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

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

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

A. Murray State expressly condemns acts of sexual assault, sexual violence and sexual misconduct, relationship violence and stalking against its students, faculty and staff. These condemned acts include sexual assault, including rape, fondling, incest and statutory rape; domestic violence; dating violence; stalking and sexually exploitative behavior.

Behaviors prohibited under this Policy are defined in Appendix I.

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

- (1) Shall:
 - (a) provide a prompt, fair and impartial process from the initial investigation to the final result and resolution; and
 - (b) be conducted by officials who, at a minimum, receive annual training on the issues related to sexual harassment, including 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 complainants and witnesses and promotes accountability. Officials conducting proceedings will not have a conflict of interest or bias for or against the complainant or the respondent. Training will include a review of the definition of sexual harassment, how to remain impartial and how to review relevant evidence; and
- (2) The complainant and the respondent are entitled to the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any meeting or proceeding by an advisor of their choice. Murray State may establish restrictions to the extent

- permitted by state and federal law, which are equally applicable to all parties, regarding the extent to which an advisor may participate in proceedings;
- (3) There will be timely notice of meetings at which the complainant or respondent, or both, may be present;
 - (4) There will be timely and equal access to the complainant, the respondent and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings; and
 - (5) Both the complainant and respondent shall be simultaneously informed, in writing, of:
 - (a) the result 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.
 - (6) Reports that a student or employee has been subjected to an act prohibited by this Policy may be made as provided in the "Reporting Allegations of Discrimination and Discrimination Grievance Procedures."

Proceedings involving an employee or student against a student alleged to have violated this Policy may be filed in the Office of Institutional Diversity, Equity and Access (IDEA) as provided in the "Reporting Allegations of Discrimination and Discrimination Grievance Procedures." Complaints which do not state a claim of sexual harassment will be forwarded to the Office of Student Affairs for resolution under the "Student Life Policies, Rules and Procedures."

Proceedings involving a student or employee against a University employee or volunteer or, where necessary, non-University individual alleged to have violated this Policy may be filed in IDEA as provided in the "Reporting Allegations of Discrimination and Discrimination Grievance Procedures."

These policies and procedures describe how to file a complaint and the steps, and anticipated timelines, for each type of proceeding. Proceedings will be consistent with these policies and will be transparent to the complainant and respondent. The preponderance of evidence standard will be followed in all proceedings. It is intended that an initial decision with respect to complaints will be made within 60 days of the initial filing of the complaint. Extensions of timeframes may be allowed for good cause with written notice to the complainant and the respondent of the delay and the reason for the delay.

- C. Sanctions or protective measures that Murray State may impose following a final determination in an institutional disciplinary procedure regarding sexual harassment, including 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 who are found to have engaged in prohibited behavior are subject to disciplinary action including written warning, suspension, removal, demotion, reassignment, termination, ban from campus and counseling/training.

A non-University individual found to have engaged in prohibited behavior after any required hearing, is subject to disciplinary action including written warning, ban from campus or ban from certain areas or activities.

A student found to have engaged in prohibited behavior is subject to disciplinary action including referral to alternative services/counseling, written warning, loss of privileges, probation, restitution, self-improvement and educational programs, program exclusion, suspension and expulsion.

The imposition of sanctions and corrective action under this policy does not prevent any other entity from imposing penalties.

- D. Protective measures Murray State may offer following an allegation or report of sexual harassment, including sexual violence or misconduct, relationship violence or stalking, include counseling, a University order of no contact, residence hall relocation, adjustment of course schedules and a leave of absence or reassignment to a different supervisor or position. An individual who allegedly engaged in prohibited behavior may be removed or banned from University property or certain portions of campus to the extent consistent with law.

