Sexual Assault & Harassment

Introduction

Sexual assault and sexual harassment are serious problems that demand our immediate attention. At the University of Wisconsin Oshkosh, we are committed to the prevention of all forms of sex-based abuse. Coercive sexual contact and unwelcome comments of a sexual nature are offensive and undermine the safety, security, and dignity of all members of the University community. The University believes that the recognition of a problem is the first step toward responding to that problem. Toward that end, this publication is intended to provide useful information that will help prevent sexual assault and sexual harassment in the University setting.

Legal definitions & penalties

The Wisconsin Statutes define the serious criminal offenses of sexual assault, sexual exploitation by a therapist, and sexual harassment. The following information prepared by UW System Legal Counsel provides a summary of offenses and corresponding penalties. Sexual assault Section 940.225 of the Wisconsin Statutes creates four degrees of sexual assault. The degrees are based upon the amount of force used by the assailant and the harm done to the victim. First, second, and third degree sexual assaults are felonies; fourth degree sexual assault is a misdemeanor.

First degree sexual assault includes:

- Sexual intercourse or sexual contact without consent which causes pregnancy or inflicts great bodily harm, or
- Sexual intercourse or sexual contact without consent accomplished by using or threatening to use a dangerous weapon, or
- Sexual intercourse or sexual contact without consent while aided by one or more persons.

A person can be imprisoned not more than 60 years for committing first degree sexual assault.

Second degree sexual assault includes:

- Sexual intercourse or sexual contact without consent through the use or threat of violence, or
- Sexual intercourse or sexual contact without consent which causes injury, including illness, disease, or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care, or
- Sexual intercourse or sexual contact with a person known by the perpetrator to be unconscious, mentally ill or mentally deficient, or under the influence of an intoxicant which renders the person incapable of giving consent.

A person can be imprisoned not more than 40 years and/or fined not more than \$100,000 for committing second degree sexual assault.

Third degree sexual assault is having sexual intercourse with a person without that person's consent. The penalty for third degree sexual assault is imprisonment for not more than ten years and/or a fine of not more than \$25,000.

Fourth degree sexual assault is having sexual contact with a person without that person's consent. The penalty for fourth degree sexual assault is imprisonment for not more than nine months in the county jail and/or a fine of not more than \$10,000.

"Consent" means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence:

- (a) A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct.
- (b) A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

Sexual assault of a child

Section 948.02 of the Wisconsin Statutes prohibits sexual assaults against children. There are two degrees of the offense, both felonies, as follows:

First degree sexual assault of a child is sexual contact or sexual intercourse with a person who has not attained the age of 13 years. The penalty for first degree sexual assault of a child is life imprisonment.

Second degree sexual assault of a child is sexual contact or sexual intercourse with a person who has not attained the age of 16 years. The penalty for second degree sexual assault of a child is imprisonment for not more than 40 years and/or a fine of not more than \$100,000.

Consent of the victim is not an issue for these offenses.

In addition, this statute prohibits "failure to act." That is, if a person responsible for a child's welfare knows that another person intends to have, has had or is having sexual intercourse or sexual contact with the child, and fails to take action, the person responsible may also be guilty of a crime. "Failure to act" under this section is a felony. A person found guilty of failure to act can be imprisoned for not more than 10 years and/or fined not more than \$25,000.

Sexual exploitation by a therapist

Section 940.22 of the Wisconsin Statutes prohibits sexual contact between a therapist and a patient or client, and imposes a duty to report violations.

Intentional sexual contact - as defined in the sexual assault statute - is prohibited between any person who is or who holds himself or herself out to be a therapist and a patient or client during any ongoing therapist-patient or therapist- client relationship. Consent is not an issue under this provision. A therapist having sexual contact with a patient or client is guilty of a felony and may be imprisoned for not more than 10 years and/or fined not more than \$25,000.

Reporting to the Department of Regulation and Licensing or the appropriate district attorney is required if a therapist has reasonable cause to suspect that a patient or client is a victim of sexual contact by another therapist. The therapist must ask the victim if he or she wants to make a report, and must make the report within 30 days of obtaining the victim's consent. The identity of the victim need not be revealed. Failure to report is a misdemeanor, punishable by imprisonment for not more than 9 months and/or a fine of not more than \$10,000.

