

Department: Student Services  
 Owner & Title: Melanie Scheet, National Director of SS

Effective Date: 8/20/2015  
 Last Revised Date: 6/8/2017

## Policy Information

### I. Title IX Notice of Non-Discrimination

Universal Technical Institute is dedicated to maintaining safe learning and working environments for students, employees, and third parties. UTI prohibits discrimination and harassment on the basis of race, color, national origin, sex, religion, disability, age, veteran status, sexual orientation, gender identity or expression, genetic information, and any other legally protected status in the provision of its courses, programs, services or activities.

UTI has designated the National Director of Student Services to coordinate its compliance with Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex. Questions or comments about discrimination or harassment can be directed to:

National Director of Student Services  
 Title IX Coordinator  
 16220 N. Scottsdale Road, Suite 100  
 Scottsdale, AZ 85254  
 800-859-7249 or 321-281-9755  
[mscheet@uti.edu](mailto:mscheet@uti.edu)

Inquiries concerning Title IX also may be made to the Office for Civil Rights at:

U.S. Department of Education  
 Office for Civil Rights  
 Lyndon Baines Johnson Department of Education Bldg.  
 400 Maryland Ave., SW  
 Washington, DC 20202-1100  
 Telephone: 800-421-3481  
 FAX: 202-453-6012  
 TDD: 877-521-2172  
 Email: [OCR@ed.gov](mailto:OCR@ed.gov)

UTI has identified the Student Services Director at each campus as a Deputy Title IX Coordinator for student related complaints. They can be contacted as follows:

Campus	Campus Address	Toll Free	Email Address
Avondale	10695 W. Pierce Street, Avondale, AZ 85323	800-859-1202	<a href="mailto:likingsley@uti.edu">likingsley@uti.edu</a>
Houston	721 Lockhaven Drive, Houston, TX 77073	800-325-0354	<a href="mailto:mcode@uti.edu">mcode@uti.edu</a>
Lisle	2611 Corporate West Drive, Lisle, IL 60532	800-441-4248	<a href="mailto:kstamp@uti.edu">kstamp@uti.edu</a>
Rancho Cucamonga	9494 Haven Avenue, Rancho Cucamonga, CA 91730	888-692-7800	<a href="mailto:ldismukes@uti.edu">ldismukes@uti.edu</a>

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Exton	750 Pennsylvania Drive, Exton, PA 19341	877-884-3986	<a href="mailto:rtrickett@uti.edu">rtrickett@uti.edu</a>
Sacramento	4100 Duckhorn Drive, Sacramento, CA 95834	877-884-2254	<a href="mailto:jgillming@uti.edu">jgillming@uti.edu</a>
NASCAR Tech	220 Byers Creek Road, Mooresville, NC 28117	866-316-2722	<a href="mailto:amason@uti.edu">amason@uti.edu</a>
Norwood	1 Upland Road, Building 200, Norwood, MA 02062	866-753-6553	<a href="mailto:icorreia@uti.edu">icorreia@uti.edu</a>
MMI Phoenix	2844 W. Deer Valley Road, Phoenix, AZ 85027	800-528-7995	<a href="mailto:tchakos@uti.edu">tchakos@uti.edu</a>
MMI Orlando	9751 Delegates Drive, Orlando, FL 32837	800-342-9253	<a href="mailto:tjohnson@uti.edu">tjohnson@uti.edu</a>
UTI Orlando	2202 Taft Vineland Road, Orlando, FL 32837	800-342-9253	<a href="mailto:tjohnson@uti.edu">tjohnson@uti.edu</a>
Dallas	5151 Regent Boulevard, Irving, TX 75063	877-873-1083	<a href="mailto:rdoval@uti.edu">rdoval@uti.edu</a>
Long Beach	4175 E. Conant Street, Long Beach, CA 90808	844-308-8838	<a href="mailto:jramirez@uti.edu">jramirez@uti.edu</a>

## II. Anti-Discrimination and Anti-Harassment Statement

UTI does not tolerate sex discrimination, sexual harassment, sexual assault, or retaliation in its programs and activities. UTI takes prompt, effective action to address sex discrimination, including sexual harassment and sexual violence, of which it has notice. This includes taking appropriate steps to determine what occurred, end a hostile environment if one was created, prevent the recurrence of a hostile environment, and provide any necessary remedies. UTI utilizes fair, impartial processes to address allegations of sex discrimination, including sexual assault. If UTI finds that a violation of this policy has occurred, it immediately imposes discipline and provides remedies to affected parties, as appropriate. UTI strongly prohibits retaliation against individuals who complain of sex discrimination, participate in Title IX investigations, or otherwise assert rights protected by Title IX.

## III. Scope and Jurisdiction

This policy applies to students, employees, and third parties, regardless of sex, gender, gender identity, or sexual orientation. It covers sex discrimination that occurs in, or has a continuing effect on, UTI's programs or activities.

## IV. Covered Conduct -- Definitions and Examples

**(Additional definitions, including state law definitions and definitions required under the Violence Against Women Act of the Clery Act, are set forth in Appendix A.)**

**Complainant:** The individual who experienced the alleged discrimination or harassment. In certain instances, such as where there is a danger to the UTI community and the individual who experienced the alleged conduct is unable or unwilling to file a complaint, UTI may serve as the complainant.

**Consent:** Affirmative, conscious, and voluntary agreement to engage in sexual activity. Neither the lack of protest or resistance nor silence constitutes consent. Consent may be withdrawn at any time. Affirmative consent must be given by all parties to sexual activity. A person who is incapacitated cannot consent (see discussion of incapacitation below). Past consent does not imply future consent. Consent

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to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Coercion, force, or threat of either invalidates consent.

*For cases involving California campuses, the following will not excuse a failure to obtain consent: a respondent's own intoxication or recklessness and a respondent's failure to take reasonable steps to ascertain whether the complainant affirmatively consented.*

Dating violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. (i) The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Domestic violence: (i) A felony or misdemeanor crime of violence committed— (A) By a current or former spouse or intimate partner of the complainant; (B) By a person with whom the complainant shares a child in common; (C) By a person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner; (D) By a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or (E) By any other person against an adult or youth complainant 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.

Incapacitation: A person may be unable to give consent due to incapacitation as a result of drug or alcohol use, use of medication, or disability status (for example, a person may be unable to communicate due to a mental or physical condition). A person who is passed out, asleep, or unconscious is incapacitated and cannot consent to sexual activity. In evaluating whether a complainant was incapacitated due to the consumption of alcohol, UTI will consider the totality of the circumstances, including factors such as the presence of slurred speech, an unsteady gait/stumbling, unfocused eyes, and impaired memory.

Respondent: The individual accused of the alleged discrimination or harassment.

Retaliation: Adverse conduct of which the institution is aware, where there is evidence of a causal connection between the conduct and a protected activity such as filing a Title IX complaint, participating in a Title IX investigation, or otherwise asserting rights under Title IX.

Sexual assault: Non-consensual physical contact of a sexual nature. This includes 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 consent. Examples: sexual intercourse with a person who is asleep or unconscious; digital penetration of a person without consent.

Sexual harassment: Unwelcome conduct of a sexual nature that unreasonably interferes with an individual's work or educational performance; limits a student's ability to participate in or benefit from the Institute's programs, activities, or opportunities; or creates an intimidating, hostile or offensive work

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or educational environment. A single or isolated incident of sexual harassment may create a hostile environment if the conduct is sufficiently severe.

Sexual harassment may include unwelcome sexual advances, requests for sexual favors, unnecessary touching, graphic verbal or visual commentaries about an individual's body, sexually suggestive objects or pictures, sexually explicit jokes, and other verbal, visual or physical conduct of a sexual nature.

Sexual misconduct: This is an umbrella term that covers unwelcome conduct of a sexual nature such as sexual assault, sexual violence, sexual harassment, dating and domestic violence, and stalking.

Sexual violence: Sexual harassment also includes sexual violence. Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual may also be unable to give consent due to an intellectual or other disability. Sexual violence includes acts such as rape, sexual assault (forcible and non-forcible), sexual battery and sexual coercion.

