

SUBJECT: SEXUAL VIOLENCE AND MISCONDUCT, RELATIONSHIP
VIOLENCE, AND STALKING

Murray State University promotes a safe environment for its student, faculty, and staff.

I. Policy Against Sexual Violence and Misconduct, Relationship Violence, and Stalking.

A. Murray State expressly condemns acts of sexual violence and misconduct, relationship violence, and stalking against its students, faculty, and staff. These condemned acts include rape and acquaintance rape, domestic violence, dating violence, sexual assault, and stalking.

Behaviors prohibited under this Policy are defined in Appendix I.

B. Procedures for institutional disciplinary action in cases of alleged sexual violence and misconduct, relationship violence, and stalking:

(1) shall

(a) provide a prompt, fair, and impartial investigation and resolution; and

(b) be conducted by officials who receive annual training on the issues related to sexual violence and misconduct, relationship violence, and stalking, including domestic violence, dating violence, sexual assault, and stalking, and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

(2) the accuser and the accused are entitled to the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice; and

(3) both the accuser and the accused shall be simultaneously informed, in writing, of—

(a) the outcome of any institutional disciplinary proceeding that arises from an allegation of sexual violence and misconduct, relationship violence, and stalking;

(b) the institution's procedures for the accused and the victim to appeal the results of the institutional disciplinary proceeding;

(c) any change to the results that occurs prior to the time that such results become final; and

(d) when such results become final.

(4) Reports that a student or employee has been subjected to an act prohibited by this Policy may be made as provided in the "Student Life Policies, Rules, and Procedures" and the "Reporting Allegations of Discrimination and Discrimination Grievance Procedures." Proceedings involving an employee or student against a student alleged to have violated this Policy will follow procedures found in the "Student Life Policies, Rules, and Procedures." Proceedings involving a student or employee against a University employee (other than a student worker) or volunteer (other than a student volunteer) or non-University individual alleged to have violated this Policy will follow the procedures found in the "Reporting Allegations of Discrimination and Discrimination Grievance Procedures." The preponderance of evidence standard will be followed in all proceedings.

C. Sanctions or protective measures that Murray State may impose following a final determination in an institutional disciplinary procedure regarding sexual violence and misconduct, relationship violence, and stalking will include measures to stop the behavior, prevent it from recurring, correct its effects, and protect other members of the University community from such behavior. Under certain circumstances, training may be required for an individual or a larger group. Employees or volunteers, other than student workers or volunteers, who are found to have engaged in prohibited behavior are subject to disciplinary action ranging from written warning to termination and ban from campus. A non-University individual found to have engaged in prohibited behavior is subject to disciplinary action ranging from written warning to a ban from campus. A student, including a student worker or volunteer, found to have engaged in prohibited behavior is subject to disciplinary action ranging from written warning to expulsion. The imposition of sanctions and corrective action under this policy does not prevent any other entity from imposing penalties.

II. Educational Programs and Information

A. It is the policy of Murray State University to provide programs to prevent sexual violence and misconduct, relationship violence, and stalking, which

includes domestic violence, dating violence, sexual assault, and stalking. Murray State has procedures that it will follow once a prohibited act has been reported and the preponderance of evidence standard will be used during any institutional conduct proceeding arising from such a report.

B. Education programs will promote the awareness of sexual violence and misconduct, relationship violence, and stalking and will include—

(1) primary prevention and awareness programs for all incoming students and new employees, which shall include—

(a) a statement that Murray State prohibits sexual violence and misconduct, relationship violence, and stalking including, in particular, the offenses of domestic violence, dating violence, sexual assault, and stalking;

(b) definitions of offenses related to sexual violence and misconduct, relationship violence, and stalking which are prohibited under Murray State policy. These definitions appear in Appendix I. Relevant definitions under Kentucky law will also be provided related to domestic violence, dating violence, sexual assault, and stalking all of which defined offenses, as they may affect Murray State students and employees, are encompassed within and prohibited under this Murray State policy prohibiting sexual violence and misconduct, relationship violence, and stalking although the Murray State policy and definitions are not limited to the conduct prohibited under Kentucky law. These definitions appear in Appendix II.

