

# **Albany College of Pharmacy and Health Sciences**

## **Vermont Campus**

### **Annual Security and Fire Safety Report**

**October 1, 2018**

In November, 1990, the Student Right-to-Know and Campus Security Act was signed into law (Public Law 101-542 as amended by Public Law 102-26 and The Higher Education Amendments of 1992). This law, known as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, requires educational institutions to publish and distribute an annual security report containing campus security policies and procedures as well as campus crime statistics. The Higher Education Act of 2008 created additional requirements to disclose policies related to fire safety, missing persons and emergency notification. In 2013, the reauthorization of the Violence Against Women Act further expanded the requirements for policies and crime data collection. This document is published and distributed to the students and employees of The Albany College of Pharmacy and Health Sciences, Vermont Campus, in compliance with this act.

### **Public Safety Services**

While classes are in session, security services for the Albany College of Pharmacy and Health Sciences Vermont Campus are provided by Hunter North Associates during the hours identified below:

|                         |                    |
|-------------------------|--------------------|
| Monday through Thursday | 2:00PM to 10:00PM  |
| Friday                  | 2:00PM to 6:00PM   |
| Saturday                | 12:00PM to 6:00PM  |
| Sunday                  | 12:00PM to 10:00PM |

Outside those hours, emergencies and criminal behavior may be reported to:

|  |                     |
|--|---------------------|
| Colchester Police Department                 | 911 or 802-264-5555 |
| University Heights Association               | 518-244-3177        |
| Associate Dean – Jennifer Mathews            | 802-735-2612        |
| Director of Student Affairs - Jennifer Payne | 802-735-2628        |

Among the services provided are:

- preventive patrol
- emergency response
- incident reporting
- investigations
- traffic control and parking enforcement
- liaison with public sector public safety agencies and University Heights Association Public Safety

Public Safety services are augmented by technologies including:

- A closed-circuit television systems that places cameras at a number of locations, both inside and outside, around campus. The cameras are monitored in the UHA dispatch center and they are recorded for investigatory and evidentiary purposes.

- A proximity card access to exterior doors of buildings that notifies Public Safety when doors are opened outside of normal business hours or when they are propped open.
- *Send Word Now*, an emergency text messaging system that the College uses to communicate vital information to the ACPHS community in the event of an emergency. *Send Word Now* allows students, staff and faculty to register multiple cellular phone numbers and email addresses to which emergency messages and instructions will be sent.

### **Authority of Campus Public Safety Officers**

Public Safety Officers are security guards licensed by the State of Vermont.

As security guards, their authority to arrest is the same as a citizen; they may make warrantless arrests for a felony “in fact committed” or any offense “in fact committed” in their presence. They may not make warrant arrests or arrests based on reasonable cause.

Public Safety Officers have the authority to request identification from all persons on campus, and to determine the reason for their presence on campus.

Public Safety Officers have the authority to issue tickets for parking violations and moving offenses on campus.

### **Reporting Criminal Activity, Emergencies and Suspicious Behavior**

All students, staff and faculty of the Albany College of Pharmacy and Health Sciences Vermont Campus are encouraged to immediately report any criminal activity, emergency or hazardous situation or suspicious person or behavior as follows:

- During the hours when Hunter North Associates are on campus, criminal activity and emergencies may be reported to them at 802--735-2693.
- Outside those hours, criminal activity and emergencies should be reported to the Colchester Police Department at 911 or 802-264-5555.

In the event that the victim of a crime is unable to report it, anyone with knowledge of the crime is encouraged to report it to Public Safety or any Campus Security Authority.

Community members may also report criminal offenses to the following College administrators, who have been designated as Campus Security Authorities:

|   |              |
|---|--------------|
| Associate Dean Jennifer Mathews                                 | 802-735-2612 |
| Director of Student Affairs Jennifer Payne                      | 802-735-2628 |
| Dean of Students Office   |              |
| Student Conduct Officers  |              |
| Faculty or Staff Advisors to Student Organizations on Campus*** |              |
| Student Life/Activities staff                                   |              |
| Title IX Coordinator(s)   |              |

### **Voluntary Confidential Reporting**

If you are the victim of a crime and do not want to pursue action within the ACPHS judicial process or within the criminal justice process, you may want to consider making a confidential report. With your permission, the Public Safety will file a report recording the details of the incident without revealing your identity. The purpose of a confidential report is to comply with your wish to keep the incident confidential, while taking steps to ensure the future safety of yourself and others. With such information, the College can keep accurate records of the number of incidents involving students and staff, determine if and where there is a pattern of crime, and alert the ACPHS community to a potential danger. Reports filed in this manner are counted and disclosed in the annual crime statistics for the institution.

### **Response to Reports**

Victims, witnesses and any other persons affected by criminal activity are encouraged to report that activity as described above:

|  |                      |
|--|----------------------|
| To Hunter North Associates                 | 802- 735-2693.       |
| To the Colchester Police Department        | 911 or 802-264-5555. |
| Associate Dean Jennifer Mathews            | 802-735-7612         |
| Director of Student Affairs Jennifer Payne | 802 735-2628.        |

Accurate and timely information is essential to the investigation of any incident.

It is the policy of the Albany College of Pharmacy and Health Sciences to investigate all crimes, complaints and incidents reported. It may also proactively investigate any activity or situation of potential hazard or criminality.

When a complaint or report of criminal activity is reported, it is investigated immediately. Depending on the needs of the Colleges, the wishes of the complainant and the severity of the crime, it may also be referred to the appropriate local, state or federal law enforcement agencies.

The College will also investigate reports of non-criminal activity that violates College policy.

### **Disclosing Information to the Community**

Information related to reported crime and emergencies is essential to a safe campus. The College has several means of sharing this important information with the community.

In the event of a serious incident that poses an immediate threat to members of the community, a message will be disseminated through the *Send Word Now* emergency system advising people of the incident and providing instructions that should be followed. This system will be used for “all hazards”, regardless of the nature of the incident. It may be used for crimes, weather emergencies, hazardous material incidents, terrorist incidents or natural disasters. *Send Word Now* will also be used to update the community and provide an “all clear” message when the incident has been resolved.

The College will also provide “timely warnings” when crimes occur that pose a continuing threat to members of the community. A continuing threat occurs when a suspect in a crime is not yet identified or is identified but remains at large. These warnings are generally shared by email, voicemail, Blackboard announcement or

by posted flyers. In the event that a threat is both immediate and continuing, *Send Word Now* may also be used.

All crimes reported to the College will be recorded in the crime log, which is available to the public in the Administrative Offices, Room 102. This chronological log of crime on campus is updated each business day and shows crimes occurring over the most recent 60 days. It contains information such as the nature of the crime, its location, date and time, and the disposition of the case.

Other sources of information about crimes and fires include the following tables in this document: Crime Statistics, Hate Crimes and Fires. Incident reports may be available to the community in the Administrative Offices, Room 102, contingent upon confidentiality requirements and the need for investigative integrity. The US Department of Education also offers this information for all colleges and universities in the country. It is available at [Security Survey](#).

### **Emergency Notification and Evacuation of the ACPHS Community**

In the event of an emergency requiring immediate action, ACPHS will notify the community and provide instructions as soon as a timely assessment of the situation allows. A *Send Word Now* message will be crafted and sent, information and instruction will be posted in the Emergency Announcement section of Blackboard, and a global voicemail will be delivered. Depending on circumstances, a room by room verbal notification may be made. Each of those information delivery systems is practiced and tested once each semester.

Administrators authorized to issue these emergency notifications are:

Associate Dean Jennifer Mathews

Director of Student Affairs Jennifer Payne

Vice President for Administrative Operations Packy McGraw

Classrooms and office has evacuation routes prominently displayed.

### **Building Access**

The Vermont Campus of the Albany College of Pharmacy and Health Sciences opens at 7:00AM and closes at 10:00PM Monday through Thursday, Friday 7:00AM-6:00PM, Saturday 12:00PM-6:00PM, and Sunday 12:00PM-10:00PM. That schedule may be modified as needed, such as during vacation periods, holidays and summer session. Outside those hours, access is controlled electronically according to the needs of individual members of the community.

**Safety and Crime Prevention Programming** Safety and Crime prevention programming is available through Hunter North Associates and the University Heights Association Office of Public Safety.

### **Alcohol and Drug Policies**

The Drug Free Schools and Communities Act of 1989 requires that institutions of higher education receiving certain funding adopt and implement a drug and alcohol abuse prevention program to prevent the unlawful possession, use or distribution of illicit drugs and alcohol by all students and employees on school premises or as part of any of its activities. It is distributed annually to all students and employees and is subject to biannual review in December of even numbered years.

The Albany College of Pharmacy and Health Sciences strongly encourages self-reporting of nicotine, alcohol and other drug abuse. Resources exist to assist and support individuals that have recognized this issue and have come forward seeking help. The College provides counseling services through the UVM Medical Center to address the mental health issues that typically underlie substance use and abuse, as well as recommending and coordinating services with licensed substance abuse treatment centers throughout Chittenden County. Additionally, the College supports the Initiative on Substance Abuse Prevention (ISAP) Committee, which is comprised of students, faculty, and staff and has the mission of providing educational and preventive outreach throughout the ACPHS Community. Initiatives include the annual Substance Abuse Awareness Week as well as providing workshops and having information available for groups and individuals in a variety of formats. The College provides the broadest level of confidentiality allowed. Individuals seeking voluntary assistance prior to allegations of policy violation may be subject to alternative steps and sanctions than those in place for persons who are alleged to be in violation of the policy.

If an ACPHS student is alleged to be in violation of these policies, in accordance with the Student Disciplinary Code they may be required to meet with the Director of Counseling Services (or other licensed professional) for an assessment. Based upon that assessment, the Director of Counseling and Wellness (or designee) can recommend additional interventions/evaluations to be completed by an approved licensed agency at the individual's expense. Additional action may be required when allegations involve illegal or controlled substances. All ACPHS students are informed that if allegations are made against them indicating that they are using illegal substances, then pursuant to the Student Disciplinary Code they may be required to meet with the Director of Counseling and Wellness and may be required to complete a substance abuse assessment with appropriate follow-up administered by an approved licensed agency at the student's expense. Note: These steps represent those taken following an allegation of illegal substance use and do not necessarily apply to individuals who are voluntarily seeking services prior to an allegation or policy violation.