Stalking: (i) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to— (A) Fear for the person's safety or the safety of others; or (B) Suffer substantial emotional distress. (ii) For the purposes of this definition— (A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. (B) reasonable person means a reasonable person under similar circumstances and with similar identities to the victim. (C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

## V. Making a Report

Individuals with knowledge of sex discrimination, sexual harassment (including sexual violence) in UTI's programs or activities are encouraged to immediately make a report to the Title IX or Deputy Title IX Coordinator. Individuals identified in the "Responsible Employees" section below must report incidents of possible sexual violence to the Title IX Coordinator within 24 hours of becoming aware of such conduct.

Where to file: Reports can be made in person, or by sending a written complaint to the Title IX and/or Deputy Title IX Coordinator via email or regular mail using the contact information set forth above. A complaint form is available at [www.uti.edu/titleix](http://www.uti.edu/titleix). If the actions of the Title IX Coordinator are at issue or there is otherwise a conflict of interest, reports should be sent to the Vice President of Student Support Services, 16220 N. Scottsdale Road, Suite 100, Scottsdale, AZ 85254, 800-859-7249, [ednajohnson@uti.edu](mailto:ednajohnson@uti.edu). The Title IX Coordinator and all deputies are campus security authorities and will report applicable data about covered conduct (e.g., date, time, location) for inclusion in UTI's Annual Security Report.

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For immediate assistance following an incident of sexual incident, dial 911 to make a report to local law enforcement. A complainant may pursue simultaneous complaints with UTI and local law enforcement. If a complainant chooses to obtain a forensic examination following a sexual assault, the complainant may wish to avoid the following activities prior to the examination to preserve evidence: showering, drinking, eating, douching, brushing teeth or hair, or changing clothes.

*In cases involving California campuses, reports of certain sexual misconduct made to campus security authorities will be disclosed to local law enforcement.*

When to file: Complaints to UTI should be filed within 300 days of the last act of alleged discrimination. Individuals seeking to file a complaint outside of this time frame may request a discretionary waiver by making a written request to the Title IX Coordinator.

Confidentiality: UTI respects the privacy of students, employees, and third parties and shares reports of sex discrimination on a limited, “need-to-know” basis, consistent with applicable state and federal laws. If a complainant requests that UTI handle a complaint on a confidential basis, UTI will honor that request where possible. UTI’s Title IX Coordinator, or designee, reviews requests for confidentiality and determines whether such requests can be honored in light of factors such as the safety of the campus and the number of complaints against a respondent. UTI will promptly notify the complainant of its determination regarding a request for confidentiality.

Individuals who wish to speak with someone in confidence about an experience of sexual misconduct may contact one of the following off-campus resources:

Campus	Resource
All campuses	<ul style="list-style-type: none"> <li>• Rape, Abuse, and Incest National Network: <a href="http://www.rainn.org">www.rainn.org</a></li> <li>• National Sexual Assault Hotline: 1-800-656-HOPE</li> <li>• The National Domestic Violence Hotline: 800-799-7233</li> <li>• Love is Respect: 866-331-9474; text “loveis” to 22522</li> </ul>
Avondale	<ul style="list-style-type: none"> <li>• Crisis Response Network, 602-222-9444, <a href="http://www.crisisnetwork.org">www.crisisnetwork.org</a></li> <li>• Community Bridges, 877-211-8661; <a href="http://www.communitybridgesaz.org">www.communitybridgesaz.org</a></li> <li>• West Valley Advocacy Center; 623-930-3720; <a href="http://www.glendaleaz.com/police/wvac/index.cfm">www.glendaleaz.com/police/wvac/index.cfm</a></li> </ul>
Houston	<ul style="list-style-type: none"> <li>• Houston Area Women’s Center; 713-528-2121; <a href="http://www.hawc.org">www.hawc.org</a></li> <li>• Family Time Crisis &amp; Counseling Center; 281-446-2615</li> </ul>
Lisle	<ul style="list-style-type: none"> <li>• YWCA, Rape Crisis Hotline; 630-971-3927</li> <li>• Sexual Assault Hotline; 815-730-8984</li> <li>• Rape Crisis Hotline; 888-293-2080</li> </ul>

## Title IX Policy and Grievance Procedure

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Rancho Cucamonga	<ul style="list-style-type: none"> <li>• Cucamonga Counseling; 909-962-7323</li> <li>• Project SISTER; 909-626-4357 (24 hour hotline)</li> </ul>
Exton	<ul style="list-style-type: none"> <li>• The Crime Victims' Center of Chester County, Inc; 610-692-7273; <a href="http://www.cvcofcc.org">www.cvcofcc.org</a></li> <li>• Victim Services Center of Montgomery County; 610-277-5200; <a href="http://www.victimservicescenter.org">www.victimservicescenter.org</a></li> </ul>
Sacramento	<ul style="list-style-type: none"> <li>• WEAVE, Inc.; 916-920-2952; <a href="http://www.weaveinc.org">www.weaveinc.org</a></li> </ul>
NASCAR Tech	<ul style="list-style-type: none"> <li>• Loving Hand Counseling; 704-662-6118</li> <li>• Fifth Street Ministries; 704-872-3403; <a href="http://www.fifthstreetministries.com">www.fifthstreetministries.com</a></li> </ul>
Norwood	<ul style="list-style-type: none"> <li>• Sexual Assault Prevention &amp; Survivor Services; 617-624-5457; <a href="http://www.mass.gov/dph/sexualassaultservices">www.mass.gov/dph/sexualassaultservices</a></li> <li>• <a href="http://www.mass.gov/eohhs/consumer/physical-health-treatment/health-care-facilities/rape-crisis-centers.html">http://www.mass.gov/eohhs/consumer/physical-health-treatment/health-care-facilities/rape-crisis-centers.html</a></li> </ul>
MMI Phoenix	<ul style="list-style-type: none"> <li>• West Valley Advocacy Center; 623-930-3720; <a href="http://www.glendaleaz.com/police/wvac/index.cfm">www.glendaleaz.com/police/wvac/index.cfm</a></li> <li>• Crisis Response Network, 602-222-9444, <a href="http://www.crisisnetwork.org">www.crisisnetwork.org</a></li> <li>• Community Bridges, 877-211-8661; <a href="http://www.communitybridgesaz.org">www.communitybridgesaz.org</a></li> </ul>
UTI/MMI Orlando	<ul style="list-style-type: none"> <li>• Devereux Florida; 800-338-3738</li> <li>• Victim Service Center of Central Florida; 407-797-6701; <a href="http://www.victimservicecenter.com">www.victimservicecenter.com</a></li> </ul>
Dallas	<ul style="list-style-type: none"> <li>• Dallas Area Rape Crisis Center (DARCC) – 972-641-7273</li> <li>• The Turning Point Rape Crisis Center – 1-800-886-7273</li> <li>• Parkland Victim Intervention Program/Rape Crisis center – (214) 590-2926 or (214) 590-0430 (24 hour hotline)</li> <li>• Victims Outreach – (214) 358-5173</li> <li>• Incest Recovery Program – (214) 941-1991</li> <li>• Brighter Tomorrows – (972) 262-8383</li> </ul>
Long Beach	<ul style="list-style-type: none"> <li>• YWCA of Greater Los Angeles County; 877-943-5778</li> <li>• Sexual Assault Crisis Agency - Long Beach; 562-494-5046</li> <li>• The Domestic Violence Resource Center; 562-437-7233</li> <li>• 1736 Family Crisis Center; 562-388-7652; <a href="http://www.1736familycrisiscenter.org/">http://www.1736familycrisiscenter.org/</a></li> </ul>

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Amnesty: UTI encourages the reporting of incidents of sexual violence and recognizes that some students may be reluctant to make such reports as a result of their personal consumption of drugs or alcohol at the time of the incident. UTI generally will not discipline complainants, respondents, or witnesses for personal consumption of drugs or alcohol in violation of UTI's policies where such conduct occurred at the time of the incident and did not endanger the health or safety of others. Educational responses to the conduct may be implemented, as appropriate.