(c) the definition of consent used in relation to Murray State policy and related to sexual activity under Kentucky law;

(d) safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of sexual violence and misconduct, relationship violence, or stalking;

(e) information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks; and

(f) the information described in Section I and Section II(B)(3 - 6);
and

(2) ongoing prevention and awareness campaigns for students, faculty, and staff including information described in items II(B)(1)(a-f) above.

(3) Information in writing will be disseminated indicating procedures victims should follow if sexual violence and misconduct, relationship violence, or stalking has occurred, including:

(a) the importance of preserving evidence as may be necessary to the proof of sexual violence and misconduct, relationship violence, and stalking including criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order;

(b) to whom the alleged offense should be reported. In addition to other sources, such information may be found in the “Student Life Handbook,” “Student Life Policies, Rules, and Procedures,” and in the “Reporting Allegations of Discrimination Grievance Procedures.”

(c) options regarding law enforcement and campus authorities, including notification of the victim’s option to—

(i) notify proper law enforcement authorities, including on-campus and local police;

(ii) be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and

(iii) decline to notify such authorities; and

(d) the rights of victims and Murray State’s responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a court.

(4) Murray State will protect the confidentiality of victims, including in publicly-available recordkeeping, to the extent permissible by law.

(5) Students and employees will be provided written notification about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for victims both on-campus and in the community.

(6) Victims will be provided written notification about options for, and available assistance in, changing academic, living, transportation, and working situations, if so requested by the victim and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.

(7) A student or employee who reports that the student or employee has been a victim of sexual violence and misconduct, relationship violence, and stalking, whether the offense occurred on or off campus, shall be provided with a written explanation of the student or employee’s rights and options, as described in Section I and Section II(B)(3-6)

III. Compliance with 20 USC 1092(f)

It is an intent of this Policy to comply with the provisions of 20 USC 1092(f), including any implementing regulations, and other law. It is the responsibility of the President, with the assistance of the Vice Presidents and other appropriate offices, to provide appropriate programs and processes in order to implement these Policy statements and to ensure that information related to and described in this Policy is properly disseminated at all of Murray State's campuses in accordance with law. If, in order for this Policy to be compliant or consistent with law, amendments or additional or supplementary information or provisions to this Policy or other Policies, including definitions, are required, the President is authorized to make such amendments and to include such additional or supplementary information or provisions. The Board of Regents will be advised of any such changes.

The President, or his or her delegee, will further ensure that information in this Policy is kept current and will provide for current and accurate references to policies, laws, offices, methods of reporting, and links. Updated information will be provided as needed.

IV. Off campus conduct

Students, faculty, and staff who believe they are victims of sexual violence and misconduct, relationship violence, or stalking are encouraged to report prohibited actions regardless of whether any such act occurred off campus.

V. Retaliation Prohibited

No officer, employee, or agent of Murray State University shall retaliate against, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising rights or responsibilities under this policy or 20 USC 1092(f).

APPENDIX I

Definitions Used by Murray State University

Murray State University prohibits acts against its students, faculty, and staff related to sexual violence and misconduct, relationship violence, and stalking. The offenses defined below fall within this prohibition:

1. “Relationship violence” includes:

A. “Dating violence” which refers to violence committed by a person:

- (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (2) where the existence of such a relationship shall be determined based on the reporting party’s statement and a consideration of the following factors:
 - (i) The length of the relationship.
 - (ii) The type of relationship.
 - (iii) The frequency of interaction between the persons involved in the relationship.

For the purpose 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.

B. “Domestic violence” which means physical injury, serious physical injury, sexual assault, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple or committed by a current or former spouse or intimate partner of the victim; a person with whom the victim shares a child in common; 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 Kentucky; or 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.