### **Sexual Assault, Sexual Harassment, Relationship Violence, Stalking and Misconduct Policies & Procedures for Students and Employees**

**This policy is continuously reviewed and revised, if necessary, to reflect changes and compliance requirements put forward by the Department of Education Office of Civil Rights and the Department of Justice Violence Against Women Act.**

### **Prohibited Acts**

The Albany College of Pharmacy and Health Sciences (ACPHS) is committed to creating and maintaining a safe environment for all of its students and employees. All forms of sexual misconduct offenses and other non-consensual sexual contact by members of the ACPHS community is strictly prohibited. This includes any acts of sexual assault, domestic violence, dating violence, and stalking. In the event that a sexual assault, act of stalking, dating violence, or domestic violence does occur, ACPHS considers it both a violation of College policy and a violation of law. Violation of these policies will result in a responsive action, as prescribed under

Title IX including an investigation of what occurred; action to stop the prohibited conduct; support for the victim of the conduct and, as necessary, for the broader community; and action to reasonably prevent the re-occurrence of the behavior. This may result in possible suspension, dismissal or termination from the College. ACPHS will apply the provisions of this policy regardless of whether the sexual assault, act of stalking, dating violence, or domestic violence occurs on campus or off campus. ACPHS will also apply the provisions of this policy when the sexual harassment, sexual assault, act of stalking, dating violence, or domestic violence occurs while a student or employee is participating in a study abroad program.

### **Non-discrimination**

ACPHS applies the protections set forth in these policies and procedures regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction.

Students may exercise civil rights and practice religion without interference by ACPHS's investigative, criminal justice, or judicial or conduct process.

### **Definitions of Individuals:**

**Accused** – a person accused of a violation who has not yet entered ACPHS's judicial or conduct process.

**Bystander** – a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of ACPHS.

**Reporting Individual** – a victim, survivor, complainant, claimant, or witness with victim status.

**Respondent** – a person accused of a violation who has entered ACPHS's judicial or conduct process.

### **Title IX Officials**

Individuals who by law (Title IX), have remedial authority to address sexual misconduct complaints on behalf of the institution. For the purpose of this policy, the following administrative officials are designated to receive sexual misconduct complaints and, if appropriate, to investigate those complaints.

Wendy Neifeld Wheeler, PhD, Dean of Students/Title IX Coordinator

Dean Neifeld Wheeler will ensure that complaints are investigated per Title IX policy, should they meet the criteria of a Title IX infraction.

Office: Library Building, Room 310

Susan Karavolas, Director of Human Resources/Deputy Title IX Coordinator

Office: O'Brien Building, Room 001

### **Trained Investigators**

ACPHS has identified members of the Administration who have received appropriate training to serve as investigators of Sexual Misconduct complaints. The investigators will receive annual training on issues related to:

- The four types of cases: domestic violence, dating violence, sexual assault, and stalking, as well as other forms of sexual misconduct as outlined in this policy.
- How to conduct an investigation that protects the safety of victims and promotes accountability, while at the same time provides a fair and equal opportunity for the accused.
- How to conduct a hearing that protects the safety of the victim and promotes accountability, while at the same time provides a fair and equal opportunity for the accused.

### **Definitions of Behavior**

**Crime of Violence** – murder, sexual assault, domestic violence, dating violence, stalking, robbery, aggravated assault, burglary, motor vehicle theft, manslaughter, and arson.

### **Incapacitated Sex**

To have sex with someone whom you know to be, or reasonably should know to be, incapable of making a rational, reasonable decision about a sexual situation is a violation of ACPHS policy, New York State Law, and Vermont State Law. Incapacity to make rational decisions about a sexual decision might result from the taking of a date rape drug, other drugs, alcohol, or as a result of illness. Intoxication on the part of the initiator is not an excuse for the violation of this policy or the law.

### **Relationship Violence**

Relationship Violence is a pattern of coercive behaviors that serve to exercise control and power in an intimate relationship. The coercive and abusive behaviors can be physical, sexual, psychological, verbal and/or emotional in nature. Intimate partner abuse can occur in relationships of the same or different genders; between current or former intimate partners who have dated, lived together, or been married. Relationship Violence includes both domestic violence and dating violence.

Under the Clery Act regulations:

- domestic violence is defined as felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by 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 New York and Vermont family violence laws, or by any other person against an adult or youth victim who is protected from that person's acts under New York or Vermont domestic or family violence laws.
- dating violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes 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. Under Vermont law, it is unlawful to attempt to cause or to willfully or recklessly cause bodily injury to a person one is dating or has dated, or to willfully cause such person to fear imminent serious bodily injury.



Under New York law, domestic violence is generally defined as

a pattern of coercive tactics, which can include physical, psychological, sexual, economic and emotional abuse, perpetrated by one person against an adult intimate partner, with the goal of establishing and maintaining power and control over the victim. There is no specific crime of “domestic violence” under New York State law. Domestic violence is handled through the criminal courts and the Family Court as a “family offense.” A family offense is defined as certain acts/crimes delineated in the Penal Law (such as harassment, menacing, assault, and stalking) committed by a family member (individuals who are married, related by blood, or who have a child in common). Victims who meet this definition may go to criminal court to seek an order of protection and have the abuser prosecuted, or they may go to Family Court for an order of protection, services, and assistance with custody and child support. Individuals victimized by an intimate partner who does not meet the definition of family member, such as a boyfriend or same-sex partner, can only go to criminal court for legal assistance. In addition, mandatory arrest, which applies when an abuser violates an order of protection or commits certain other offenses, is only applicable when a case involves individuals who meet the family definition. According to the NYS Office for the Prevention of Domestic, however, many police departments in New York State use an expanded definition of family when making mandatory arrest determinations. This provides greater protection to victims who fall outside of the family definition, although these victims still do not have access to Family Court.

Under Vermont law, domestic violence

includes violence committed (1) by a current or former spouse of the complainant, (2) by a person with whom the complainant shares a child in common, (3) by a person who is cohabitating with or has cohabitated with the complainant as a spouse, (4) by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Vermont, or (5) by any other person against an adult or youth complainant who is protected from that person’s acts under the domestic or family violence laws of Vermont. Per Vermont law, it is unlawful to attempt to cause or to willfully or recklessly cause bodily injury to a family or household member, or to willfully cause a family or household member to fear imminent serious bodily injury. “Household members” are defined as those persons who, for any period of time, are living or have lived together, are sharing or have shared occupancy of a dwelling, and are engaged in or have engaged in a sexual relationship, or minors or adults who are dating or have dated.

### **Sexual Activity**

- Contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight;
- Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
- Penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
- Intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

## Sexual Assault

Under the Clery Act regulations,

the term “sexual assault” means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI’s UCR program and as set forth in Appendix A to the Clery Act regulations (34 CFR § 668.46). These terms are defined as follows:

- **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.
- **Fondling** – the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person’s will; or, not forcibly or against the person’s will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
- **Incest** – sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape** – sexual intercourse with a person who is under the statutory age of consent.

Under New York law,

“sexual assault” includes any and all “sexual offenses” defined in New York State Penal Code Article 130. These sexual offenses include sexual misconduct, rape, sexual abuse, forcible touching, and aggravated sexual contact, and involve conduct that would generally fall within the above-listed definitions. However, these offenses also cover certain actions, such as sexual assault with an object, which may not be included within the above-listed definitions. Students and employees are encouraged to review the full definitions and elements of these offenses, which can be found in New York State Penal Law §§ 130.00 to 130.96. Under New York State law, a sexual offense occurs when certain sexual acts are perpetrated against a victim without his or her affirmative consent.

Under Vermont law,

sexual assault is defined as engaging in a sexual act with another person by any of the following means:

- Without his or her consent; or
- By physically forcing, threatening, intimidating or coercing the other person; or
- By placing the other person in fear that any person will suffer imminent bodily injury; or
- When the person knows, or reasonably should know based on an objective standard, that the other person’s ability to give or withhold consent is impaired:
  - 1) by the consumption of drugs, alcohol or other intoxicants; or
  - 2) because the other person is subject to a physical or mental incapacity such as sleep or unconsciousness. Students and employees are encouraged to review the full definitions and elements of these offenses, which can be found in Vermont Penal Law §§ 3252.

## Sexual Misconduct

**Non-Consensual Sexual Contact:** Any intentional sexual touching without effective consent. This includes any contact with the breasts, buttocks, groin, genitals, mouth or other bodily orifice of a person upon another person, as well as the touching of another with any of these body parts, without effective consent; or other intentional contact of a sexual nature without consent.

**Non-Consensual Sexual Intercourse:** Any sexual intercourse or penetration (anal, oral, or vaginal) however slight, with any object or body part, by a person upon another person without effective consent.

**Forced Sexual Intercourse:** Any sexual intercourse (anal, oral or vaginal), by any object or body part, by a person upon another person, that occurs as a result of force. The prohibited force may be physical in nature, or represented by threats, intimidation or coercion. Intercourse obtained by any form of force impacts the free will of the victim and thus removes the opportunity for effective consent

**Sexual Exploitation:** Sexual exploitation occurs when an individual takes non-consensual, unfair, or abusive advantage of another for his/her own advantage or benefit, even though that behavior does not constitute one of the other sexual misconduct offenses. Examples include, but are not limited to:

- Non-consensual video or audio taping of sexual activity.
- Stalking with a sexual component. Stalking may take many forms, including persistent calling, texting, or posting on a social networking site as well as physical stalking. When the content of the messages or the nature of the physical stalking is of a sexual nature sexual misconduct has occurred.
- Voyeurism is a form of sexual exploitation in which one individual engages in secretive observation of another for personal sexual pleasure or engages in non-consensual video or audio taping of sexual acts. Although the source for the secretive viewing or taping may be unaware of the observation, this behavior is a form of sexual misconduct and violates the integrity of the unaware student.
- The disrobing or exposure of another person without their consent.

### **Sexual Harassment**

Sexual harassment is defined under this policy as severe or persistent or pervasive and objectively offensive unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct or communication of a sexual nature that limits or denies a student's ability to participate in or benefit from the college's educational programs or activities, or creates a hostile working environment for employees when:

- Submission to the conduct is made either explicitly or implicitly a term or condition of an individual's academic or other advancement (quid pro quo harassment);
- Submission to, or rejection of, the conduct is used as the basis for academic decisions affecting the individual (quid pro quo harassment); or
- Has the effect of unreasonably interfering with a person's work, professional or educational performance, productivity, physical security, participation in living arrangements; or extracurricular activities, academic or career opportunities, services or benefits—or of creating an intimidating, hostile, or offensive learning environment.

### **Stalking**

Generally, stalking is a pattern of behavior that can include:

- Repeatedly leaving or sending victim unwanted items, presents, flowers
- Harassing the victim through the internet, including social networking websites
- Repeated, unwanted and intrusive phone calls, e-mails or text messages; especially after being clearly informed to stop
- Damaging or threatening to damage the victim's property
- Following, monitoring, surveillance of victim and/or victim's family, friends, co-workers
- Abusing or killing a pet or other animal
- Crossing jurisdictions/borders to stalk/commit offenses

Under the Clery Act regulations,

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. For the purposes of this definition:

- "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; and
- "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Under New York law,

a person engages in stalking when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:

- is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or
- causes material harm to the mental or emotional health of such person, where such conduct consists of following (including unauthorized tracking of someone's movements or location through a GPS or other device), telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or
- is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

More detailed definitions can be found in New York State Penal Law §§ 120.45 to 120.60.