*In California, complainants and witnesses are protected from sanctions for violations of student conduct policies that occurred around the time of the reported incidents, unless UTI finds the violations egregious.*

Interim measures: Interim measures are available to individuals who report alleged sex discrimination, as appropriate. Interim measures may include no contact orders, changes to academic situations for students, leave for employees, or other actions. Interim measures will be administered in a manner that reduces the burden on the complainant while preserving the fundamental fairness of the process. Requests for interim measures should be made to the Title IX Coordinator, Deputy Title IX Coordinator, or designee, using the contact information provided above.

## VI. Responsible Employees

Responsible employees must report to the Title IX Coordinator and/or Deputy Title IX Coordinator all information about incidents of sexual violence of which they are aware. Responsible employees include employees who have the authority to take action to redress sexual violence; who have been given the duty of reporting incidents of sexual violence or other student misconduct; or whom a student could reasonably believe has this duty.

Responsible employees must report to the Title IX Coordinator and/or Deputy Title IX Coordinator all information about the incident of possible sexual violence of which they are aware. This may include the names of the parties, the date, time, and location of the incident, and available facts about what occurred. Responsible employees should not undertake any investigation of the incident unless specifically directed to do by the Title IX or Deputy Title IX Coordinator or designee.

UTI has designated the following individuals as responsible employees: Student Services Directors, Student Services Supervisors, Senior Student Affairs Advisors, Student Affairs Advisors, Education Directors, Education Managers, and People Services staff.

UTI employees who have not been designated as responsible employees are strongly encouraged to report to the Title IX Coordinator incidents of sex discrimination, including sexual harassment and sexual violence, of which they are aware.

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## VII. Procedure Once a Report is Received

Standard of review: UTI uses the preponderance of the evidence or “more likely than not” standard of review during the investigation and resolution of complaints.

Response by the Title IX/Deputy Title IX Coordinator:

Evaluation: The Title IX Coordinator, Deputy Title IX Coordinator or designee will review all reports of sex discrimination within 7 calendar days of receipt and will determine the appropriate response. If there are jurisdictional considerations that preclude Title IX consideration, the complainant will be notified of such limitations. If the complaint is dismissed at this stage, the complainant will receive written notice of the outcome and has the opportunity to appeal the determination using the appeal procedure below.

Investigation: Within 10 calendar days of receiving the report, the Title IX Coordinator, Deputy Title IX Coordinator, or designee will commence an investigation of the allegation(s), if appropriate. The investigation may include contacting the complainant, respondent, and witnesses to obtain additional information about the allegation(s). UTI has developed trauma-informed protocols for interviewing complainants that include follow-up and support, as appropriate. Similarly, UTI ensures that respondents receive a fundamentally fair process that is sensitive to the possibility that a respondent may be facing simultaneous criminal charges.

The complainant and respondent will have an equal opportunity to provide witnesses and evidence throughout the process; the Title IX Coordinator and/or Deputy Title IX Coordinator will assist the parties in locating and identifying witnesses, as appropriate. The investigation will implement procedures for considering allegations that drugs or alcohol were used during the alleged incident.

The Title IX and/or Deputy Title IX Coordinator generally will conclude the investigation within 30 calendar days. This timeframe may be extended in extenuating circumstances (e.g., school breaks). The Title IX and/or Deputy Title IX Coordinator will notify the parties of any delays and the reasons for the delays.

Investigatory report: At the conclusion of the investigation, the Title IX Coordinator, Deputy Title IX Coordinator or designee will prepare an investigatory report that makes factual findings and determines whether sex discrimination, including sexual harassment, has occurred. The Title IX Coordinator, Deputy Title IX Coordinator or designee may find the respondent responsible or not responsible for the alleged violation, or may find that there is insufficient evidence to make such a finding. If the Title IX Coordinator, Deputy Title IX Coordinator or designee finds the respondent responsible, the Title IX Coordinator, Deputy Title IX Coordinator or designee will impose an appropriate sanction and determine whether any remedies should be provided to the complainant and/or campus community.

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Notice of the outcome: Within 15 calendar days of the conclusion of the investigation, the complainant and respondent will receive concurrent written notice of the outcome, including any sanction imposed, consistent with applicable state and federal privacy laws.

Advisor of choice: In cases of sexual misconduct, including sexual assault, dating violence, domestic violence, and stalking, the complainant and respondent may choose to have an advisor of their choice present during meetings or disciplinary proceedings. Advisors may include advocates and support persons. If a party selects an advisor who is an attorney, the party must notify the Title IX Coordinator or Deputy Title IX Coordinator at least 24 hours prior to the first meeting or disciplinary proceeding in which the advisor will participate.

Timeframes: The investigation and resolution of the complaint generally will be completed within 60 calendar days, absent extenuating circumstances. The Title IX Coordinator, Deputy Title IX Coordinator or designee will provide regular status updates to the parties.

Mediation: UTI does not use mediation in cases where sexual violence has been alleged, even on a voluntary basis.

Training: The Title IX Coordinator and others with responsibilities under this policy receive training, including trauma-informed training, on at least an annual basis.

Recordkeeping: UTI maintains records related to complaints of sex discrimination consistent with its record retention policy and federal and state laws.

## **VIII. Sanctions and Remedies**

Sanctions for students may include sexual assault or other related training, no contact directives, bans from specific areas of campus, professionalism infractions, removal from a course, requirement to change sessions, suspension, or termination from school. For employees, sanctions may include a final warning with sexual assault training or termination. As to third parties, UTI will implement available sanctions, such as bans from campus, as appropriate. UTI will also abide by and support any sanctions imposed by law enforcement. UTI will also provide remedies to the complainant and campus community, as appropriate, such as educational programming, policy review and revision, and counseling.

## **IX. Appeal Procedure**

The complainant and respondent have an equal right to appeal outcome decisions made by the Title IX Coordinator, Deputy Title IX Coordinator or designee. Appeals may be made on the following bases: (1) a party obtains new relevant evidence that was unavailable at the time of the investigation and could change the outcome of the investigation; (2) there is evidence of procedural error; or (3) the sanction was substantially disproportionate to the findings. Appeals must be made to Rhonda Turner, SVP People Services, at 16220 N. Scottsdale Road, Suite 100, Scottsdale, AZ 85254, 800-859-7249, rturner@uti.edu.

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Appeals must be filed within 7 calendar days of the date that written notice of the outcome was provided. Appeal requests after this timeframe may be eligible for a discretionary waiver. The SVP People Services will decide the appeal promptly but generally within 30 calendar days and provide the respondent and complainant within written notice of the final determination.

## **X. Resources**

In addition to the resources provided above, additional on- and off-campus resources are listed on UTI's Title IX webpage at [www.uti.edu/titleix](http://www.uti.edu/titleix). Written information about resources and services also may be obtained by contacting the Title IX Coordinator, Deputy Title IX Coordinator, or in the Student Services Department.

## **XI. Prevention and Awareness Programs**

UTI is committed to having in place sexual misconduct, including dating violence, domestic violence and stalking, prevention and awareness programs for students and employees. UTI implements prevention and awareness programming during new student and new employee orientation. Informational prevention and awareness materials also are available on an on-going basis.

## **XII. Non-Fraternization**

UTI has a Non-Fraternization Policy set forth in its Course Catalog and Employee Handbook. UTI employees may not engage in conduct of a sexual nature with any students or with employees where there is supervisory or evaluative relationship, regardless of whether such conduct is consensual. Conduct in violation of the Non-Fraternization Policy also may be addressed under the Title IX Policy if the conduct meets one of the definitions above (e.g., sexual harassment, dating or domestic violence, stalking).

## **XIII. Prohibition against Retaliation**

Retaliation in any form (including acts of intimidation or harassment) against any person who makes a Title IX report, witnesses or experiences harassment, or asserts rights under Title IX will also not be tolerated. Reports of retaliatory conduct should be made to the Title IX Coordinator and/or Deputy Title IX Coordinator using the contact information set forth above.