Harassment

Section 947.013 of the Wisconsin Statutes prohibits harassment. Harassment occurs when a person:

- Strikes, shoves, kicks or otherwise subjects another person to physical contact or attempts or threatens to do any of these things, or
- Engages in a course of conduct or repeatedly commits acts which harass or intimidate the person, and which serve no legitimate purpose.
- A person who engages in harassment is subject to a forfeiture of not more than \$1,000.

Sexual harassment

Section Ill.32(13) of the Wisconsin Statutes defines sexual harassment as unwelcome sexual advances, unwelcome physical contact of a sexual nature or unwelcome verbal or physical conduct of a sexual nature. Unwelcome verbal or physical conduct of a sexual nature includes but is not limited to the deliberate, repeated making of unsolicited gestures or comments, or the deliberate, repeated display of offensive sexually graphic materials which is not necessary for business purposes.

Victim's legal rights

If a victim pursues legal prosecution, he or she has rights under Chapter 980 of the Wisconsin Statutes.

Eligibility of victims

A victim has legal rights and is eligible for the services under this chapter only if the victim reports the crime to law enforcement authorities within 5 days of its occurrence or discovery, unless he or she has a reasonable excuse not to do so.

Basic bill of rights

Sections of 950.04 and 950.045 of the Wisconsin Statutes identifies the following basic rights of victims and witnesses of crime:

- 1. To be informed by local law enforcement agencies and the district attorney of the final disposition of the case. If the crime charged is a felony or is specified in ch. 940 or s. 948.02, 948.03 or 948.05, the victim shall be notified whenever the defendant or perpetrator is released from custody. The victim shall be notified of a pardon application by the governor under s. 57.09(3).
- 2. To be notified that a court proceeding to which they have been subpoenaed will not go on as scheduled, in order to save the person an unnecessary trip to court. 2m. To have the court provided with information pertaining to the economic, physical and psychological

- effect of the crime upon the victim of a felony and have the information considered by the court.
- 3. To receive protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available.
- 4. To be informed of financial assistance and other social services available as a result of being a witness or a victim of a crime, including information on how to apply for the assistance and services.
- 5. To be informed of the procedure to be followed in order to apply for and receive any witness fee to which they are entitled.
- 6. To be provided, whenever possible, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families and friends of defendants.
- 7. To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analyses and property the ownership of which is disputed, shall be returned to the person within 10 days of being taken
- 8. To be provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process and the juvenile justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances.
- 9. To be entitled to a speedy disposition of the case in which they are involved as a victim or witness in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter.
- 10. To have the family members of all homicide victims afforded all of the rights under subs. (1) to (4) and (6) to (9) and analogous services under s. 950.05, whether or not they are witnesses in any criminal proceedings.

Section 950.045 indicates that victims of crime are entitled to written statements concerning parole and pardon applications.

Reporting sexual harassment

Any student who believes that sexual harassment has occurred may make an inquiry or complaint to the dean of students, affirmative action officer, department chair or college dean. The student will be informed of options available and the responsibilities associated with the resolution process. Allegations by students, faculty or staff that a student has engaged in sexual harassment will be processed through the Dean of Students Office.

A copy of the Sexual Harassment Policy and Complaint Procedure can be obtained from the Dean of Students Office, Dempsey 125, or Affirmative Action Office, Dempsey 211.

Sexual assault: statistics and reporting procedures

National, state statistics

According to the FBI Uniform Crime Report, nationally, there were an estimated at 84,767 forcible rapes reported to law enforcement in 2010. This estimate was 5% lower than the 2009 estimate. These figures include forcible rape and assaults or attempts to commit rape by force or threat of force. At the state level there were 4,857 sexual assaults as defined by s. 940.225 and 948.02, Wisconsin Statutes, reported in 2010, up 5% from 4,627 in 2009. (Federal Bureau of Investigation, Uniform Crime Report, 2010; Office of Justice Assistance, State of Wisconsin, Sexual Assaults in Wisconsin 2010.)

UW Oshkosh statistics

From January 1, 2010 through December 31, 2010 there were fourteen (14) sexual assaults reported to the University Police Department, Dean of Students Office and/or another university department. In nine (9) cases the victims knew the assailant. Three (3) of these sexual assaults occurred on campus. Eleven (11) of these cases occurred off-campus or in an unknown location. Alcohol was a factor in over half (8) of the reported sexual assaults.

Should I report an assault?

Report any incident, even if you are unsure about how to define what happened to you. You may report the incident to your hall director, community advisor, the University Police Department, the Oshkosh Police Department, and/or the Dean of Students Office. Assistance for reporting a sexual assault to authorities is also available if requested. Feel free to bring a friend with you for support. In criminal sexual assault cases, it is important to consider preserving evidence that may be necessary for the proof of the assault.

