

*This policy and procedures statement is intended to supplement Section 102.08 of the Campus Regulations Applying to Students and Campus Organizations published in November 2001.*

*The following information applies only when the accused perpetrator of sexual assault is a UCSB student and the assault occurred on University property. Sexual assaults occurring off University property may also be considered for investigation. Anyone, regardless of University affiliation, who is victimized by a UCSB student, may seek redress through the campus judicial process. The Rape Prevention Education Program (RPEP) will advise non-University affiliated survivors; however, other campus resources may be available only to students, staff or faculty. If the assault occurred on campus but the accused perpetrator is not a student, please seek advice from the Rape Prevention Education Coordinator, or the police.*

## I. GENERAL POLICY

The Campus Regulations Applying to Students and Campus Organizations prohibit sexual assault and other behavior as described in Section 102.08. The campus regulations, as well as the laws on sexual abuse and physical assault, apply whether the alleged perpetrator is a stranger, acquaintance, family member or friend.

### A. Section 102.08 of the Campus Regulations (p. 24) prohibits:

“Physical abuse, threats of violence, or conduct that threatens the health or safety of any persons. Such abuse, threats, or conduct may include sexual assault perpetrated either by a stranger or an acquaintance. (See Policies/Procedure on Sexual Assault)”

### B. Definitions:

UCSB relies upon the California Penal Code definition for sexual offenses. The absence of informed consent is the critical component distinguishing a crime from a sexual encounter.

1. Consent. The penal code defines consent as positive cooperation in act or attitude pursuant to an exercise of free will. The person consenting must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. The fact that an individual was intoxicated may be considered in determining whether that person was able to consent to the act in question. Consent may not be inferred from silence or passivity alone. Excessive use of alcohol often precedes many assaults. It is important to note that in the UCSB disciplinary process, use of alcohol does not diminish personal responsibility or act as a mitigating factor in disciplinary sanctions should a violation be found to have occurred. A current or previous dating relationship does not constitute consent.
2. Rape. Rape is non-consensual sexual intercourse (penile-vaginal penetration) that involves the use of coercion, duress, force, violence, or threats of force or violence, or threats of future retaliation. Sexual intercourse is considered non-consensual, and therefore rape, when the person is incapable of giving consent because she or he is incapacitated from alcohol or drugs, or if a mental disorder or developmental or physical disability renders her or him incapable of giving consent.
3. Sexual assault. Sexual assault is a general term that covers a number of related crimes, including rape. Other acts of sexual assault include non-consensual oral copulation, anal intercourse, penetration of the anus or vagina with a foreign object, and touching an intimate part of another person. These acts may be perpetrated by either gender against either gender. The attempt to commit any act of sexual assault is also a crime.

*Whether or not you decide to report to law enforcement, you should talk to someone who is knowledgeable and trained about sexual assault so that you can start the process of recovering.*

## II. PROCEDURES

### A. If you are sexually assaulted:

1. Get to a safe place.
2. Call a friend or someone else to be with you.
3. If you know you want to report to the police, call 911 and say, “I want to report an assault.” You will need to give your name and other information (see below).
4. If you are not sure what you want to do, call the Santa Barbara Rape Crisis Center’s 24-hour hotline (564-3696). You do not have to give your name. The advocate will talk with you about your options, rights and choices.
5. You may also call or come to the UCSB Women’s Center Monday through Friday from 10 a.m. until 5 p.m. A staff member will help you with your decisions about what to do. You can contact the Women’s Center at 893-3778.
6. If you are not sure about reporting to the police for possible criminal charges but think you might want to later, you must make a police report now in order to obtain an evidence exam. The evidence exam can only be done if you make an official report. You have the right to change your mind later about being involved in a legal case.
7. If you definitely do not want to report to the police, it is still a good idea to have a medical exam to see if you were injured internally and to check for sexually transmitted diseases and pregnancy. You can do this at the Student Health Service during normal hours of operation or have a private physician perform the exam.
8. It is important to note, however, that all health care providers (including Student Health Services) are legally required to report to the police any suspected sexual or physical assaults. This does not mean that you must talk to the police.

