

I. SEXUAL MISCONDUCT POLICY FOR MICHIGAN TECH STUDENTS

A. GUIDING PRINCIPLES

Michigan Tech recognizes that sexual misconduct is a growing national problem that affects a significant number of college students. The trauma experienced by the survivors of nonconsensual sexual intercourse, nonconsensual sexual contact, sexual exploitation and mutually incapacitated sexual intercourse and those close to them undermines the trust that is so essential to the educational process. The fact that most incidents of sexual misconduct are committed by people the survivors know and often must continue to interact with is devastating to the individual and, indeed, to the very mission of the University. Michigan Tech is committed to educating our students, faculty, and staff about this topic; to improving our responses; and to working with the surrounding communities to offer as great a variety of services as possible. Michigan Tech's regulations expressly prohibit violation of this sexual misconduct policy.

II. DEFINITIONS

A. Effective consent: informed, freely and actively given, with mutually understandable words or actions which indicate a willingness to participate in mutually agreed upon sexual activity.

1. In the absence of mutually understandable words or actions (a meeting of the minds on what is to be done, where, with whom, and in what way), it is the responsibility of the initiator, or the person who wants to engage in the specific sexual activity to make sure that they have consent from their partner(s).

2. Mutually understandable consent is a subjective standard. Consent is mutually understandable when a reasonable person would consider the words or actions of the parties to have manifested a mutually understandable agreement between them to do the same thing, in the same way, at the same time, with each other.

3. Consent which is obtained through the use of fraud or force whether that force be physical force, threats, intimidation, or coercion, is ineffective consent;

4. Effective consent may never be given by minors (statutory rape) to legal adults, mentally disabled persons, or physically incapacitated persons. One who is physically incapacitated as a result of alcohol or other drug consumption (voluntary and involuntary), or who is unconscious, unaware, or otherwise physically helpless, is incapable of giving consent. One may not engage in sexual activity with another who one knows or should reasonably have known is physically incapacitated. Incapacitation means being in a state where a person lacks the capacity to appreciate the fact that the situation is sexual or cannot appreciate (rationally and reasonably) the nature and/or extent of that situation.

B. Intercourse: 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).

C. Sexual touching: any contact with the breasts, buttocks, groin, mouth, 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.

D. The definitions in Section VIII of the Code of Community Conduct are incorporated in the Sexual Misconduct Policy by this reference.

III. INTERPRETIVE RULES FOR SEXUAL MISCONDUCT CHARGES

A. The person who is the object of sexual aggression (the “complainant”) is not required to physically or otherwise resist a sexual aggressor.

B. Silence, previous sexual relationships, and/or current relationship with the “respondent” (the alleged perpetrator), or anyone else, may not, in themselves, be taken to imply consent. Consent cannot be implied by attire, or inferred from the buying of dinner or the spending of money on a date.

C. Intentional use of alcohol/drugs by the respondent is not an excuse for violation of the sexual misconduct policy.

D. A student who deliberately drugs or attempts to push another to consume alcohol for the purpose of rendering that person incapacitated or sexually submissive/passive commits a violation of the sexual misconduct policy.

E. Effective consent to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly (because you cannot be expected to read the mind of your sexual partner(s)), and all sexual activity must cease.

F. An "intent to rape" is not required under this policy. Unlike murder, for which there must be an intent to kill, rape is not an intent-based concept. The requisite intent for rape is demonstrated by engaging in the act of intercourse intentionally.

G. Effective consent has an expiration date. Effective consent lasts for a reasonable time, depending on the circumstances. Effective consent must be contemporaneous with the sexual activity involved.

H. Forced sexual intercourse is not limited to strangers and can include acquaintances.

IV. PROHIBITED CONDUCT

A. Sexual Harassment: Any unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature constitute sexual harassment when:

- submission to the conduct is either explicitly or implicitly used as a basis for academic advancement (e.g., better grade, evaluative decision on advancement in an academic program); or
- submission or rejection of the conduct is used as a basis for an employment (e.g., evaluative decision on advancement in employment) affecting the person rejecting or submitting to the conduct; or
- the conduct has the purpose or effect of unreasonably interfering with an affected person's work performance or learning environment: it creates an intimidating, hostile, or offensive work, academic, and/or residential living environment.

B. Nonconsensual Sexual Intercourse: any sexual intercourse (anal, oral or vaginal); however slight; with any object; by a man or a woman upon a man or a woman; without *effective* consent.

C. Nonconsensual Sexual Contact: any sexual touching (including disrobing or exposure); however slight; with any object; by a man or a woman upon a man or a woman; without *effective* consent .

D. Mutually Incapacitated Sexual Intercourse: any sexual intercourse (anal, oral, or vaginal); however slight; with any object; occurring between parties who are mutually incapacitated by the use of alcohol or other drugs.