The main concerns will be to ensure that you have the support and assistance you need and to outline possible options for you. You will be able to report what happened confidentially. (The only exception to this involves complying with state laws requiring reporting of sexual assaults of persons under 18 years of age).

Dean of Students Office

Options through the Dean of Students Office may include disciplinary action if the offender is a student and a University policy has been violated. Disciplinary actions can include reprimand, probation, suspension or expulsion. The staff in the Dean of Students Office may, if you wish, take steps to contact and to confront an offender without using disciplinary action.

Procedures for on-campus disciplinary action are covered in UWS Chapter 17 as found in the Student Discipline Code. Copies are available in the Dean of Students Office. In cases of alleged sexual assault, (1) the accuser and the accused shall be provided an opportunity to be represented during the course of a disciplinary hearing and (2) both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceedings brought alleging sexual assault under parameters of federal and state law.

Assistance for changing academic and living situations may also be available. Options available in cases alleging sexual assaults include but are not limited to the following: reassignment of alleged assailant to another residence hall; restriction of alleged assailant from residence hall(s);

restriction of alleged assailant from eating in a particular commons; and no contact with the complainant.

UW Oshkosh guarantee for sexual assault victims

We will meet with you privately, at a place of your choice in this area, to take a complaint report.

If you feel more comfortable talking with a female or male officer or staff member, we will do our best to accommodate your request.

You may file a complaint through the University Police, at the Dean of Students Office, or both. All options will be explained to you. We will fully investigate your case and will help you achieve the best outcome. This may involve the arrest and full prosecution of the suspect responsible. You will be kept up-to-date on the progress of the investigation and/or prosecution.

Our officers and other staff will not prejudge you, and you will not be blamed for what occurred.

We will continue to be available for you to answer your questions, to explain the systems and processes involved, and to be a willing listener.

We will assist you in arranging for any hospital treatment or other medical needs.

We will assist you in privately contacting counseling, safety, advising and other available resources.

We will treat you and your particular case with courtesy, sensitivity, dignity, understanding and professionalism.

We will consider your case seriously, regardless of your gender or the gender of the suspect.

We will ask the press to respect your privacy. Local media have been very sensitive to the confidentiality of those reporting sexual assaults.

Adapted with permission from: Michigan State University Department of Public Safety

Prevention information

Protecting against acquaintance rape Men

- Listen carefully. Take the time to hear what the woman is saying. If you feel she is not being direct or is giving you a "mixed message," ask for clarification.
- Don't fall for the common stereotype that when a woman says "No" she really means "Yes." "No" means "No." If a woman says "No" to sexual contact, believe her and stop.
- Remember that date rape is a crime. It is never acceptable to use force in sexual situations, no matter what the circumstances.

- Don't make assumptions about a woman's behavior. Don't automatically assume that a woman wants to have sex just because she drinks heavily, dresses provocatively, or agrees to go to your room. Don't assume that just because a woman has had sex with you previously she is willing to have sex with you again. Also don't assume that just because a woman consents to kissing or other sexual intimacies she is willing to have sexual intercourse.
- Be aware that having sex with someone who is mentally or physically incapable of giving consent is rape. If you have sex with a woman who is drugged, intoxicated, passed out, incapable of saying "No," or unaware of what is happening around her, you may be guilty of rape.
- Be especially careful in group situations. Be prepared to resist pressure from friends to participate in violent or criminal acts.
- "Get involved" if you believe someone is at risk. If you see a woman in trouble at a party or a male friend using force or pressuring a woman, don't be afraid to intervene. You may save the woman from the trauma of sexual assault and your friend from the ordeal of criminal prosecution.

Both men and women should be especially careful In situations involving the use of alcohol or drugs. Alcohol and drugs can interfere with your ability to assess situations and to communicate effectively.

Women

- Know your sexual intentions and limits. You have the right to say "No" to any unwanted sexual contact. If you are uncertain about what you want, ask the man to respect your feelings.
- Communicate your limits firmly and directly. If you say "No," say it like you mean it.
 Don't give mixed messages. Back up your words with a firm tone of voice and clear body language.
- Don't rely on "ESP" to get your message across. Don't assume that your date will automatically know how you feel, or will eventually "get the message" without your having to tell him.
- Remember that some men think that drinking heavily, dressing provocatively, or going to a man's room indicates a willingness to have sex. Be especially careful to communicate your limits and intentions clearly in such situations.
- Listen to your gut feelings. If you feel uncomfortable or think you may be at risk, leave the situation immediately and go to a safe place.
- Don't be afraid to "make waves" if you feel threatened. If you feel you are being pressured or coerced into sexual activity against your will, don't hesitate to state your feelings and get out of the situation. Better a few minutes of social awkwardness or embarrassment than the trauma of sexual assault.
- Attend large parties with friends you can trust. Agree to "look out" for one another. Try to leave with a group, rather than alone or with someone you don't know very well.