### B. Reporting a sexual assault to the police:

1. Call 911 and tell the dispatcher that you have been sexually assaulted and want to make a report. The dispatcher will ask for your name, location, phone number, and suspect information. During this time, the dispatcher may simultaneously relay information to officers who will then come to your location, unless you request otherwise.
2. If you are up to it, write down details about the assault while you are waiting.
3. Do not eat, drink, wash, shower, go to the bathroom, douche, “clean up”, or clean up the scene of the assault. As hard as this is, your body constitutes the evidence in a sexual assault case. If you have already done these things, it is still OK to make a report. Just be sure to let the officer know if you have done any of the above.
4. You have a right to have a Rape Crisis Center advocate and one additional support person of your choice present at any medical evidentiary or physical examination or interview by law enforcement, district attorneys or defense attorneys.
5. The police will call the Rape Crisis Center advocate who will be present to give you information and emotional support and explain any procedures you don’t understand.
6. If you were under the influence of alcohol or drugs, this may be relevant to the case and you may want to disclose this information to the police.
7. The officer will give you her or his business card with your case number on it. Save this so that you can have easy access to your case when you call for follow-up information.
8. In order to provide protection for the privacy of survivors of sexual assault, California law allows complainants to request that the police not release personal information—name, address, phone numbers and date of birth. This will ensure a degree of confidentiality but does not guarantee complete anonymity.
9. A few days after reporting the incident you should ask to go over your statement with the investigator. If there are details in the statement that need to be clarified, or you have remembered other facts, the investigator can clarify or make additions. It’s important that the report accurately reflect the survivor’s view of the assault.

10. Many victims do not report offenses immediately. The police will accept a report at any time and encourage late reporting over no reporting at all. Sometimes assailants are apprehended based on information from late reports. You may also choose to make an anonymous report to the police and/or campus security authorities.
11. In cases of sexual assaults on campus where a threat to the community may exist, the Campus Chief of Police shall determine the potential danger and provide news releases to the community and to the media.

*The District Attorney chooses to pursue cases depending upon the degree of evidence and availability and cooperation of witnesses. If the complaint is rejected for criminal prosecution or action through the judicial system, it is not necessarily, or even usually, based on the accuracy of the charges, but rather on the strength of the evidence available. In other words, if a case does not proceed to prosecution in court, it does not mean there is no victim or there was no sexual assault.*

*Reporting is the decision of the survivor. Understanding that reporting is an intensely personal process, and is considered empowering and therapeutic for some yet emotionally draining and unsatisfactory for others, the University respects the right of the survivor to decide whether or not to report.*

### C. Other options. Survivors of sexual assault may:

1. File a criminal report with the police even if you don’t want prosecution. (Ultimately the decision to prosecute is made by the District Attorney although the cooperation of the survivor is considered necessary.)
2. Ask the campus Judicial Affairs Office to investigate an incident through the campus judicial process if the alleged perpetrator is a UCSB student.
3. Report to both the police and campus conduct system.
4. File a civil suit against the accused.
5. Seek to obtain a restraining order through the court system for a small, nominal fee.
6. Request academic assistance for missed classes or exams, or help with rearranging your coursework.
7. Ask to be moved if both you and the accused live in residential housing, or request that the accused be moved pending a campus conduct committee hearing.

### D. The Rape Prevention Education Program (RPEP)

The campus has an office designated to assist students who have been assaulted, either recently or in the past, or who have questions about sexual assault, dating and relationship violence, domestic violence, stalking, and child sexual abuse. The RPEP, located in the Women’s Center, will provide confidential assistance to anyone who desires help with all of the procedures and information outlined in this section.