Under Vermont Law,

stalking is defined as intentionally following, lying in wait for, or harassing a person that serves no legitimate purpose and would cause a reasonable person to fear for his or her physical safety or suffer substantial emotional distress.

More detailed definitions can be found in Vermont Penal Law §§ 1061, 1062, 1063

### **Definition of Consent**

**Affirmative Consent** – a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity.

Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

Consent can be established if the following four conditions are present (Berkowitz, 2002):

- Both participants are fully conscious;
- Both participants are equally free to act;
- Both parties have clearly communicated their willingness/permission; and
- Both parties are positive and sincere in their desires.

## **Definitions of Confidentiality and Privacy**

### **Confidentiality**

Different people on campus have different reporting responsibilities and different abilities to maintain confidentiality, depending on their roles at the college and upon college policy. All parties should be aware of confidentiality, privacy and mandatory reporting, when consulting campus resources, in order to make informed choices. On campus, some people can offer you confidentiality, sharing options and advice without any obligation to tell anyone unless you want them to. Other people are expressly there for you to report crimes and policy violations and they will take action when you report your victimization to them. A victim may seek assistance from these campus community members without starting a formal process that is beyond the victim's control, or violates her/his privacy. The following explains each of these types of reporting.

- **Privileged Reporting**

Privileged reporting resources are those individuals who, by law and/or professional ethics, maintain privileged based confidentiality of the disclosure of sexual misconduct. These individuals are not required to re-disclose information shared with them other than in very extreme and unusual circumstances involving evidence of a serious and imminent threat to identifiable individuals, or by subpoena. Privileged reporting resources include:

- Counseling and Wellness, Student Center, 518-694-7262 or 518-694-7143  
<http://www.acphs.edu/albany-campus/health-safety/counseling-services>
- UVM Medical Center Counseling Services: 888-329-3327
- STEPS to End Domestic Violence: 802-658-1996
- Hope Works Hotline: 802-863-1236
- Vermont Statewide Sexual Violence Hotline: 800-489-7273

- UVM Medical Center, Urgent Care, Fanny Allen Campus, 790 College Parkway, Colchester, VT 05446, 802-847-1170
- SANE nurses can be reached at 802-847-2434  
<https://www.uvmhealth.org/medcenter/pages/departments-and-programs/sexual-assault-nurse-examiners-sane-program.aspx>

- **Administrative (Mandatory) Reporting By Responsible Employees**

At ACPHS Responsible Employees are considered Mandatory Reporters and include all employees including Resident Assistants. Mandatory reporters are required to report all details of an incident of sexual misconduct, including the identity of the victim and the perpetrator, the date and location of the incident and details regarding the incident if known, to the appropriate office for purposes of initiation of an investigation and appropriate action. Responsible Employees are trained to provide information and support and appropriate referral to confidential or private reporting resources. Responsible Employees are also required to provide Clery Act statistical information and/or information for a timely warning if the circumstances warrant.

### **Privacy**

Employees of ACPHS must offer privacy to reporting individuals if they are unable to offer confidentiality to those individuals under the law. Information learned from a reporting individual or bystander to a crime or incident will not be disclosed more than necessary to comply with state and federal laws, including informing appropriate officials of ACPHS. A reporting individual's identity will remain private at all times if the reporting individual wishes to maintain privacy.

### **Privacy of Records**

The investigation and resolution conducted by ACPHS are maintained confidentially. Information is shared only between ACPHS administrators who need to know. Where information must be shared to permit the investigation to move forward, the person bringing the accusation will be informed. Privacy of the records specific to the investigation is maintained in accordance with New York and Vermont State laws and, with respect to student records, the federal Family Educational Rights and Privacy Act of 1974 (FERPA) statute. Any public release of information to comply with the timely warning provisions of the Jeanne Clery Act (Clery Act) will not release the names of victims or information that could easily lead to a victim's identification.

### **What Do I Do If I Am A Victim of Sexual Misconduct/Violence?**

If you believe you are the victim of any of the offenses described above, you should follow the following procedures:

- Get yourself to a safe place.** Public Safety and the Colchester Police Department can help you do this. Officers of those agencies are trained to respond to the needs of a victim of sexual assault, relationship violence, and stalking. They can also make you aware of support and advocacy services and advise you about reporting procedures and requirements.
- Obtain medical attention.** For your safety and well-being, immediate medical attention is encouraged. Further, being examined as soon as possible is important in the case of sexual assault. The hospital will arrange for a specific medical examination at no charge. We encourage you to do so at a facility that uses SANE, or Sexual Assault Nurse Examiners. University of Vermont Medical Center is a SANE

facility. Remember that this medical treatment may also provide the opportunity for the collection and documentation of evidence, should you decide to pursue the incident and offender through the legal system. Public Safety and the Colchester Police Department may assist you in this effort as well.

- C. **Preserve evidence.** We encourage you to take steps to preserve any and all evidence when a domestic violence, dating violence, or sexual assault incident occurs, as this evidence may be necessary to prove that the offense took place and/or to obtain a protective order. Be aware that the location of the offense, your clothing, and your person may be considered a “crime scene,” and as such, a source of evidence. The location of the incident should be safe guarded and the victim should avoid washing, douching, using the toilet or changing clothes prior to a medical/legal exam.
- D. **Report the incident.** ACPHS encourages, but does not require, victims, survivors, complainants, claimants, and witnesses with victim status of sexual assault, relationship violence, or stalking (reporting individuals) to report the incident to one or more of the following resources:
1. You may (but are not required to) report it to local law enforcement and/or state police for the sole purpose of documentation. You may also (but are not required to) report it to local law enforcement and/or state police so that they may investigate the matter and identify an offender. You have the further option (but are not required to) to pursue the case through the criminal justice system, where you will be assisted by the District Attorney’s office, the local or state Police Department and the support and advocacy services of your choice. If you want or need assistance in notifying the local or state Police Department, contact the Office of Public Safety who will assist you in doing so.
  2. You may (but are not required to) report it to UHA Public Safety, Hunter North Associates or Colchester Police. This may trigger the judicial process of ACPHS, which may result in the removal of the offender from the campus. It also assists ACPHS in complying with Federal requirements for reporting offenses occurring on campus. You may (but are not required to) report incidents of sexual assault, relationship violence, or stalking anonymously to UHA Public Safety, Hunter North Associates or Colchester Police, preserving your privacy and only reporting the particulars of the incident.
  3. You may also (but are not required to) report the incident to a Compliance Officer (identified below) or any senior officer of ACPHS.
    - When you first disclose an incident to a representative of ACPHS, you will be presented with (1) a copy of this policy, (2) a written explanation of your rights and options, whether the incident occurred on or off-campus, and (3) the following information: “You have the right to make a report to university police or campus security, local law enforcement, and/or state police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution.”
    - You will have the right to emergency access to the Title IX Coordinator or a Compliance Officer, who will be available upon the first instance of disclosure by a reporting individual to provide immediate information and assistance regarding (1) options to proceed, including other reporting options; (2) where applicable, the importance of preserving evidence and obtaining a

sexual assault forensic examination as soon as possible; and (3) the criminal justice process, including that it utilizes different standards of proof and evidence and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney. The Compliance Officer will also explain whether he or she is authorized to offer you confidentiality or privacy, and will inform you about other reporting options.

- Be aware that certain ACPHS officials with significant responsibility for student and employee activities may be required by law to disclose the occurrence of the event. If you make a report to an official who is required by law to disclose the occurrence of the event, but you request confidentiality, the Title IX coordinator will evaluate the confidentiality request, by weighing the request against ACPHS's obligation to provide a safe, non-discriminatory environment for all members of its community. If it is determined that the incident must be disclosed, your name will be kept confidential, and you will be offered privacy to the greatest extent possible. If it is determined that the incident must be kept confidential, ACPHS will still assist with academic, housing, transportation, employment, and other reasonable and available accommodations.
  - Even ACPHS officers and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution. Your identity will remain private at all times if you wish to maintain privacy.
  - ACPHS will make every effort to ensure that you are asked to describe the incident to as few representatives of ACPHS as possible, and are not required to unnecessarily repeat a description of the incident.
4. In addition to, or in lieu of, reporting an incident to one or more of the above, you may (but are not required to) make a confidential report to any mental health counselor, pastoral counselor, social worker, psychologist, nurse-practitioner, or other person with a professional license or who is supervised by such a person. This includes, but is not limited to, professional employees and support staff at the Counseling and Wellness Center. These employees are exempt from any requirement to further disclose your report to them, unless you want and ask them to do so. These employees can assist in obtaining services for reporting individuals.
  5. In addition, you may confidentially disclose the incident and obtain services from the state or local government.
  6. You can also make an anonymous report to a confidential hotline provided by Vermont state agencies and not-for-profit entities. These hotlines include:
    - HOPE Works Hotline: 802-863-1236
    - STEPS to End Domestic Violence Hotline: 802-658-1996
    - Vermont Statewide Sexual Violence Hotline: 800-489-7273
    - Vermont Statewide Domestic Hotline: 1-800-228-7395
    - The National Sexual Assault Hotline: 1-800-656-4673
    - The National Domestic Violence Hotline: 1-800-799-7233



7. Lastly, if the accused is an employee of ACPHS, you can report the incident to ACPHS's Human Resources Department, or request that another employee assist in reporting to the Human Resources Department.

ACPHS encourages the victims of sexual assault, relationship violence, and/or stalking to report the incident, in any of the manners described above. However, again, victims are not required to report the offense to, or to seek assistance from ACPHS, law enforcement, or campus authorities. ACPHS will not pressure any student or employee to disclose a crime or violation, or to participate in the judicial, conduct, or criminal justice processes.

**Reporting an incident does not:**

- obligate the victim to prosecute;
- subject the victim to inappropriate scrutiny or judgment by the person receiving the report; or
- suggests in any way that the victim is at fault for the crime or violation, or should have acted in a different manner to avoid the crime or violation.

**Reporting the incident does:**

- ensure that a victim of sexual assault, relationship violence, or stalking receives necessary medical testing and treatment;
- provide the opportunity for collection of evidence critical to a prosecution, which cannot be obtained later;
- ensure that the victim has knowledge of and access to professional, confidential counseling from a counselor specifically trained in the areas of sexual assault, relationship violence, or stalking.

**Students' Bill of Rights**

All students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination;

10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

### **Ways to Protect Yourself**

There are some practical steps you can take that may decrease the risk of sexual assault.

- Express your expectations and limits clearly before you are involved in a sexual encounter.
- Limit alcohol and drug use. They make it more difficult for you to be in control. Never ride with someone who has used alcohol or drugs.
- Avoid meeting in secluded places and walking alone. If you are concerned, ask campus security to escort you.
- Try to be aware of attitudes that your date expresses concerning women or men: hostility, unrealistic views of women or men and/or viewing people as "sex objects."
- Use assertive language such as, "I feel uncomfortable when you don't listen to me or when you touch me like that."
- Scream "fire" (rather than "rape" or "help"), if you need assistance.
- Be alert to what is happening around you.

