveys; and/or revisiting its policies and practices.

6. Amnesty for Students Who Report Prohibited Conduct to the University⁶

The University recognizes that a student who is under the influence of alcohol and/or drugs at the time of an incident may be hesitant to report an incident to the University because of a fear of University disciplinary sanctions for student's own violation of the Standards of Conduct. Because of the importance to the University of responding to incidents of Prohibited Conduct, a student who reports Prohibited Conduct to the University or testifies or provides information in a University investigation into alleged Prohibited Conduct will not be subject to disciplinary action by the University for personal consumption of alcohol or other drugs, or minor offenses, at or near the time of the reported incident, but may be responsible for other, more serious conduct that harmed or placed the health or safety of any other person at risk.

B. REPORTING TO LAW ENFORCEMENT

Prohibited Conduct may constitute both a violation of this policy and criminal law. Therefore, the University encourages persons to report incidents of Prohibited Conduct to law enforcement. Prompt reporting of an incident to law enforcement is especially critical for incidents of Sexual Assault and Relationship Violence because the collection and preservation of evidence relating to Sexual Assault and Relationship Violence often is essential for law enforcement investigations and criminal prosecutions.

⁶ This Section III.A.6 does not apply to reports to UTPD. The amnesty provision in this Section III.A.6 applies only to discipline for violations of the University's Code of Conduct.

A Complainant has the right to decline to report the incident to law enforcement. Even if a Complainant does not report the incident to law enforcement, the Complainant may still request Interim Measures from the University by reporting the incident to the Title IX Coordinator, a Deputy Title IX Coordinator, the S.A.R.T., or another Mandatory Reporter.

1. Contact Information for Campus and Local Law Enforcement

The following options are available 24 hours, seven days a week, for reporting an incident of Prohibited Conduct to law enforcement:

INCIDENT LOCATION	CONTACT
Regardless of where the incident occurred	Call 911 in an emergency or UTPD 1101 Cumberland Avenue, Knoxville, TN 865-974-3111 http://utpolice.utk.edu/
In the City of Knoxville	Knoxville Police Department (KPD) 800 Howard Baker, Jr. Avenue, Knoxville, TN 865-215-4010 http://www.cityofknoxville.org/kpd/ or UTPD
In Knox County but outside of the City of Knoxville	Knox County Sheriff 400 Main Street, Suite L165, Knoxville, TN 37902 865-215-2243 http://www.knoxsheriff.org or UTPD
Outside of Knox County	Contact the law enforcement agency that has jurisdiction over the location where the incident occurred or Contact UTPD for assistance in contacting another jurisdiction's law enforcement agency

Upon the Complainant's request, the Title IX Coordinator, a Deputy Title IX Coordinator, and/or another member of the S.A.R.T. will assist a Complainant in contacting UTPD or another appropriate local law enforcement agency.

Employees of UTPD are also Mandatory Reporters for reports received in a law enforcement capacity. Accordingly, if a person reports an incident to UTPD, and the incident has not been previously reported to a Mandatory Reporter outside of UTPD, then UTPD will contact the Title IX Coordinator, a Deputy Title IX Coordinator, and/or a member of the S.A.R.T. Then, the Title IX Coordinator, a Deputy Title IX Coordinator, and/or a member of the S.A.R.T. will contact the Complainant regarding the University's response to the report (**Section III.A.4**). In contrast, if a Complainant reports the incident to KPD or another law enforcement agency

other than UTPD, then the Complainant also will need to report the incident to a Mandatory Reporter if the Complainant wants the University to take any action under this policy.

2. What to Expect after Reporting Prohibited Conduct to Law Enforcement

Even if the Complainant is unsure whether to pursue criminal prosecution or an order of protection, the University recommends that the Complainant report the incident to law enforcement as soon as possible. In most cases, after addressing a Complainant's immediate safety needs and/or needs for medical care, a law enforcement officer will meet with the Complainant and take a statement about what occurred. It may help a Complainant to write down every detail the Complainant can remember, as soon as possible, so the Complainant can communicate the details to law enforcement. In cases of Sexual Assault and Relationship Violence, in addition to taking a statement, the law enforcement officer may ask to examine the scene of the incident and collect bedding, clothing, or other items of evidentiary value. A UTPD law enforcement officer also will conduct a thorough interview to record as many details as possible and as precisely as possible. The law enforcement interview may take as long as several hours, depending on the circumstances of the case. Due to the traumatic effect of sexual assaults on survivors, multiple interviews may be required to get all of the pertinent details of the assault. When UTPD conducts the law enforcement interview, the UTPD law enforcement officer typically will ask the Complainant whether they want UTPD to call on on-call victim advocate from the Sexual Assault Center of East Tennessee to be present during the Complainant's interview(s).

If law enforcement determines that a crime occurred after concluding its investigation, then law enforcement will refer the matter to the district attorney. **The district attorney will decide whether to pursue criminal prosecution; however, it is unusual for cases to proceed without the cooperation of the Complainant. Reporting the incident to law enforcement does not obligate the Complainant to cooperate with the district attorney's criminal prosecution.** If criminal prosecution is pursued, however, the likelihood of success will be much higher if the Complainant reported and allowed evidence to be collected immediately after the incident of Prohibited Conduct.

3. How University Policies/Procedures Relate to Criminal Law/Procedures

The University will cooperate with law enforcement agencies if a Complainant decides to pursue the criminal process, to the extent permitted by law. However, this policy may differ in significant respects from criminal law. A Complainant may seek resolution through the University's procedures outlined in this policy, may pursue criminal action, may choose one but not the other, may choose both, or may choose neither. Neither law enforcement's determination whether to prosecute a Respondent nor the outcome of any criminal prosecution is determinative of whether Prohibited Conduct occurred in violation of this policy. Procedures under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. The University normally does not wait until a criminal investigation or proceeding is concluded before conducting its own investigation, implementing Interim Measures, and/or taking other appropriate action. Although the University may need to delay temporarily the fact-finding portion of its investigation while law enforcement is gathering evidence, the University will take Interim Measures to support the Complainant during such a delay. Decisions made or sanctions imposed by the University are not based on a result of criminal or civil charges against a Respondent arising from the same incident being dismissed, reduced, rejected, sustained, or not prosecuted; however, a Respondent's plea or a finding against a Respondent in a criminal or civil proceeding may, at the University's discretion, be used by the University in a University disciplinary proceeding.

4. Anonymous Reporting to Law Enforcement

UTPD currently is in the process of developing an anonymous reporting system. Persons may report a crime anonymously to the Knoxville Police Department by calling **(865) 215-7212**. Persons may report a crime anonymously to the Knox County Sheriff by visiting www.knoxsheriff.org/tip/index.php or by texting the word **Knox** to **Crimes 274637**.

Texting is not an alternative to calling 911; in an emergency, call 911.

C. CONFIDENTIAL RESOURCES

Section IV.A describes options to communicate confidentially with someone regarding an incident of Prohibited Conduct.

D. THE UNIVERSITY'S DISCLOSURE OBLIGATIONS UNDER FEDERAL AND TENNESSEE LAW RELATING TO REPORTS OF PROHIBITED CONDUCT

1. Clery Act

Certain University employees, called Campus Security Authorities, have a duty to report certain incidents of Prohibited Conduct to UTPD to comply with the Clery Act. Campus Security Authorities are not required to report personally identifiable information to UTPD for Clery Act purposes, but statistical information must be sent to UTPD regarding the type of incident that occurred and its general location (e.g., on or off-campus) for publication in an annual report of crime statistics, called the Annual Security Report. Statistics published in the Annual Security Report help to provide the campus community with a clearer picture of the extent and nature of campus crime, **but the statistics do not personally identify Complainants.**

Complainants of Prohibited Conduct also should be aware that the Clery Act requires the University to issue timely warnings for crimes reported to UTPD or Campus Security Authorities that pose a substantial threat of bodily harm or danger to members of the campus community. The University will undertake reasonable efforts to avoid disclosing a Complainant's name and other identifying information, while still providing enough information for community members to make safety decisions in light of the potential danger.

2. FERPA

In accordance with FERPA, personally identifiable information about a Complainant, Respondent, or Reporter who is a student that has been communicated to a Mandatory Reporter regarding Prohibited Conduct will be shared within the University only with the Title IX Coordinator and those University employees who "need to know" in order to assist with the University's response to the Prohibited Conduct. Personally identifiable information concerning a Complainant, Respondent, or Reporter who is a student will not be disclosed by the University to third parties unaffiliated with the University without the consent of the student except in response to a lawfully issued subpoena, court order, or as otherwise required or allowed by law (see, e.g., **Section III.E.3** relating to the Tennessee Public Records Act) If, during a University's investigation or resolution of Prohibited Conduct, a Respondent who is a student makes a request to review documents concerning the investigation, the University will be required by FERPA to grant the Respondent's request to inspect and review records that relate specifically to the Respondent, but the University will redact the Complainant's name and any other identifying information to the maximum extent allowed by law.

3. Tennessee Public Records Act

Incident reports prepared by UTPD for law enforcement purposes are generally considered public records under the Tennessee Public Records Act (Tennessee Code Annotated § 10-7-503 *et seq.*) and are not protected by FERPA, which means the University is obligated by law to make them available to any Tennessee citizen upon request unless the report is part of an ongoing criminal investigation. Local law enforcement agencies may also be required to make their records available under similar circumstances. In addition, investigative reports prepared by other University officials (e.g., the Office of Equity & Diversity) that do not contain personally identifiable student information also are generally considered public records under the Tennessee Public Records Act.

4. Robert (Robbie) Nottingham Campus Crime Scene Investigation Act

The Robert (Robbie) Nottingham Campus Crime Scene Investigation Act (Nottingham Act), Tennessee Code Annotated § 49-7-129, requires UTPD to notify the Knoxville Police Department upon UTPD's receipt of a report from a victim alleging that any degree of rape has occurred on University property. The Nottingham Act requires UTPD and the Knoxville Police Department to participate in a joint investigation of the rape, with UTPD leading the investigation.

The Nottingham Act also requires sexual assault programs and services on campus to report annually to UTPD the number of requests for assistance received from persons who were raped on or in the vicinity of campus during the preceding calendar year. Personally identifiable information is not provided to UTPD in connection with that report.

5. Due Process

After the University has formally accused a Respondent of violating this policy, the Respondent may have a constitutionally-protected due process right to be informed of the nature of the allegations, including the identity of the Complainant.

E. TAKE BACK THE NIGHT AND OTHER PUBLIC AWARENESS EVENTS; RESEARCH-BASED DISCLOSURES

Public awareness events such as “Take Back the Night,” candlelight vigils, protests, “survivor speak outs” or other forums in which students or employees disclose incidents of Prohibited Conduct, are not considered notice to the University of Prohibited Conduct for purposes of triggering its obligation to investigate any particular incident(s). Such events may, however, inform the need for campus-wide education and prevention efforts, and the University may provide information about Title IX rights at these events.