The RPEP Coordinator and staff will:

1. Advise you on sources of help that you may need, including legal, medical, emotional & academic.
2. Talk with you, your friends or family, if you wish.
3. Maintain your confidentiality.
4. Help you make your own decisions about what—if anything—you want to do next.
5. Schedule appointments, coordinate services, and arrange for counseling.
6. Respect your wishes.

### E. University response to on-campus assaults. Sexual misconduct cases may be reported for possible University action. The following procedures will apply:

1. Jurisdiction. Any person who was sexually assaulted by a UCSB student on University property or at an official University function may ask the University to investigate and bring charges against the accused. Sexual assaults occurring off University property may also be considered for investigation. In considering whether to exercise off-campus jurisdiction in an individual case, the following may be considered: the seriousness of the alleged misconduct, whether the alleged victim is a member of the campus community, whether a crime has been reported to the criminal authorities, the risk of future harm involved, whether the off-campus conduct is part of a series of actions that occurred both on and off campus, and the ability of the University to gather evidence, including the testimony of witnesses. Any request to extend jurisdiction will be reviewed by the Office of Judicial Affairs, the Dean of Students, and the Vice Chancellor Student Affairs, in consultation with a committee composed of faculty and students.
2. An Investigation by the Judicial Affairs Office. A preliminary investigation by the Associate Dean of Students will determine whether “interim suspension” should be invoked (see Section 105.08, Campus Regulations). This process immediately removes from campus any person deemed an imminent threat or danger to any member of the campus community. “Imminent threat” is a high standard to meet, and a victim should not be discouraged if the accused is not removed in this fashion upon the Associate Dean’s receipt of the complaint. The Associate Dean will also determine if the case should go to a conduct hearing based on his or her preliminary investigation. If the Associate Dean determines that a prima facie (at first impression true and valid) case of sexual assault exists, he or she may forward the case to the conduct committee. The role of the Dean’s office is both to determine whether there is a case against, and protect the rights of, the accused. Given this dual role, the Associate Dean cannot presume guilt through the investigation process. That process must be as neutral as possible and concerned with establishing the facts of the case. For the University to take action against the student, the victim must be the reporting party and be willing to testify at a closed conduct committee hearing. In certain limited cases, the University may act swiftly without victim approval by invoking interim suspension, relocation, and/or contract cancellation if the continued presence on campus, or in campus housing, is determined to pose an imminent threat to the safety of any member of the UCSB community.
3. The hearing. If a hearing is held, in most cases the complainant will be required to testify. The complainant and the respondent (accused) will each, separately, work with the Judicial Affairs Office throughout the adjudication of a complaint. The RPEP can provide an advocate for the complainant when requested; it is our recommendation that all complainants seek this assistance. During the time that the Judicial Affairs Office investigation and hearing are underway, the complainant will be apprised of the status of the case by the Judicial Affairs Office and/or RPEP advocate. S/he will be asked to describe what happened first by the Associate Dean of Students and then later by the Student Faculty Conduct Committee, should there be a hearing. The Committee will hear all testimony and then render a decision about the case. If the accused student is found guilty, the conduct committee will recommend disciplinary action against the accused.
4. Informal resolution. In cases where it is determined that a hearing should not be held (e.g., lack of enough evidence to establish a prima facie case) there may still be an informal response by the University. Such a response may include discussions with the accused student. The discussions may be with the Dean of Students, the Associate Dean, and the Vice Chancellor Student Affairs.
5. Complainant’s rights and responsibilities connected to a conduct hearing:
  - a. To anticipate a timely hearing after filing charges. (Cases reported just prior to the end of a quarter may be delayed by the quarter break period.)
  - b. To be accompanied to the hearing by a person or persons of her or his choice.
  - c. To be present while evidence is being presented and remain until deliberations begin, unless the accused argues confidentiality and the Committee (or Hearing Officer) decides to ask the complainant to leave while other testimony is given. This request (asking the complainant to leave) would be made only in circumstances where it is requested by the accused student to legitimately protect the accused students rights under the Federal Education Rights and Privacy Act (FERPA)