E. Sexual Exploitation: taking nonconsensual, unjust or abusive advantage of another in a sexual or intimate context, including without limitation prostituting another person, engaging in, permitting or facilitating nonconsensual viewing, videotaping or audio taping of sexual or intimate activity (such as dressing, showering and similar activity of oneself or others), knowingly infecting another person with HIV or other sexually transmitted disease and/or inducing incapacitation of another person with the intent to facilitate the rape or sexual assault of that person.

V. GROUP INFRACTIONS

When members of groups, individuals acting collusively, or members of a student organization act in concert in violation of the sexual misconduct policy, they will be charged individually and the group may be charged as a student organization. Sanctions against an organization can range from organizational probation and expulsion.

VI. FALSE REPORTING

Michigan Tech will not tolerate intentional false reporting of sexual misconduct. It is a violation of the student code of conduct to make an intentionally false report of sexual misconduct, and it may also violate state criminal statutes and civil defamation laws.

VII. LIMITATIONS OF CONFIDENTIALITY

A. Complete Confidentiality: If a sexual misconduct complainant desires that details of his/her incident be kept confidential, the complainant should speak with counselors (on or off-campus), who will maintain confidentiality. Counselors will explain the details of confidentiality rules. Campus counselors are available to help you free of charge and can be seen on an emergency basis by calling Counseling Services at 487-2538. In addition, complainants may speak on and off-campus with members of the clergy and chaplains, who will also keep reports made to them confidential. They may also call Dial Help (482-HELP) which is a confidential local helpline.

B. Duty to Investigate: Complainants are encouraged to speak to other officials (such as Residence Life staff, Public Safety, deans, coaches, or other administrators) of the institution for purposes of seeking information or reporting incidents. Michigan Tech recognizes that many complainants desire confidentiality and many will not want the University to investigate and attempt to resolve the incident. However, it is the duty of University officials to follow-up on all allegations of sexual misconduct they receive, and in doing so, confidentiality cannot always be maintained. At all times, University officials will tightly contain the extent to which personal details are disclosed, sharing information only when necessary, to only to those who have a legitimate need to know.

C. Federal Reporting Statistical Requirements: Michigan Tech officials (including administrative staff, student employees in Residence Life, Public Safety, deans, coaches and other administrators) must fulfill federal crime reporting requirements. All personally identifiable information is kept confidential, but statistical information must be passed along to Public Safety regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given), for publication in the Campus Security Act Annual Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety.

D. Federal Timely Warning Requirements: Complainants of sexual misconduct should also be aware that Michigan Tech officials must issue timely warnings for incidents reported to them that continue to pose a substantial threat of bodily harm or danger to members of the campus community. Michigan Tech will make every effort to ensure that a complainant's name and other identifying information is not disclosed, while still providing enough information for students to make safety decisions in light of the danger.

E. Open Campus Police Logs – Public Safety Office: When incidents are reported to law enforcement officials, federal law requires that the police note incidents in a police log that is made public within two business days of the report of an incident. No names or other information that could reveal the identity of the complainant will be made public.

F. Confidentiality of Medical Services: If a complainant seeks medical attention, he or she should know that medical providers are required to alert law enforcement of sex crimes. If police are called to the hospital, the complainant has the right not to talk to them. However, if a report is given to the police (at the hospital, or thereafter), prosecution is a decision that can be made with or without the assistance and permission of the complainant. Custody of all physical

evidence obtained at the hospital is eventually held at the law enforcement agency.

VIII. LIMITED IMMUNITY FOR COMPLAINANTS

The Michigan Tech community encourages the reporting of sexual misconduct. Sometimes, complainants are hesitant to report to university officials because they fear that they themselves may be charged with policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that as many complainants as possible choose to report to university officials. To encourage reporting, Michigan Tech pursues a policy of offering complainants of sexual misconduct limited immunity from being charged for policy violations related to the sexual misconduct incident. While some violations cannot be completely overlooked, Michigan Tech will provide mandated educational options, rather than sanctions, in such cases.

IX. GOOD SAMARITAN IMMUNITY

The welfare of students in our community is of paramount importance. At times, students on and off-campus may need assistance. Michigan Tech encourages students to offer help and assistance to others in need. Sometimes, students are hesitant to offer assistance to others, for fear that they may get themselves in trouble (for example, an underage student who has been drinking might hesitate to help take a sexual misconduct complainant to the campus police). Michigan Tech pursues a policy of limited immunity for students who offer help to others in need. While not all policy violations can be overlooked, Michigan Tech will provide mandated educational options, rather than sanctions, to those who offer assistance.

X. RIGHTS AND PROCEDURES UNDER SEXUAL MISCONDUCT POLICY

A. Jurisdiction. The jurisdiction of Michigan Tech over sexual misconduct incidents is broad. Michigan Tech will take judicial jurisdiction, to the extent practical and possible, over all sexual misconduct cases occurring on campus, as long as the person being charged is a student, regardless of the enrollment status of the alleged complainant.