Disclosures of incidents of alleged Prohibited Conduct made by a University student during such student’s participation as a subject in an Institutional Review Board-approved human subjects research protocol are not considered notice to the University of Prohibited Conduct for purposes of triggering its obligation to investigate any particular incident(s).

F. FALSE REPORTING

An accusation of Prohibited Conduct may have severe consequences for a Respondent. A Reporter who makes a report that is later found to have been intentionally false or made maliciously without regard for truth may be subject to disciplinary action, up to and including termination of employment or dismissal from the University. This provision does not apply to reports made in Good Faith (as defined in **Section II.B.4**), even if the facts alleged in the report are not substantiated by an investigation. Similarly, a Respondent or other person who is later proven to have intentionally given false information during the course of a University investigation or disciplinary proceeding action may be subject to disciplinary action, up to and including termination of employment or dismissal from the University.

IV. CARE AND SUPPORT

This section of the policy outlines a variety of University and external resources and measures relating to Prohibited Conduct. In addition to the information provided in this section, information concerning options for Complainants following a Sexual Assault can be found at: <https://rainn.org/get-information/sexual-assault-recovery>.

A. CONFIDENTIAL RESOURCES

The persons identified below are able to keep information communicated to them by a Complainant completely confidential and will not communicate such information to the University, law enforcement, or any other third party, unless required by law in the limited circumstances described in **Appendix D**.

Information communicated to a person identified as a confidential resource in this Section IV.A does not constitute notice or a report to the University of an incident of Prohibited Conduct. In other words, a disclosure of Prohibited Conduct to a person identified in this Section IV.A (including a person supervised by them (e.g., assistants, and front-desk staff)) will not trigger a University response to an incident because the people identified in this Section IV.A are not Mandatory Reporters and do not report any information about an incident to the Title IX Coordinator, a Deputy Title IX Coordinator, the S.A.R.T., a Mandatory Reporter, or UTPD without the Complainant's permission. As a result, the University will be unable to investigate the incident or pursue disciplinary action against the Respondent. If Prohibited Conduct is disclosed only to a University Confidential Employee, the University may be limited in its ability to provide Interim Measures to the Complainant depending on how much information the Complainant is willing to share with the University.

The persons identified in **Section IV.A.1** can, however, help a Complainant explore options, provide information, including information on Interim Measures, and provide emotional support. A Complainant who at first requests confidentiality may later decide to report the incident to the University and/or to law enforcement and have the incident fully investigated. The persons identified in **Section IV.A.1** can provide the Complainant with assistance in making such reports if the Complainant asks them to do so.

Complainants may pursue the communication options outlined in this Section IV.A regardless of whether or not they choose to report the incident to the University or law enforcement. In other words, the resources described in this policy are not mutually exclusive.

1. University “Confidential Employees”

If a Complainant does not desire action by the University and would like the details of the incident to be kept confidential, but desires to confide in someone, the Complainant may speak with one of the following persons, who are called “Confidential Employees” for purposes of this policy:

- A **licensed psychologist, registered nurse, or nurse practitioner in the Student Counseling Center (865-974-2196)**, from 8:00 a.m. – 5:00 p.m., Mondays-Fridays, except on University holidays, breaks, or closures) (*resource option for students only*);
- A **licensed psychiatrist, registered nurse, or nurse practitioner in the Student Health Center (865-974-2251)**, from 8:00 a.m. – 4:30 p.m., Mondays, Tuesdays, Thursdays, and Fridays, and from 9:00 a.m. – 4:30 p.m. on Wednesdays, except on University holidays, breaks, or closures) (*resource option for students only*);
- A **licensed physician, registered nurse, or nurse practitioner in the Student Health Center (865-974-3648)**, from 8:00 a.m. – 4:30 p.m., Mondays, Tuesdays, Thursdays, and Fridays, and from 9:00 a.m. – 4:30 p.m. on Wednesdays, except on University holidays, breaks, or closures) (*resource option for students only*);
- A **licensed psychologist in the Psychological Clinic (865-974-2161)**, from 8:00 a.m. – 5:00 p.m., Monday-Thursday, and 8:00 a.m. – 5:00 p.m. on Fridays, except on University holidays, breaks, or closures);
- A **counselor with the Employee Assistance Program** managed by Magellan Health Services (**855-Here4TN (855-437-3486)**) (*resource option for employees only*); and
- The following persons associated with the Department of Intercollegiate Athletics (*resource options for intercollegiate student-athletes only*):

- the **Team ENHANCE/EXCEL Coordinator (865-974-9754)**;
- a **Team Physician** (Team Physicians are University contractors, not employees); and
- a **Team Psychiatrist or Team Psychologist** (Team Psychiatrists and Team Psychologists are University contractors, not employees).

A physician, psychologist, psychiatrist, or social worker identified in this section is a Confidential Employee only if the student or employee is communicating with that person as a patient or client.

Confidential Employees may periodically report non-personally identifiable information about Prohibited Conduct to the Title IX Coordinator to keep the Title IX Coordinator informed about the general extent and nature of Prohibited Conduct on and off campus.

2. Confidential Resources Outside the University

Complainants of Prohibited Conduct also have options to communicate confidentially with someone who is not affiliated with the University or law enforcement. Complainants who desire to speak confidentially with someone not affiliated with the University or law enforcement may contact one of the following:

Knoxville-area resources available 24 hour/7 days a week

- **Sexual Assault Center of East Tennessee** **865-522-7273**
(24 hour crisis line)
6215 Kingston Pike, Suite A, Knoxville
<http://www.mcabbcenter.org/sacet>

In order to better serve its students, the University has entered into a Memorandum of Understanding with the Sexual Assault Center of East Tennessee (SACETN). The primary mission of the SACETN is to provide excellent and compassionate services for survivors of sexual assault and to empower communities through education and social change. The SACETN is a service of the Helen Ross McNabb Center. **A Complainant does not have to report a sexual assault to law enforcement in order to receive services from the SACETN.**

SACETN has four program areas: Sexual Assault Nurse Examinations; Advocacy; Therapy; and Education and Outreach. Three of those program areas are described in more detail below.

- Sexual Assault Nurse Examinations. A Sexual Assault Nurse Examiner (SANE) is available 24/7, 365 days a year to provide forensic nursing to sexual assault crime victims ages 13 and older. SANE exams can be performed at a local hospital or at SACETN. All services provided by the SACETN are free, including no-cost SANE exams, pregnancy prevention, and testing and preventative treatment for sexually transmitted infections.
- Advocacy. The advocacy program of the SACETN provides victims of sexual assault with the support, information, and resources needed throughout the recovery process. Advocates work to ensure that Complainants' legal rights are protected, while also empowering Complainants to make their own decisions. Advocacy assistance includes: accompaniment during SANE exams, police interviews, legal appointments, and University and court proceedings; and assistance filing victim's compensation applications and petitions for orders of protection.
- Therapy. Therapy services are available to Complainants in crisis, Complainants who are victims of a recent sexual assault, and Complainants who were victims of a sexual assault or sexual abuse that happened months or years ago. The goal of the SACETN is to work collaboratively to address the many concerns and issues associated with sexual violence in order to promote healing. Therapists at the SACETN specialize in treating female, male, and LGBTQ Complainants and offer services to individuals of all ages.

- **University of Tennessee Medical Center** **865-305-9000**
1924 Alcoa Highway
<http://www.utmedicalcenter.org/>

NOTE: The University of Tennessee Medical Center is a separate legal entity from the University of Tennessee. As a result, a report to the University of Tennessee Medical Center does not put the University of Tennessee on notice of Prohibited Conduct.

National and state crisis lines available 24 hour/7 days a week

- **Tennessee Coalition Against Domestic & Sexual Violence** **1-800-356-6767**
<http://tncoalition.org/>
The Tennessee Coalition to End Domestic and Sexual Violence (TCEDS) is a private nonprofit organization composed of diverse community leaders and program members who share a common vision of ending violence in the lives of Tennesseans through public policy, advocacy, education and activities that increase the capacity of programs and communities to address violence. The TCEDS is a stateside organization that serves: domestic violence and sexual assault programs; community groups and organizations; criminal justice agencies; allied professionals (e.g., medical, legal, mental health professionals); individuals seeking information and resources; and immigrant victims of domestic or sexual violence, stalking or trafficking.
- **RAINN National Sexual Assault Crisis Hotline (4673)** **800-656-HOPE**
<http://www.rainn.org/get-help/national-sexual-assault-hotline>
- **National Domestic Violence Hotline (7233)** **800-799-SAFE**
www.thehotline.org
- **Love is Respect – National Dating Abuse Hotline** **866-331-9474**
www.loveisrespect.org/

Other confidential, non-University resources

- **A personal attorney**
- **A clergy member**
- **A physician or Qualified Mental Health Professional who is not an employee or contractor of the University**
- **A licensed marital or family therapist, licensed professional counselor, or certified clinical pastoral therapist who is not an employee or contractor of the University**

Non-University counselors, advocates, and health care providers will generally maintain confidentiality unless state law otherwise requires (**Appendix D**) or the Complainant requests the disclosure and signs a consent or waiver form.

B. NON-CONFIDENTIAL UNIVERSITY RESOURCES

The University employees/units identified below are trained to support Complainants. While not bound by confidentiality (i.e., they are Mandatory Reporters who are required to report knowledge of incidents of Prohibited Conduct to the University and/or take other responsive action), these University employees/units will maintain the privacy of information shared by Complainants within the limited circle of those University employees involved in the University’s response to an incident of Prohibited Conduct. When speaking with one of the resources below, Complainants are free to limit the details they share while they decide whether to report an incident to the University.

The following University employees/units are generally available Monday-Friday from 8:00 a.m. to 5:00 p.m. on University business days unless otherwise specified below:

- **Title IX Coordinator** **865-974-2498**
- **Sexual Assault Response Team** **865-974-HELP (4357)**
- **Deputy Title IX Coordinator for Students** **865-974-5725 or 865-974-HELP**
- **Deputy Title IX Coordinator for Athletics** **865-974-9190**
- **University of Tennessee Police Department** **865-974-3111**
(24 hours/day, seven days/week)

Please contact UTPD if you would like a UTPD police officer to take you either to a local hospital or the Sexual Assault Center of East Tennessee for medical treatment, including a sexual assault nurse examination.

- **Office of Student Conduct and Community Standards** **865-974-3171**
409 Student Services Building
<http://studentconduct.utk.edu/>
- **Office of the Dean of Students** **865-974-3179**
413 Student Services Building
<http://dos.utk.edu>

C. MEDICAL CARE

A Complainant may seek medical care at any time following Prohibited Conduct. The resources described in this Section V.C are confidential resources, as described in **Section IV.A**.