These suggestions may help you to reduce your risk for being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. If there are any questions or ambiguity then you DO NOT have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves.
- Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

### **Additional Options of Available Action**

**Potentially File Student Conduct Charges.** If the accused or respondent is a student, you may file student conduct charges against the accused or respondent. Charges should be prepared in writing and directed to the Dean of Students. Additional details regarding the Student Disciplinary Code can be found on the ACPHS Intranet.

**Potentially Seek a Court Order.** Victims of relationship violence, sexual assault, and/or stalking may have a right to obtain a court order to protect themselves from the perpetrators. ACPHS will enforce all applicable no contact orders, restraining orders, and similar lawful orders issued by a criminal, civil, or tribunal court, to the extent required by law.

ACPHS will provide reporting individuals assistance from UHA Public Safety or other ACPHS officials in obtaining an order of protection. ACPHS will provide the accused or respondent and the reporting individual a copy of any order of protection or equivalent that ACPHS receives. ACPHS will also provide the accused or respondent and the reporting individual an opportunity to meet or speak with a representative of ACPHS, or other appropriate individual, who can explain the order and answer questions about it, including information from the order about the accused person's responsibility to stay away from the protected person or persons. ACPHS will provide the accused or respondent and the reporting individual an explanation of the consequences of violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension. ACPHS will also call on and assist local law enforcement in effecting an arrest when an individual violates an order of protection.

**Potentially Initiate Legal Proceedings.** ACPHS will provide assistance to reporting individuals in initiating legal proceedings in family court or civil court related to any incident of relationship violence, sexual assault, and/or stalking. ACPHS will enter into a Memorandum of Understanding ("MOU") with a provider to deliver these services.

**Right to Withdraw.** You have the right to withdraw your report and/or to withdraw from involvement in ACPHS's investigation of the complaint at any time.

### **Immediate Consequences Following a Report of an Incident of Sexual Assault, Relationship Violence, and/or Stalking**

#### **A. Mandatory No Contact Order**

When the accused or respondent is a student, ACPHS will issue a "no contact order," whereby: (1) continued intentional contact with the reporting individual is a violation of ACPHS's policy that is subject to additional conduct charges; and (2) if the accused or respondent and a reporting individual observe each other in a public place, it is the responsibility of the accused or respondent to leave the area immediately and without directly contacting the reporting individual. This may include establishing an appropriate schedule for the accused and respondent's to access applicable buildings and property of ACPHS at a time when such buildings and property are not being accessed by the reporting individual.

Upon request, both the accused (or respondent) and the reporting individual are entitled to a prompt review, reasonable under the circumstances, of the need for and terms of the no contact order,

including potential modification, in which they are allowed to submit evidence in support of their requests.

**B. Mandatory Interim Suspension**

When the accused or respondent is a student who is determined by a College official to present a continuing threat to the health and safety of the community, the accused or respondent will be subject to an interim suspension pending the outcome of a judicial or conduct process.

Upon request, ACPHS will provide both the accused or respondent and the reporting individual a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification, in which they are allowed to submit evidence in support of their request.

**C. Additional Interim Measures.**

ACPHS will offer reasonable and available interim measures to all reporting individuals in order to help ensure safety, prevent retaliation, and avoid an ongoing hostile environment. These interim measures may include:

- support services (victim advocacy, housing assistance, academic support, counseling, health and mental health services, legal assistance);
- changing work assignments and situations (for employees);
- changing living arrangements, course schedules, assignments, or test schedules (for students);
- no contact orders, campus escorts, transportation assistance, or targeted interventions;
- provides increased monitoring, supervision, or security; and/or providing an escort.
- When the accused is not a student, but is a member of ACPHS's community and presents a continuing threat to the health and safety of the community, ACPHS will subject the accused to interim measures in accordance with applicable collective bargaining agreements, employee handbooks, and rules and policies of ACPHS.
- ACPHS will provide reasonable and available interim measures to all reporting individuals.
- ACPHS will protect the confidentiality of accommodations or protective measures provided to a complainant or accuser, to the extent that doing so will not impair ACPHS's ability to provide the accommodations or protective measures.
- Upon request, ACPHS will provide both the accused or respondent and the reporting individual a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measure and accommodation that directly affects him or her, in which he or she is allowed to submit evidence in support of his or her request.

**On and Off-Campus Support Services Following an Incident of Sexual Assault, Relationship Violence, and/or Stalking**

ACPHS recommends that reporting individuals seek the assistance of trained professionals in the aftermath of an incident of sexual assault, relationship violence, and/or stalking, and will assist

reporting individuals to receive this assistance. ACPHS will provide reporting individuals with information on sexually transmitted infections and sexual assault forensic examinations.

UVM Medical Center in Colchester are providers of helpful services for reporting individuals, including exit counseling, health, mental health, and other related services. These services are provided at no cost to the reporting individual. These resources can be located and/or contacted as follows:

Vermont Campus  
 UVM Medical Center  
 Urgent Care, Fanny Allen Campus  
 790 College Parkway  
 Colchester, VT 05446  
 Phone:(802) 847-1170

ACPHS has also entered into collaborative partnerships with community-based organizations (including rape-crisis centers, domestic violence shelters, and assistance organizations), to refer students for assistance or make services available to students. These helpful service providers in Chittenden county provide helpful services (such as counseling, legal assistance, victim advocacy, and visa/immigration assistance), including the following:

| <b>Program/Entity</b>                        | <b>Contact Information</b>   | <b>Cost</b> |
|--|--|-------------|
| STEPS to End Domestic Violence               | P: 802-658-1996<br>E: <a href="https://www.stepsvt.org/">https://www.stepsvt.org/</a>      | No cost     |
| HOPE Works Hotline                           | 802-863-1236<br>E: <a href="https://www.hopeworksvt.org/">https://www.hopeworksvt.org/</a> | For a fee   |
| Vermont Statewide Domestic Violence Hotline: | P: (800) 228-7395  | No cost     |
| Vermont Statewide Sexual Violence Hotline    | P: (800) 489-7273  | No cost     |

Medical services are also available to reporting individuals from the following providers:

| <b>Program/Entity</b>                | <b>Location</b>   | <b>Contact Information</b> | <b>Cost</b> |
|--------------------------------------|---|----------------------------|-------------|
| University of Vermont Medical Center | Fanny Allen Campus<br>790 College Parkway<br>Colchester, VT 05446 | Phone:(802) 847-1170       | No cost     |

## **Amnesty from Campus Conduct Process**

ACPHS strongly encourages the reporting of incidents of sexual misconduct.

The health and safety of every student at the College is of utmost importance. ACPHS recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to College officials or law enforcement will not be subject to the College's student disciplinary code action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault. As an institution that reports to a licensing board, ACPHS reserves the right to take steps necessary to ensure the safety of patients and the public and to report truthfully to licensing bodies.

## **Investigation and Disciplinary Procedures in Cases of Sexual Assault, Relationship Violence, and Stalking**

When ACPHS becomes aware of an incident of sexual assault, relationship violence, or stalking by or against an employee or student or that has a reasonable connection to ACPHS, it will take prompt and appropriate action.

Where the respondent is found not responsible for the alleged violation(s), the investigation should be closed. When facts obtained in the investigation do not support the allegation, the investigation will be closed. If subsequently there is additional information discovered related to the allegation the investigation will be re-opened. No record of a complaint is kept in the complainant's file unless the investigation concludes that the complaint was reckless or frivolous.

## **The Investigation Process**

The Director of Human Resources (for employees) or the Dean of Students (for students) will make an initial assessment regarding the validity of any information received about the incident.

The following provisions apply:

- If ACPHS determines that an investigation is required, it must seek consent from reporting individuals prior to conducting an investigation. If a reporting individual does not consent to ACPHS's request to initiate an investigation, the Title IX Coordinator will weigh the request against ACPHS's obligation to provide a safe, nondiscriminatory environment for all members of its community.
- ACPHS will honor a request to decline to consent to an investigation, unless ACPHS determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the reporting individual or other members of the community, based on the Title IX Coordinator's consideration of factors that include, but are not limited to, the following:
  1. Whether the accused has a history of violent behavior or is a repeat offender;
  2. Whether the incident represents escalation in unlawful conduct on behalf of the accused from previously noted behavior;

3. The increased risk that the accused will commit additional acts of violence;
  4. Whether the accused used a weapon or force;
  5. Whether the reporting individual is a minor; and
  6. Whether the institution possesses other means to obtain evidence such as security footage, and
  7. Whether available information reveals a pattern of perpetration at a given location or by a particular group.
- If the Title IX Coordinator determines that the request to decline to consent to an investigation can be honored, ACPHS will still assist with academic, housing, transportation, employment, and other reasonable and available accommodations.
  - If the Title IX Coordinator determines that a request to decline to consent to an investigation cannot be honored, and an investigation is necessary, ACPHS must notify the reporting individuals and take immediate action as necessary to protect and assist them.
  - When an investigation is commenced the reporting individual must be informed, as promptly as possible, of (1) the specific rule, rules, laws, and/or code of conduct provisions alleged to have been violated; (2) the date, time, location and factual allegations concerning the violation; (3) in what manner the specific rule, rules or laws are alleged to have been violated, and (4) the sanction or sanctions that may be imposed on the respondent based upon the outcome of any judicial or conduct process.

### **Who Will Facilitate the Investigation?**

The Director of Human Resources (for employees) or the Dean of Students (for students) will designate a trained investigator, who does not have a conflict of interest, to promptly conduct a fair, complete, thorough, and impartial investigation, that provides a meaningful opportunity to be heard. Each of the designated investigators receives annual training on issues related to sexual assault, relationship violence, and stalking, and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability. The designated investigators, will also receive annual training on conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is “not responsible” until a finding of responsibility is made, ACPHS’s policies and procedures, and other issues.

If the Director of Human Resources or Dean of Students is implicated in the report, the President will be responsible for designating an investigator to conduct the investigation. If it would be inappropriate for the Director of Human Resources, Dean of Students, or President to designate a trained investigator to conduct the investigation, then the Chair of the Board of Trustees will make this designation.

### **Standard of Evidence**

The standard of evidence used to evaluate a report of sexual assault, relationship violence, or stalking by or against an employee or student is a “preponderance of the evidence.” Under this standard, a determination must be made on the basis of whether it is more likely than not that the accused student or employee violated the policy.