Michigan Tech will take judicial jurisdiction, to the extent practical and possible, over all sexual misconduct cases that occur off- campus, if the person being charged and the alleged complainant are students, and if the impact of the assault is likely to have a substantial effect on the alleged complainant's on-campus life and activities, or if the incident poses a threat of danger to other students. To the extent it is practical and possible, Michigan Tech may also take judicial jurisdiction over students charged with off- campus sexual misconduct cases where the alleged complainant is not a student.

Michigan Tech will take judicial jurisdiction, to the extent practical and possible, over incidents where charges are brought against a student by another student or by a non-student, when those incidents take place during a period in which the University is not in session, including intra-semester breaks, such as spring break, and inter-term breaks, such as winter and summer breaks. This does not include periods before which a student has

matriculated and after which a student has graduated, except in circumstances where allegations arise against a graduated student based on an incident that took place before the student graduated. If found to be responsible for a violation of the sexual misconduct policy, the student could face revocation of his or her diploma.

B. Section XII of the Code of Community Conduct provides a detailed explanation of the process which will be followed for complaints filed under the sexual misconduct policy. In addition, the following rights apply:

1. Complainant's Rights. It is the goal of Michigan Tech to ensure that students alleging sexual misconduct have access to needed resources, services, and information including:

a. The right of the complainant to be treated with respect by Michigan Tech officials;

b. The right to have an advisor (as defined in the Code of Community Conduct) to accompany and assist in the campus hearing process. The advisor may advise and provide support to the complainant but may not take part directly in the hearing itself. If the respondent has an attorney present (see 2.c. below) then the complainant may have an attorney present, but the attorney may not take part directly in the hearing itself.

c. The right not to be discouraged by Michigan Tech officials from reporting an sexual misconduct offense;

d. The right to be informed of the outcome and sanction of any disciplinary hearing involving sexual misconduct;

e. The right to be informed of their options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses. This also includes the right not to report, if this is the complainant's desire;

f. The right to be notified of available counseling, mental health or student services for complainants of sexual misconduct, both on campus and in the community;

g. The right to notification of and options for, and available assistance in, changing academic and living situations after an alleged sexual misconduct incident, if so requested by the complainant and if such changes are reasonably available (no charges or investigation, campus or criminal, need occur before this option is available).

h. The right not to have irrelevant prior sexual history admitted in a campus hearing;

i. The right to make a complainant-impact statement to the administrative judicial panel and to have that statement considered by the panel in determining its sanction;

j. The right to a campus “No Contact” condition against another student who has engaged in or threatens to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the complaining student or others;

k. The right to have complaints of sexual misconduct responded to quickly and with sensitivity by campus law enforcement.

l. The right to appeal the findings and sanction of the administrative judicial panel in accordance with the standards for appeal established in the Student Rights and Responsibilities in the University Community document.

2. Respondent’s Rights. It is the goal of Michigan Tech to ensure that students responding to charges of sexual misconduct have access to needed resources, services and information. Michigan Tech strives to offer a reasonable parity of resources, services and information, to the extent possible, to all parties to the incident, including, but not limited to, the following rights:

a. The right to a timely notice of disciplinary charges, including the nature of the charge and possible sanctions;

b. The right to a hearing on the charges, including timely notice of the hearing date, and adequate time for preparation;

c. The right to have an “advisor” (as defined in the student code of conduct) to accompany and assist in the campus hearing process. The advisor may advise and provide support to the respondent but may not take part directly in the hearing itself. If there are pending criminal charges against the respondent, the respondent may have an attorney present in the hearing to advise him/her, but the attorney may not take part directly in the hearing itself.

d. The right to refuse to answer some or all questions to avoid self-implication, and the right not to have this silence used against the respondent student;

e. The right to question adverse witnesses at the administrative judicial panel;

f. The right to have basic rules of evidence (relevance and credibility) observed in the hearing;

g. The right to a written notice of the outcome and sanction of the hearing;

h. The right to appeal the finding and sanction of the administrative judicial panel, in accordance with the standards for appeal established in the Student Rights and Responsibilities in the University Community document.

i. The right to submit an impact statement to the administrative judicial panel.

j. The right of access to campus resources for medical, counseling, and advisory services.

Appendix A: OPTIONS FOR COMPLAINANTS

Complainants have a number of options to consider when they have been involved in an incident of nonconsensual sexual intercourse, nonconsensual sexual contact, and sexual exploitation. Procedures for complaints related to sexually harassment can be found at the Affirmative Programs office, Admin. Room 207, and the Dean of Students Office, Admin. Room 170.