Medical care may be obtained from the following:

- University of Tennessee **Student Health Center** (**865-974-3648**, from 8:00 a.m. – 4:30 p.m., Mondays, Tuesdays, Thursdays, and Fridays, and from 9:00 a.m. – 4:30 p.m. on Wednesdays, except on University holidays, breaks, or closures) (*option for students only*)
- **Sexual Assault Center of East Tennessee** (**865-522-7273**, 24 hours, seven days a week)
- **UT Medical Center** or another local hospital (24 hours, seven days a week)

In cases of Sexual Assault or Relationship Violence, it is important for a Complainant to seek immediate medical attention to determine the presence of physical injury, address pregnancy concerns, determine the possibility of exposure to sexually transmitted diseases, and, if the Complainant later decides to pursue legal options, to obtain evidence to assist in criminal prosecution, a civil action, or in obtaining a civil protection order. **According to the Sexual Assault Center of East Tennessee, the key to success in collecting physical evidence of a Sexual Assault is to collect the evidence as soon as possible after a Sexual Assault (ideally within 24 hours of a Sexual Assault but no later than 72 hours after a Sexual Assault).** Prior to seeking medical care, Complainants of Sexual Assault should not change their clothing, bathe, shower, douche, use the bathroom, brush their teeth, drink liquids, wash their hands or face, or comb their hair. If Complainants change clothes, they should place all of their clothing that was worn at the time of the incident in a paper (not plastic) bag.

The collection of evidence for use in a criminal prosecution or an order of protection hearing relating to Sexual Assault can only be performed by trained personnel at a hospital emergency room (e.g., UT Medical Center) or at the Sexual Assault Center of East Tennessee; physical examinations by other healthcare providers are likely to impede potential future legal remedies. In cases of Sexual Assault, a medical professional usually will: examine the Complainant; provide appropriate medical treatment; collect evidence of the assault, such as hairs, fluids, and fibers; and, if applicable, talk with the

Complainant about the prevention of venereal disease and pregnancy. A medical examination preserves evidence for forensic analysis in the event that a Complainant wishes to pursue a criminal prosecution or an order of protection. The medical examination likely will be performed by a sexual assault nurse examiner, a nurse who is specially trained to collect evidence in cases of Sexual Assault.

If the Complainant chooses not to report the incident to law enforcement at the time of the medical examination, the medical provider will provide the examination materials to local law enforcement with a unique identifying number that will also be provided to the Complainant. The law enforcement agency with jurisdiction will store the examination materials for up to three (3) years. If in that time the Complainant decides to make a police report, the Complainant may report to the law enforcement agency with jurisdiction and refer to the unique identifying number so that the Complainant's examination materials may be matched up with the Complainant's law enforcement report for evidentiary purposes.

D. INTERIM MEASURES

After a Mandatory Reporter receives a report of Prohibited Conduct, the University will implement Interim Measures designed to eliminate the reported Prohibited Conduct and protect the persons involved in the matter (e.g., Complainant, Reporter, Respondent potential witnesses).

1. Availability of Interim Measures

Interim Measures are available:

- even if the Complainant does not want to report the incident to law enforcement;
- even if the Complainant has requested confidentiality or that the University not pursue an investigation or discipline and the University has determined that it can respect a Complainant's request for confidentiality (**Section III.A.5**). (The University may be able to take measures to protect the Complainant while keeping the identity of the Complainant confidential, such as: providing support services to the Complainant; changing living arrangements or course schedules, assignments, or tests; and providing increased monitoring, supervision, or security at locations or activities where the Prohibited Conduct occurred);
- prior to or during an investigation of Prohibited Conduct; and
- prior to a final determination that Prohibited Conduct occurred.

2. Examples of Interim Measures

The following are examples of Interim Measures:

- informing the Complainant of the Complainant's rights under the University's procedures for complaints against students or procedures for complaints against employees or other non-students;
- informing the Complainant of the Complainant's right to report the incident to law enforcement for criminal investigation and prosecution and assisting the Complainant in reporting an incident to law enforcement, if the Complainant wants to report the incident;
- issuing a no-contact directive to the Respondent, which prohibits the Respondent from having verbal, physical, or written contact with the Complainant for a definite or indefinite period of time (the Complainant may also receive a directive to not contact the Respondent);
- issuing an interim suspension to the Respondent (if a student) prior to the conclusion of the investigation and resolution of a complaint of Prohibited Conduct (an interim suspension may be issued when the Vice Chancellor for Student Life (or designee) has reasonable cause to believe that a student's or student organization's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an ongoing threat to the disruption of, or interference with, the normal operations of the University);
- putting a Respondent (if an employee) on leave, in accordance with other applicable University policies, prior to the conclusion of the investigation and resolution of a report of Prohibited Conduct;
- providing medical and counseling services to a Complainant who is a student;
- exploring changes in living, transportation, dining, and working arrangements for the Complainant and the Respondent;

- providing an escort to ensure that a Complainant who is a student can move safely between classes and activities;
- arranging appointments for a Complainant with follow-up on-campus support services (if a student) or off-campus support services, such as those identified in this **Section IV** (e.g., arranging an appointment with the Knoxville Family Justice Center to discuss options for pursuing an order of protection in Knox County Fourth Circuit Court);
- exploring changes in class and extracurricular schedules, including adjustments so that the Complainant and the Respondent do not share the same classes (if both the Complainant and the Respondent are students);
- assisting the Complainant in communicating with faculty (for Complainants who are students);
- reviewing any disciplinary action(s) taken against the Complainant to see if there is a causal connection between the Respondent's misconduct and the misconduct that may have resulted in the Complainant being disciplined;
- providing academic support for the Complainant, including tutoring (for Complainants who are students); and
- exploring the options of re-taking a course, dropping a course, or withdrawing for a semester without financial or academic penalty (for students).

3. Determination of Interim Measures

The specific Interim Measures implemented and the process for implementing those measures will vary depending on the facts of each case and the student or employee status of the Complainant and the Respondent. The Title IX Coordinator or a Deputy Title IX Coordinator, in consultation as needed with the S.A.R.T. or other appropriate University employees (e.g., an employee who would be involved in implementing the Interim Measure being considered), will consider a number of factors in determining what Interim Measures the University will take, including, for example: the specific desire(s) expressed by the person who will benefit from the Interim Measures (e.g., the Complainant); whether the Complainant has requested confidentiality (**Section III.A.5**); the age of the persons involved; the severity or pervasiveness of the allegations; any continuing effects on the Complainant; whether the Complainant and Respondent share the same residence hall, dining hall, classes, extracurricular activities, transportation, or job location; and whether judicial measures have been taken to protect the Complainant (e.g., civil protection orders). In implementing Interim Measures, the University attempts to minimize the burden on the Complainant while balancing the due process rights, if any, of the Respondent.

4. Subsequent Communications with the University Concerning Interim Measures

The University will strive to maintain consistent contact with the Complainant and the Respondent to ensure that all safety, emotional, and physical well-being concerns are being addressed. Persons are encouraged to report to the Title IX Coordinator concerns about the failure of another person to abide by the terms of an Interim Measure. The University will take immediate and responsive action to enforce a previously implemented Interim Measure.

E. ORDERS OF PROTECTION AND OTHER LEGAL REMEDIES

For assistance in pursuing orders of protection in Knox County Fourth Circuit Court and other legal remedies, a Complainant may contact:

- **Knoxville Family Justice Center**
400 Harriet Tubman Street
Knoxville, TN 37915
865-521-6336 (24/7 crisis line)
<http://fjcknoxville.com/>

The Title IX Coordinator/Deputy Title IX Coordinators, a member of the S.A.R.T., or UTPD can assist a Complainant with arranging an appointment with the Knoxville Family Justice Center to discuss options for pursuing an order of protection and other legal remedies.

Additional information on orders of protection can be found here:

- The Tennessee District Attorneys General Conference provides information for victims of Sexual Assault and Relationship Violence on multiple pages of its website:
<http://www.tndagc.org/dv.htm> (FAQ on orders of protection)
<http://www.tndagc.org/vwh.htm> (resource describing the criminal justice system written specifically for those who need to understand how the system relates to them as victims/survivors and how perpetrators interact with the system)
<http://www.tndagc.com/vr.htm> (description of victims' rights under Article I, Section 35 of the Tennessee Constitution relating to criminal cases)
- The Knoxville Police Department provides a list of community resources for victims of domestic violence here: http://www.cityofknoxville.org/kpd/dvu_gethelp.asp.
- The Knox County Fourth Circuit Court provides information on domestic violence and orders of protection here:
http://www.knoxcounty.org/fourthcircuitcourt/domestic_violence.php.

V. UNIVERSITY PROCEDURES FOR INVESTIGATING AND RESOLVING REPORTS OF PROHIBITED CONDUCT

A. SUMMARY OF STUDENT AND EMPLOYEE PROCEDURES

The University has specific procedures for investigating and resolving reports of Prohibited Conduct based on the relationship of the Respondent to the University and the type of Prohibited Conduct that was reported.

- The procedures used to investigate and resolve Prohibited Conduct involving a Respondent who is a student as described in **Section V.B** and **Section V.D**.
- The procedures used to investigate and resolve Prohibited Conduct involving a Respondent who is an employee or other non-student generally depends on whether the incident allegedly involved non-Consensual physical contact with the Complainant.
 - A report involving Sexual Assault, a Sex Offense Crime, a Relationship Violence Crime, Dating Violence, Domestic Violence, or Stalking generally will be resolved in accordance with the procedures described in **Section V.B** and **Section V.C**.
 - A report of Sex Discrimination (e.g., Sexual Harassment) that does **not** involve Sexual Assault, a Sex Offense Crime, a Relationship Violence Crime, Dating Violence, Domestic Violence, or Stalking generally will be resolved by the Office of Equity & Diversity in accordance with the University's **Discrimination Complaint Procedure** (<http://oed.utk.edu/complaints/>).

Appendix E contains a chart that summarizes which complaint procedures will be used to resolve reports of Prohibited Conduct.

B. STANDARDS APPLICABLE TO ALL PROCEDURES

The standards in this Section V.B apply to all procedures under this policy (i.e., **Section V.C** and **Section V.D**) for investigating and resolving reports of Prohibited Conduct, regardless of whether the Complainant or Respondent is a University student, University employee, or a person who is neither a student nor an employee.

1. Determining the Appropriate Procedure

The appropriate University procedure for investigating and resolving reports of Prohibited Conduct generally is determined by whether the Respondent is a student, employee, or a person who is neither a student nor an employee. In all of the procedures described below, the University is committed to providing a prompt, thorough, and equitable investigation and resolution. A University investigation may occur alongside, rather than in lieu of, a law enforcement investigation. The University does not use mediation to resolve incidents of Sexual Misconduct. The Title IX Coordinator will resolve issues regarding the appropriate investigatory and resolution procedure.