2. "Sexual Violence and Misconduct" as used in this policy refers to any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent and includes:

- A. The 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 the consent of the victim.

- B. A touching of one individual by another individual in a sexual manner without consent. The touching prohibited by this policy need not be forcible and includes:

- i. intentional contact with the breasts, buttocks, groin, or genitals (or the clothing covering these intimate body parts);
- ii. touching another person with any of the body parts listed previously or making another person touch you or themselves with or on any of these body parts (or the clothing covering these intimate body parts);
- iii. knowingly transmitting HIV or any sexually transmitted infection to another student or employee.

- C. "Sexually Exploitative Behavior" occurs when a person takes non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited, and that behavior does not otherwise constitute one of the preceding sexual misconduct offenses. Examples of sexually exploitative behavior include:

- i. non-consensual video/audio-taping or photographing of sexual activity, or posting or distribution of materials involving the sexual activity of another person via the internet or other media. No consent will exist if the victim is under 18.

- ii. observing without consent a person who is naked, in the process of undressing, or engaging in sexual acts;

- iii. exposing one's genitals to another under conditions which are likely to cause alarm to the other;
- iv. inducing incapacitation in another for the purpose of engaging in sexual conduct.

D. Regardless of the age of consent, "sexual violence and misconduct" may occur if the perpetrator is in a position of authority or position of special trust and the victim is under 18 and is someone with whom the perpetrator has come in contact as a result of that position.

3. "Stalking" means to engage in an intentional course of conduct:
 - A. Directed at a specific person or persons;
 - B. Which seriously alarms, annoys, intimidates, or harasses the person or persons; and
 - C. Which serves no legitimate purpose

The course of conduct shall be that which would cause a reasonable person to suffer substantial mental distress.

"Course of conduct" means a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose. One (1) or more of these acts may include the use of any equipment, instrument, machine, or other device by which communication or information is transmitted, including computers, the Internet or other electronic network, cameras or other recording devices, telephones or other personal communications devices, scanners or other copying devices, and any device that enables the use of a transmitting device. Constitutionally protected activity is not included within the meaning of course of conduct.

4. As used in this Murray State policy, "consent" is informed, freely given, and mutual.
 - A. If coercion, intimidation, threats, or physical force are used, there is no consent;

- B. If a person is mentally or physically incapacitated, or impaired, so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no consent. This includes impairment or incapacitation due to alcohol, drug consumption, being asleep, or unconscious;
- C. There is no consent when there is force, expressed or implied, or use of duress or deception upon the victim;
- D. Silence does not necessarily constitute consent;
- E. Past consent to sexual activities does not imply ongoing future consent;
- F. Whether an individual has taken advantage of a position of influence over an alleged victim may be a factor in determining consent.
- G. No consent can exist if the victim is under 16 years of age.

APPENDIX II

Offenses under Kentucky Law

In accordance with 20 USC 1092(f), below are general definitions under Kentucky law of certain behaviors which are related to domestic violence, dating violence, sexual assault, and stalking. The general definitions are offered for informational purposes only and complete information may be found in the Kentucky Revised Statutes found at www.lrc.state.ky.us/Law.htm. All such behaviors are encompassed within the definitions above of behavior prohibited by Murray State policy although the Murray State policy and definitions are not limited to the conduct prohibited under Kentucky law. The failure to include any particular offense does not indicate such behavior is not prohibited under law or Murray State policy.