A complainant can choose any and all of the options listed here. The options are noted as follows: 1. option for medical attention, and 2. reporting options that include (a) campus judicial charges, (b) request campus "no contact" condition, (c) criminal prosecution option, (d) option for civil suit and (e) request for civil restraining orders/personal protection orders.

1. Options for medical attention:

Testing at the hospital for the presence of "date rape" drugs can be done 24-48 hours after the ingestion of most of these types of sedative or hallucinogenic drugs.

If you have questions on this option, refer to the following:

Q: What are "date-rape" drugs?

A: So-called date-rape drugs are usually powerful sedatives or hallucinogenic drugs, such as Rohypnol (a.k.a. rope, roaches, R2, Roofies), GHB (a chemical compound often mixed by people who look up the recipe on the Internet, and buy the ingredients from supermarkets and hardware stores), Burundanga, Ketomine, Scopolamine, etc. Rohypnol is a prescription sedative sold in Europe and South America, but illegal in the United States. Other date rape drugs are of varying types, but all produce similar results: blackout or incoherence for 2-8 hours.

Q: How do I know if I have been drugged?

A: If you are drinking, and you experience a "high" far beyond what would be normal for the amount of alcohol you have had, suspect that you may have been drugged. Similarly, if all of a sudden you begin to get extremely dizzy; incoherent; or lose your balance, equilibrium, sense of time, or place, you may have been drugged. The only way to know for sure is to have someone take you to the hospital the minute you begin to experience these symptoms. It is

hard to know if you have been drugged because these drugs can be easily slipped into any drink, alcoholic or not. These drugs are mostly tasteless, odorless, and colorless, and will dissolve instantly. They take hold in about 15-25 minutes, and complete unconsciousness can result shortly thereafter. If your drink tastes slightly salty, this could be an indication of the presence of GHB. If your drink suddenly turns blue, this is a sure sign of Rohypnol, the latest version of which now is manufactured to change the color of the liquid it is dissolved in.

Q: How do they test for the presence of these drugs?

A: Blood and urine tests are the usual means.

If less than 72 hours have passed since the assault, physical evidence should be collected ASAP at the hospital with a PERK (rape kit).

If you have questions on this option, refer to the following:

Q: What is a PERK?

A: PERK is an evidence collection procedure (Physical Evidence Recovery Kit) — hair, fluid, tissue samples are taken. A gynecological exam is performed. Female nurses are available. They will also will treat for injuries, test for HIV/STDs, pregnancy and date rape drugs.

Q: Do I have to go to the hospital?

A: You are not required to seek medical attention. However, even if you do not want to prosecute now, collecting the evidence is important in case you change your mind later. Without a PERK, it is very hard to prosecute successfully. Medical attention is also important because some injuries may not be immediately apparent to the complainant or may not show up until several days after an incident.

Q: What do I do if it has been 74 hours since the incident?

A: After 72+ hours, it may be too late to collect bodily fluids. Have the evidence collected as soon as possible. You still may be able to have PERK after 72 hours, if not long past, so it is best to check with the hospital to be sure.

Q: Where is the rape kit (PERK) done?

A: The PERK is performed at Portage Health System Hospital.

Q: How do I get to the hospital?

A: Public Safety can accompany and transport you. Or, you could get a ride from a friend, obtain a taxi, or you can go alone.

Q: Do I have to go alone?

A: No, you can take a same sex friend/family member/advocate who can stay with you through the exam. Counselors or local rape crisis advocates can be called to accompany/assist you, if you wish.

Q: How much does it cost?

A: An emergency room visit with lab work can cost someplace in the range of \$300 to \$500. Complainants who decide to prosecute may have the cost reimbursed by the state

complainant's assistance fund. PERK's are covered by most insurance, and hospitals may do blind-billing (will not list the type of medical service, so parents don't find out).

Q: How long will it take?

A: The procedure may take three hours or more.

Q: If I am still wearing the clothes I was assaulted in, what should I do?

A: You will need to take a change of clothes with you unless you have already changed. If you have already changed, it is important to secure physical evidence. Place all clothing, towels used to clean up, etc. into clean paper bags for transport to the hospital. Separate bags for each item—no PLASTIC bags!!! If you change before you go, remove your clothes over a clean white sheet, and take the sheet and the clothes to hospital for testing. If you have not changed/cleaned-up, avoid touching or brushing anything that might disturb evidence. Do not bring bedding to the hospital; let the police collect evidence from the scene of the incident.

Q: Is the medical exam confidential?

A: You must sign a release for the medical exam to be completed. Once signed, the hospital is required to notify the police. They may or may not come to the hospital. You do not have to talk to them.

If more than 72+ hours have passed since the assault, you can seek medical testing for HIV/STD/Pregnancy at the Portage Health System Hospital.

If you have questions on this option, refer to the following:

Q: Can I get a rape kit?