Protecting against stranger rape Walking on campus

- Always be aware of what is going on around you. Stay alert to your surroundings.
- Walk with confidence. Hold your head up and shoulders straight.
- At night, stick to well-lighted, populated areas and walk with another person. Avoid walking alone or in isolated areas.
- Use campus escort services.
- Take special precautions in parking lots, stairwells, elevators, bathrooms, and dark areas with shrubbery. Studies show that many assaults by strangers occur in these places.
- If you suspect that you are being followed, go to a place where there are other people as soon as possible. If you choose to run, run as fast as you are able and scream to attract attention or summon help.
- Follow your gut instincts. If you sense that you may be at risk or in danger, try to get out of the situation. For example, if you see a suspicious looking person or someone who makes you feel uncomfortable in a parking lot, leave the area. Report your suspicions to the authorities.

In residence halls

- Lock your door at all times, even if you run down the hall for just a few minutes to visit a friend.
- Do not prop security doors open.
- In residence halls accessed only by a special key, do not let anyone without such a key enter, no matter how presentable their appearance or how plausible their request seems. Simply tell them, "I would like to help you out, but we are very concerned about security in this residence," and direct them to campus security for assistance.
- Be especially aware of security during vacation periods when fewer people are on campus.

* [Rape Treatment Center, Santa Monica Hospital Medical Center. (1990). Prevention information. Discussion Guide for the Film "Campus Rape." Santa Monica, CA: Author]

Courses and programs

Persons interested in programs or courses regarding protective behaviors should contact Sexual Abuse Services (see Resources) for information.

Campus for Acquaintance Rape Education (CARE)

An awareness of date rape and discussions about it are important steps to help prevent sexual assaults and were the concepts for the development of CARE. CARE is a campus wide education and prevention program cosponsored by the Department of Residence Life, University Police Department, Oshkosh Student Association, Women's Center and the Counseling Center.

A key component of CARE is an educational program that lasts approximately one hour and touches on a variety of important topics dealing with acquaintance/date rape. It is presented with a team approach (male and female presenter team) in order to facilitate discussion by men and

women. The program was not designed exclusively for men or women but recognizes the need for communication between men and women. It can, however, be presented to male- or female-only groups and tailored to the needs of different kinds of organizations.

Questions about or requests for the CARE program should be directed to the Counseling Center at 424-2061.

Campus resources

Sexual assaults Counseling Center, Student Success Center, Suite 240 8:00 a.m. - 7:00 p.m. (Mon.) 8:00 a.m. - 4:30 p.m. (Tues.-Fri.) 424-2061

Dean of Students Office, Dempsey 125 8:00 a.m. - 4:30 p.m. (Mon.-Fri.) 424-3100

Department of Residence Life, 2nd floor So., Gruenhagen (Mon.-Fri.) 8:00 a.m. - 4:30 p.m. 424-3212 (or contact a Residence Hall director)

University Police (24 hours), 424-1212

UW Oshkosh Health Center, Radford Hall, (Mon.) 8:00 a.m. - 6:30 p.m. (Tues.-Fri.) 8:00 a.m. - 4:30 p.m. 424-2424

Community Service Officer (CSO) Safe Walk Program University Police 424-1212
Sun - Wed 7:30p.m. - 2:30 a.m.
Thurs - Sat 7:30 p.m. - 4:00 a.m.

Sexual Harassment

Affirmative Action Office, Dempsey 211, 8:00 a.m. - 4:30 p.m. (Mon.-Fri.), 424-2296

Council for Equity and Affirmative Action

Students Contact the Oshkosh Student Association (OSA) for names and phone numbers of student members.

Community resources Crisis Intervention Helpline (Telephone Only), 24 hours, 233-7707

Aurora Medical Center, 456-6000

Mercy Medical Center, 223-2000

Oshkosh Police/Ambulance, 911

Sexual Abuse Services, 426-1460

Neenah/Menasha, 722-8150