## **XIV. False Reporting**

Allegations of discrimination and harassment are extremely serious and must be made honestly and in good faith. Knowingly providing false information to a school official may result in disciplinary action up to and including termination for employees, and suspension or termination for students.

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## Appendix A

Universal Technical Institute is making these definitions and terms available pursuant to the Violence Against Women Act Amendments to the Clery Act:

1. **Advisor:** Any individual who provides the accuser or accused support, guidance, or advice
2. **Awareness programs:** Community-wide or audience specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce perpetration
3. **Bystander intervention:** Safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking.

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 actions to intervene.

4. **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.

The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition, 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.

Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

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

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

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

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

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;

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.

6. **Ongoing prevention and awareness campaigns:** Programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault, and stalking, using a range of strategies with audiences throughout the institution

7. **Primary prevention programs:** Programming, initiatives, and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop dating violence, domestic violence, sexual assault, and stalking 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 direction.

8. **Proceeding:** All activities related to a non-criminal resolution of an institutional disciplinary complaint, including, but not limited to, fact finding investigations, formal or informal meetings, and hearings. Proceeding does not include communications and meetings between officials and victims concerning accommodations or protective measures to be provided to a victim.

9. **Programs to prevent dating violence, domestic violence, sexual assault, and stalking:** Comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault, and stalking that:

Are 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

Consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels

Programs to prevent dating violence, domestic violence, sexual assault, and stalking include both primary prevention and awareness programs directed at incoming students and new employees and ongoing prevention and awareness campaigns directed at students and employees.

10. **Prompt, fair, and impartial proceeding:** A proceeding that is completed within reasonably prompt timeframes designated by an institution's policy, including a process that allows for

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the extension of timeframes for good cause and with written notice to the accuser and the accused of the delay and the reason for the delay;

Conducted in a manner that:

Is consistent with the institution's policies and transparent to the accuser and accused;

Includes timely notice of meetings at which the accuser or accused, or both, may be present; and

Provides timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings; and

Conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused.

11. **Result:** Any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within the institution. The result includes any sanctions imposed by the University.

12. **Risk reduction:** Options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence.

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

**Rape** – The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by sex organ of another person, without the consent of the victim.

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

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

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

14. **Sexual Assault:** An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program.

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

Fear for the person's safety or the safety of others; or

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 a person, or interferes with a person's property.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

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### ARIZONA CRIMINAL CODE

#### 13-1401.

#### Definitions

In this chapter, unless the context otherwise requires:

1. **“Oral sexual contact” means oral contact with the penis, vulva or anus.**
2. **“Sexual contact” means any direct or indirect touching, fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or by any object or causing a person to engage in such contact.**
3. **“Sexual intercourse” means penetration into the penis, vulva or anus by any part of the body or by any object or masturbatory contact with the penis or vulva.**
4. **“Spouse” means a person who is legally married and cohabiting.**
5. **“Without consent” includes any of the following:**
  - (a) The victim is coerced by the immediate use or threatened use of force against a person or property.
  - (b) The victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant. For purposes of this subdivision, “mental defect” means the victim is unable to comprehend the distinctively sexual nature of the conduct or is incapable of understanding or exercising the right to refuse to engage in the conduct with another.
  - (c) The victim is intentionally deceived as to the nature of the act.
  - (d) The victim is intentionally deceived to erroneously believe that the person is the victim’s spouse.

#### 13-1406.

#### Sexual assault; classification; increased punishment

A. A person commits sexual assault by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without consent of such person.

\* \* \*

#### 13-2923.

#### Stalking; classification; definitions

A. A person commits stalking if the person intentionally or knowingly engages in a course of conduct that is directed toward another person and if that conduct either:

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1. **Would cause a reasonable person to fear for the person's safety or the safety of that person's immediate family member and that person in fact fears for the person's safety or the safety of that person's immediate family member.**

2. **Would cause a reasonable person to fear death of that person or that person's immediate family member and that person in fact fears death of that person or that person's immediate family member.**

B. Stalking under subsection A, paragraph 1 of this section is a class 5 felony. Stalking under subsection A, paragraph 2 of this section is a class 3 felony.

C. For the purposes of this section:

1. **"Course of conduct":**

(a) Means any of the following:

(i) ***Maintaining visual or physical proximity to a specific person or directing verbal, written or other threats, whether express or implied, to a specific person on two or more occasions over a period of time, however short.***

(ii) ***Using any electronic, digital or global positioning system device to surveil a specific person or a specific person's internet or wireless activity continuously for twelve hours or more or on two or more occasions over a period of time, however short, without authorization.***

(iii) ***Does not include constitutionally protected activity or other activity authorized by law, the other person, the other person's authorized representative or if the other person is a minor, the minor's parent or guardian.***

2. **"Immediate family member" means a spouse, parent, child or sibling or any other person who regularly resides in a person's household or resided in a person's household within the past six months.**

### **13-3601. Domestic violence; definition; classification; sentencing option; arrest and procedure for violation; weapon seizure**

A. **"Domestic violence"** means any act that is a dangerous crime against children as defined in section 13-705 or an offense prescribed in section 13-1102, 13-1103, 13-1104, 13-1105, 13-1201, 13-1202, 13-1203, 13-1204, 13-1302, 13-1303, 13-1304, 13-1406, 13-1425, 13-1502, 13-1503, 13-1504, 13-1602 or 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6, section 13-2910, subsection A, paragraph 8 or 9, section 13-2915, subsection A, paragraph 3 or section 13-2916, 13-2921, 13-2921.01, 13-2923, 13-3019, 13-3601.02 or 13-3623, if any of the following applies:

1. **The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or having resided in the same household.**

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2. **The victim and the defendant have a child in common.**
3. **The victim or the defendant is pregnant by the other party.**
4. **The victim is related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.**
5. **The victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or who has resided in the same household as the defendant.**
6. **The relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship. The following factors may be considered in determining whether the relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship:**
  - (a) The type of relationship.
  - (b) The length of the relationship.
  - (c) The frequency of the interaction between the victim and the defendant.
  - (d) If the relationship has terminated, the length of time since the termination.

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### CALIFORNIA PENAL CODE

**261.** (a)**Rape** is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused.

Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets any one of the following conditions:

Was unconscious or asleep.

Was not aware, knowing, perceiving, or cognizant that the act occurred.

Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

Where a person submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.

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Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(b) As used in this section, "duress" means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.

(c) As used in this section, "menace" means any threat, declaration, or act which shows an intention to inflict an injury upon another.

**261.5 (a) Unlawful sexual intercourse** is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a "minor" is a person under the age of 18 years and an "adult" is a person who is at least 18 years of age.

(b) Any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor.

(c) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

(d) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a

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felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

**261.6.** In prosecutions under Section 261, 262, 286, 288a, or 289, in which consent is at issue, “**consent**” shall be defined to mean positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.

A current or previous dating or marital relationship shall not be sufficient to constitute consent where consent is at issue in a prosecution under Section 261, 262, 286, 288a, or 289.

Nothing in this section shall affect the admissibility of evidence or the burden of proof on the issue of consent.

**261.7.** In prosecutions under Section 261, 262, 286, 288a, or 289, in which consent is at issue, evidence that the victim suggested, requested, or otherwise communicated to the defendant that the defendant use a condom or other birth control device, without additional evidence of consent, is not sufficient to constitute consent.

**262.** (a) Rape of a person who is the spouse of the perpetrator is an act of sexual intercourse accomplished under any of the following circumstances:

(1) Where it is accomplished against a person’s will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known, by the accused.

Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, “unconscious of the nature of the act” means incapable of resisting because the victim meets one of the following conditions:

(A) Was unconscious or asleep.

Was not aware, knowing, perceiving, or cognizant that the act occurred.

Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraud in fact.

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Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(b) As used in this section, "duress" means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.

(c) As used in this section, "menace" means any threat, declaration, or act that shows an intention to inflict an injury upon another.

**263.** The essential guilt of rape consists in the outrage to the person and feelings of the victim of the rape. Any sexual penetration, however slight, is sufficient to complete the crime.