A: The rape kit (PERK) can only be done in 72 hours or less after an incident.

Q: Why would I need medical testing?

A: HIV, STDs, pregnancy and physical injuries may result from sexual contact/intercourse.

History: Revised August, 2005

2. You have the following reporting options:

a. Campus Judicial Charges

Q: What are campus judicial charges?

A: MICHIGAN TECH prohibits sexual misconduct in its Code of Community Conduct and Sexual Misconduct Policy. There are five categories of sexual misconduct. The violations of under the University's Sexual Misconduct policy are nonconsensual sexual intercourse, nonconsensual sexual contact, sexual exploitation, sexual harassment and mutually incapacitated sexual intercourse. Initiating campus judicial procedures allows the complainant to have the University render a disciplinary decision on whether the respondent has violated one or more of the five regulations identified under the sexual misconduct policy.

Q: How do I report a complaint to the campus judicial system?

A: A complaint can be reported at the Office of Student Judicial Affairs by a complainant. Charges can be initiated by the Office of Student Judicial Affairs from reports submitted to Public Safety, Residence Life, Health Services, Affirmative Programs, Counseling Services, faculty, and coaches, and any administrator who refers a case to the Office of Student Judicial Affairs.

Q: Who can initiate a campus complaint for disciplinary action and against whom?

A: Campus charges can be imposed against a student by another student or by a non student against a student arising out of sexual misconduct that occurs on or off-campus, during and between academic terms, including summer breaks, as long as the student being respondent is presently enrolled. Charges may be filed against a student who graduated if the sexual misconduct occurred prior to graduation. Charges may be filed by graduated students against current students.

Q: What if my complaint is against a member of the faculty, staff, or administration?

A: You can report a complaint to the Office of Affirmative Programs and/or Public Safety.

Q: Is the campus judicial process confidential?

A: If campus charges are filed, complete confidentiality cannot be maintained. Campus police will usually be asked to investigate, including contacting and interviewing potential witnesses. Administrators involved in hearing the case will know, as will the appeal officer. All of these people will keep confidentiality to the best of their ability and duties. After a hearing has concluded, the hearing officers must report non personal identifying information to the director of public safety in order to meet annual federal campus crime statistic reporting requirements. Within two days of a report, basic details of an incident are available to the public in the campus police log. No names are given, and facts that could lead to the identity of the complainant are not disclosed. Campus judicial hearings are not open to the public.

Q: What will happen if I pursue campus charges?

A: Campus cases are heard and resolved much more quickly than criminal charges, often going from the filing of charges to resolution in six weeks or less. Temporary suspensions of respondent students to protect you and other students are possible in the interim. Campus sanctions for sexual misconduct range from warnings to expulsion, and the standard sanction for those in violation of nonconsensual sexual intercourse is expulsion.

Q: Is this like filing criminal charges?

A: No. Campus cases may be easier to prove than criminal charges, because the standard of proof (the amount of evidence required to convince judicial officers) is lower. Filing campus charges does not preclude the filing of criminal charges and/or civil suits. Campus charges cannot result in imprisonment. Witnesses may be called at the campus hearing, for both you and the respondent. Usually, you control the campus judicial process and can withdraw the complaint at any time. You can also refuse to be a witness. In certain cases, the University may pursue charges without your assistance or cooperation, when it is necessary to resolve a case in order to protect the community from a student who poses a threat to others.

b. Campus "No Contact" Conditions:

Q: What is a campus "No Contact" condition?

A: A campus "No Contact" condition is a warning to students to keep a certain distance from, or a prohibition from contact with, each other. "No Contact" conditions are available to students when necessary to protect them. The campus "no contact" condition applies to both the complainant and the person the complaint is lodged against (the respondent). Failure to comply with a campus "no contact" condition can result in disciplinary charges and possible dismissal.

Q: How do I get a campus "No Contact" condition?

A: They can be issued by Student Affairs staff when needed. You can contact a staff member in Residence Life, Counseling Services or Student Affairs to request a campus "no contact" condition.

Q: What happens if a student violates a campus "No Contact" condition?

A: Michigan Tech would initiate judicial charges against the student for the violation, with appropriate punishment resulting if a violation is found.

c. The Criminal Prosecution Option

Q: How do I initiate criminal charges?

A: You can choose to pursue a full investigation. Once evidence has been collected by law enforcement supporting the allegation that a crime has been committed you will have the right to file criminal charges with the prosecuting attorney's office. If you decide to file criminal charges, the results of the investigation will be released to the prosecuting attorney. If the incident occurred on-campus, Public Safety (campus police) would conduct the investigation. If the incident occurred locally, Houghton Police (in the city of Houghton), Hancock Police (in the city of Hancock), the Houghton County Sheriff's Department (outside of city jurisdiction) or the Michigan State Police would conduct the investigation. You may also contact the

Houghton County Prosecuting Attorney to initiate charges. If the incident did not occur locally, you should contact the police with the jurisdiction of where the incident occurred.