### **Investigating a Complaint**

In investigating the complaint, the designated trained investigator shall:

1. Meet with the appropriate individuals and review all appropriate records that bear on the case.

2. Provide the accuser and the accused with copies of the policy.
3. Discuss the allegations in the complaint with the accuser and accused at separate meetings, and provide the accuser and accused with equal opportunities to identify witnesses and present evidence supporting their respective positions at these meetings.
4. Provide the accuser and the accused with the same opportunities for a support person or advisor of their choice throughout the process, including any meeting, conference, hearing or other procedural action. An attorney for either the accuser or the accused, however, may be present but may not have a speaking role during such meeting, conference, hearing, or other procedural action.
5. The reporting individual or accused will be provided with:
  - a. reasonable advance written or electronic notice of any meeting they are required to or are eligible to attend,
  - b. an opportunity to submit evidence during an investigation concerning a report of sexual assault, relationship violence, or stalking, and
  - c. the opportunity to exclude (1) their own prior sexual history with persons other than the other party in the conduct process and (2) their own mental health diagnosis and/or treatment from the investigator's consideration when determining responsibility. (However, the investigator may consider past findings of domestic violence, dating violence, stalking, or sexual assault when determining the sanction to be imposed).
6. Attempt, where appropriate, to resolve the complaint by exploring and suggesting possible solutions to the problem with all involved parties, provided, however, that the complainant or accuser will not be required to participate in mediation with the accused.
7. If the preceding step does not resolve the problem, make and transmit a preponderance of the evidence determination in the matter of the allegation of sexual assault, relationship violence, or stalking to the accused, accuser, and, if the accused is an employee, the senior officer for the unit in which the accused is employed (or the President if the accused is a senior officer; or the Board of Trustees if the accused is the President), or, if the accused is a student, the Dean of Students.

The time necessary to complete an investigation will vary depending upon the facts of a particular case. In most cases, every effort will be made to have investigations completed within 20 business days of receipt of a report, but not to exceed 60 days.

The trained investigator who conducted the investigation shall prepare written findings of fact and present these findings to a Conduct Hearing Board. The Hearing Board may invite witnesses, the respondent, complainant, or any other individual they feel could provide evidence, clarification or information regarding the incident to be part of the process. It is common for the proceedings to provide students with the opportunity to present evidence and testimony at a hearing. The proceedings are completed within a reasonably prompt, designated timeframe. However, the timeframe may be extended for good cause upon written notice to the accuser and accused.

The hearing board will review all information and make a decision, with respect to whether it is more likely than not that the incident of sexual assault, relationship violence, or stalking occurred, determine appropriate disciplinary actions, if any, and/or other appropriate remedial measures.

Once the investigation is complete, the parties will be informed, in writing, of the outcome. When the victim or accused is a student, this written notice will include the result of the investigation, any recommended sanctions, the rationale for the result and any recommended sanctions, the findings of fact, and a notification if conduct charges will be pursued and/or continued. Delivery of this outcome will not be delayed to either



party, and should occur as nearly simultaneously as possible, without unnecessarily bringing those in conflict into close proximity to each other. Should any change in outcome occur prior to finalization, all parties will be timely informed in writing, and will be notified when the results of the resolution process become final.

If the Conduct Hearing Board concludes that the accused student or employee did not violate the policy, ACPHS will not pursue discipline against the student or employee. The parties will be informed of their potential rights to exercise a request for an appeal of the determination, if applicable. If the College Hearing Board determines that a student did not violate ACPHS's policy, the reporting individual has the right to appeal the finding of no violation to an Appellate Board within two (2) business days of the decision. If the College Hearing Board determines that an employee did not violate ACPHS's policy, the reporting individual has the right to appeal the finding of no violation to the Director of Human Resources within two (2) business days of the decision.

Detailed information regarding internal disciplinary proceedings for students can be found in the Student Disciplinary Code, available on the ACPHS intranet. Information regarding internal disciplinary proceedings for employees can be found in the Employee Handbook.

### **Appeals Process**

All parties will also be informed of their potential rights to exercise a request for an appeal of the disciplinary determination under the Student Disciplinary Code or Employee Handbook. Pursuant to the Student Disciplinary Code, all students have a right to an appeal any final disciplinary determination to an Appellate Board within two (2) business days of the decision. Any party who files an appeal must do so in writing to the designated appeal board chair. The chair will share the appeal with the other party (e.g., if the accused student appeals, the appeal is shared with the complainant, who may also wish to file a response), and then the chair will draft a response memorandum (also shared with all parties). All appeals and responses are then forwarded to the Appeals Hearing Board for initial review to determine if the appeal meets the limited grounds and is timely. The original finding and sanction will stand if the appeal is not timely or substantively eligible, and the decision is final. If the appeal has standing, the documentation is forwarded for consideration. The ONLY grounds for appeal are as follows:

1. A procedural error occurred that significantly impacted the outcome of the hearing;
2. To consider new evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included;
3. The sanctions imposed are substantially disproportionate to the severity of the violation.

Sanctions determined as an outcome of the investigation will be in effect during the appeal. A request may be made to the Dean of Students for special consideration in exigent circumstances, but the presumptive stance of the institution is that the sanctions will stand. Graduation, study abroad, internships/externships, etc. do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal. In cases where the appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.

### **All Appeals Decisions Are Final**

Unless otherwise required by law, ACPHS will protect all information obtained about students and employees during the course of the disciplinary process from public release.

## **Sanctions**

Discipline for incidents of sexual assault, relationship violence, and stalking may take a variety of forms, depending upon the circumstances of a particular case. Among the disciplinary sanctions which may be imposed on students are the following: verbal warning, written reprimand, probation, restrictions, suspension, and expulsion. Among the disciplinary sanctions which may be imposed on employees are: verbal warning, written reprimand, suspension without pay, and termination. The full range of student disciplinary penalties is set forth in the Student Disciplinary Code. Employee disciplinary penalties are set forth in the Employee Handbook.

If the investigation reveals that sexual assault, relationship violence, or stalking did occur, ACPHS will take also take appropriate remedial measures necessary to end such conduct, prevent any such future conduct, and correct any personnel or academic decisions made which are related to the prohibited conduct. Remedies may include, but are not limited to, continuing or commencing any of the above-listed “interim measures.” These remedies are separate from, and in addition to, any interim measures that may have been provided prior to the conclusion of the investigation. Such measures can be requested by a reporting individual or accuser, by contacting the Director of Human Resources (for employees) or the Dean of Students (for students).

Engaging in sexual assault, relationship violence, or stalking may also lead to civil and/or criminal action under both Vermont and the New York State Penal Law. Any employee who, in violation of the College’s policy, engages in domestic violence, dating violence, and/or stalking, is acting outside the scope of his or her employment and may be personally liable for such actions and their consequences. In the event legal proceedings are commenced against such an employee, the College may decline to provide legal, financial, or other assistance.

In any proceeding brought against ACPHS which seeks to vacate or modify a finding that a student engaged in sexual assault, relationship violence, or stalking, ACPHS (1) will treat the name and identifying biographical information of any student as presumptively confidential, and (2) will not include this information in the pleadings and other papers in such proceeding absent a waiver or cause shown as determined by the court; and (3) will identify student witnesses only as numbered witnesses.

### **Notation on Student Transcripts** (Effective October 5, 2015)

If a student is found responsible for a crime of violence, ACPHS must make a notation on the student’s transcript that they were “suspended after a finding of responsibility for a code of conduct violation” or “expelled after a finding of responsibility for a code of conduct violation.” If a student withdraws from ACPHS while such conduct charges related to crimes of violence are pending against the student, and declines to complete the disciplinary process, ACPHS must make a notation on the student’s transcript that he or she “withdrew with conduct charges pending.”

These transcript notations can be appealed by contacting the Dean of Students. Transcript notations for violence-related suspensions shall not be removed prior to one year after conclusion of the suspension. Transcript notations for violence-related expulsions shall never be removed from a student’s transcript. If a finding of responsibility is vacated for any reason, however, the transcript notation must be removed.

### **Prohibition of Retaliation**

It is a violation of federal and state law and this policy for any employee or student to retaliate against any student or employee for exercising any rights or responsibilities under the Violence Against Women Act, the

Clery Act, and/or Title IX. This includes retaliating against a student or employee who reports an incident of sexual assault, relationship violence, or stalking in good faith, or furnishes information or participates in any manner in an investigation of such a report. Retaliation includes any conduct directed at someone because he or she engaged in such protected activity, which might deter a reasonable student or employee from making or supporting such a report. Any individual found to have engaged in retaliation will be subject to disciplinary action, up to and including, termination of employment and/or dismissal from ACPHS.

Any employee or student who feels as though someone has subjected him or her to retaliation as a result of a report or participation into the investigation of a report should contact the Dean of Students or Directory of Human Resources or other senior officer immediately.

**Compliance Officers**

ACPHS has appointed certain individuals as Compliance Officers. The Compliance Officers are responsible for assisting in the resolution of reports of sexual assault, relationship violence, and stalking. In addition, Compliance Officers are responsible for being proactive in creating an atmosphere which will inhibit sexual assault, relationship violence, and stalking. A list of these individuals is set forth below:

|  |   |
|--|---|
| Dean of Students/Title IX Coordinator<br>Currently: <b>Wendy Neifeld Wheeler</b><br>Library Building, 310<br>Ext. 319 (518-694-7319)<br>Email: <b>Wendy.NeifeldWheeler@acphs.edu</b> | Executive Director of Human Resources<br>Currently: <b>Susan Karavolas</b><br>O’Brien Building. 001<br>Ext. 278 (518-694-7278)<br>Email: <b>Susan.karavolas@acphs.edu</b> |
| Vice President for Administrative Operations<br>Currently: <b>Packy McGraw</b><br>O’Brien Building, 104C<br>Ext. 257 (518-694-7257)<br>Email: <b>Packy.McGraw@acphs.edu</b>          | Academic Advisor<br>Currently: <b>Kim Keyes</b><br>Library Building, 309C<br>Ext. 893 (518-694-7893)<br>Email: <b>Kim.keyes@acphs.edu</b>                                 |
| Director of Residence Life<br>Currently: <b>Alison Buckley</b><br>Gozzo Student Center, 207C<br>Ext. 155 (518-694-7155)<br>Email: <b>Alison.Buckley@acphs.edu</b>                    | Student Support Specialist<br>Currently: <b>Alyssa Abitabile</b><br>Library Building, 303B<br>Ext. 147 (518-694-7147)<br>Email: <b>Alyssa.Abitabile@acphs.edu</b>         |
| Director of Athletics and Recreation<br>Currently: <b>Christine Kanawada</b><br>Gymnasium 101<br>Ext. 357 (518-694-7357)<br>Email: <b>Christine.kanawada@acphs.edu</b>               | Coordinator of Student Affairs, Vermont<br>Currently: <b>Carolyn Claxton</b><br>Vermont 102C<br>802-735-2620<br>Email: <b>Carolyn.Claxton@acphs.edu</b>                   |
| Director of Student Affairs<br>Currently: <b>Jennifer Payne</b><br>Vermont<br>Ext. 802 735-2628<br>Email: <b>Jennifer.Payne@acphs.edu</b>  | Student Support Specialist<br>Currently: <b>Jarrett Lykins</b><br>Library Building 303A<br>Ext. 284 (518-694-7284)<br>Email: <b>Jarrett.Lykins@acphs.edu</b>              |

**Education and Training for Students and Employees**

It is the policy of ACPHS to offer multiple methods of educational programming to all students and employees each year to prevent relationship violence, sexual assault (including stranger and known offender assaults),

and stalking. ACPHS has adopted a comprehensive student onboarding and ongoing education campaign to educate members of ACPHS's community about domestic violence, dating violence, stalking, and sexual assault, in compliance with applicable federal laws.

