Sexual Misconduct

Sexual Misconduct Defined
Sexual misconduct is includes, but is not limited to, any sexual activity as defined by NH RSA 632 A:1 (IV) and (V) that occurs without seeking and receiving expressed permission (consent). Sexual misconduct also includes sexual activity by an individual when the other person’s ability to give expressed permission (consent) is compromised due to a mental/physical disability and/ or mental/physical incapacitation due to substance ingestion. Substances can include legal or illegal drugs and alcohol or any combination of these. Sexual assault is a violation of the UNH Code of Conduct, as well as a violation of NH state law.

1. Consent is:
Mutual agreement, based on a shared desire for specific sexual activities; An ongoing verbal interaction, taken one step at a time, to an expressed and honest yes; Mutual awareness of possible consequences of activities; Each partner remains open to and respects the other partner’s expression of agreement or disagreement to engage in the activity.

2. Consent is NOT:
a. Cooperation: This occurs when someone says yes, because they are too scared or intimidated to say no;
b. Compliance: This occurs when someone says yes, because giving physically/mentally is the easiest thing to do to avoid conflict;
c. Power: When there is an imbalance of physical size and strength, or of status or authority, it can feel impossible to honestly express desires and limits;
d. Coercion: Some examples of nonconsensual sex include: Getting the other person to say yes by threatening, forcing, manipulating, intimidating, pressuring, blackmailing, drugging, and getting him or her drunk.

3. Expressed Permission
Seeking and receiving expressed permission to engage in sexual activity is least ambiguous when the behavior of seeking and expressing permission is done with words. Although it may be possible to seek and express permission without words, this behavior is far more ambiguous than when done with words. Ambiguity can lead a person to think that they sought permission or received permission when in fact they did not.

NH RSA 632-A:1 (IV) defines Sexual Contact as:
The intentional touching, whether directly, through clothing, or other side, of the victim’s or actor’s sexual or intimate parts, including breasts and buttocks. Sexual contact includes only conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.

NH RSA 632-A:1 (V) defines Sexual Penetration as:
a. Sexual intercourse;
b. Cunnilingus

c. Fellatio;

d. Anal intercourse;

e. Any intrusion, however slight, of any part of the actor’s body or any object manipulated by the actor into genital or anal openings of the victim’s body; or

f. Any intrusion, however slight, of any part of the victim’s body into genital or anal openings of the actor’s body;

g. Any act which forces, coerces or intimidates the victim to perform any sexual penetration as defined in subparagraphs (a) – (f) on the actor, on another person, or on himself;

Emission is not required as an element of any form of sexual penetration.

**Options for Sexual Assault Survivors:**

If you are the victim of sexual assault, you may choose to:

- Report the assault to the police. Once you report the crime, the police are then obligated to begin an investigation;

- Seek medical attention. Whether or not you plan to report the assault to the police, it’s always a good idea to seek medical treatment, even if you don’t feel that you were injured. Emergency departments throughout NH can examine and treat any injuries you may have received and also prescribe emergency antibiotics to prevent the spread of some STDs as well as emergency contraceptives to prevent unwanted pregnancy. You may seek medical attention without reporting the crime to the police;

- Complete a Sexual Assault Forensic Examination Kit. This kit, provided by the NH Attorney General’s Office, collects evidence that could be helpful if you decide to report the assault to the police within the following 60 days. Kits can be completed in any NH emergency Department without charge to the victim, even if the victim chooses not to proceed legally. If you are thinking about completing a kit, please note the following:
  - You may choose to complete the kit anonymously. The kit will be referenced with an identification number and stored by the State for three (3) months. At any time during this period, the victim can report the crime and the kit will be brought forward to the NH Crime Lab for analysis;
  - Evidence diminishes over time. Anyone reporting a sexual assault to emergency department personnel should be offered the option of complete an evidence collection kit up to five (5) days after the assault. However, time washing, changing one’s clothes or “cleaning up” after the assault will all increase the likelihood that valuable evidence will be destroyed;
  - It’s important to bring a complete change of clothing if at all possible. Clothing worn at the time of the assault may contain evidence and will, in all likelihood, be taken as part of the kit.
Date rape drugs become less detectible after a short amount of time. If you believe that you may have been drugged as part of the assault, you can ask emergency department staff to test for the presence of drugs in your system. Because date rape drugs decompose quickly within your system, blood test must be done within 24 hours of ingesting the substance. A urine test may contain evidence up to 72 hours after ingestion;