Q: Can criminal charges be filed even if I don't want them to be?

A: Yes, in certain infrequent circumstances, a prosecuting attorney could prosecute a case that you do not want to be prosecuted. You are not a party to the prosecution. A sex crime is a crime against the state: prosecution is done in the name of the state, not the complainant.

Q: Does it matter when I file criminal charges?

A: Prosecutions are most successful in cases when you report the assault to authorities as quickly as possible. Michigan has a seven (7) year statute of limitations on reporting and prosecuting rape. Normally, criminal charges cannot be filed more than seven (7) years after the incident occurred.

Q: If I prosecute, how long will it take?

A: Investigations can sometimes take weeks or months to complete. Criminal prosecutions can take years to get from the filing of charges to the end of the final appeal. This is not meant to discourage, but to give a realistic perspective of the criminal justice system.

Q: Are prosecutions confidential?

A: Criminal rape prosecutions in Michigan are closed to the public when the complainant makes this request at the preliminary hearing. The name of the complainant is protected from release, but people involved in the prosecution would know about it, as would witnesses. Otherwise, the proceedings can be open to the public.

Q: If the prosecution is successful, what will happen?

A: Nationally, sentences for rape average 12 years, with 7-8 years served. However, other (unwanted touching, penetration) sexual assault convictions result in shorter sentences than do rape convictions. Criminal convictions for sexual assault can result in fines, jail time, community service, probation, and other punishments.

Q: How hard is it to win the case?

A: Criminal rape convictions must be proved beyond a reasonable doubt, a very high standard. Many rapists charged plead to a lesser charge and thus do not end in a sexual assault conviction of rape. Criminal trials are decided by juries, so every one is different and the outcome is hard to predict.

Q: How much does it cost to prosecute?

A: Prosecuting is free if the prosecuting attorney decides to take your case.

Q: If I choose to prosecute, do I have to be there?

A: Normally, complainants provide testimony as witnesses and provide the main evidence against the defendant. However, you need not always participate in the trial to get a conviction, and this is something you should discuss further with the prosecuting attorney.

Q: Will this prosecution put me on trial?

A: The defendant's attorneys may try to make it look like it was your fault, and may try to call

your character into question. However, irrelevant evidence of a complainant's past sexual history is generally inadmissible in court.

Q: If the incident happened on campus, can I still prosecute?

A: Yes, Michigan courts have jurisdiction over cases that occur on campus.

Q: If I prosecute, do I still have other options?

A: Filing criminal charges does not preclude filing campus charges and civil suits.

d. The Option of a Civil Suit

Q: How is this different than a prosecution?

A: You can initiate a civil suit against a perpetrator to seek money damages and other civil remedies (not imprisonment).

Q: Is this option exclusive of other options?

A: No, filing a civil suit does not preclude the filing of campus charges and/or criminal charges

Q: How do I exercise this option?

A: You can initiate a civil suit by contacting an attorney. Attorneys can be found in the phone book, or by contacting Legal Services of Northern Michigan at 482-3908.

Q: How much does a civil suit cost?

A: Filing a civil suit is usually free. The attorney only gets paid if he or she wins; you may have to pay for some expenses if you lose.

Q: How long do I have to exercise this option?

A: Civil suits can be filed up to two years after the date of the incident.

Q: Is there an advantage to this option?

A: Winning a civil suit is often easier than winning a criminal trial.

Q: Is there a disadvantage to this option?

A: Yes, suing a student can be complicated, because they don't often have the money to pay a judgment against them.

Q: How long will a civil suit take?

A: Resolving a civil suit can take up to several years.

Q: Will a civil suit be confidential?

A: No, civil suits are not confidential and may be open to the public.

e. Civil Restraining Order/Personal Protective Orders

Q: What is this option?

A: A restraining/protective order is a legal order issued by a magistrate or judge, ordering

someone to physically stay away from you and/or avoid all contact with you. Restraining orders do not physically prevent anything, it just gives police power to enforce and arrest when an order is violated. They often have time expirations. Restraining orders can be no-contact orders or distance-based (a restricted distance of 100 yards at all times).

Q: Where do I get one?

A: You can obtain it from a civil magistrate or judge in the locality where the person to be restrained is located.

Q: How do I get one?

A: The judge will hold a hearing, and you will give testimony to show cause for the need for protection. You can seek assistance from police, the Office of Student Affairs or Dial-Help.

3. Advocacy Options

Q: Who can I contact as an advocate of a sexual misconduct complaints handled in the court system?

A: S.A.R.T. is a free service, with trained professionals in advocacy, forensic medical exams and sensitive law enforcement interviews. S.A.R.T. can be activated by calling 911, Dial Help (482-HELP), the local hospital emergency room or any law enforcement agency.