2. Selecting an Investigator

For each report of Prohibited Conduct to be investigated, the University may select an investigator(s) of its choosing, provided that the investigator has specific training and experience investigating allegations of Prohibited Conduct. Any investigator(s) chosen to conduct the investigation must be impartial and free of any conflict of interest. The investigator(s) may be a University employee, a team of University employees, an external investigator(s) engaged to assist the University, or a team of investigators that pairs an external investigator(s) with a University employee. Investigations of reports of Prohibited Conduct are usually performed by the Office of Equity and Diversity (if the Respondent is an employee or other non-student) or the Office of Student Conduct (if the Respondent is a student). A separate law enforcement investigation may be conducted by UTPD.

3. Preponderance of the Evidence Standard

All investigations and proceedings, including disciplinary hearings, relating to Prohibited Conduct must be conducted using a "Preponderance of the Evidence" standard.

4. Advisors and Support Persons

Both the Complainant and the Respondent are entitled to bring a person of their choice to University meetings and hearings, but the person's role is limited to providing advice, guidance, and/or support for the Complainant or the Respondent, not acting as an advocate or participant (except in a TUAPA Hearing, in which a Complainant and a Respondent are entitled to have an attorney advocate on their behalf).

5. Training

University employees and students participating in University investigations and disciplinary hearings involving Prohibited Conduct receive annual training on issues related to Prohibited Conduct and how to conduct an investigation and/or hearing in a way that protects the safety of Complainants and promotes accountability.

6. Complainants' Rights

In addition to rights for Complainants described in other parts of this Section V and other sections of this policy, Complainants have the following rights in cases involving Prohibited Conduct:

- notice concerning the procedure by which the University will handle the Complainant's report and an opportunity to ask questions about University policies and procedures;
- a prompt, thorough, and equitable investigation of the Complainant's report;
- the same opportunity as the Respondent to present an explanation of the facts during the University's investigation;
- notice of the outcome of the University's investigation;
- notice of the date, time, and location of a disciplinary hearing; the right to have a disciplinary hearing closed to the public if a hearing involves a student Complainant or Respondent; and the right to request rescheduling of a disciplinary hearing for good cause;
- the same access as the Respondent to any information or documents that will be used by the University during a disciplinary hearing, unless prohibited by law;
- to challenge the seating of any TUAPA administrative judge or hearing officer for good cause (determined at the discretion of the Chancellor/Agency Head); any member of a hearing board, panel, or committee for good cause (determined at the discretion of the chairperson of the hearing board, or, if the seating of the chairperson is challenged, then at the discretion of the majority of the hearing board; or any other hearing decision maker for good cause (determined at the discretion of the University employee responsible for supervising the hearing board);
- the same opportunity as the Respondent to be present during a disciplinary hearing, present witnesses and other evidence, challenge the admissibility of evidence, and cross-examine adverse witnesses during the disciplinary hearing;
- to testify or remain silent in an investigation or disciplinary hearing;
- not to be questioned directly by the Respondent during a disciplinary hearing or at any other time during the University's investigation or resolution;
- to submit a written impact statement to a hearing board, panel, or committee, or other hearing decision maker, for consideration during the sanctioning phase of a disciplinary hearing, if the Respondent is found responsible for the charges, or to the Office of Student Conduct or other

administrator for consideration during the sanctioning phase of an administrative hearing, if the Respondent admits responsibility for the charges;

- to be provided with the same or equivalent rights as the Respondent to challenge or appeal the decision of a University investigation or disciplinary hearing panel, board, or other decision maker.

7. Notice to Complainants and Respondents

Unless prohibited by federal law, with respect to any University disciplinary hearing that arises from an allegation of Prohibited Conduct, the University will provide simultaneous written notification to the Complainant and the Respondent of:

- the results of the hearing;
- the University's procedures for the Complainant and the Respondent to appeal the results of the University disciplinary hearing, if such procedures are available (any such procedures shall be available to both the Complainant and the Respondent);
- any change to the results of the hearing before the results are final; and
- when the results of the hearing become final.

For the purposes of this Section V.A.7, "results" means any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within the University. The results include any sanctions imposed by the University and include the rationale for the results.

Notice to the Complainant and the Respondent concerning other matters (e.g., appeals) shall be provided in writing simultaneously to the Complainant and Respondent.

8. Time Frames

The University will strive to meet the time frames described in this Section V. In each case, however, the University will balance the need to complete a prompt investigation and resolution with the need to conduct a thorough investigation and a resolution that complies with due process. Thus, the actual time to complete an investigation and resolution may require a reasonable adjustment of the time frames in this policy depending on many factors, including, without limitation: the complexity of the allegations; the complexity of the investigation and resolution; the severity and extent of the alleged misconduct; the number of parties, witnesses, and the types of other evidence (e.g., forensic evidence) involved; the availability of the parties, witnesses, and evidence (e.g., forensic evidence); a request by a Complainant to conduct an investigation or resolution at a slower pace; the effect of a concurrent criminal investigation; any intervening University holidays, breaks, or other closures; and/or other unforeseen circumstances. In the event that the need arises to significantly adjust the time frames in this policy or those previously communicated to the Complainant and the Respondent for good cause, the University will notify the Complainant and the Respondent in writing of the reason for the delay and the expected adjustment in time frames.

9. Prior Conduct, Including Sexual History

In general, neither the Complainant's nor the Respondent's prior sexual history is relevant to the issue of whether Prohibited Conduct occurred and will not be considered as evidence during an investigation or hearing. However, when the Respondent contends that the Complainant gave Consent for a particular sexual act, the prior sexual history between the Complainant and the Respondent may be relevant to assess the manner and nature of communications between the parties. As noted in **Section II.B.1**, however, the mere existence of a current or previous dating, romantic, intimate, or sexual relationship with the other person does not allow a Respondent to imply or infer Consent. The Complainant's and the Respondent's prior sexual history may also be relevant in other limited circumstances, such as to show intent, motive, absence of mistake, or to explain an injury or physical finding.

10. Prompt, Fair, and Impartial Proceedings

All activities related to a non-criminal resolution of a University disciplinary complaint, including, but not limited to, fact-finding investigations, formal or informal meetings, and hearings conducted by the University under this policy shall be prompt, fair, and impartial. Those activities shall be conducted in a manner that: (1) is consistent with the University's policies and transparent to the Complainant and the Respondent; (2) includes timely notice of meetings at which the Complainant or the Respondent, or both, may be present; and (3) provides timely access to the Complainant, the Respondent, and appropriate officials to any information that will be used after the fact-finding investigation but during informal and formal disciplinary meetings and hearings. Decision makers concerning appeals shall not have a conflict of interest or bias for or against the Complainant or the Respondent.

C. PROCEDURE FOR INVESTIGATING AND RESOLVING A REPORT INVOLVING A RESPONDENT WHO IS A UNIVERSITY EMPLOYEE OR OTHER NON-STUDENT

This Section V.C describes procedures for investigating and resolving a report of Sexual Assault, Sex Offense Crimes, Relationship Violence, Stalking, or Retaliation involving a Respondent who is an employee or other non-student.

1. Meeting (Communication) with the Complainant

After receiving a report of Prohibited Conduct from a Reporter or a Mandatory Reporter, the Title IX Coordinator will initiate immediate and appropriate steps by the University to: inform the Complainant about this policy, including the Complainant's rights, and give the Complainant an opportunity to ask questions; implement Interim Measures; and, subject to a Complainant's request for confidentiality (**Section III.A.5**), investigate and resolve the matter promptly, thoroughly, and equitably in accordance with the procedures outlined in this section if, based on an initial assessment, the alleged conduct meets the definition of Prohibited Conduct. Subject to the University's legal disclosure obligations, information about the report will be shared only as reasonably necessary with investigators, witnesses and the Respondent. The Title IX Coordinator will designate one or more persons to investigate the report, which most often will be an employee in the Office of Equity and Diversity.

2. Investigation and Resolution

Unless the University determines that it will not investigate a report of Prohibited Conduct following a Complainant's request for confidentiality (**Section III.A.5**), the investigator selected by the University will conduct the investigation in a manner appropriate in light of the circumstances of the case, which will typically include interviews with the Complainant, the Respondent, and any witnesses. As part of the investigation, the University will provide an equal opportunity for the Complainant and the Respondent to be heard, to submit information, and to identify witnesses and other evidence. The interviews will be supplemented by the gathering of any physical, documentary, or other evidence, as appropriate and available. The investigation is designed to provide a fair and reliable gathering of the facts. The investigation will be thorough and equitable, and all persons will be treated with appropriate sensitivity and respect. The investigation will be conducted in a manner that is respectful of individual privacy concerns.

The University's investigator will make written findings and recommendations (including a statement outlining the basis for them) and transmit the findings and recommendations to the appropriate University administrator. The findings and recommendations will be made available simultaneously to the Complainant and the Respondent. The appropriate administrator will review the investigator's findings and recommendations, make a determination whether this policy was violated (and, if so, what disciplinary and/or other corrective actions should be imposed), and will provide simultaneous written notification of the determination to the Complainant and the Respondent.

The University strives to complete the procedures in this Section V.B.2 within 60 calendar days of the receipt of a report of Prohibited Conduct.

3. Appeals

A Respondent who is an employee who is not satisfied with the administrator's determination may appeal in accordance with applicable University policies and procedures, including, without limitation, **University of Tennessee System Human Resources Policy 0525 (Disciplinary Action)**, **University of Tennessee System Human Resources Policy 0640 (Grievances)**, and the **University of Tennessee, Knoxville Faculty Handbook**. A Complainant shall be provided the same opportunity as a Respondent to submit information to the decision maker on appeal.

Within fifteen (15) calendar days after receipt of the administrator's determination, a Complainant who is not satisfied with the determination may appeal in writing to the next higher administrative level. The University will inform the Complainant in writing of the person to whom an appeal may be made. Any administrator who receives a Complainant's appeal shall make a decision on the appeal within ten (10) calendar days of the administrator's receipt of the appeal.

Decision makers concerning appeals must be impartial and free of any conflict of interest.

Decisions on appeals shall be provided in writing simultaneously to the Complainant and Respondent.

4. Disciplinary or Other Corrective Actions

Disciplinary actions with respect to an employee found to have committed Prohibited Conduct can include, without limitation: termination, demotion, suspension without pay, and/or oral or written corrective action. When the person found to have committed Prohibited Conduct is neither a student nor an employee, the University's corrective action(s) will vary based on the University's ability to implement corrective action(s).

D. PROCEDURE FOR INVESTIGATING AND RESOLVING A REPORT INVOLVING A RESPONDENT WHO IS A UNIVERSITY STUDENT

This Section V.D describes procedures for investigating and resolving reports of Prohibited Conduct involving a Respondent who is a student.