As part of this campaign, ACPHS requires all new first-year and transfer students who enroll in ACPHS, whether first-year or transfer, undergraduate, graduate, or professional, to receive training, during the course of their onboarding, on the following topics, using a method and manner determined by ACPHS:

1. Sexual and interpersonal violence including resources to any victims and survivors of such violence and administrative/conduct action regarding any accused individual within the jurisdiction of the institution;
2. Relevant definitions including, but not limited to, the definitions of sexual assault, domestic violence, dating violence, stalking, confidentiality, privacy, and consent;
3. The equal application of policies regarding of sexual orientation, gender identity, or gender expression;
4. The role of the Title IX Coordinator, campus security, and other relevant offices that address domestic violence, dating violence, stalking, and sexual assault prevention and response;
5. Awareness of violence, its impact on victims and survivors and their friends and family, and its long-term impact;
6. Bystander intervention and the importance of taking action to prevent violence when one can safely do so;
7. Risk assessment and reduction including, not limited to, steps that potential victims, perpetrators, and bystanders can take to lower the incidence of violations, which may contain information about the dangers of drug and alcohol use, including underage drinking and binge drinking, involuntary consumption of incapacitating drugs and the danger of mislabeled drugs and alcohol, the importance of communication with trusted friends and family whether on campus or off campus, and the availability of institution officials who can answer general or specific questions about risk reduction; and
8. Consequences and sanctions for individuals who commit these crimes and code of conduct violations.

ACPHS offers general and specific training on each of the following topics to all students and employees:

1. ACPHS's policy prohibiting relationship violence, sexual assault, and stalking;
2. the definitions of "dating violence," "domestic violence," "sexual assault," and "stalking" under federal law, New York law, Vermont law and ACPHS's policies;
3. the definition of "consent," in reference to sexual activity, under federal law, New York law, Vermont law and The ACPHS Colleges' policies;
4. a description of ACPHS's educational programs and campaigns to promote the awareness of relationship violence, sexual assault, and stalking;
5. procedures victims should follow if a crime of relationship violence, sexual assault, or stalking has occurred, including information about:
  - a. the importance of preserving evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order;
  - b. how and to whom the alleged offense should be reported;
  - c. options about 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;

6. the rights of victims and ACPHS's responsibilities for orders of protection, "no-contact" orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court or by ACPHS;
7. information about how ACPHS will protect the confidentiality of victims and other necessary parties, including how it will:
  - a. complete publicly available recordkeeping without including personally identifying information about the victim; and
  - b. maintain as confidential any accommodations or protective measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of ACPHS to provide the accommodations or protective measures;
8. ACPHS's policy of providing written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both within ACPHS and in the community; and
9. ACPHS's policy of providing written notification to victims about options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures;
10. ACPHS's policy that, when a student or employee reports to ACPHS that the student or employee has been a victim of relationship violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options;
11. a description of ACPHS's disciplinary proceedings regarding alleged incidents of relationship violence, sexual assault, or stalking, which:
  - a. include a prompt, fair, and impartial process from the initial investigation to the final result;
  - b. are conducted by officials who, at a minimum, receive annual training on the issues related to relationship violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;
  - c. provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice;
  - d. do not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; and
  - e. require simultaneous notification, in writing, to both the accuser and the accused, of (i) the result of any institutional disciplinary proceeding that arises from an allegation of dating violence, domestic violence, sexual assault, or stalking; (ii) the institution's procedures for the accused and the victim to appeal the result of the institutional disciplinary proceeding, if such procedures are available; (iii) any change to the result; and (iv) when such results become final.
12. information on how to prevent and identify sexual violence;
13. the potential for re-victimization by responders and its effect on students and employees;
14. the impact of trauma on victims;
15. the role alcohol and drugs can play in sexual violence incidents;
16. appropriate methods for responding to a student or employee who may have experienced sexual violence, including the use of nonjudgmental language;
17. reporting obligations, including what should be included in a report, any consequences for failing to report, and how requests for confidentiality should be treated;
18. protections against retaliation; and
19. other information to prevent violence, promote safety and reduce perpetration.

ACPHS will also offer training on bystander intervention. Bystander intervention means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of relationship violence, sexual assault, 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.

Additionally, all employees and students are offered information regarding risk reduction. Risk reduction means 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.

ACPHS regularly assesses programs and policies established pursuant to federal and state law to determine effectiveness and relevance for students and employees.

### **Public Awareness and Advocacy Events**

As part of ACPHS's public awareness campaign, ACPHS may from time to time schedule primary prevention, public awareness, and advocacy programs for students and employees, which include the following:

- RAD (Rape Aggression Defense) Training for Women
- Title IX training - including training on roles as mandated reporters
- Training on how to appropriately respond to victims of sexual assault
- In Her Shoes- domestic violence empathy exercise
- Active Bystander training
- Healthy Relationship trainings
- Sex Signals
- Domestic Violence 101 for the Healthcare Provider

Information regarding educational programs can be found on ACPHS's website, at <http://www.acphs.edu/titleix/>.

If an individual discloses information through a public awareness event such as candlelight vigils, protests, or other public event, ACPHS is not obligated to begin an investigation based on such information. However, ACPHS may use the information provided at such an event to inform its efforts for additional education and prevention efforts.

### **Sexual Offender Registry**

The federal Campus Sex Crimes Prevention Act enacted in 2000 went into effect October 28, 2002. The law requires institutions of higher education to issue a statement advising the campus community where law enforcement agency information provided by a State concerning registered sex offenders may be obtained. It also requires sex offenders required to register in a State to provide notice, as required under state law, of each institution of higher education in that State at which the person is employed, carries on a vocation, or is a student. The Vermont sex offender registry may be accessed at <http://vcic.vermont.gov/sor>

## **Memoranda of Understanding**

By October 5, 2015, ACPHS will enter into memoranda of understanding with providers to:

1. provide sexual assault forensic examination to students; and
2. provide legal assistance to students (including both accused/respondents and reporting individuals).

ACPHS will also propose and endeavor to execute memoranda of understanding in partnership with:

1. a local rape crisis center, to further provide victim advocacy and support services to victims of sexual violence; and
2. local law enforcement authorities, regarding the protocols and procedures for referring allegations of sexual violence, relationship violence, and stalking, sharing information and conducting contemporaneous investigations regarding such allegations.

## **Climate Surveys**

Commencing during the 2016 - 2017 school year, ACPHS will conduct a biannual anonymous survey of students and employees to examine (1) the prevalence and incidence of sexual assault, relationship violence, and stalking, (2) the perceptions of the campus climate, (3) the general awareness and knowledge of students and employees about the provisions of the New York Enough is Enough law, and (4) student experience with and knowledge of reporting and college adjudicatory processes. Participation in such climate survey shall be voluntary but is encouraged.

The climate survey will be developed using standard and commonly recognized research methods, and includes questions covering the following topics:

1. the Title IX Coordinator's role;
2. campus policies and procedures addressing sexual assault;
3. how and where to report domestic violence, dating violence, stalking or sexual assault as a victim, survivor or witness;
4. the availability of resources on and off campus, such as counseling, health and academic assistance;
5. the prevalence of victimization and perpetration of domestic violence, dating violence, stalking, or sexual assault on and off campus during a set time period;
6. bystander attitudes and behavior;
7. whether reporting individuals disclosed to the institution and/or law enforcement, experiences with reporting and institution processes, and reasons why they did or did not report;
8. the general awareness of the difference, if any, between the institution's policies and the penal law; and
9. general awareness of the definition of affirmative consent.

ACPHS will take steps to ensure that answers to climate assessments remain anonymous and that no individual is identified. ACPHS will publish an executive summary of the climate assessment survey results on ACPHS website, provided that no personally identifiable information or information which can reasonably lead a reader to identify an individual is shared.

## **Annual Reporting**

Reports of certain crimes occurring in specific geographic locations are included in ACPHS' annual security report (ASR), in an anonymous manner that identifies neither the specifics of the crime nor the identity of the reporting individual.

ACPHS is obligated to issue timely warnings of crimes enumerated in the Clery Act occurring within relevant geography that represent a serious or continuing threat to students and employees, except in those circumstances where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the reporting individual. A reporting individual shall not be identified in a timely warning.

FERPA allows ACPHS to share information with parents when (i.) there is a health or safety emergency, or (ii.) when the student is a dependent on either parent's prior year federal income tax return. Generally, however, ACPHS will not share information about a report of domestic violence, dating violence, stalking, or sexual assault with parents without the permission of the reporting individual.

Effective July 7, 2016, ACPHS will annually report the following information about reports of domestic violence, dating violence, stalking and sexual assault to the New York State Education Department:

1. The number of such incidents that were reported to the Title IX Coordinator.
2. The number of reporting individuals who sought ACPHS's judicial or conduct process.
3. The number of cases processed through ACPHS's judicial or conduct process.
4. The number of respondents who were found responsible through ACPHS's judicial or conduct process.
5. The number of respondents who were found not responsible through ACPHS's judicial or conduct process.
6. A description of the final sanctions imposed by ACPHS for each incident for which a respondent was found responsible through ACPHS's judicial or conduct process.
7. The number of cases in ACPHS's judicial or conduct process that were closed prior to a final determination after the respondent withdrew from ACPHS and declined to complete the disciplinary process.
8. The number of cases in ACPHS's judicial or conduct process that were closed because the complaint was withdrawn by the reporting individual prior to a final determination.

### **Sexual Assault Laws of Vermont**

#### • § 3251. Definitions

- (1) A "sexual act" means conduct between persons consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any intrusion, however slight, by any part of a person's body or any object into the genital or anal opening of another.
- (2) "Sexual conduct" means any conduct or behavior relating to sexual activities of the complaining witness, including but not limited to prior experience of sexual acts, use of contraceptives, living arrangement and mode of living.
- (3) "Consent" means words or actions by a person indicating a voluntary agreement to engage in a sexual act.
- (4) "Serious bodily injury" shall have the same meaning as in subdivision 1021(2) of this title.
- (5) "Bodily injury" means physical pain, illness or any impairment of physical condition.
- (6) "Actor" means a person charged with sexual assault or aggravated sexual assault.
- (7) "Deadly force" means physical force which a person uses with the intent of causing, or which the person knows or should have known would create a substantial risk of causing, death or serious bodily injury.
- (8) "Deadly weapon" means:



- (A) any firearm; or
- (B) any weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury. (Added 1977, No. 51, § 1; amended 1985, No. 83, § 1; 1989, No. 293 (Adj. Sess.), § 4; 2005, No. 192 (Adj. Sess.), § 10, eff. May 26, 2006.)