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, stalking and sexually exploitative behavior. 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. Primary prevention programs means programming, initiatives and strategies informed by research or assessed for value, effectiveness or outcome that are intended to stop dating violence, domestic violence, sexual assault and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually-respectful relationships and sexuality, encourage safe bystander intervention and seek to change behavior and social norms in healthy and safe directions. Awareness programs means community-wide or audience-specific programming, initiatives and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety and reduce perpetration. These 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. In accordance with 20 U.S.C. §1092(f), general definitions under Kentucky law of behaviors which are related to domestic violence, dating violence, sexual assault and stalking may be found in Kentucky Revised Statutes located at <https://legislature.ky.gov/Law/Statutes/Pages/default.aspx>.
 - (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 or individuals to prevent harm or intervene when there is a risk of sexual violence and misconduct, relationship violence or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options and taking action to intervene;
 - (e) information on options designed to decrease perpetration and bystander inaction and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence 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)(1-7); and
- (2) Ongoing prevention and awareness campaigns for students, faculty and staff. This refers to programming, initiatives and strategies that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing

- dating violence, domestic violence, sexual assault and stalking, using a range of strategies with audiences throughout the institution and 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 that may assist in proving the alleged sexual violence and misconduct, relationship violence and stalking including criminal domestic violence, dating violence, sexual assault or staking occurred or in obtaining a protection order;
 - (b) how and 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 and Discrimination Grievance Procedures.”
 - (c) options regarding the involvement of 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.
 - (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 or by Murray State.
- (4) Murray State University will, to the extent possible under law and except as provided under this policy, keep confidential allegations, complaints, responses, investigative materials and other matters under this policy. Individuals may be provided with documents or information when necessary, if there is a need to know and if allowed by law. Murray State will protect the confidentiality of victims to the extent permissible by law by (i) completing publicly available record keeping without inclusion of personally identifiable information about the victim and (ii) maintaining as confidential any accommodation or protective measures provided to the victim to the extent that maintaining such confidentiality would not impair Murray State’s ability to provide the accommodation or protective measures.
- (5) Students and employees will be provided written notification about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid and other services available for victims both on campus and in the community.
- (6) Victims will be provided written notification about options for, available assistance in and how to request changes to academic, living, transportation and working situations or protective measures. Murray State will make such

accommodations if the victim requests them 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's or employee's rights and options, as described in Section I and Section II(B)(3-6).

III. Compliance with 20 U.S.C. §1092(f)

It is an intent of this Policy to comply with the provisions of 20 U.S.C. §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 ensure that information related to and described in this Policy is properly disseminated at all of Murray State's campuses in accordance with law. The President is authorized, without additional approval, to make any amendment to this policy as may be deemed necessary. The only exception to the preceding is that the Board of Regents must approve any amendment which changes the person or entity who formally adjudicates a complaint. 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 U.S.C. §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 abuse or assault or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse or assault or any felony or misdemeanor crime of violence 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 where the crime of violence occurred 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. “Sexual Assault” – An offense that meets the definition of rape, fondling, incest or statutory rape.
 - (i) “Rape” – 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.

- (ii) “Fondling” – The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- (iii) “Incest” – Sexual intercourse between persons who are related to each other within the degree wherein marriage is prohibited by law.
- (iv) “Statutory Rape” – Sexual intercourse with a person who is under the statutory age of consent.

- B. “Sexually Exploitative Behavior” which 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.
- (v) knowingly transmitting HIV or any sexually transmitted infection to another student or employee without that person’s understanding of risks.
- (vi) non-consensual touching of another person with one’s private body parts or making of another person to touch oneself on or themselves with any of these body parts (or the clothing covering these body parts).

- C. 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 engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- A. Fear for the person’s safety or the safety of others; or

B. Suffer substantial emotional distress.

“Course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly or through third parties, by any action, method, device or means, follows, monitors, observes, surveils, threatens or communicates to or about a person, or interferes with a person’s property.

“Reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim.

“Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

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 if consent is not otherwise clear;
 - 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. As an example, and without limiting factors to be taken into account, 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.
 - G. No consent can exist if the victim is under 16 years of age.