Crime	Elements	Classification	Penalty
Rape First Degree KRS 510.040	sexual intercourse and forcible compulsion; OR sexual intercourse and victim is incapable of consent because of physical helplessness or is less than 12 years old	Class B Felony Class A if victim is less than 12 or receives a serious physical injury	10-20 years 20 years or more
Rape Second Degree KRS 510.050	sexual intercourse and perpetrator is 18 or older and victim is less than 14; OR sexual intercourse and victim is mentally incapacitated	Class C Felony	5-10 years
Rape Third Degree KRS 510.060	sexual intercourse and victim is incapable of consent because he/she is an individual with an intellectual disability; OR sexual intercourse and perpetrator is 21 or older and victim is less than 16 years old; OR sexual intercourse and perpetrator is 21 or older and victim is less than 18 and is provided a foster home, as defined by statute, by the perpetrator;	Class D Felony Class D Felony Class D Felony	1-5 years 1-5 years 1-5 years

	<p>OR</p> <p>perpetrator is in a position of authority, as defined by statute, and he/she engages in sexual intercourse with a minor who is under 18 and with whom the perpetrator has come into contact as a result of that position of authority; OR</p> <p>an individual, as defined by statute and who is involved in corrections or juvenile justice or with a detention facility, has sexual intercourse with an individual known to be incarcerated, supervised, evaluated or treated by the Department of Corrections, Department of Juvenile Justice, detention facility or contracting entity</p>		
<p>Sodomy First Degree KRS 510.070</p>	<p>deviate sexual intercourse and forcible compulsion; OR</p> <p>deviate sexual intercourse and victim is incapable of consent because victim is physically helpless or less than 12 years old</p>	<p>Class B Felony</p> <p>Class A if victim is less than 12 or receives a serious physical injury</p>	<p>10-20 years</p> <p>20 years or more</p>
<p>Sodomy Second Degree KRS 510.080</p>	<p>deviate sexual intercourse and perpetrator is 18 or older and victim is less than 14 years old; OR</p> <p>deviate sexual intercourse and victim is mentally incapacitated.</p>	<p>Class C Felony</p>	<p>5-10 years</p>
<p>Sodomy Third Degree KRS 510.090</p>	<p>deviate sexual intercourse and victim is incapable of consent because he/she is an individual with an intellectual disability; OR</p> <p>deviate sexual intercourse and perpetrator is 21 or older and victim is less than 16 years old; OR</p> <p>deviate sexual intercourse and perpetrator is 21 or older and victim</p>	<p>Class D Felony</p>	<p>1-5 years</p>

	<p>is less than 18 and is provided a foster home, as defined by statute, by the perpetrator; OR</p> <p>perpetrator is in a position of authority or special trust, as defined by statute, and he/she engages in deviate sexual intercourse with a minor who is under 18 and with whom the perpetrator has come into contact as a result of that position of authority;</p> <p>OR</p> <p>an individual, as defined by statute and who is involved in corrections or juvenile justice or with a detention facility, has sexual intercourse with an individual known to be incarcerated, supervised, evaluated or treated by the Department of Corrections, Department of Juvenile Justice, detention facility or contracting entity</p>		
<p>Sexual Abuse First Degree</p> <p>KRS 510.110</p>	<p>perpetrator subjects victim to sexual contact by forcible compulsion; OR</p> <p>perpetrator subjects victim to sexual contact who is incapable of consent because the victim is physically helpless, less than 12 years old, or mentally incapacitated; OR</p> <p>perpetrator is 21 years or older and subjects victim who is less than 16 years old to sexual contact; engages in masturbation in the presence of victim who is less than 16 years old and knows or has reason to know the minor is present; or engages in masturbation while using the internet, telephone, or other</p>	<p>Class D Felony</p> <p>Class C Felony if victim is less than 12</p>	<p>1-5 years</p> <p>5-10 years</p>