- **§ 3252. Sexual assault**

(a) No person shall engage in a sexual act with another person and compel the other person to participate in a sexual act:

- (1) without the consent of the other person; or
- (2) by threatening or coercing the other person; or
- (3) by placing the other person in fear that any person will suffer imminent bodily injury.

(b) No person shall engage in a sexual act with another person and impair substantially the ability of the other person to appraise or control conduct by administering or employing drugs or intoxicants without the knowledge or against the will of the other person.

(c) No person shall engage in a sexual act with a child who is under the age of 16, except:

- (1) where the persons are married to each other and the sexual act is consensual; or
- (2) where the person is less than 19 years old, the child is at least 15 years old, and the sexual act is consensual.

(d) No person shall engage in a sexual act with a child who is under the age of 18 and is entrusted to the actor's care by authority of law or is the actor's child, grandchild, foster child, adopted child, or stepchild.

(e) No person shall engage in a sexual act with a child under the age of 16 if:

- (1) the victim is entrusted to the actor's care by authority of law or is the actor's child, grandchild, foster child, adopted child, or stepchild; or
- (2) the actor is at least 18 years of age, resides in the victim's household, and serves in a parental role with respect to the victim.

(f)(1) A person who violates subsection (a), (b), (d), or (e) of this section shall be imprisoned not less than three years and for a maximum term of life, and, in addition, may be fined not more than \$25,000.00.

(2) A person who violates subsection (c) of this section shall be imprisoned for not more than 20 years, and, in addition, may be fined not more than \$10,000.00.

(g) A person convicted of violating subsection (a), (b), (d), or (e) of this section shall be sentenced under section 3271 of this title. (Added 1977, No. 51, § 1; amended 1985, No. 83, § 2; 1989, No. 293 (Adj. Sess.), § 5; 2005, No. 192 (Adj. Sess.), § 10, eff. May 26, 2006.)

- **§ 3253. Aggravated sexual assault**

(a) A person commits the crime of aggravated sexual assault if the person commits sexual assault under any one of the following circumstances:

- (1) At the time of the sexual assault, the actor causes serious bodily injury to the victim or to another.
- (2) The actor is joined or assisted by one or more persons in physically restraining, assaulting or sexually assaulting the victim.
- (3) The actor commits the sexual act under circumstances which constitute the crime of kidnapping.
- (4) The actor has previously been convicted in this state of sexual assault under subsection 3252(a) or (b) of this title or aggravated sexual assault or has been convicted in any jurisdiction in the United States or territories of an offense which would constitute sexual assault under subsection 3252(a) or (b) of this title or aggravated sexual assault if committed in this state.
- (5) At the time of the sexual assault, the actor is armed with a deadly weapon and uses or threatens to use the deadly weapon on the victim or on another.

(6) At the time of the sexual assault, the actor threatens to cause imminent serious bodily injury to the victim or to another and the victim reasonably believes that the actor has the present ability to carry out the threat.

(7) At the time of the sexual assault, the actor applies deadly force to the victim.

(8) The victim is under the age of 13 and the actor is at least 18 years of age.

(9) The victim is subjected by the actor to repeated nonconsensual sexual acts as part of the same occurrence or the victim is subjected to repeated nonconsensual sexual acts as part of the actor's common scheme and plan.

(b) A person who commits the crime of aggravated sexual assault shall be imprisoned not less than ten years and a maximum term of life, and, in addition, may be fined not more than \$50,000.00.

(c)(1) Except as provided in subdivision (2) of this subsection, a sentence ordered pursuant to subsection (b) of this section shall include at least a ten-year term of imprisonment. The ten-year term of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year or ten-year term of imprisonment.

(2) The court may depart downwardly from the ten-year term of imprisonment required by subsection (b) of this section and impose a lesser term of incarceration if the court makes written findings on the record that the downward departure will serve the interests of justice and public safety, provided that in no event may the court impose a term of incarceration of less than five years.

(d) A person convicted of violating this section shall be sentenced under section 3271 of this title. (Added 1977, No. 51, § 1; amended 1989, No. 293 (Adj. Sess.), § 6; 2005, No. 79, § 10; 2005, No. 192 (Adj. Sess.), § 10, eff. May 26, 2006.)

- **§ 3253a. Aggravated sexual assault of a child**

(a) A person commits the crime of aggravated sexual assault of a child if the actor is at least 18 years of age and commits sexual assault against a child under the age of 16 in violation of section 3252 of this title and at least one of the following circumstances exists:

(1) At the time of the sexual assault, the actor causes serious bodily injury to the victim or to another.

(2) The actor is joined or assisted by one or more persons in physically restraining, assaulting, or sexually assaulting the victim.

(3) The actor commits the sexual act under circumstances which constitute the crime of kidnapping.

(4) The actor has previously been convicted in this state of sexual assault under subsection 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this title, or aggravated sexual assault of a child under this section, or has been convicted in any jurisdiction in the United States or territories of an offense which would constitute sexual assault under subsection 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this title, or aggravated sexual assault of a child under this section if committed in this state.

(5) At the time of the sexual assault, the actor is armed with a deadly weapon and uses or threatens to use the deadly weapon on the victim or on another.

(6) At the time of the sexual assault, the actor threatens to cause imminent serious bodily injury to the victim or to another, and the victim reasonably believes that the actor has the present ability to carry out the threat.

(7) At the time of the sexual assault, the actor applies deadly force to the victim.

(8) The victim is subjected by the actor to repeated nonconsensual sexual acts as part of the same occurrence or the victim is subjected to repeated nonconsensual sexual acts as part of the actor's common scheme and plan.

(b) A person who commits the crime of aggravated sexual assault of a child shall be imprisoned for not less than 25 years with a maximum term of life, and, in addition, may be fined not more than \$50,000.00. The 25-year term of imprisonment required by this subsection shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the 25-year term of imprisonment. (Added 2009, No. 1, § 30, eff. March 4, 2009.)

- **§ 3254. Trial procedure; consent**

In a prosecution for a crime defined in this chapter or section 2601 of this title:

(1) lack of consent may be shown without proof of resistance;

(2) a person shall be deemed to have acted without the consent of the other person where the actor:

(A) knows that the other person is mentally incapable of understanding the nature of the sexual act or lewd and lascivious conduct; or

(B) knows that the other person is not physically capable of resisting, or declining consent to, the sexual act or lewd and lascivious conduct; or

(C) knows that the other person is unaware that a sexual act or lewd and lascivious conduct is being committed; or

(D) knows that the other person is mentally incapable of resisting, or declining consent to, the sexual act or lewd and lascivious conduct, due to a mental condition or a psychiatric or developmental disability as defined in 14 V.S.A. § 3061. (Added 1977, No. 51, § 1; amended 1993, No. 100, § 13; 2013, No. 96 (Adj. Sess.), § 57.)

- **§ 3255. Evidence**

(a) In a prosecution for a crime defined in this chapter and in sections 2601 and 2602 of this title, for human trafficking or aggravated human trafficking under chapter 60 of this title, or for abuse of a vulnerable adult under chapter 28 of this title or 33 V.S.A. chapter 69:

(1) Neither opinion evidence of, nor evidence of the reputation of the complaining witness' sexual conduct shall be admitted.

(2) Evidence shall be required as it is for all other criminal offenses and additional corroborative evidence heretofore set forth by case law regarding sexual assault shall no longer be required.

(3) Evidence of prior sexual conduct of the complaining witness shall not be admitted; provided, however, where it bears on the credibility of the complaining witness or it is material to a fact at issue and its probative value outweighs its private character, the Court may admit:

(A) evidence of the complaining witness' past sexual conduct with the defendant;

(B) evidence of specific instances of the complaining witness' sexual conduct showing the source of origin of semen, pregnancy or disease;

(C) evidence of specific instances of the complaining witness' past false allegations of violations of this chapter.

(b) In a prosecution for a crime defined in this chapter and in a prosecution pursuant to sections 2601 and 2602 of this title, for human trafficking or aggravated human trafficking under chapter 60 of this title, or for abuse or exploitation of a vulnerable adult under 33 V.S.A. § 6913(b), if a defendant proposes to offer evidence described in subdivision (a)(3) of this section, the defendant shall prior to the introduction of such evidence file written notice of intent to introduce that evidence, and the Court shall order an in camera hearing to determine its admissibility. All objections to materiality, credibility and probative value shall be stated on the record by the prosecutor at the in camera hearing, and the Court shall rule on the objections forthwith, and prior to the taking of any other evidence.

(c) In a prosecution for a crime defined in this chapter and in sections 2601 and 2602 of this title or for human trafficking or aggravated human trafficking under chapter 60 of this title, if the defendant takes the deposition of the complaining witness, questions concerning the evidence described in subdivisions (a)(1) and (3) of this section shall not be permitted. (Added 1977, No. 51, § 1; amended 1993, No. 100, § 14; 1995, No. 170 (Adj. Sess.), § 23, eff. Sept. 1, 1996; 2011, No. 55, § 8.)

• **§ 3256. Testing for infectious diseases**

(a) The victim of an offense involving a sexual act may obtain an order from the Criminal or Family Division of the Superior Court in which the offender was convicted of the offense, or was adjudicated delinquent, requiring that the offender be tested for the presence of the etiologic agent for acquired immune deficiency syndrome (AIDS) and other sexually-transmitted diseases, including gonorrhea, herpes, chlamydia, and syphilis. If requested by the victim, the State's Attorney shall petition the Court on behalf of the victim for an order under this section. For the purposes of this section, "offender" includes a juvenile adjudicated a delinquent.

(b) For purposes of this section, "sexual act" means a criminal offense:

(1) where the underlying conduct of the offender constitutes a sexual act as defined in section 3251 of this title; and

(2) which creates a risk of transmission of the etiologic agent for AIDS to the victim as determined by the federal Centers for Disease Control and Prevention.

(c) If the Court determines that the offender was convicted or adjudicated of a crime involving a sexual act with the victim, the Court shall order the test to be administered by the Department of Health in accordance with applicable law. If appropriate under the circumstances, the Court may include in its order a requirement for follow-up testing of the offender. An order for follow-up testing shall be terminated if the offender's conviction is overturned. A sample taken pursuant to this section shall be used solely for purposes of this section. All costs of testing the offender shall, if not otherwise funded, be paid by the Department of Public Safety.

(d) The results of the offender's test shall be disclosed only to the offender and the victim.

(e) If an offender who is subject to an order pursuant to subsection (c) of this section refuses to comply with the order, the victim, or State's Attorney on behalf of the victim, may seek a civil contempt order pursuant to 12 V.S.A. chapter 5.