**269.** (a) Any person who commits any of the following acts upon a child who is under 14 years of age and seven or more years younger than the person is guilty of aggravated sexual assault of a child:

(1) Rape, in violation of paragraph (2) or (6) of subdivision (a) of Section 261.

Rape or sexual penetration, in concert, in violation of Section 264.1.

Sodomy, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 286.

Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 288a.

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Sexual penetration, in violation of subdivision (a) of Section 289.

(b) Any person who violates this section is guilty of a felony and shall be punished by imprisonment in the state prison for 15 years to life.

(c) The court shall impose a consecutive sentence for each offense that results in a conviction under this section if the crimes involve separate victims or involve the same victim on separate occasions as defined in subdivision (d) of Section 667.6.

## FLORIDA CRIMINAL CODE

### CHAPTER 794

#### Sexual Battery

##### **794.011**

##### **Sexual battery. —**

(1) As used in this chapter:

(a) **“Consent”** means intelligent, knowing, and voluntary consent and does not include coerced submission. “Consent” shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender.

(b) **“Mentally defective”** means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

(c) **“Mentally incapacitated”** means temporarily incapable of appraising or controlling a person’s own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

(d) **“Offender”** means a person accused of a sexual offense in violation of a provision of this chapter.

(e) **“Physically helpless”** means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.

(f) **“Retaliation”** includes, but is not limited to, threats of future physical punishment, kidnapping, false imprisonment or forcible confinement, or extortion.

(g) **“Serious personal injury”** means great bodily harm or pain, permanent disability, or permanent disfigurement.

(h) **“Sexual battery”** means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

(i) **“Victim”** means a person who has been the object of a sexual offense.

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(j) **“Physically incapacitated”** means bodily impaired or handicapped and substantially limited in ability to resist or flee.

(2) (a) A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a capital felony, punishable as provided in ss. 775.082 and 921.141.

(b) A person less than 18 years of age who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a life felony, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(3) A person who commits sexual battery upon a person 12 years of age or older, without that person’s consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury commits a life felony, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(4) (a) A person 18 years of age or older who commits sexual battery upon a person 12 years of age or older but younger than 18 years of age without that person’s consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(b) A person 18 years of age or older who commits sexual battery upon a person 18 years of age or older without that person’s consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(c) A person younger than 18 years of age who commits sexual battery upon a person 12 years of age or older without that person’s consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(d) A person commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115 if the person commits sexual battery upon a person 12 years of age or older without that person’s consent, under any of the circumstances listed in paragraph (e), and such person was previously convicted of a violation of:

1. Section 787.01(2) or s. 787.02(2) when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. 800.04 or s. 847.0135(5);

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2. Section 787.01(3)(a)2. or 3.;
3. Section 787.02(3)(a)2. or 3.;
4. Section 800.04;
5. Section 825.1025;
6. Section 847.0135(5); or
7. This chapter, excluding subsection (10) of this section.

(e) The following circumstances apply to paragraphs (a)-(d):

1. The victim is physically helpless to resist.
2. The offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat.
3. The offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future.
4. The offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates the victim.
5. The victim is mentally defective, and the offender has reason to believe this or has actual knowledge of this fact.
6. The victim is physically incapacitated.
7. The offender is a law enforcement officer, correctional officer, or correctional probation officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified under s. 943.1395 or is an elected official exempt from such certification by virtue of s. 943.253, or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

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(5) (a) A person 18 years of age or older who commits sexual battery upon a person 12 years of age or older but younger than 18 years of age, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(b) A person 18 years of age or older who commits sexual battery upon a person 18 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(c) A person younger than 18 years of age who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(d) A person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115 if the person commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury and the person was previously convicted of a violation of:

1. Section 787.01(2) or s. 787.02(2) when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. 800.04 or s. 847.0135(5);
2. Section 787.01(3)(a)2. or 3.;
3. Section 787.02(3)(a)2. or 3.;
4. Section 800.04;
5. Section 825.1025;
6. Section 847.0135(5); or
7. This chapter, excluding subsection (10) of this section.

**794.027Duty to report sexual battery; penalties.** — A person who observes the commission of the crime of sexual battery and who:

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- (1) Has reasonable grounds to believe that he or she has observed the commission of a sexual battery;
- (2) Has the present ability to seek assistance for the victim or victims by immediately reporting such offense to a law enforcement officer;
- (3) Fails to seek such assistance;
- (4) Would not be exposed to any threat of physical violence for seeking such assistance;
- (5) Is not the husband, wife, parent, grandparent, child, grandchild, brother, or sister of the offender or victim, by consanguinity or affinity; and
- (6) Is not the victim of such sexual battery

is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**794.05 Unlawful sexual activity with certain minors. —**

- (1) A person 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this section, “sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.
- (2) The provisions of this section do not apply to a person 16 or 17 years of age who has had the disabilities of nonage removed under chapter 743.
- (3) The victim’s prior sexual conduct is not a relevant issue in a prosecution under this section.
- (4) If an offense under this section directly results in the victim giving birth to a child, paternity of that child shall be established as described in chapter 742. If it is determined that the offender is the father of the child, the offender must pay child support pursuant to the child support guidelines described in chapter 61.

**741.28 Domestic violence; definitions. —** As used in ss. 741.28-741.31:

- (1) **“Department”** means the Florida Department of Law Enforcement.
- (2) **“Domestic violence”** means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal

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offense resulting in physical injury or death of one family or household member by another family or household member.

(3) **“Family or household member”** means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

(4) **“Law enforcement officer”** means any person who is elected, appointed, or employed by any municipality or the state or any political subdivision thereof who meets the minimum qualifications established in s. 943.13 and is certified as a law enforcement officer under s. 943.1395.

**784.048 Stalking; definitions; penalties. —**

(1) As used in this section, the term:

(a) **“Harass”** means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.

(b) **“Course of conduct”** means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose. The term does not include constitutionally protected activity such as picketing or other organized protests.

(c) **“Credible threat”** means a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. It is not necessary to prove that the person making the threat had the intent to actually carry out the threat. The present incarceration of the person making the threat is not a bar to prosecution under this section.

(d) **“Cyberstalk”** means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

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- (2) A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
- (3) A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (4) A person who, after an injunction for protection against repeat violence, sexual violence, or dating violence pursuant to s. 784.046, or an injunction for protection against domestic violence pursuant to s. 741.30, or after any other court-imposed prohibition of conduct toward the subject person or that person's property, knowingly, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (5) A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks a child under 16 years of age commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (6) A law enforcement officer may arrest, without a warrant, any person that he or she has probable cause to believe has violated this section.
- (7) A person who, after having been sentenced for a violation of s. 794.011, s. 800.04, or s. 847.0135(5) and prohibited from contacting the victim of the offense under s. 921.244, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks the victim commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (8) The punishment imposed under this section shall run consecutive to any former sentence imposed for a conviction for any offense under s. 794.011, s. 800.04, or s. 847.0135(5).
- (9) (a) The sentencing court shall consider, as a part of any sentence, issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any such order be based upon the seriousness of the facts before the court, the probability of future violations by the perpetrator, and the safety of the victim and his or her family members or individuals closely associated with the victim.

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(b) The order may be issued by the court even if the defendant is sentenced to a state prison or a county jail or even if the imposition of the sentence is suspended and the defendant is placed on probation.

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### MASSACHUSETTS CRIMINAL CODE

#### **Section 22 Rape, generally; weapons; punishment; eligibility for furlough, education, training or employment programs**

**Section 22** (a) Whoever has sexual intercourse or unnatural sexual intercourse with a person, and compels such person to submit by force and against his will, or compels such person to submit by threat of bodily injury and if either such sexual intercourse or unnatural sexual intercourse results in or is committed with acts resulting in serious bodily injury, or is committed by a joint enterprise, or is committed during the commission or attempted commission of an offense defined in section fifteen A, fifteen B, seventeen, nineteen or twenty-six of this chapter, section fourteen, fifteen, sixteen, seventeen or eighteen of chapter two hundred and sixty-six or section ten of chapter two hundred and sixty-nine shall be punished by imprisonment in the state prison for life or for any term of years.

