

SEXUAL DISCRIMINATION & MISCONDUCT POLICY

Philosophy

Sexual assault is a serious violent crime. It is a crime of hostility and aggression, as well as a violation of human dignity. Sexual assault is also a very sensitive crime which is unique in its physical and mental impact upon the alleged victim. When it occurs at Bellarmine University, it is also a flagrant violation of University standards and will not be tolerated.

The Bellarmine University community expects its members to treat other persons with respect and dignity and will not tolerate any form of sexual assault or sexual misconduct. Sexual activity should be explicitly agreed upon by both parties. The same holds whether the assailant is a stranger or an acquaintance. The use of alcohol or drugs will not be accepted as an explanation for the actions of any person charged with the violation of this policy. In addition, the use of alcohol or other mind-altering substances by either party does not have to be known by both parties for the offense to be considered sexual assault or sexual misconduct. Wanton, unacceptable conduct will be addressed severely for the good of the students and the academic community.

Students who violate this policy will be disciplined under the University's Code of Conduct and may be prosecuted under Kentucky's criminal statutes. Whether or not a criminal prosecution occurs, Bellarmine retains the right to proceed with disciplinary action at any time, and the University need not await the dispensation of any such criminal prosecution. Appropriate disciplinary action may include counseling, educational sanctions, disciplinary probation, suspension, expulsion, and referral to the proper law enforcement authorities for prosecution. This policy applies to student on student allegations only.

Definitions

The following definitions are offered to inform the Bellarmine University community of the various types of sex offenses that occur most frequently on college campuses. If the institution reasonably should know about student-on-student harassment that creates a hostile environment, immediate action will be taken to eliminate the harassment, prevent recurrence, and address effects, even if the harassment occurred off campus or is reported by a third party.

Sexual misconduct offenses include, but are not limited to:

1. Sexual Harassment
2. Non-Consensual Sexual Contact (or attempts to commit same)
3. Non-Consensual Sexual Intercourse (or attempts to commit same)
4. Sexual Exploitation
5. Retaliation in connection with any of these offenses

1. Sexual Harassment is:

- Unwelcome, gender-based verbal or physical conduct that is,
- Sufficiently severe, persistent or pervasive that it,
- Has the effect of unreasonable interference with, denying or limiting someone's ability to participate in or benefit from the University's educational program and/or activities and is
- Based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexually based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence; stalking; gender-based bullying.

2. Non-Consensual Sexual Contact is

- Any intentional sexual touching,
- However slight,
- With any object,
- By a man or a woman upon a man or a woman,
- That is without consent and /or by force.

Sexual Contact includes: intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, groin, genitals, mouth or other orifice.

3. Non-Consensual Sexual Intercourse is

- Any sexual intercourse
- However slight,
- With any object,
- By a man or woman upon a man or a woman,
- That is without consent and/or by force.

Intercourse includes: vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

4. Sexual Exploitation: Occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting another student;
- Non-consensual video or audio taping of sexual activity;
- Going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- Engaging in voyeurism;
- Knowingly transmitting an STI or HIV to another student;
- Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation

5. Retaliation: Retaliation is any adverse action against a student who reports discrimination or sexual misconduct, files a complaint, assists someone in reporting or filing a complaint, participates in an investigation or hearing of a complaint, or protests what he or she considers to be discrimination or sexual misconduct under this Policy, where the intent of the action is to intimidate, coerce or otherwise deter the student from exercising his or her rights under this Policy. Retaliation includes, but is not limited to, verbal threats, physical abuse or different treatment because of the student's exercise of his or her rights.

6. Consent: Consent is clear, knowing and voluntary. Consent is active, not passive. The responsibility to obtain consent rests with the initiator of the activity. Consent is defined as informed, freely and actively given, mutually understandable words or actions. A person has the right AT ANY TIME to say "no" to sexual activity and that "no" means "no." Verbal communications of nonconsent, nonverbal acts of resistance or rejection, or mental incapacitation of the alleged victim due to any cause including the alleged victim's use of alcohol or drugs constitute a lack of consent. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.

- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity
- Previous relationships or prior consent cannot imply consent to future sexual acts.

7. Force: Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent ("Have sex with me or I'll hit you. Okay, don't hit me, I'll do what you want.").

- Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they

do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

- NOTE: There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.
- In order to give effective consent, one must be of legal age.
- Sexual activity with someone whom one should know to be or based on the circumstances should reasonably have known to be – mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy.
 - Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction.).
 - This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of drugs of any kind. Possession, use and/or distribution of any of any of these substances, including, but not limited to, Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>
- Use of alcohol or other drugs will never function as a defense to a violation of this policy.
- The sexual orientation and/or gender identity of individuals engaging in sexual activity is not relevant to allegations under this policy.

Reporting Procedure for Sexual Discrimination and Misconduct Cases

If a student assault occurs, it should be reported to the Office of Public Safety, the Dean of Students, Residence Life, Health Services, or the Counseling Center. If a faculty or staff assault occurs, it should be reported to the Office of Public Safety or Human Resources (www.bellarmino.edu/hr/misconduct.aspx). Privacy will be maintained unless another student is involved or a potential risk of harm to self or others exists; reports to Health Services or the Counseling Center will be kept confidential, to the extent possible. Information will be shared only with relevant medical and/or therapeutic personnel until such time that a decision is made or temporary, indirect, or direct action taken. Assaults that occur by an assailant not affiliated with the University and/or off-campus should be reported to local police (911). If law enforcement officials are notified first, it is still recommended to contact a campus resource person so that appropriate measures can be taken and support provided.

When an alleged sexual assault is reported, campus resource persons will notify the complainant of the range of resources and alternatives available to him/her both on campus and in the Louisville community. The discussion should include encouraging the complainant to report the incident to law enforcement authorities. The University can help arrange a meeting with law enforcement authorities and will accompany and support the alleged victim during the meetings.

In instances where reports of sexual discrimination or misconduct are found to be falsely made, the complainant may be charged with a violation of the Student Code of Conduct, specifically, providing false information to University Officials.

Informal Action

1. Immediate medical attention (U of L Hospital has the most comprehensive rape response unit). Refer to subsection on Medical Attention.
2. Referral to free, trained therapists.
3. Access to legal advocacy.
4. Access to printed information to enable informed decisions regarding crime and assistance, and criminal and disciplinary proceedings.
5. No mediation will be used to resolve sexual assault complaints.

Formal Procedures

The complainant is encouraged to file a formal report, not only in order to deter such assaults from happening to others, but also to receive services that enhance recovery. Once an informal or formal report has been made, a prompt, thorough, and impartial investigation by the University will occur. Law enforcement investigations do not relieve the school from the need to conduct an investigation. The University will inform and obtain consent from the complainant before beginning an investigation. If the complainant requests confidentiality or asks that the complaint not be pursued, the University will take all reasonable steps to investigate and respond to the complaint, consistent with the request for confidentiality or request not to pursue an investigation. If a complainant insists that his or her name or other identifiable information not be disclosed to the respondent, the University will have limited ability to respond to the complaint, but will pursue other steps to limit the effects of the alleged offense and prevent its recurrence. If the complainant continues to ask that identifiable information not be revealed, the University will evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. Bellarmine will inform the complainant if it cannot ensure confidentiality. The complainant has the option to participate in conduct procedures without being physically present through written statement, phone conference, or other means.

A student who has been sexually assaulted may pursue a complete professional investigation before making a decision about how to proceed with the case. The pendency of criminal proceedings shall not be ground for appeal of any findings or sanctions based on the respondent's failure to attend or speak at the hearing. The