(f) After arraignment, a defendant who is charged with an offense involving a sexual act may offer to be tested for the presence of the etiologic agent for acquired immune deficiency syndrome (AIDS) and other sexually transmitted diseases, including gonorrhea, herpes, chlamydia, and syphilis. Such testing shall follow the same procedures set forth for testing an offender who is subject to an order pursuant to subsection (c) of this section. The defendant's offer to be tested after arraignment shall not be used as evidence at the defendant's trial. If the defendant is subsequently convicted of an offense involving a sexual act, the Court may consider the offender's offer for testing as a mitigating factor.

(g) Upon request of the victim at any time after the commission of a crime involving a sexual act under subsection (b) of this section, the State shall provide any of the following services to the victim:

(1) counseling regarding human immunodeficiency virus (HIV);

(2) testing, which shall remain confidential unless otherwise provided by law, for HIV and other sexually transmitted diseases, including gonorrhea, herpes, chlamydia, and syphilis;

(3) counseling by a medically trained professional on the accuracy of the testing, and the risk of transmitting HIV and other sexually transmitted diseases to the victim as a result of the crime involving a sexual act; and

(4) prophylaxis treatment, crisis counseling, and support services.

(h) A victim who so requests shall receive monthly follow-up HIV testing for six months after the initial test.

- (i) The State shall provide funding for HIV or AIDS, or both, and sexual assault cross-training between sexual assault programs and HIV and AIDS service organizations.
- (j) The record of the court proceedings and test results pursuant to this section shall be sealed.
- (k) The Court Administrator's Office shall develop and distribute forms to implement this section in connection with a criminal conviction or adjudication of delinquency.
- (l) The Center for Crime Victims Services shall be the primary coordinating agent for the services to be provided in subsections (g), (h), and (i) of this section. (Added 2001, No. 49, § 12, eff. June 12, 2001; amended 2009, No. 154 (Adj. Sess.), § 100.)

- **§ 3257. Sexual exploitation of an inmate**

- (a) No correctional employee, contractor, or other person providing services to offenders on behalf of the department of corrections or pursuant to a court order or in accordance with a condition of parole, probation, supervised community sentence, or furlough shall engage in a sexual act with a person who the employee, contractor, or other person providing services knows:
  - (1) is confined to a correctional facility; or
  - (2) is being supervised by the department of corrections while on parole, probation, supervised community sentence, or furlough, where the employee, contractor, or other service provider is currently engaged in a direct supervisory relationship with the person being supervised. For purposes of this subdivision, a person is engaged in a direct supervisory relationship with a supervisee if the supervisee is assigned to the caseload of that person.
- (b) A person who violates subsection (a) of this section shall be imprisoned for not more than five years or fined not more than \$10,000.00, or both. (Added 2005, No. 177 (Adj. Sess.), § 1.)

- **§ 3258. Sexual exploitation of a minor**

- (a) No person shall engage in a sexual act with a minor if:
  - (1) the actor is at least 48 months older than the minor; and
  - (2) the actor is in a position of power, authority, or supervision over the minor by virtue of the actor's undertaking the responsibility, professionally or voluntarily, to provide for the health or welfare of minors, or guidance, leadership, instruction, or organized recreational activities for minors.
- (b) A person who violates subsection (a) of this section shall be imprisoned for not more than one year or fined not more than \$2,000.00, or both.
- (c) A person who violates subsection (a) of this section and who abuses his or her position of power, authority, or supervision over the minor in order to engage in a sexual act shall be imprisoned for not more than five years or fined not more than \$10,000.00, or both. (Added 2009, No. 1, § 13, eff. March 4, 2009.)

### **Missing Persons**

The Albany College of Pharmacy and Health Sciences has a comprehensive policy in place for the investigation of missing persons. Although primarily intended as a safety net for resident students, it may also be used to investigate the disappearance of any student, staff member or faculty member who disappears from campus. It can also be used to assist local law enforcement agencies who are investigating the disappearance of a community member from some off-campus location.

Key elements of the plan include:

- Resident students may identify a confidential emergency contact person who would be notified in the event of a disappearance.
- The confidential emergency contact person and the Colchester Police Department must be notified no longer than twenty-four hours after a person is thought to be missing.

- Circumstances such as the possibility of foul play or mental health concerns require the immediate notification of the emergency contact person and the Albany Police Department.

In addition to Public Safety, those who suspect a member of the community to be missing may report that information to:

Associate Dean Jennifer Mathews  
802-735-7612  
Jennifer.mathews@acphs.edu

Director of Student Affairs Jennifer Payne  
802-735-2628  
Jennifer.Payne@acphs.edu

### **Campus Crime Statistics**

The Clery Act requires that the institution collect and distribute statistical data concerning certain specified crimes on campus. It also requires that those crimes be further reported according to where the incidents occur. There are four categories for location of criminal activity, defined as follows:

- “campus” means any building or property controlled by an institution of higher education within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls and, property within the same reasonably contiguous geographic area of the institution that is owned by the institution but controlled by another person, is used by students, and supports institutional purposes (such as a food or other retail vendor).
- “non-campus building or property” means any building or property controlled by a student organization recognized by the institution, and any building or property (other than a branch campus) owned or controlled by an institution of higher education that is used in direct support of, or in relation to, the institution's educational purposes, is used by students, and is not within the same reasonably contiguous geographic area of the institution.
- “public property” means all public property, all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution if the facility is used by the institution in direct support of, or in a manner related to the institution's educational purposes.
- “residence hall” means residential facilities for students on campus.

The Act also requires that crimes that single out an individual because of actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability are to be reported according to the category of prejudice and that the number of arrests or referrals to the campus judicial process for violation of alcohol, drug and weapons polices be reported.

### **Fire Statistics**

The Clery Act requires all colleges to report on fires occurring in on-campus or off campus residence halls owned or controlled by the institution.

Presently, there are no residence halls located on or off campus at ACPHS-VT

Crime statistics for the years 2015, 2016 and 2017 are denoted on pages 39-41 of this report:

Albany College of Pharmacy and Health Sciences  
Vermont Campus  
Crime statistics, 2015 -2017

| Offense                           | Year | On Campus Property | Non Campus Property | Public Property | Total |  | Residential Facilities | Unfounded |
|-----------------------------------|------|--------------------|---------------------|-----------------|-------|--|------------------------|-----------|
| Murder/Non-Negligent Manslaughter | 2015 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2016 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2017 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
| Negligent Manslaughter            | 2015 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2016 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2017 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
| Rape                              | 2015 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2016 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2017 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
| Fondling                          | 2015 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2016 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2017 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
| Incest                            | 2015 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2016 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2017 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
| Statutory Rape                    | 2015 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2016 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2017 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
| Robbery                           | 2015 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2016 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2017 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
| Aggravated Assault                | 2015 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2016 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2017 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
| Burglary                          | 2015 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2016 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2017 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
| Motor Vehicle Theft               | 2015 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2016 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2017 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
| Arson                             | 2015 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2016 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |
|                                   | 2017 | 0                  | 0                   | 0               | 0     |  | 0                      | 0         |

Albany College of Pharmacy and Health Sciences  
 Vermont Campus  
 Interpersonal Violence, 2015 – 2017

| Offense           | Year | On Campus | Non Campus | Public Property | Total | Residential Facility |
|-------------------|------|-----------|------------|-----------------|-------|----------------------|
| Domestic Violence | 2015 | 0         | 0          | 0               | 0     | 0                    |
|                   | 2016 | 0         | 0          | 0               | 0     | 0                    |
|                   | 2017 | 0         | 0          | 0               | 0     | 0                    |
| Dating Violence   | 2015 | 0         | 0          | 0               | 0     | 0                    |
|                   | 2016 | 0         | 0          | 0               | 0     | 0                    |
|                   | 2017 | 0         | 0          | 0               | 0     | 0                    |
| Stalking          | 2015 | 0         | 0          | 0               | 0     | 0                    |
|                   | 2016 | 0         | 0          | 0               | 0     | 0                    |
|                   | 2017 | 0         | 0          | 0               | 0     | 0                    |

Albany College of Pharmacy and Health Sciences  
 Vermont Campus  
 Arrests and Referrals, 2015 – 2017

| Offense   | Year | On Campus | Non Campus | Public Property | Total | Residential Facility * |
|---|------|-----------|------------|-----------------|-------|------------------------|
| Liquor Law Arrests  | 2015 | 0         | 0          | 0               | 0     | 0                      |
|   | 2016 | 0         | 0          | 0               | 0     | 0                      |
|   | 2017 | 0         | 0          | 0               | 0     | 0                      |
| Liquor Law Violations referred for disciplinary action      | 2015 | 0         | 0          | 0               | 0     | 0                      |
|   | 2016 | 0         | 0          | 0               | 0     | 0                      |
|   | 2017 | 0         | 0          | 0               | 0     | 0                      |
| Drug Law Arrests  | 2015 | 0         | 0          | 0               | 0     | 0                      |
|   | 2016 | 0         | 0          | 0               | 0     | 0                      |
|   | 2017 | 0         | 0          | 0               | 0     | 0                      |
| Drug Law Violations referred for disciplinary action        | 2015 | 0         | 0          | 0               | 0     | 0                      |
|   | 2016 | 0         | 0          | 0               | 0     | 0                      |
|   | 2017 | 0         | 0          | 0               | 0     | 0                      |
| Illegal Weapons Possession Arrests                          | 2015 | 0         | 0          | 0               | 0     | 0                      |
|   | 2016 | 0         | 0          | 0               | 0     | 0                      |
|   | 2017 | 0         | 0          | 0               | 0     | 0                      |
| Illegal Weapons Possession referred for disciplinary action | 2015 | 0         | 0          | 0               | 0     | 0                      |
|   | 2016 | 0         | 0          | 0               | 0     | 0                      |
|   | 2017 | 0         | 0          | 0               | 0     | 0                      |

\*Crimes reported in the Residence Halls are also included in the On Campus category



### **Hate Crime**

Certain crimes that single out an individual because of actual or perceived race, gender, gender identity, religion, sexual orientation, ethnicity, nationality, or disability are to be reported according to the category of prejudice. Those crimes include all of the crimes enumerated above in the “Crime Statistics” section of this report, as well as the crimes of larceny-theft, simple assault, intimidation, destruction/damage/vandalism to property and any other crime involving bodily injury.

The Vermont Campus of the Albany College of Pharmacy and Health Sciences had no reported hate crime in 2015, 2016, or 2017.

### **Preparation of This Report**

This report is presented on an annual basis and is available by October 1. It is prepared by the Director of Public Safety utilizing incident reports generated during the year, as well as information provided by Campus Security Authorities and the Colchester Police Department. It is available in hard copy as well as on the Web at Annual Security and Fire Safety Report. The statistical portion of the report is also available at the U.S. Department of Education's Campus Crime Survey on their website.