Speaking with a victim advocate from a rape crisis center can help you to be informed about your options. Victim advocates provide support, advocacy, information, options and referrals. At UNH The Sexual Harassment and Rape Prevention Program (SHARPP) provides trained advocates who are available 24 hours a day. Advocates can accompany you to the hospital and court and provide ongoing support and assistance, including academic interventions. Hospitals in N.H. are trained to immediately call an advocate from the local crisis center whenever someone seeks services for sexual assault. It is your choice whether or not to speak with she/he at that time.

- Receive follow-up testing and care for pregnancy and/or STD’s;

*Drug and Sexual Misconduct (or “drug-facilitated sexual assault”)*

**Alcohol**

Alcohol is the drug most commonly used in the drug-facilitated sexual assaults. Alcohol may make it more difficult to clearly evaluate a potentially dangerous situation and to resist and/or physical assault. Black-outs and memory loss may also occur. Immediate effects of alcohol impairment include:

- Intoxication;
- Muscle relaxation;
- Depression;
- Impaired motor control;
- Impaired memory and judgement;
- Lowered inhibitions.

Other rape drugs may be used to render victims helpless. Such drugs may include Rohypnol (“Roofies”), Gamma-hydroxybutyrate (“GHB”), Ketamine (“Special K”), and MDMA (“Ecstasy”). These Drugs are slipped into victim’s drinks, and are tasteless, odorless and colorless. Signs that you may have been given a rape drug include:

- Feeling a lot more intoxicated than you usually do when drinking the same amount of alcohol;
- Waking up very hung over, feeling “fuzzy”, experiencing memory lapse and being unable to account for a period of time;
- Being able to remember taking a drink, but not being able to recall what happened for a period of time after you had the drink; or
• Feeling as though someone had sex with you, but not being able to remember part of or the entire incident. If you believe you were drugged, inform police and medical personnel right away. Blood and/or urine test can be done at a local hospital to check for rape drugs in your system. Blood test can be done within 24 hours of the time that you believe that you may have ingested the drug. Urine test may be conducted within 72 hours. If the test is part of a sexual assault forensic examination, it will be paid for by the State of New Hampshire.

Under the DRUG-INDUCED RAPE PREVENTION PUNISHMENT ACT OF 1996, it is illegal to distribute or administer Rohypnol or Gamma-hydroxybutyrate to another person without that person’s knowledge and with the intent to commit a violent crime. This act, separate from the assault itself, is punishable by up to twenty (20) years in prison and a fine.

**Alcohol and Prescription Drugs:**
Prescription drugs, over the counter antihistamines and other drugs (such as pain relievers) taken in combination with alcohol can either mask or heighten alcohol’s effect on the body. Depressants (like sleeping pills, muscle relaxers, etc.) taken in combination with alcohol increases the sedative effect of alcohol while stimulants, such as caffeine, and other drugs may disguise the full effect of alcohol which can cause a person to drink more.

Mixing alcohol with certain drugs can cause:
• Nausea and vomiting
• Drowsiness, fainting and/or passing out
• Loss of memory/blacking out
• Trouble concentrating
• Loss of coordination
• Unusual behavior

All of these reactions increase one’s vulnerability to becoming a victim of sexual assault.

**Reporting Sexual Misconduct**

**UNH Conduct Complaints**
In situations where the accused person is a student, the case may be adjudicated through the UNH Conduct system. This could be a one time incident or multiple events occurring over time where alleged violation(s) of the UNH Code of Conduct take place. A case may be brought through the conduct system up to one year after an alleged incident takes place.