No person serving a sentence for a second or subsequent such offense shall be eligible for furlough, temporary release, or education, training or employment programs established outside a correctional facility until such person shall have served two-thirds of such minimum sentence or if such person has two or more sentences to be served otherwise than concurrently, two-thirds of the aggregate of the minimum terms of such several sentences.

(b) Whoever has sexual intercourse or unnatural sexual intercourse with a person and compels such person to submit by force and against his will, or compels such person to submit by threat of bodily injury, shall be punished by imprisonment in the state prison for not more than twenty years; and whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or for any term or years.

Whoever commits any offense described in this section while being armed with a firearm, rifle, shotgun, machine-gun or assault weapon, shall be punished by imprisonment in the state prison for not less than ten years. Whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years.

No person serving a sentence for a second or subsequent such offense shall be eligible for furlough, temporary release, or education, training or employment programs established outside a correctional facility until such person shall have served two-thirds of such minimum sentence or if such person has two or more sentences to be served otherwise than concurrently, two-thirds of the aggregate of the minimum terms of such several sentences.

For the purposes of prosecution, the offense described in subsection (b) shall be a lesser included offense to that described in subsection (a).

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## **Section 24 Assault with intent to commit rape; weapons; punishment; eligibility for furloughs, education, training or employment programs**

**Section 24.** Whoever assaults a person with intent to commit a rape shall be punished by imprisonment in the state prison for not more than twenty years or by imprisonment in a jail or house of correction for not more than two and one-half years; and whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or for any term of years. Whoever commits any offense described in this section while armed with a firearm, rifle, shotgun, machine gun or assault weapon shall be punished by imprisonment in the state prison for not less than five years. Whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 20 years.

No person serving a sentence for a second or subsequent such offense shall be eligible for furlough, temporary release, or education, training or employment programs established outside a correctional facility until such person shall have served two-thirds of such minimum sentence or if such person has two or more sentences to be served otherwise than concurrently, two-thirds of the aggregate of the minimum terms of such several sentences.

## **Section 43 Stalking; punishment**

**Section 43** (a) Whoever (1) willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress, and (2) makes a threat with the intent to place the person in imminent fear of death or bodily injury, shall be guilty of the crime of stalking and shall be punished by imprisonment in the state prison for not more than 5 years or by a fine of not more than \$1,000, or imprisonment in the house of correction for not more than 2 1/2 years or by both such fine and imprisonment. The conduct, acts or threats described in this subsection shall include, but not be limited to, conduct, acts or threats conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including, but not limited to, any device that transfers signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications.

(b) Whoever commits the crime of stalking in violation of a temporary or permanent vacate, restraining, or no-contact order or judgment issued pursuant to sections eighteen, thirty-four B, or thirty-four C of chapter two hundred and eight; or section thirty-two of chapter two hundred and nine; or sections three, four, or five of chapter two hundred and nine A; or sections fifteen or twenty of chapter two hundred and nine C or a protection order issued by another jurisdiction; or a

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temporary restraining order or preliminary or permanent injunction issued by the superior court, shall be punished by imprisonment in a jail or the state prison for not less than one year and not more than five years. No sentence imposed under the provisions of this subsection shall be less than a mandatory minimum term of imprisonment of one year.

A prosecution commenced hereunder shall not be placed on file or continued without a finding, and the sentence imposed upon a person convicted of violating any provision of this subsection shall not be reduced to less than the mandatory minimum term of imprisonment as established herein, nor shall said sentence of imprisonment imposed upon any person be suspended or reduced until such person shall have served said mandatory term of imprisonment.

A person convicted of violating any provision of this subsection shall not, until he shall have served the mandatory minimum term of imprisonment established herein, be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct under sections one hundred and twenty-nine, one hundred and twenty-nine C and one hundred and twenty-nine D of chapter one hundred and twenty-seven; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to said offender a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of next of kin or spouse; to visit a critically ill close relative or spouse; or to obtain emergency medical services unavailable at said institution. The provisions of section eighty-seven of chapter two hundred and seventy-six relating to the power of the court to place certain offenders on probation shall not apply to any person seventeen years of age or over charged with a violation of this subsection. The provisions of section thirty-one of chapter two hundred and seventy-nine shall not apply to any person convicted of violating any provision of this subsection.

(c) Whoever, after having been convicted of the crime of stalking, commits a second or subsequent such crime shall be punished by imprisonment in a jail or the state prison for not less than two years and not more than ten years. No sentence imposed under the provisions of this subsection shall be less than a mandatory minimum term of imprisonment of two years.

A prosecution commenced hereunder shall not be placed on file or continued without a finding, and the sentence imposed upon a person convicted of violating any provision of this subsection shall not be reduced to less than the mandatory minimum term of imprisonment as established herein, nor shall said sentence of imprisonment imposed upon any person be suspended or reduced until such person shall have served said mandatory term of imprisonment.

A person convicted of violating any provision of this subsection shall not, until he shall have served the mandatory minimum term of imprisonment established herein, be eligible for

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probation, parole, furlough, work release or receive any deduction from his sentence for good conduct under sections one hundred and twenty-nine, one hundred and twenty-nine C and one hundred and twenty-nine D of chapter one hundred and twenty-seven; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to said offender a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of next of kin or spouse; to visit a critically ill close relative or spouse; or to obtain emergency medical services unavailable at said institution. The provisions of section eighty-seven of chapter two hundred and seventy-six relating to the power of the court to place certain offenders on probation shall not apply to any person seventeen years of age or over charged with a violation of this subsection. The provisions of section thirty-one of chapter two hundred and seventy-nine shall not apply to any person convicted of violating any provision of this section.

## NORTH CAROLINA CRIMINAL CODE

### ARTICLE 7A.

#### Rape And Other Sex Offenses

##### **§ 14-27.1. Definitions.**

As used in this Article, unless the context requires otherwise:

(1) **“Mentally disabled”** means (i) a victim who suffers from mental retardation, or (ii) a victim who suffers from a mental disorder, either of which temporarily or permanently renders the victim substantially incapable of appraising the nature of his or her conduct, or of resisting the act of vaginal intercourse or a sexual act, or of communicating unwillingness to submit to the act of vaginal intercourse or a sexual act.

(2) **“Mentally incapacitated”** means a victim who due to any act committed upon the victim is rendered substantially incapable of either appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act.

(3) **“Physically helpless”** means (i) a victim who is unconscious; or (ii) a victim who is physically unable to resist an act of vaginal intercourse or a sexual act or communicate unwillingness to submit to an act of vaginal intercourse or a sexual act.

(4) **“Sexual act”** means cunnilingus, fellatio, anilingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person’s body: provided, that it shall be an affirmative defense that the penetration was for accepted medical purposes.

(5) **“Sexual contact”** means (i) touching the sexual organ, anus, breast, groin, or buttocks of any person, (ii) a person touching another person with their own sexual organ, anus, breast, groin, or buttocks, or (iii) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person.

(6) **“Touching”** as used in subdivision (5) of this section, means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim. (1979, c. 682, s. 1; 2002-159, s. 2(a); 2003-252, s. 1; 2006-247, s. 12(a).)

##### **§ 14-27.2. First-degree rape.**

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- (a) A person is guilty of rape in the first degree if the person engages in vaginal intercourse:

With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or

With another person by force and against the will of the other person, and:

- a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or
- b. Inflicts serious personal injury upon the victim or another person; or
- c. The person commits the offense aided and abetted by one or more other persons.

- (b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes. (1979, c. 682, s. 1; 1979, 2nd Sess., c. 1316, s. 4; 1981, c. 63; c. 106, ss. 1, 2; c. 179, s. 14; 1983, c. 175, ss. 4, 10; c. 720, s. 4; 1994, Ex. Sess., c. 22, s. 2; 2004-128, s. 7.)