1. Meeting (Communication) with the Complainant

After receiving a report of Prohibited Conduct from a Reporter or a Mandatory Reporter, the Title IX Coordinator, a Deputy Title IX Coordinator, and/or a member of the S.A.R.T. will initiate immediate and appropriate steps by the University to: have an appropriate University employee meet with or otherwise communicate with the Complainant; in cases of Sexual Assault, Relationship Violence, or Stalking, provide a Complainant with a copy of this policy and/or another written publication approved by the Title IX Coordinator to inform the Complainant of the Complainant's rights under this policy (if that has not already been done by a Mandatory Reporter); evaluate whether Interim Measures need to be implemented and assist with the implementation of Interim Measures; and, subject to a Complainant's request for confidentiality (**Section III.A.5**), initiate the investigation and resolution procedures outlined in this section if, based on an initial assessment, the alleged conduct meets the definition of Prohibited Conduct. The Title IX Coordinator, a Deputy Title IX Coordinator, and/or a member of the S.A.R.T. also can assist a Complainant in reporting the incident to law enforcement.

2. Investigation

Unless the University determines that it will not investigate a report of Prohibited Conduct following a Complainant's request for confidentiality (**Section III.A.5**), the investigator(s) selected by the University will conduct the investigation in a manner appropriate in light of the circumstances of the case, which will typically include interviews with the Complainant, the Respondent, and any witnesses. As part of the investigation, the University will provide an equal opportunity for the Complainant and the Respondent to be heard, to submit information, and to identify witnesses and other evidence. The interviews will be supplemented by the gathering of any physical, documentary, or other evidence, as appropriate and available. The investigation is designed to provide a fair and reliable gathering of the facts. The investigation will be thorough and equitable, and all persons will be treated with appropriate sensitivity and respect. The investigation will be conducted in a manner that is respectful of individual privacy concerns. Investigations usually will be conducted by the Office of Student Conduct.

The investigator will prepare a written report at the conclusion of the investigation and submit the report to the Director of Student Conduct and Community Standards for further action, as necessary. The Director will provide simultaneous written notice of the investigative finding and disciplinary penalty/remedy (if any) to the Complainant and the Respondent. The University strives to complete the procedures in this Section V.D.2 within 60 calendar days of the receipt of a report of Prohibited Conduct.

3. Resolution

If the University determines after an investigation that a student has engaged in Prohibited Conduct, then the University will take prompt and effective steps reasonably calculated to end the misconduct, prevent the misconduct from recurring, and address its effects. One of those steps likely will involve the Office of Student Conduct charging the Respondent with a violation of the Standards of Conduct and resolving the matter in accordance with **Section V.B, Section V.B.4**, and the University's student disciplinary regulations and procedures described in *Hilltopics*.

4. Appeals

Appeal by the Complainant of a Decision of the Office of Student Conduct to Not Charge a Respondent with Violating the Standards of Conduct. A Complainant may appeal a decision of the Office of Student Conduct to not charge a Respondent with violating the University's Standards of Conduct to the Vice Chancellor for Student Life by filing a written request for appeal within ten (10) calendar days after receipt of the decision of the Office of Student Conduct. The Vice Chancellor for Student Life may affirm the decision of the Office of Student Conduct, reverse the decision and direct the Office of Student Conduct to charge the Respondent with violating the Standards of Conduct, or remand the matter for additional investigation or consideration. The Vice Chancellor for Student Life will issue a decision in writing, sent to the Complainant and the Respondent simultaneously, within ten (10) calendar days of receipt of the appeal. The decision of the Vice Chancellor for Student Life is final.

Appeal by the Complainant of a Proposed Disciplinary Penalty. In a case in which the Respondent has indicated a willingness to accept responsibility for violating a Standard of Conduct, but the Complainant does not agree with the disciplinary penalty proposed by the Office of Student Conduct for the Respondent's violation of the Standard of Conduct, the Complainant may appeal to the Vice Chancellor for Student Life by filing a written request for appeal within ten (10) calendar days after notification of the proposed disciplinary penalty by the Office of Student Conduct. The Vice Chancellor for Student Life may affirm the disciplinary penalty proposed by the Office of Student Conduct, modify the disciplinary penalty proposed by the Office of Student Conduct, or remand the matter for additional consideration by the Office of Student Conduct. The Vice Chancellor for Student Life will issue a decision in writing, sent to the Complainant and the Respondent simultaneously, within ten (10) calendar days of receipt of the request for review. The decision of the Vice Chancellor for Student Life is final.

Appeal of a Decision of the Student Disciplinary Board or the Student Tribunal

- (a) **Appellate Boards.** A decision of the Student Disciplinary Board (SDB) may be appealed to the Student Tribunal (ST). A decision of the ST may be appealed to the Student Life Council (SLC). The decision of the Student Life Council is final and may not be appealed. For purposes of this section, the term "Appellate Board" means the ST or the SLC.
- (b) **Appealable Decisions.** The University, the Complainant and/or the Respondent may appeal a decision of the SDB or the ST that is contained in the notice of the SDB's or ST's decision, but the grounds for appeal are limited to those described below in subsection (d).
- (c) **Notice of Appeal.** An appeal of a decision of the SDB or ST is procedurally valid only if all of the following requirements are met:
 1. An appeal shall be submitted in writing by fully completing a form approved by Student Conduct called a "Notice of Appeal."
 2. For an appeal of a decision of the SDB to the ST, the Notice of Appeal shall be received by Student Conduct within five (5) business days of the date that Student Conduct transmitted the notice of the SDB's decision. For an appeal of a decision of the ST to the

SLC, the Notice of Appeal shall be received by Student Conduct within five (5) business days of the date that the Director of Student Conduct transmitted the notice of the ST's decision.

3. The Notice of Appeal shall not include information that is not included in the record of the hearing before the SDB or, if applicable, the appeal to the ST.
- (d) Grounds for Appeal. The Notice of Appeal shall explain the grounds for the appeal, which shall be limited to one or more of the following grounds:
1. *Clearly Unreasonable Sanction.* The sanction(s) imposed by the SDB or ST is clearly unreasonable (i.e., has no sound basis or justification in reason).
 2. *Substantial Procedural Error.* A procedural error occurred prior to or during the SDB hearing, and the procedural error reasonably could have had a substantial impact on the SDB in reaching its decision. Neither the failure of the Respondent or the Complainant to secure the attendance of an advisor or witness nor the failure of an advisor or witness to attend or otherwise participate in any phase of the student conduct process constitutes a procedural error. The failure of the Respondent or the Complainant to attend the SDB hearing does not constitute a procedural error.
 3. *New Information.* New information has been discovered, the information reasonably could have had a substantial impact on the SDB in reaching its decision, and the person submitting the Notice of Appeal did not know and reasonably could not have known about the information at the time of the SDB Hearing.
- (e) Effective Date of Sanction. The sanction(s) imposed by the SDB shall not be effective during the period in which a Notice of Appeal may be submitted, or, if a procedurally valid Notice of Appeal has been submitted, until a Notice of Final Decision is issued by the SDB or ST, whichever is later.
- (f) Notice of Final Decision.
1. An Appellate Board shall reach one (1) of the following decisions:
 - (i) Affirm both the SDB's finding that the Respondent violated the Standards of Conduct and the sanctions imposed by the SDB;
 - (ii) In a case involving a clearly unreasonable sanction, affirm the SDB's finding that the Respondent violated the Standards of Conduct and modify the sanctions imposed by the SDB by imposing a greater or lesser sanction(s);
 - (iii) In cases of a substantial procedural error, remand the case for a new hearing to be conducted by the same SDB. The Appellate Board should recommend to the Chairperson how to correct the procedural error. The Director of Student Conduct may appoint a substitute member for any member of the SDB who is unavailable to participate in the new hearing; or
 - (iv) In cases of new information that fits the criteria described above in subsection (d)(3), remand the case to the same SDB for the limited purpose of hearing the new information and reconsidering its decision based on the new information. The Director of Student Conduct may appoint a substitute member for any member of the SDB who is unavailable to participate in hearing the new information or the reconsideration of the decision.
 2. The Appellate Board shall communicate its decision through a written notice called a Notice of Final Decision. The Notice of Final Decision should be issued within five (5) business days of the hearing of the appeal by the Appellate Board. The Notice of Final Decision shall be sent to the Director of Student Conduct, who will send the Notice of

Final Decision to the Respondent, the Chairperson of the SDB, and, if permitted or required by law, the Complainant.

3. The decision of the SLC is final and is not subject to appeal.

Appeal by the University, the Complainant, or the Respondent of an Initial Order in a TUAPA Hearing. An appeal of an initial order of in a TUAPA Hearing shall be filed with the Chancellor/Agency Head within fifteen (15) calendar days after entry of the initial order. In cases involving Prohibited Conduct, the Chancellor/Agency Head will strive to issue a final order or an order remanding the matter for further proceedings within ten (10) calendar days after the filing of an appeal.

Decisions on Any Type of Appeal. Decisions on appeals shall be provided in writing simultaneously to the Complainant and Respondent.

5. Disciplinary Sanctions and Other Remedial and Protective Measures

Following a final determination under University procedures that a student committed Prohibited Conduct (e.g., after appeals have been exhausted), the University will take prompt and effective steps reasonably calculated to end the misconduct, prevent the misconduct from recurring, and address its effects. Such steps likely will include imposing one or more of the following disciplinary sanctions: permanent dismissal, suspension, deferred suspension, disciplinary probation, disciplinary reprimand, restitution, education, loss of privilege, and/or warning. In addition to imposing disciplinary sanctions, the University may implement other remedial and protective actions, including: issuing a no-contact directive to the Respondent; providing medical and counseling services to the Complainant (for a student Complainant); exploring changes in living, transportation, dining, and working arrangements for the Complainant and the Respondent; providing an escort to ensure that the Complainant can move safely between classes and activities (for a student Complainant); exploring changes in class and extracurricular schedules, including adjustments so that the Complainant and the Respondent do not share the same classes (for a student Complainant); assisting the Complainant in communicating with faculty (for a student Complainant); providing academic support for the Complainant, including tutoring (for a student Complainant); and exploring options for re-taking a course, dropping a course, or withdrawing for a semester without financial or academic penalty (for a student Complainant). The University will take prompt and effective steps reasonably calculated to end the misconduct, prevent the misconduct from recurring, and address its effects.

VI. REQUIREMENTS AND GUIDELINES FOR MANDATORY REPORTERS

A. REQUIRED ACTIONS

A Mandatory Reporter who receives information concerning an incident of Prohibited Conduct **shall**:⁷

- 1.** assist the Complainant with obtaining medical assistance (if needed or requested) or accessing other on- or off-campus resources (if requested);
- 2.** encourage the Complainant to report the incident to law enforcement and assist the Complainant in contacting law enforcement if requested by the Complainant; and
- 3.** report the incident to the University:
 - evaluate whether University Safety Policy 0575 applies because the incident involves suspected child abuse or child sexual abuse (if so, comply with the reporting requirements of that policy); or
 - if University Safety Policy 0575 does not apply, report the incident to the Title IX Coordinator, a Deputy Title IX Coordinator, or a member of the S.A.R.T. promptly after receiving notice of the incident (no later than 48 hours after receiving the report⁸).⁹ The Mandatory Reporter shall communicate: (1) details known about the alleged incident that the University will need to determine what happened – including the names of the Complainant, Reporter, and Respondent(s), any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident; and (2) if applicable, communicate to the Title IX Coordinator, a Deputy Title IX Coordinator, or a member of the S.A.R.T. that a Complainant has requested that the University maintain confidentiality.