The judicial process provides due process protections for both the complainant and the accused student. The complaint has the right to the following:
• The right to a formal hearing to determine responsibility and appropriate sanctions’
• The right to assistance at hearing from an advisor;
The right to accommodations during the hearing that minimize face to face contact with the respondent;
- The right to ask for breaks throughout the hearing;
- The right to alternative living arrangements or academic scheduling if accused student lives or attends class in close proximity; and the right to be notified of the outcome of the hearing and the sanction imposed.

Complaints in sexual misconduct cases also have the right to have a SHARPP advocate present throughout the hearing. The role of the SHARPP advocate is to provide emotional support to the survivor and/or any witnesses called by the complainant.

Additionally, the survivor has the option of choosing to be a Co-complainant or a witness in his/her hearing. As the Co-Complaint, the survivor is able to be present in the room for the entire hearing and can directly question the Respondent and witness(es) if s/he chooses. If the survivor chooses to be a witness in his/her case, s/he will be present only during the times s/he is presenting her/his specific information about the case. The survivor will not be able to observe the Respondent or other witnesses.

Sanctions
The minimum sanction for those found responsible for sexual misconduct that includes sexual penetration as defined by RSA 632-A:1,V is suspension for one year or until the survivor graduates or otherwise leaves the University for an indefinite period of time, whichever is longer.

The Office of Community Standards (862-3377) can provide additional information on the hearing process.

Criminal Justice Complaints
In place of or in addition to bringing a complaint forward through the UNH Conduct system, violations of NH state law may also be brought forth through the criminal justice system.

To do this, the assault must be reported to the law enforcement agency that has jurisdiction over the area where the crime was committed. In NH, survivors who were 18 years old or older when the crime occurred have up to 6 years after the assault to report the incident to the police. Survivors who were under the age of 18 when the sexual assault occurred have until their 40th birthday to report.

Medical Attention and Evidence Collection
It is recommended that sexual assault survivors seek medical attention to address injuries and to receive treatment to prevent sexually transmitted infections or unwanted pregnancies. In addition, survivors of sexual assault may choose to undergo a sexual assault evidence collection examination at a hospital to capture evidence, survivors
should refrain from changing their clothes, brushing their teeth or showering prior to the exam. Evidence may be collected up to 5 days after the assault, even if the survivor has bathed and changed his/her clothes.

The closest hospital to Durham is Wentworth Douglass Hospital in Dover. Additional aftercare may be provided by UNH Health Services.

Evidence Collection options

Anonymous reporting option: Adult survivors (18 and older) of sexual assault may choose to have the sexual assault evidence collection kit completed anonymously. A number is assigned to the kit rather than the survivor’s name. The anonymous kit is kept in storage at the NH state crime lab for 60 days from the date of the medical exam; at the end of that 60 day period, if the victim has not reported the crime to law enforcement, the evidence will be returned to the submitting police department for final disposition.

Reporting as part of an investigation: Survivors of sexual assault may choose to complete an evidence collection (forensic) exam as part of their decision to report the assault to police. The exam is intended to collect trace evidence that may remain on the survivor’s body after the assault. It is important to note, however, that a forensic is required in order to report the assault to the police.

Financial Concerns: The State of New Hampshire is responsible for the payment of sexual assault medical examinations not covered by insurance, when the examination is conducted for the purpose of collecting evidence. The Attorney General’s Office will cover the cost of all exams, even if the crime is not reported to law enforcement.

On campus Resources
The sexual Harassment and Rape Prevention Program (SHARPP) provides direct services to all survivors of sexual and intimate partner violence and their allies. Trained peer advocates are on call 24 hours a day to provide crisis intervention, court and hospital advocacy, support and information and referrals. All SHARPP Services are free and confidential SHARPP can be reach 24 hours a day at 862-7233 (Safe) or (888) 271-7233. SHARPP can also be reached through confidential TTY at (800) 735-2964 or by visiting www.unh.edu/sharpp.

Additional Campus Resources
The Affirmative Action and Equity, Office 862-2930
Campus Crime Report,
The Counseling Center, 862-2090
UNH Health Services, 862-1530