4. Counseling/Healing/Living Options:

Q: What are my on-campus options?

A: There are licensed counselors on campus at Counseling Services in the Hamar House. Their phone number is 487- 2538. Meetings are confidential and free of charge. Counselors are available on a 24-hour emergency basis by contacting Public Safety (campus police) at 487-2216.

Q: What if this incident affects my academic performance?

A: Parties in sexual misconduct cases may see that their academic performance is affected by the stress associated with the incident. The Office of Student Affairs will verify to instructors and academic advisors that highly unusual circumstances exist and they will suggest appropriate accommodations such as extended deadlines on course work and make-up exams. You may also choose to contact your instructor directly.

Q: What if I am uncomfortable with returning to live in my residence hall room as a result of this incident of sexual misconduct?

A: You can request to relocate to another room on campus or request that we relocate the respondent to another location on campus (if reasonable and space is available). A campus "no contact" condition can also restrict cafeteria use (time and /or place) and movement of either party through the residence halls.

Q: What are my off-campus options?

A: Off-campus options include contacting Dial Help, Inc. (482-9930), the 24-hour, nationwide RAINN Hotline (1-800-656- HOPE), clergy, private therapists (counselors, psychologists, psychiatrists, social workers, etc.), family and friends, and Internet resources such as on-line

support groups.

Appendix B:

ILLUSTRATIVE EXAMPLES

There are six illustrative examples provided here to assist members of the University community in exploring how issues of sexual misconduct are defined by this policy.

- Mary and Bob meet at a party. They spend the evening dancing and getting to know each other. Bob convinces Mary to come up to his room. From 11:00 p.m. until 3:00 a.m., Bob uses every line he can think of to convince Mary to have sex with him, but she adamantly refuses. Finally, it seems to Bob that her resolve is weakening when he tells her he won't consider it sexual relations. He convinces her to give him a "hand job" (hand to genital contact). Mary would never have done it but for Bob's incessant advances. He feels that he successfully seduced her and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left. *Bob is responsible for violating the MICHIGAN TECH Nonconsensual sexual Contact policy. This is not a Nonconsensual Sexual Intercourse case. Bob coerced Mary into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not effective when forced. Sex without effective consent is sexual misconduct.*
- Kate and Bill met at a movie. They started to date on and off. One night, Kate and Bill went out drinking. After the bars closed, they went to Kate's dorm room. Kate was very drunk and engaged in sex with Bill despite his protests. Bill was not as drunk as Kate. Kate argues that even if she might have had nonconsensual sex with Bill, it's not her fault because of how drunk she was. She believes she was so drunk she didn't even know she was having sex with him, let alone that it was something he didn't want. Is Kate guilty of sexual misconduct? *Yes, intoxication of a party is no excuse for violation of the sexual misconduct policy. If it were, drunken people could be excused for drunk driving, because they were so drunk they didn't realize they were driving. Further, rape is not an intent-based infraction. Whether or not Kate intended to rape Bill is irrelevant. The fact that she had sex with him without his consent is sufficient to satisfy the elements of the offense.*
- Jack is a junior. Sue is a sophomore. Jack comes to Sue's dorm room with some mutual friends to watch a movie. Jack and Sue, who have never met before, are attracted to each other. After the movie, everyone leaves and Jack and Sue are alone. They hit it off, and are soon becoming more intimate. They start to make out. Jack verbally expresses his desire to have sex with Sue. Sue, who was abused by a baby-sitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As Jack takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Sue has a severe flashback to her childhood trauma. She wants to tell Jack to stop, but cannot. Sue is stiff and unresponsive during the intercourse. *Jack would be held responsible in this scenario for violating the policy on Nonconsensual*

Sexual Intercourse. It is the duty of the sexual initiator, Jack, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jack had no verbal or nonverbal mutually understandable indication from Sue that she consented to sexual intercourse. Of course, wherever possible, students should attempt to be as clear as possible as to whether or not sexual contact is desired, but students must be aware that for psychological reasons, or because of alcohol or drug use, your partner may not be in a position to provide you with as clear an indication as our policy requires.