Deputy Title IX Coordinators and members of the S.A.R.T. must inform the Title IX Coordinator of all reports of Prohibited Conduct. In cases involving Sexual Assault, Relationship Violence, or Stalking, the Title IX Coordinator must ensure that a copy of this policy or another written publication approved by the Title IX Coordinator has been provided to the Complainant to inform the Complainant of their rights under this policy.

Complainants who are Mandatory Reporters are not required to report or take any other action identified in this section with respect to Prohibited Conduct to which they personally have been subjected.

B. RECOMMENDED ACTIONS

Before a person reveals information to the Mandatory Reporter that the person may wish to keep confidential, use his/her best efforts to ensure that the person understands:

⁷ In addition to the responsibilities of a Mandatory Reporter described in this Section VI, the Title IX Coordinator, Deputy Title IX Coordinators, the S.A.R.T., and UTPD also are responsible for carrying out responsibilities described in other sections of this policy. The Title IX Coordinator, Deputy Title IX Coordinators, the S.A.R.T., and/or UTPD may develop internal procedures for the purposes of implementing this policy, as long as the procedures do not conflict with this policy.

⁸ If the end of the 48 hour reporting window falls on a weekend or a University holiday, then the Mandatory Reporter should report the incident as soon as possible on the next University business day.

⁹ A Mandatory Reporter may also inform his/her supervisor of the incident. With the prior approval of the Title IX Coordinator, a University unit may adopt a policy that requires a Mandatory Reporter in the unit to report an incident of Prohibited Conduct to his/her supervisor or other designee within the unit, who, in lieu of the Mandatory Reporter who received notice of the incident, shall promptly report the incident to the Title IX Coordinator, a Deputy Title IX Coordinator, or a member of the S.A.R.T.

1. the Mandatory Reporter's obligation to report the names of a Respondent and a Complainant involved in the alleged Prohibited Conduct, as well as other relevant facts regarding the alleged incident, to the University;
2. a Complainant's ability to share the information confidentially with certain on- and off-campus resources (**Section IV.A**);
3. a Complainant's option under this policy to request that the University maintain confidentiality (**Section III.A.5**), if the person indicates that he/she wants to disclose information to the Mandatory Reporter but wishes to maintain confidentiality;
4. if the person indicates hesitancy to report an incident to the University, inform the person that the University prohibits Retaliation and will not only take steps to prevent Retaliation but also take strong responsive action if Retaliation occurs; and

A Mandatory Reporter who receives information from a Complainant concerning an incident of Prohibited Conduct **should**:

1. provide emotional support to the Complainant;
2. encourage the Complainant to preserve any physical evidence (e.g., if possible, the Complainant should not shower, bathe, douche, change clothes, brush his/her teeth, or comb his/her hair);
3. inform the Complainant that the Mandatory Reporter will be reporting the incident to the Title IX Coordinator, a Deputy Title IX Coordinator, or a member of the S.A.R.T., one of whom will be contacting the Complainant to provide further guidance and assistance; and
4. provide a Complainant with a copy of this policy or another written publication approved by the Title IX Coordinator, if available, to inform the Complainant of the Complainant's rights under this policy.

C. PROHIBITED ACTIONS

A Mandatory Reporter who receives notice of an incident of Prohibited Conduct **shall not**:

1. guarantee a Complainant that the Mandatory Reporter will keep information confidential;
2. share information about the incident with a person who does not have a University-related need to know;
3. share personally identifiable information about the incident with law enforcement (including UTPD) without the Complainant's consent; and/or
4. investigate or otherwise attempt to resolve reports of Prohibited Conduct without the approval of the Title IX Coordinator (this provision does not apply to UTPD), other than taking an action required or recommended in **Section VI.A-B**.

D. UTPD

UTPD shall provide the Title IX Coordinator with access to its investigation notes and findings as necessary for the University's non-law enforcement investigation, as long as providing the notes and findings would not compromise UTPD's law enforcement investigation.

When the University's non-law enforcement investigation of a report of Prohibited Conduct occurs concurrently with a law enforcement investigation of the same incident, UTPD shall not cause the University's non-law enforcement investigation to be delayed pending the outcome of UTPD's law enforcement investigation, except for the collection of evidence.

VII. OTHER UNIVERSITY POLICIES/PROCEDURES; DUE PROCESS; ACADEMIC FREEDOM AND FIRST AMENDMENT RIGHTS

A. CHILD ABUSE AND CHILD SEXUAL ABUSE

University of Tennessee System Safety Policy 0575 (“Programs for Minors”) (http://policy.tennessee.edu/safety_policy/sa0575/) takes precedence over this policy with respect to reporting suspected child abuse and child sexual abuse. Except for **Safety Policy 0575** and as otherwise provided in this policy, this policy takes precedence over other University policies and procedures concerning Prohibited Conduct in the event of a conflict.

B. STUDENT POLICIES AND PROCEDURES

The Standards of Conduct for students can be found in **Hilltopics**, the University’s student handbook (<http://hilltopics.utk.edu/>). Standard of Conduct Number 7 for students prohibits students from engaging in Sexual Misconduct, Relationship Violence, or Stalking. Standard of Conduct Number 31 for students prohibits students from engaging in Retaliation. In the event of a conflict between this policy and **Hilltopics**, this policy shall control. If this policy does not supply a substantive or procedural rule relating to an issue, then **Hilltopics** shall supply the rule.

C. EMPLOYEE POLICIES AND PROCEDURES

In the event of a conflict between this policy and another University employee policy or procedure, this policy shall control. If this policy does not supply a substantive or procedural rule relating to an issue, then another employee policy or procedure, if applicable, may supply the rule. The following is a non-exclusive list of other policies and procedures that in some cases may apply to the investigation and/or resolution of a report of Prohibited Conduct involving a University employee:

- **University of Tennessee Board of Trustees Policy 0006** (Policies Governing Academic Freedom, Responsibility, and Tenure)
- **University of Tennessee, Knoxville Faculty Handbook**
- **University of Tennessee System Human Resources Policy 0160** (Termination of Employment)
- **University of Tennessee System Human Resources Policy 0220** (Equal Employment Opportunity and Affirmative Action)
- **University of Tennessee System Human Resources Policy 0355** (Leave of Absence)
- **University of Tennessee System Human Resources Policy 0525** (Disciplinary Action)
- **University of Tennessee System Human Resources Policy 0580** (Code of Conduct)
- **University of Tennessee System Human Resources Policy 0640** (Grievances)

D. TENNESSEE UNIFORM ADMINISTRATIVE PROCEDURES ACT

Chapter 1720-1-5 of the Rules of the University of Tennessee (<http://www.tn.gov/sos/rules/1720/1720-01/1720-01-05.pdf>) sets forth the University’s procedures for conducting a contested case hearing pursuant to the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-301 *et seq.* In a case involving alleged Sexual Misconduct, Relationship Violence, Stalking, or Retaliation, the administrative judge or hearing officer shall modify those procedures when required to comply with federal law, including without limitation, Title IX and the Clery Act.

E. CONSENSUAL RELATIONSHIPS

Consensual romantic or sexual relationships between members of the University community also are subject to other University policies. For example, the University’s policy on amorous or sexual relationships between faculty and students can be found in **Section 2.2.6 of the UTK Faculty Handbook** (<http://provost.utk.edu/faculty/manuals/faculty-handbook/>). Even if an amorous or sexual relationship between members of the University community begins as consensual, it can evolve into situations that lead to allegations of Prohibited Conduct. In addition, depending on the circumstances, a consensual sexual relationship may also violate other University policies, including, without limitation, University of Tennessee System Human

Resources Policies **0220** (“Equal Employment Opportunity Affirmative Action and Diversity”), **0280** (“Sexual Harassment”), and **0580** (“Code of Conduct”).

F. DUE PROCESS

This policy is designed to comply with Title IX while also ensuring that due process (if constitutionally required) is provided to Respondents who are accused of violating this policy.

G. ACADEMIC FREEDOM AND FIRST AMENDMENT RIGHTS

This policy is not intended to, and will not be used to, infringe on academic freedom or to censor or punish students, faculty, or staff who exercise their First Amendment rights, even though such expression may be offensive or unpleasant.

VIII. PREVENTION AND AWARENESS PROGRAMS

The University implements comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to prevent Prohibited Conduct by and against members of the University community. The University intends that its Prevention Programs: (1) be culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome; and (2) consider environmental risk and protective factors as they occur on the individual, relationship, University, community, and societal levels. Prevention Programs include both Primary Prevention Programs, Primary Awareness Programs, and Ongoing Prevention and Awareness Campaigns.

A. PRIMARY PREVENTION PROGRAMS

The University implements programming, initiatives, and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop Prohibited Conduct before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe Bystander Intervention, and seek to change behavior and social norms in healthy and safe directions.

The University implements programs for incoming students and new employees that inform them about:

- this policy, including: the University's prohibition against Prohibited Conduct; the definitions of Tennessee Sex Offense Crimes and Tennessee Relationship Violence Crimes; the definition of consent with respect to crimes relating to sexual activity in the State of Tennessee; and the information that is included in this policy in accordance with 34 C.F.R. § 668.46(b)(11) and 34 C.F.R. § 668.46(k)(2);
- Bystander Intervention; and
- Risk Reduction.

Questions about the University's current Primary Prevention Programs should be directed to the Title IX Coordinator or the Deputy Title IX Coordinator for Students.

B. PRIMARY AWARENESS PROGRAMS

The University implements comprehensive, intentional, and integrated community-wide or audience-specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent Prohibited Conduct, promote safety, and reduce the perpetration of Prohibited Conduct.

Questions about the University's Primary Awareness Programs should be directed to the Title IX Coordinator or the Deputy Title IX Coordinator for Students.

C. ONGOING PREVENTION AND AWARENESS CAMPAIGNS

The University implements programming, initiatives, and strategies for students and employees that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing Prohibited Conduct using a range of strategies with audiences throughout the University and including information about:

- this policy, including: the University's prohibition against Prohibited Conduct; the definitions of Tennessee Sex Offense Crimes and Tennessee Relationship Violence Crimes; the definition of consent with respect to crimes relating to sexual activity in the State of Tennessee; and the information that is included in this policy in accordance with 34 C.F.R. § 668.46(b)(11) and 34 C.F.R. § 668.46(k)(2);
- Bystander Intervention; and
- Risk Reduction.

Questions about the University's ongoing prevention and awareness campaigns should be directed to the Title IX Coordinator or the Deputy Title IX Coordinator for Students.

