

## **Sexual Misconduct**

Sexual misconduct is defined to include any unwanted kissing, any unwanted touching of an intimate part of another person, such as a sexual organ, breast, or buttocks as well as forced or non-consenting sexual intercourse. In this definition, sexual intercourse is defined to include sodomy, oral copulation, and rape by foreign object (penetration of genital or anal openings by a foreign object, including a finger).

Creighton University will not tolerate any type of sexual misconduct. Sexual misconduct is considered to be among the most serious violations of University policy. When there is reasonable cause to suspect a violation of University policy in regard to the following forms of sexual misconduct, the University will investigate and undertake disciplinary action against the perpetrator(s). Because of the seriousness of this offense, the full range of University disciplinary action may be imposed. Further, it should be clearly understood that University action against violators of this policy in no way precludes the possibility of criminal action by authorities should the victim wish to pursue this course.

The following offenses which include rape and other forms of sexual abuse like forcible fondling, is an extreme form of sexual harassment.

### **Definitions of sexual misconduct:**

- Non-consensual sexual intercourse is any sexual intercourse--however slight--with any object, by any person upon another without effective consent.
- Non-consensual sexual contact is any sexual touching--however slight--with any object, by any person upon another, without effective consent.

Other forms of sexual misconduct include, but are not limited to, the following:

- Attempts to commit sexual misconduct
- Aiding in the commission of sexual misconduct as an accomplice
- Giving another person alcohol, GHB, Rohypnol, Scopolamine, Ketamine, or other sedative or date rape drug
- Sexual exploitation - 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.

### **Clarifications:**

- Sexual intercourse includes vaginal and/or anal penetration by a penis, object, tongue or finger; and oral copulation (mouth to genital contact or genital to mouth contact).
- Sexual touching includes any contact of a sexual nature (as determined using a "reasonable-person" standard) with the breasts, buttocks, groin, genitals, mouth, or body part of another. Sexual touching also includes an individual making someone else touch him or her with, or on, any of these body parts.

- Force includes physical force (such as pushing, hitting, pinning down), threats (direct or indirect expressions of harm to self or others), intimidation (implied or indirect threats), and/or coercion.
- Blacking out is an amnesia-like state often brought on by heavy drinking or intoxication during which a person is able to engage in simple or even complex behavior. Afterwards the person has no recollection of all or part of the events. Therefore, there is a meaningful distinction between passing-out--falling asleep or becoming unconscious in an alcohol-induced stupor--and blacking out, which leaves one conscious and operative.

### **Effective Consent**

Effective consent is informed, freely and actively given, and consists of mutually understandable words or actions indicating a willingness to engage in mutually agreed-upon sexual activity.

- Mutually understandable consent must be obtained by both parties throughout the sexual interaction.
- Consent to sexual activity may be revoked at any time, as long as the revocation is communicated clearly, at which point sexual activity must cease immediately.
- Previous sexual relationships and/or a current relationship with the accused student (or anyone else) are irrelevant and, therefore, may not be taken to imply consent. In addition, consent cannot be implied by attire, inferred from the buying of dinner, the spending of money on a date, or being invited to a person's residence.
- Consent expires. Consent lasts for a reasonable time, depending on the circumstances. For example, consent on Thursday night does not mean one automatically has consent on Friday night, or at any other time.
- One who is incapacitated as a result of alcohol or other drug consumption (voluntary and/or involuntary), or who is unconscious, unaware, asleep or otherwise physically helpless, is incapable of giving consent. Because consent must be informed, an individual may not engage in sexual activity with another who one knows, or should reasonably know (based on the reasonable person standard), to be incapacitated.
- *Incapacitated persons, whether male or female, are considered incapable of giving effective consent because they lack the ability to appreciate the fact that the situation is sexual, and/or cannot rationally and reasonably appreciate the nature and extent (who, what, when, where, why and how) of that situation.*
- Consent obtained through the use of fraud or force (actual or implied) whether that force is physical force, threats, intimidation, or coercion, is *not* consent.
- Consent may never be given by the following:
  - a minor (someone under the age of 18 in the state of Nebraska) to an adult;
  - Individuals with cognitive disability rendering them incapable of giving consent; and
  - Incapacitated persons. (See "Incapacitation" above.)

**Incapacitation is the inability to make a rational, reasonable decision. Evidence of incapacity can be detected from one or an accumulation of context clues, which can include but are not limited to the following:**

- One person may have knowledge regarding how much alcohol another person has consumed or whether some other drug has been ingested;

- slurred speech;
- bloodshot eyes;
- the smell of alcohol on the breath;
- shaky equilibrium;
- vomiting;
- outrageous or unusual behavior;
- unconsciousness;
- elevated blood alcohol level; and
- blacking out.

It is the burden of the person wishing to engage in sexual activity with another to specifically determine the capacity of that potential sexual partner to provide "Effective Consent."