**§ 14-27.2A. Rape of a child; adult offender.**

(a) A person is guilty of rape of a child if the person is at least 18 years of age and engages in vaginal intercourse with a victim who is a child under the age of 13 years.

(b) A person convicted of violating this section is guilty of a Class B1 felony and shall be sentenced pursuant to Article 81B of Chapter 15A of the General Statutes, except that in no case shall the person receive an active punishment of less than 300 months, and except as provided in subsection (c) of this section. Following the termination of active punishment, the person shall be enrolled in satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.

**§ 14-27.3. Second-degree rape.**

(a) A person is guilty of rape in the second degree if the person engages in vaginal intercourse with another person:

- (1) By force and against the will of the other person; or

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(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class C felony.

**§ 14-27.4. First-degree sexual offense.**

(a) A person is guilty of a sexual offense in the first degree if the person engages in a sexual act:

(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or

(2) With another person by force and against the will of the other person, and:

a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or

b. Inflicts serious personal injury upon the victim or another person; or

c. The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony. (1979, c. 682, s. 1; 1979, 2nd Sess., c. 1316, s. 6; 1981, c. 106, ss. 3, 4; 1983, c. 175, ss. 5, 10; c. 720, s. 4; 1994, Ex. Sess., c. 22, s. 3.)

**§ 14-27.4A. Sexual offense with a child; adult offender.**

(a) A person is guilty of sexual offense with a child if the person is at least 18 years of age and engages in a sexual act with a victim who is a child under the age of 13 years.

(b) A person convicted of violating this section is guilty of a Class B1 felony and shall be sentenced pursuant to Article 81B of Chapter 15A of the General Statutes, except that in no case shall the person receive an active punishment of less than 300 months, and except as provided in subsection (c) of this section. Following the termination of active punishment, the person shall be enrolled in satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.

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(c) Notwithstanding the provisions of Article 81B of Chapter 15A of the General Statutes, the court may sentence the defendant to active punishment for a term of months greater than that authorized pursuant to G.S. 15A-1340.17, up to and including life imprisonment without parole, if the court finds that the nature of the offense and the harm inflicted are of such brutality, duration, severity, degree, or scope beyond that normally committed in such crimes, or considered in basic aggravation of these crimes, so as to require a sentence to active punishment in excess of that authorized pursuant to G.S. 15A-1340.17. If the court sentences the defendant pursuant to this subsection, it shall make findings of fact supporting its decision, to include matters it considered as egregious aggravation. Egregious aggravation can include further consideration of existing aggravating factors where the conduct of the defendant falls outside the heartland of cases even the aggravating factors were designed to cover. Egregious aggravation may also be considered based on the extraordinarily young age of the victim, or the depraved torture or mutilation of the victim, or extraordinary physical pain inflicted on the victim.

(d) The offense under G.S. 14-27.4(a)(1) is a lesser included offense of the offense in this section. (2008-117, s. 2.)

**§ 14-27.5. Second-degree sexual offense.**

(a) A person is guilty of a sexual offense in the second degree if the person engages in a sexual act with another person:

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class C felony. (1979, c. 682, s. 1; 1979, 2nd Sess., c. 1316, s. 7; 1981, c. 63; c. 179, s. 14; 1993, c. 539, s. 1131; 1994, Ex. Sess., c. 24, s. 14(c); 2002-159, s. 2(c).)

**§ 14-27.5A. Sexual battery.**

(a) A person is guilty of sexual battery if the person, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person:

(1) By force and against the will of the other person; or

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(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class A1 misdemeanor. (2003-252, s. 2.)

**§ 14-27.7. Intercourse and sexual offenses with certain victims; consent no defense.**

(a) If a defendant who has assumed the position of a parent in the home of a minor victim engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim, the defendant is guilty of a Class E felony. Consent is not a defense to a charge under this section.

(b) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim engages in vaginal intercourse or a sexual act with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school, but before the victim ceases to be a student, the defendant is guilty of a Class G felony, except when the defendant is lawfully married to the student. The term "same school" means a school at which the student is enrolled and the defendant is employed, assigned, or volunteers. A defendant who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student, is guilty of a Class A1 misdemeanor. This subsection shall apply unless the conduct is covered under some other provision of law providing for greater punishment. Consent is not a defense to a charge under this section. For purposes of this subsection, the terms "school", "school personnel", and "student" shall have the same meaning as in G.S. 14-202.4(d). For purposes of this subsection, the term "school safety officer" shall include a school resource officer or any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools. (1979, c. 682, s. 1; 1979, 2nd Sess., c. 1316, s. 9; 1981, c. 63; c. 179, s. 14; 1993, c. 539, s. 1132; 1994, Ex. Sess., c. 24, s. 14(c); 1999-300, s. 2; 2003-98, s. 1.)

**§ 14-27.7A. Statutory rape or sexual offense of person who is 13, 14, or 15 years old.**

(a) A defendant is guilty of a Class B1 felony if the defendant engages in vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old and the defendant is at least six years older than the person, except when the defendant is lawfully married to the person.

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(b) A defendant is guilty of a Class C felony if the defendant engages in vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old and the defendant is more than four but less than six years older than the person, except when the defendant is lawfully married to the person. (1995, c. 281, s. 1.)

**§ 14-27.8. No defense that victim is spouse of person committing act.**

A person may be prosecuted under this Article whether or not the victim is the person's legal spouse at the time of the commission of the alleged rape or sexual offense. (1979, c. 682, s. 1; 1987, c. 742; 1993, c. 274.)

**§ 14-27.9. No presumption as to incapacity.**

In prosecutions under this Article, there shall be no presumption that any person under the age of 14 years is physically incapable of committing a sex offense of any degree or physically incapable of committing rape, or that a male child under the age of 14 years is incapable of engaging in sexual intercourse. (1979, c. 682, s. 1.)

**§ 14-277.3A. Stalking.**

(b) **Definitions.** The following definitions apply in this section:

(1) **Course of conduct** - 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, is in the presence of, or follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(2) **Harasses or harassment** - Knowing conduct, including written or printed communication or transmission, telephone, cellular, or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or transmissions, and electronic mail messages or other computerized or electronic transmissions directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose.

(3) **Reasonable person** - A reasonable person in the victim's circumstances.

(4) **Substantial emotional distress** - Significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

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(c) **Offense.** A defendant is guilty of stalking if the defendant willfully on more than one occasion harasses another person without legal purpose or willfully engages in a course of conduct directed at a specific person without legal purpose and the defendant knows or should know that the harassment or the course of conduct would cause a reasonable person to do any of the following:

(1) Fear for the person's safety or the safety of the person's immediate family or close personal associates.

(2) Suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment.

(d) **Classification.** A violation of this section is a Class A1 misdemeanor. A defendant convicted of a Class A1 misdemeanor under this section, who is sentenced to a community punishment, shall be placed on supervised probation in addition to any other punishment imposed by the court. A defendant who commits the offense of stalking after having been previously convicted of a stalking offense is guilty of a Class F felony. A defendant who commits the offense of stalking when there is a court order in effect prohibiting the conduct described under this section by the defendant against the victim is guilty of a Class H felony.

(e) **Jurisdiction.** Pursuant to G.S. 15A-134, if any part of the offense occurred within North Carolina, including the defendant's course of conduct or the effect on the victim, then the defendant may be prosecuted in this State. (2008-167, s. 2.)

## TEXAS PENAL CODE

### **Sec. 22.011. SEXUAL ASSAULT.**

- (a) A person commits an offense if the person:
- (1) intentionally or knowingly:
    - (A) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;
    - (B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or
    - (C) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or
  - (2) intentionally or knowingly:
    - (A) causes the penetration of the anus or sexual organ of a child by any means;
    - (B) causes the penetration of the mouth of a child by the sexual organ of the actor;
    - (C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;
    - (D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or
    - (E) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.
- (b) A sexual assault under Subsection (a)(1) is without the consent of the other person if:
- (1) the actor compels the other person to submit or participate by the use of physical force or violence;
  - (2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat;

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- (3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;
- (4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;
- (5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;
- (6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;
- (7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;
- (8) the actor is a public servant who coerces the other person to submit or participate;
- (9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;
- (10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; or
- (11) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under Chapter 2, Family Code.