	<p>electronic communication device while communicating with a minor who the perpetrator knows is less than 16 years old and the minor can see or hear the perpetrator masturbate; OR</p> <p>the perpetrator is a person in a position of authority or special trust as defined by statute and subjects a minor who is less than 18 years old, with whom the perpetrator has contact has a result of the position, to sexual contact or engages in masturbation in the presence of the minor and knows or has reason to know the minor is present, or engages in masturbation while using the internet, telephone, or other electronic communication device while communicating with a minor who the perpetrator knows is less than 16 years old, and the minor can see or hear the person masturbate</p>		
<p>Sexual Abuse Second Degree KRS 510.120</p>	<p>sexual contact and victim is incapable of consent because of an intellectual disability; OR</p> <p>sexual contact and perpetrator is at least 18 years old but less than 21 years old and victim is less than 16 years old; OR</p> <p>sexual contact and perpetrator is a jailer, or an employee, contractor, vender, or volunteer of the Department of Corrections, Department of Juvenile Justice, or an entity under contract with either department or a detention facility and</p>	<p>Class A Misdemeanor</p>	<p>12 months</p>

	victim is 18 years old and perpetrator knows the victim is incarcerated, supervised, evaluated or treated by the Department of Corrections, Department of Juvenile Justice, detention facility or contracting entity		
Sexual Abuse Third Degree KRS 510.130	sexual contact without victim's consent	Class B Misdemeanor	90 days
Sexual Misconduct KRS 510.140	sexual intercourse or deviate sexual intercourse without victim's consent	Class A Misdemeanor	12 months
Terroristic Threatening Third Degree KRS 508.080	threatens to commit any crime likely to result in death or serious physical injury or substantial property damage to another	Class A Misdemeanor	12 months
Stalking First Degree KRS 508.140	stalking (see definition below); AND threat which causes victim to fear sexual contact, serious physical injury, or death; AND perpetrator has received notice of protective order against him/her concerning same victim; or, perpetrator has received notice of pending criminal complaint against him/her concerning same victim; or, perpetrator has been convicted of a felony or Class A misdemeanor concerning same victim; or, perpetrator committed stalking with a deadly weapon	Class D Felony	1-5 years
Stalking Second Degree	stalking (see definition below); AND threat which causes victim to fear	Class A Misdemeanor	12 months

KRS 508.150	sexual contact, physical injury, or death		
Incest KRS 530.020	sexual intercourse or deviate sexual intercourse with a person known to be an ancestor, descendent, uncle, aunt, brother, or sister; includes relationships of whole or half blood regardless of legitimacy and relationship of parent/child by adoption, stepparent/stepchild and stepgrandparent/stepgrandchild	Class C Felony if consenting adults Class B Felony if committed by forcible compulsion; OR victim is less than 18 or is incapable of consent because he/she is physically helpless or mentally incapacitated Class A Felony if victim is less than 12 or victim receives serious physical injury	5-10 years 10-20 years 20 years or more

“Domestic violence and abuse” means physical injury, serious physical injury, sexual assault, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple. KRS 403.720

“Stalking” means to engage in an intentional course of conduct:

- A. Directed at a specific person or persons;
- B. Which seriously alarms, annoys, intimidates, or harasses the person or persons; and
- C. Which serves no legitimate purpose.

The course of conduct shall be that which would cause a reasonable person to suffer substantial mental distress.

“Course of conduct” means a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose. One (1) or more of these acts may include the use of any equipment, instrument, machine, or other device by which communication or information is transmitted, including computers, the Internet or other electronic network, cameras or other recording devices, telephones or other personal communications devices, scanners or other copying devices, and any device that enables the use of a transmitting device. Constitutionally protected activity is not included within the meaning of course of conduct. KRS 508.130

“Lack of consent” results from:

- (a) Forcible compulsion;
- (b) Incapacity to consent; or
- (c) If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.

A person is deemed incapable of consent when he or she is:

- (a) Less than sixteen (16) years old;
- (b) An individual with an intellectual disability or an individual that suffers from a mental illness;
- (c) Mentally incapacitated;
- (d) Physically helpless; or
- (e) Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency.

The provisions of subsection (e) of this section shall not apply to persons who are lawfully married to each other and no court order is in effect prohibiting contact between the parties. KRS 510.020.