APPENDIX A: ADDITIONAL POLICY DEFINITIONS

In addition to the terms defined in **Section II**, the following definitions apply for the purposes of this policy:

- A. BYSTANDER INTERVENTION:** Safe and positive options that may be carried out by an individual(s) to prevent harm or intervene when there is a risk of Prohibited Conduct. Bystander Intervention includes: recognizing situations of potential harm; understanding institutional structures and cultural conditions that facilitate violence; overcoming barriers to intervening; identifying safe and effective intervention options; and taking action to intervene. More information about Bystander Intervention can be found at: <http://wellness.utk.edu>.
- B. CAMPUS SECURITY AUTHORITIES:** Individuals from whom the University collects certain crime statistics for purposes of the Clery Act, as defined in 34 C.F.R. § 668.46. A list of the job titles of the University's Campus Security Authorities can be found at: <http://utpolice.utk.edu/clery-act/>.
- C. CLERY ACT:** The Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act, 20 U.S.C. § 1092(f), as amended by the Violence Against Women Reauthorization Act of 2013. More information about the Clery Act, including the University's Annual Security Report, can be found at: <http://utpolice.utk.edu/clery-act/>.
- D. CLERY GEOGRAPHY:** Clery Geography means property for which the University is required to report crime statistics pursuant to the Clery Act, as described in 34 C.F.R. § 668.46(c)(4).
- E. COMPLAINANT:** A person who may have been subjected to Prohibited Conduct regardless of whether that person makes a report or seeks action under this policy. This term does not imply pre-judgment concerning whether the person was subjected to Prohibited Conduct.
- F. DEPUTY TITLE IX COORDINATOR(S):** The person(s) identified as Deputy Title IX Coordinators in **Section I.C**.
- G. FERPA:** The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g.
- H. INTERIM MEASURES:** Reasonable and appropriate measures, as determined by the University, which are designed to eliminate reported Prohibited Conduct and protect the persons involved in the matter (e.g., Complainant, Reporter, potential witnesses).
- I. MANDATORY REPORTER:** A University employee identified in **Section III.A** (non-law enforcement), **Section III.B.1** (UTPD), and/or **Appendices B-C** as an option for reporting Prohibited Conduct to the University. Notwithstanding anything in this policy to the contrary, Mandatory Reporters do not include persons who are prohibited in the situation from reporting an incident by a law or mandatory ethical standard imposed by their profession (e.g., a Qualified Mental Health Professional who learns of the information in the course of a privileged provider-patient relationship).
- J. OFFICE OF STUDENT CONDUCT:** The University's Office of Student Conduct and Community Standards.
- K. PREPONDERANCE OF THE EVIDENCE:** The amount of evidence that causes one to conclude that an allegation is probably true (i.e., more likely true than not true). If the evidence on a particular allegation is equally balanced, then that allegation has not been proven by a preponderance of the evidence. (*The source of this definition is Tennessee Pattern Jury Instruction 2.40.*)
- L. PROHIBITED CONDUCT:** Sexual Misconduct, Relationship Violence, Stalking, and/or Retaliation.
- M. QUALIFIED MENTAL HEALTH PROFESSIONAL:** A person who is licensed in the state of Tennessee, if required for the profession, and who is: a psychiatrist; physician with expertise in psychiatry as determined by training, education, or experience; psychologist with health service provider designation; psychological examiner or senior psychological examiner; licensed master's social worker with two years of mental health experience or licensed clinical social worker; marital and family therapist; nurse with a

master's degree in nursing who functions as a psychiatric nurse; professional counselor; or if the person is providing service to children, any of the above educational credentials plus mental health experience with children. *(The source of this definition is Tennessee Code Annotated § 33-1-101.)*

- N. REGISTERED STUDENT ORGANIZATION:** A student organization registered with the University in accordance with University rules.
- O. RELATIONSHIP VIOLENCE CRIME(S):** A term that encompasses both Clery Act Relationship Violence Crimes and Tennessee Relationship Violence Crimes, which are defined below:
- 1. CLERY ACT RELATIONSHIP VIOLENCE CRIMES:** The Clery Act requires the University to report certain statistics for the following crimes of relationship violence that occur on Clery Geography in the University's Annual Security Report:
 - a. DATING VIOLENCE:** This term is defined in **Section II.A.**
 - b. DOMESTIC VIOLENCE:** This term is defined in **Section II.A.**
 - c. STALKING (CLERY ACT CRIME):** This term is defined in **Section II.A.**
 - 2. TENNESSEE RELATIONSHIP VIOLENCE CRIMES:** The crimes below are crimes in the State of Tennessee that are the closest equivalents to Clery Act Relationship Violence Crimes:
 - a. ASSAULT:** The crime of assault in Tennessee is defined in Tennessee Code Annotated § 39-13-101.
 - b. DOMESTIC ASSAULT:** The crime of Domestic Assault in Tennessee is defined in Tennessee Code Annotated § 39-13-111.
 - c. STALKING (TENNESSEE CRIME):** The crime of in Tennessee is defined in Tennessee Code Annotated § 39-17-315.
 - d. VIOLATING AN ORDER OF PROTECTION RELATING TO DOMESTIC ABUSE OR STALKING:** In Tennessee, a domestic abuse victim or stalking victim who has been subjected to, threatened with, or placed in fear of, domestic abuse or stalking may seek relief by filing a sworn petition alleging domestic abuse or stalking by the Respondent. Such a petition must be filed in the county where the Respondent resides or the county in which the domestic abuse, stalking, or sexual assault occurred. If the Respondent is not a resident of Tennessee, the petition may be filed in the county where the Complainant resides. Tennessee law provides criminal penalties for violations of certain orders of protection. More information on Tennessee's law on orders of protection can be found in Tennessee Code Annotated § 36-3-601 *et seq.*
- P. REPORTER:** A person who communicates a concern to a Mandatory Reporter regarding the occurrence of Prohibited Conduct. A Reporter need not be a Complainant.
- Q. RESPONDENT:** A person or registered student organization who has been accused of committing Prohibited Conduct. This term does not imply pre-judgment concerning whether the person or registered student organization committed Prohibited Conduct.
- R. RISK REDUCTION:** Options designed to decrease perpetration and bystander inaction, and to increase empowerment for Complainants in order to promote safety and to help individuals and communities address conditions that facilitate violence. More information about Risk Reduction can be found at: <http://utpolice.utk.edu>.
- S. SEX DISCRIMINATION:** Conduct directed at a specific person or a group of identifiable persons that subjects the person or group to treatment that adversely affects their employment, education, or ability to participate in or benefit equally in any University program or activity, on account of sex. Sex Discrimination may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility

based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. A complaint of Prohibited Conduct will be treated as a complaint of Sex Discrimination in violation of Title IX if it was based on the sex of the Complainant.

- T. SEX OFFENSE(S):** Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
- U. SEXUAL ASSAULT RESPONSE TEAM (S.A.R.T.):** The group of University employees identified in **Section I.D.**
- V. SEX OFFENSE CRIME(S):** A term that encompasses both Clery Act Sex Offenses and Tennessee Sex Offenses, which are defined below:
 - 1. CLERY ACT SEX OFFENSES:** The Clery Act requires the University to report certain statistics for the following Sex Offenses that occur on Clery Geography in the University's Annual Security Report:
 - a. FONDLING:** The touching of a private body part 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 Tennessee law.
 - c. RAPE (CLERY ACT):** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the victim.
 - d. SEXUAL ASSAULT (CLERY ACT):** An act that meets the definition of Rape (Clery Act), Fondling, Incest, or Statutory Rape (Clery Act).
 - e. STATUTORY RAPE (CLERY ACT):** Sexual Intercourse with a person who is under the statutory age of Consent.
 - 2. TENNESSEE SEX OFFENSES:** The crimes below are crimes in the State of Tennessee that are the closest equivalents to Clery Act Sex Offenses:
 - a. AGGRAVATED RAPE:** The crime of Aggravated Rape is defined in Tennessee Code Annotated § 39-13-502.
 - b. RAPE (TENNESSEE):** The crime of Rape (Tennessee) is defined in Tennessee Code Annotated § 39-13-503.
 - c. AGGRAVATED SEXUAL BATTERY:** The crime of Aggravated Sexual Battery is defined in Tennessee Code Annotated § 39-13-504.
 - d. SEXUAL BATTERY:** The crime of Sexual Battery is defined in Tennessee Code Annotated § 39-13-505.
 - e. STATUTORY RAPE (TENNESSEE):** The crime of Statutory Rape is defined in Tennessee Code Annotated § 39-13-506.
 - f. SEXUAL CONTACT WITH A MINOR BY AN AUTHORITY FIGURE:** The crime of Sexual Contact with a Minor by an Authority Figure is defined in Tennessee Code Annotated § 39-13-509.
 - g. RAPE OF A CHILD:** The crime of Rape of a Child is defined in Tennessee Code Annotated § 39-13-522.

- h. **SEXUAL BATTERY BY AN AUTHORITY FIGURE:** The crime of Sexual Battery by an Authority Figure is defined in Tennessee Code Annotated § 39-13-527.
- i. **AGGRAVATED RAPE OF A CHILD:** The crime of Aggravated Rape of a Child is defined in Tennessee Code Annotated § 39-13-531.
- j. **STATUTORY RAPE BY AN AUTHORITY FIGURE:** The crime of Statutory Rape by an Authority Figure is defined in Tennessee Code Annotated § 39-13-532.
- k. **VIOLATING AN ORDER OF PROTECTION RELATING TO SEXUAL ASSAULT:** In Tennessee, a person who has been subjected to, threatened with, or placed in fear of Aggravated Rape, Rape, Statutory Rape, Rape of a Child, Aggravated Sexual Battery, Sexual Battery, or Sexual Battery by an Authority Figure may seek relief by filing a sworn petition alleging domestic abuse or stalking by the Respondent. Such a petition must be filed in the county where the respondent resides or the county in which the domestic abuse, stalking, or sexual assault occurred. If the Respondent is not a resident of Tennessee, the petition may be filed in the county where the Complainant resides. Tennessee law provides criminal penalties for violations of certain orders of protection. More information on Tennessee’s law on orders of protection can be found in Tennessee Code Annotated § 36-3-601 *et seq.*
- W. **TITLE IX:** Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*
- X. **TITLE IX COORDINATOR:** The person identified as the Title IX Coordinator in **Section I.C** or a designee of the Title IX Coordinator employed in the Office of Equity & Diversity.
- Y. **TUAPA HEARING:** A hearing conducted by a University administrative judge or hearing officer in accordance with the University’s procedures for conducting a contested case hearing pursuant to the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-301 *et seq.*
- Z. **UNIVERSITY:** The University of Tennessee, Knoxville and/or the University of Tennessee Institute of Agriculture.
- AA. **UTPD:** The campus police department at the University of Tennessee, Knoxville.