- Harry is a junior. Karen is a senior. Harry comes to Karen's dorm room with some mutual friends to watch a movie. Harry and Karen, who have never met before, are attracted to each other. After the movie, everyone leaves and Harry and Karen are alone. They hit it off, and are soon becoming more intimate. They start to make out. Harry verbally expresses his desire to have sex with Karen. Karen isn't ready to do it with Harry, since they just met. But, she likes him and doesn't want to scare him off either. She decides to satisfy him orally, hoping they can get to know one another better later before engaging in intercourse. Perceiving the oral sex as foreplay, Harry stops Karen, lays her back on the bed, takes off her clothes, and engages in intercourse with her. Karen is unresponsive during the intercourse. *Again, this behavior by Harry would violate the sexual misconduct policy. Engaging in one form of sexual behavior does not necessarily imply consent to another. Clearly, Karen consented by her actions to oral sex with Harry. But, Harry had no mutually understandable indication from Karen that she consented to sexual intercourse. Some verbal or clear overt action would be necessary to show Harry that Karen wanted to have more than oral sex with him.*
- Ed is a junior. Sally is a sophomore. Ed comes to Sally's room with some mutual friends to watch a movie. Ed and Sally, who have never met before, are attracted to each other. After the movie, everyone leaves and Ed and Sally are alone. They hit it off, and are soon becoming more intimate. They start to make out. Ed verbally expresses his desire to have sex with Sally. Sally responds by removing all of her clothing and lying down on the bed. No further words are exchanged between them. Ed and Sally have sexual intercourse, during which Sally is rigid and unresponsive. Ed is aware of this, but does not stop or check to see if everything is okay. *This scenario tests the strictness of the definition. The definition requires consent to be communication that is mutually understandable. The definition requires a meeting of the minds of the participants on an agreement to do the same thing in the same way at the same time. While reasonable people might consider Sally's body language as sufficient to constitute consent to them, the standard is not that subjective. The question is not how you might view her actions, but whether or not Sally and Ed communicated a true meeting of the minds to each other. For example, Sally could have been hot, and decided to take her clothes off to cool off. More realistically, she might be willing to consent to some form of sexual behavior, but not necessarily intercourse. Thus, Ed's actions represent an assumption on his part if Sally claims that she meant something other than permission for sexual intercourse by her actions. This does not relieve Sally of responsibility for communicating her intentions to Ed, but it does not place her at fault for not doing so. The responsibility is on the initiator of the sexual activity to make sure she/he has consent to the desired sexual activity. Finally, the definition says*

consent must be actively given. Active means that Sally does something to Ed or herself.

- Pete is a sophomore. Ellie is a sophomore. Ellie comes to Pete's residence hall room with some mutual friends to hang out. Pete and Ellie, who have never met before, are attracted to each other. There is quite a lot of drinking in the room. Ellie and Pete are soon beyond intoxicated. Later on in the evening, everyone leaves, and Pete and Ellie are alone. They hit it off, and are soon becoming more intimate. They start to make out and before long they are engaged in intercourse. While engaged in intercourse, Pete's roommate Andy comes into the room to retrieve a forgotten key. He observes Pete and Ellie, but leaves quickly, feeling embarrassed. The next day, Pete and Ellie remember nothing of the night before, except kissing each other. When Andy mentions that he saw them having intercourse, Pete is shocked (not that Andy saw them, but that he lost his virginity and has no memory of it). Feeling very violated and taken advantage of, Pete charges Ellie with rape. *Two people had sex while incapacitated, it matters not that Pete is the one who feels violated. By the definition, the logical answer is that they raped each other, unless it can be shown that one or the other was clearly the aggressor or initiator or used some type of force (and this cannot be demonstrated by the facts given). But the logical answer here is not the proper result. It makes very little sense to suspend or expel both Pete and Ellie for raping each other. The University would treat this as an opportunity for educating Pete and Ellie about the risks of drinking and hooking up. Both should have warnings placed in their files, and both should be dealt with more harshly if they are found responsible for being so disrespectful of another person in the future.*
- What if the situation is reversed? Ellie and Pete are in Ellie's room. Ellie's roommate, Julie walks in on them. Ellie and Pete remember nothing, but the next day, Julie tells Ellie what she saw. Upset and hurt, Ellie charges Pete with rape. Does your decision change at all? It should not.

Appendix C

EDUCATIONAL PROGRAMS RELATED TO SEXUAL MISCONDUCT

The University and student organizations sponsor a variety of educational programs to promote awareness of sexual misconduct offenses. Programs include, but are not limited to:

[Check Current Status of These programs as well as new programs]

- "No Witness" -- live, interactive play on alcohol and date rape performed for new students -- Office of Student Affairs
- A variety of self-defense programs for sororities, residence halls and student groups -- Husky Tae Kwon Do, Keweenaw Martial Arts Club
- "Playing the Game" -- Video regarding alcohol and date rape typically shown to Greek organizations and athletes -- Counseling Service
- Annual Campus Lecture on Sexual Misconduct -- Office of Student Affairs, Counseling Services and other campus sponsors

- Peers Offering Wellness Education Resources (POWER) -- peer educators offer students a variety of programs on alcohol, safety, date rape and alternatives to traditional pledging for Greek groups -- Counseling Services
- Annual presentations to Residence Life Staff –RA training on issues related to sexual misconduct -- Counseling Services, Office of Student Affairs

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