(c) In this section:

- (1) **"Child"** means a person younger than 17 years of age.
- (2) **"Spouse"** means a person who is legally married to another.
- (3) **"Health care services provider"** means:
  - (A) a physician licensed under Subtitle B, Title 3, Occupations Code;
  - (B) a chiropractor licensed under Chapter 201, Occupations Code;

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- (C) a physical therapist licensed under Chapter 453, Occupations Code;
- (D) a physician assistant licensed under Chapter 204, Occupations Code; or
- (E) a registered nurse, a vocational nurse, or an advanced practice nurse licensed under Chapter 301, Occupations Code.

(4) **“Mental health services provider”** means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

- (A) licensed social worker as defined by Section 505.002, Occupations Code;
- (B) chemical dependency counselor as defined by Section 504.001, Occupations Code;
- (C) licensed professional counselor as defined by Section 503.002, Occupations Code;
- (D) licensed marriage and family therapist as defined by Section 502.002, Occupations Code;
- (E) member of the clergy;
- (F) psychologist offering psychological services as defined by Section 501.003, Occupations Code; or
- (G) special officer for mental health assignment certified under Section 1701.404, Occupations Code.

(5) **“Employee of a facility”** means a person who is an employee of a facility defined by Section 250.001, Health and Safety Code, or any other person who provides services for a facility for compensation, including a contract laborer.

(d) It is a defense to prosecution under Subsection (a)(2) that the conduct consisted of medical care for the child and did not include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or a third party.

(e) It is an affirmative defense to prosecution under Subsection (a)(2):

- (1) that the actor was the spouse of the child at the time of the offense; or

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(2) that:  
(A) the actor was not more than three years older than the victim and at the time of the offense:

(i) ***was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or***

(ii) ***was not a person who under Chapter 62, Code of Criminal Procedure, had a reportable conviction or adjudication for an offense under this section; and***

(B) the victim:

(i) ***was a child of 14 years of age or older; and***

(ii) ***was not a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.***

(f) An offense under this section is a felony of the second degree, except that an offense under this section is a felony of the first degree if the victim was a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

**Sec. 22.021. AGGRAVATED SEXUAL ASSAULT.**

(a) A person commits an offense:

(1) if the person:

(A) intentionally or knowingly:

(i) ***causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;***

(ii) ***causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or***

(iii) ***causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or***

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- (B) intentionally or knowingly:
- (i) causes the penetration of the anus or sexual organ of a child by any means;*
  - (ii) causes the penetration of the mouth of a child by the sexual organ of the actor;*
  - (iii) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;*
  - (iv) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or*
  - (v) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor; and*
- (2) if:
- (A) the person:
    - (i) causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode;*
    - (ii) by acts or words places the victim in fear that any person will become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;*
    - (iii) by acts or words occurring in the presence of the victim threatens to cause any person to become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or to cause the death, serious bodily injury, or kidnapping of any person;*
    - (iv) uses or exhibits a deadly weapon in the course of the same criminal episode;*
    - (v) acts in concert with another who engages in conduct described by Subdivision (1) directed toward the same victim and occurring during the course of the same criminal episode; or*

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**(vi) administers or provides flunitrazepam, otherwise known as rohypnol, gamma hydroxybutyrate, or ketamine to the victim of the offense with the intent of facilitating the commission of the offense;**

- (B) the victim is younger than 14 years of age; or
- (C) the victim is an elderly individual or a disabled individual.

(3) In this section:

- (A) “**Child**” has the meaning assigned by Section 22.011(c).
- (B) “**Elderly individual**” and “**disabled individual**” have the meanings assigned by Section 22.04(c).
- (C) An aggravated sexual assault under this section is without the consent of the other person if the aggravated sexual assault occurs under the same circumstances listed in Section 22.011(b).
- (D) The defense provided by Section 22.011(d) applies to this section.
- (E) An offense under this section is a felony of the first degree.
- (F) The minimum term of imprisonment for an offense under this section is increased to 25 years if:

**(i) the victim of the offense is younger than six years of age at the time the offense is committed; or**

**(ii) the victim of the offense is younger than 14 years of age at the time the offense is committed and the actor commits the offense in a manner described by Subsection (a)(2)(A).**

### **Sec. 25.11. CONTINUOUS VIOLENCE AGAINST THE FAMILY.**

(a) A person commits an offense if, during a period that is 12 months or less in duration, the person two or more times engages in conduct that constitutes an offense under Section 22.01(a)(1) [assault] against another person or persons whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code.

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(b) If the jury is the trier of fact, members of the jury are not required to agree unanimously on the specific conduct in which the defendant engaged that constituted an offense under Section 22.01(a)(1) against the person or persons described by Subsection (a) or the exact date when that conduct occurred. The jury must agree unanimously that the defendant, during a period that is 12 months or less in duration, two or more times engaged in conduct that constituted an offense under Section 22.01(a)(1) against the person or persons described by Subsection (a).

(c) A defendant may not be convicted in the same criminal action of another offense the victim of which is an alleged victim of the offense under Subsection (a) and an element of which is any conduct that is alleged as an element of the offense under Subsection (a) unless the other offense:

(1) is charged in the alternative;

(2) occurred outside the period in which the offense alleged under Subsection (a) was committed; or

(3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a).

(d) A defendant may not be charged with more than one count under Subsection (a) if all of the specific conduct that is alleged to have been engaged in is alleged to have been committed against a single victim or members of the same household, as defined by Section 71.005, Family Code.

(e) An offense under this section is a felony of the third degree.

### **Sec. 42.072.**

### **STALKING.**

(a) A person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct that:

(1) constitutes an offense under Section 42.07, or that the actor knows or reasonably should know the other person will regard as threatening:

(A) bodily injury or death for the other person;

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(B) bodily injury or death for a member of the other person's family or household or for an individual with whom the other person has a dating relationship; or

(C) that an offense will be committed against the other person's property;

(2) causes the other person, a member of the other person's family or household, or an individual with whom the other person has PENAL CODE Statute text rendered on: 3/4/2015 - 293 - a dating relationship to be placed in fear of bodily injury or death or in fear that an offense will be committed against the other person's property, or to feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended; and

(3) would cause a reasonable person to:

(A) fear bodily injury or death for himself or herself;

(B) fear bodily injury or death for a member of the person's family or household or for an individual with whom the person has a dating relationship;

(C) fear that an offense will be committed against the person's property; or

(D) feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended.

(b) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor has previously been convicted of an offense under this section or of an offense under any of the following laws that contains elements that are substantially similar to the elements of an offense under this section:

(1) the laws of another state;

(2) the laws of a federally recognized Indian tribe;

(3) the laws of a territory of the United States; or

(4) federal law.

(c) For purposes of this section, a trier of fact may find that different types of conduct described by Subsection (a), if engaged in on more than one occasion, constitute conduct that is engaged in pursuant to the same scheme or course of conduct.

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(d) In this section:

(1) “Dating relationship,” “family,” “household,” and “member of a household” have the meanings assigned by Chapter 71, Family Code.

(2) “Property” includes a pet, companion animal, or assistance animal, as defined by Section 121.002, Human Resources Code.

### Revision History

Document Revision History				
Date	Version	Change	Author	Approver
7-29-15	1.0		Melanie Scheet, National Director of Student Services	Kelleen Brennan, VP Edna Johnson, VP
4-14-16	1.1	Added Student Services Directors as Deputy Title IX Coordinators for student complaints; contact information included	Melanie Scheet, National Director of Student Services	Kelleen Brennan, VP Edna Johnson, VP
6-8-17	1.2	Added additional references to Deputy Title IX Coordinator throughout the policy; updated appeal contact to Rhonda Turner and included contact information; included additional sanctions; added additional resources to chart; updated Deputy contact information for Nascar Tech	Melanie Scheet, National Director of Student Services	Edna Johnson, VP