APPENDIX B: MANDATORY REPORTERS WHEN THE COMPLAINANT IS A UNIVERSITY STUDENT¹⁰

EMPLOYEE	IS THE EMPLOYEE A MANDATORY REPORTER WHEN THE COMPLAINANT IS A UNIVERSITY STUDENT?
Title IX Coordinator/Office of Equity & Diversity	Yes
Deputy Title IX Coordinators	Yes
Faculty members	Yes
Exempt, non-student staff members	Yes (except for Confidential Employees identified in Article IV.A.1, who are not Mandatory Reporters if they receive the information from a Complainant who is a patient or a client)
Academic advisors, but not including student tutors	Yes
Faculty and staff advisors to registered student organizations	Yes
Resident Assistants and Graduate Assistants (e.g., Graduate Teaching Assistants, Academic Advisors, Graduate Assistants in Athletics)	Yes, if the report is received in the assistant's University employment capacity (except for a graduate assistant who receives the information while working for a Confidential Employee identified in Article IV.A.1)
A University employee whom the University has designated as a "Campus Security Authority" for purposes of Clery Act compliance http://utpolice.utk.edu/clery-act/	Yes, if the report concerns a Clery Act crime that occurred on Clery Act Geography (the report shall be sent to UTPD)
Employees who are not identified in this Appendix B	No

¹⁰ If an employee has multiple roles, the employee is a Mandatory Reporter if the answer is "Yes" on this chart with respect to any of the employee's roles in a particular situation. Also, as described in Article III.B.1, employees of UTPD are Mandatory Reporters for reports received in a law enforcement capacity.

APPENDIX C: MANDATORY REPORTERS WHEN THE COMPLAINANT IS A UNIVERSITY EMPLOYEE¹¹

EMPLOYEE	IS THE EMPLOYEE A MANDATORY REPORTER WHEN THE COMPLAINANT IS A UNIVERSITY EMPLOYEE?
Title IX Coordinator/Office of Equity & Diversity and Deputy Title IX Coordinators	Yes
The Executive Director or the Director of Human Resources Employee Relations	Yes
Employees who are supervisors	<p>Yes, if the report is made to: (1) the immediate supervisor of either the Complainant or the Respondent; or (2) other employee who has the authority to redress the prohibited conduct.</p> <p>However, Confidential Employees identified in Article IV.A.1 are not Mandatory Reporters if they receive the information from a person who is a patient or a client.</p>
A University employee whom the University has designated as a “Campus Security Authority” for purposes of Clery Act compliance http://utpolice.utk.edu/clery-act/	Yes, if the report concerns a Clery Act crime that occurred on Clery Act Geography (the report shall be sent to UTPD)
Employees who are not identified in this Appendix C	No

¹¹ If an employee has multiple roles, the employee is a Mandatory Reporter if the answer is “Yes” on this chart with respect to any of the employee’s roles in a particular situation. Also, as described in Article III.B.1, employees of UTPD are Mandatory Reporters for reports received in a law enforcement capacity.

APPENDIX D: CONFIDENTIALITY EXCEPTIONS UNDER TENNESSEE LAW

- A. Child abuse or child sexual abuse (Tennessee Code Annotated §§ 37-1-401 et seq.; 37-1-601 et seq.; 37-1-614).** Tennessee law mandates reporting by any person, including a psychiatrist, psychologist, physician, or social worker, who has knowledge of physical or mental harm to a child if: (1) the nature of the harm reasonably indicates it was caused by brutality, abuse, or neglect; or (2) on the basis of available information, the harm reasonably appears to have been caused by brutality, abuse, or neglect. Tennessee law also mandates reporting by any person who knows or has reasonable cause to suspect that a child has been sexually abused, regardless of whether the child has sustained any apparent injury as a result of the abuse. State law requires a report of child abuse or child sexual abuse to be made immediately to one of the following authorities outside the University: (1) 911, in the case of an emergency; (2) the Tennessee Department of Children's Services; (3) the sheriff of the county where the child resides; (4) the chief law enforcement official of the city where the child resides; or (5) a judge having juvenile jurisdiction over the child. The Tennessee mandatory reporting laws apply to all University employees, contractors, and volunteers, even if the child abuse or child sexual abuse does not occur in connection with a University educational program or activity. For purposes of the Tennessee mandatory reporting law, University students who are under the age of eighteen (18) are not excluded from the definition of a child.
- B. Persons called upon to tender aid to certain victims (Tennessee Code Annotated § 38-1-101).** Tennessee law requires all physicians, surgeons, nurses, pharmacists, or other persons to immediately report an incident in which they were called upon to tender aid to a victim suffering from any wound or other injury inflicted by means of a knife, pistol, gun, or other deadly weapon, or by other means of violence, or suffering from the effects of poison, or suffocation, or where a wound or injury is reasonably believed to have resulted from exposure to a methamphetamine laboratory or a methamphetamine related fire, explosion, or chemical release, or appears to be suffering from or to have been the victim of female genital mutilation in violation of Tennessee Code Annotated § 39-13-110. The report is required to be made to certain law enforcement officials. Generally, such report must state the name, residence, and employer of the victim, if known, the victim's whereabouts at the time the report is made, the place the injury occurred, and the character and extent of the victim's injuries. However, the reporting obligations do not apply if: (1) the victim is at least 18 years of age; (2) the victim objects to the release of any identifying information to law enforcement officials; (3) the victim is a victim of a sexual assault offense or domestic abuse as defined in Tennessee Code Annotated § 36-3-601; and (4) the victim's injuries are not considered by the treating healthcare professional to be life threatening, or the victim is not being treated for injuries inflicted by strangulation, a knife, pistol, gun, or other deadly weapon.
- C. Subpoenas or court orders – physicians.** A physician can be required to testify concerning confidential information by a subpoena or court order.
- D. Court orders – Qualified Mental Health Professionals (Tennessee Code Ann. § 33-3-114).** A court can order a Qualified Mental Health Professional to disclose confidential information if, after a hearing, the court determines that disclosure is necessary for the conduct of proceedings before it.
- E. Duty to warn third parties (Tennessee Code Annotated §§ 33-3-206; 33-3-210).** A Qualified Mental Health Professional (e.g., a licensed psychiatrist or psychologist) is required by state law to take reasonable care to predict, warn of, or take precautions to protect an identified victim from a patient/client's violent behavior if: (1) a patient/client has communicated to a Qualified Mental Health Professional an actual threat of bodily harm against a clearly identified victim; and (2) the Qualified Mental Health Professional, using the reasonable skill, knowledge, and care ordinarily possessed and exercised by the professional's specialty under similar circumstances, has determined that the patient/client has the apparent ability to commit such an act and is likely to carry out the threat unless prevented from doing so. If the threat communicated by a patient/client to a Qualified Mental Health Professional is an actual threat of serious bodily harm or death against a reasonably identifiable victim or victims, then the Qualified Mental Health Professional is required to report the patient/client to local law enforcement.

F. Sexually transmitted diseases (Tennessee Code Annotated §§ 68-10-102; 68-10-115).

- A person who has a reasonable belief that a person has knowingly exposed another to HIV may inform the potential victim without incurring any liability. Please note that Tennessee law is not clear whether this obligation applies to a physician or a Qualified Mental Health Professional.
- If any attending physician or other person knows or has good reason to suspect that a person having a STD is behaving so as to expose other persons to infection, or is about to so behave, the attending physician or other person shall notify the municipal or county health officer of the name and address of the diseased person and the essential facts in the case. Please note that Tennessee law is not clear whether this obligation applies to a Qualified Mental Health Professional.

G. Tennessee Adult Protection Act (protection of the elderly and other vulnerable persons) (Tennessee Code Annotated § 71-6-101 et seq.). Generally, Tennessee law requires any person who has reasonable cause to suspect that a person age 60 or older, or a person with certain physical and mental disabilities, has been subject abuse, neglect, or exploitation to report the situation to the Tennessee Department of Human Services, which will notify the appropriate law enforcement agency.

APPENDIX E: COMPLAINT PROCEDURES

NATURE OF THE REPORT	STATUS OF THE RESPONDENT	UNIVERSITY COMPLAINT PROCEDURE
Sexual Assault or a Sex Offense Crime	Student	Section V.B and Section V.D of this policy
Dating Violence, Domestic Violence, Stalking, or a Relationship Violence Crime	Student	Section V.B and Section V.D of this policy
Sex Discrimination (e.g., Sexual Harassment, Sexual Exploitation) that does not involve Sexual Assault, a Sex Offense Crime, a Relationship Violence Crime, Dating Violence, Domestic Violence, or Stalking	Student	Section V.B and Section V.D of this policy
Retaliation	Student	Section V.B and Section V.D of this policy
Sexual Assault or a Sex Offense Crime	Employee or Other Non-Student	Section V.B and Section V.C of this policy
Dating Violence, Domestic Violence, Stalking, or a Relationship Violence Crime	Employee or Other Non-Student	Section V.B and Section V.C of this policy
Sex Discrimination (e.g., Sexual Harassment, Sexual Exploitation) that does not involve Sexual Assault, a Sex Offense Crime, a Relationship Violence Crime, Dating Violence, Domestic Violence, or Stalking	Employee or Other Non-Student	Discrimination Complaint Procedure (http://oed.utk.edu/complaints/)
Retaliation	Employee or Other Non-Student	Discrimination Complaint Procedure (http://oed.utk.edu/complaints/)

APPENDIX F: CONSENT UNDER TENNESSEE CRIMINAL LAW

In Tennessee, with respect to most criminal offenses relating to sexual activity, sexual activity is criminal if: (1) the activity was accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the activity that the victim did not consent; (2) force or coercion is used to accomplish the activity; (3) the defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless; or (4) the sexual activity is accomplished by fraud.

“Consent” is not explicitly defined in Tennessee statutory law, for purposes of criminal offenses relating to sexual activity.

“Coercion” means a threat of kidnapping, extortion, force, or violence to be performed immediately or in the future. (Tennessee Code Annotated § 39-13-501(1))

“Mentally defective” means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of the person's conduct. (Tennessee Code Annotated § 39-13-501(3))

“Mentally incapacitated” means that a person is rendered temporarily incapable of appraising or controlling the person's conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without the person's consent, or due to any other act committed upon that person without the person's consent. (Tennessee Code Annotated § 39-13-501(4))

“Physically helpless” means that a person is unconscious, asleep or for any other reason physically or verbally unable to communicate unwillingness to do an act. (Tennessee Code Annotated § 39-13-501(5))

With respect to criminal offenses relating to sexual activity with a person under the age of eighteen (18) years of age, consent is irrelevant because Tennessee law deems a minor as incapable of consenting to sexual activity. However, Tennessee law provides a close-in-age exception to that general rule that allows minors who are at least the age of thirteen (13) and less than the age of eighteen (18) to give Consent to sexual acts with another person who is less than four (4) years older than the minor.