**Victims, witnesses, and participants in the investigation and hearing are protected from harassment and/or stalking by the accused, or others, by all applicable laws and by Campus and University-wide Regulations.**

- g. To make a “victim impact statement” (how you have been personally affected by the alleged violation) and to suggest an appropriate penalty at the hearing.
  - h. To be informed as soon as possible of the outcome of the hearing.
6. Rights of the Accused. The accused has the right to procedural due process as outlined in the Campus Regulations. Among these rights is the right to written notice of the charges, to be accompanied at the hearing by an advisor, to be present while evidence is being presented, to produce witnesses and evidence pertaining to the case, to confront and question all witnesses, and not to be required to give self-incriminating evidence. Normally, the Student Faculty Conduct Committee will want all witnesses present throughout the presentation of evidence and questioning period. The accused however, may on the grounds of confidentiality pursuant to FERPA object to the presence of other witnesses—including the accuser—during testimony or questioning of other witnesses. The Committee will make the final determination as to the legitimacy of this request.

For a full description of accused rights and responsibilities, as well as an overview of the disciplinary system, please see Chapter VII of the UCSB Campus Regulations Applying to Campus Activities, Organizations, and Students. All hearings are closed and information pertaining to a conduct case is controlled by federal and state privacy laws.

7. Possible Sanctions. Students found guilty of a sexual assault may be suspended or dismissed from the University as well as restricted from areas of campus and/or from activities. Sanctions apply only to UCSB. No other UC campus will be informed of the incident except on a “need-to-know” basis (“duty to warn”, “clear and present danger”, etc). However, all suspensions and dismissals will be noted on the student’s transcript. Discipline records are normally purged after five years from the sanctioning date; however, the Associate Dean of Students may decide to keep a file active for a longer period of time and such a determination may be applied to sexual assault cases. The University cannot compel counseling but can highly recommend it and in certain cases make it mandatory for re-admission of a suspended/dismissed student. By law, under no circumstances can the University mandate HIV anti-body testing.
8. Statute of Limitations. To be adjudicated, assaults must be reported to the University within twelve months of the violation. As with most offenses, the sooner a report is filed, the more likely the incident will be successfully adjudicated. If the accused recently left the University or graduated, the University may be able to proceed with a formal hearing if the incident occurred while the accused was a student and confirmation of graduation has not yet been processed.

#### **F. Adjudicating Sexual Assaults by Location on Campus:**

Any violation of Campus Regulations that would usually warrant suspension or dismissal from the University will be heard by the Student Faculty Conduct Committee. This applies to violations occurring in residence halls, single-student apartments, family housing, elsewhere on campus and any off-campus location where jurisdiction exists.

1. Residence Halls.

Usually the first contact in reporting a sexual assault is a Resident Assistant. Resident Assistants are encouraged to provide as much assistance and information to the survivor as possible within their ability and training. This would primarily include making the victim aware of community and campus resources, such as the Rape Crisis Center, the Counseling Center, and the Rape Prevention Education Program.

2. Apartment Living and Family Student Housing.

Santa Ynez Apartments, Family Student Housing, Westgate Apartments and El Dorado are University-owned apartments and subject to the same jurisdiction, regarding sexual assault, as the residence halls. Each component has a staff member designated as a response person or team to help with sexual assault issues. The response person may be contacted through Resident Coordinators or Apartment Living Coordinators at

each complex. The response person will, with the survivor’s permission, contact the RPEP for case coordination, referral to all other services, and counseling, if desired.

3. University-affiliated student housing

The University has the right to extend jurisdiction over sexual assaults that occur off University property, including University-affiliated student housing. Victims of assaults in University-affiliated student housing should follow the general procedures listed above, and contact the Judicial Affairs Office if they would like the incident to be investigated by the University.

4. Other locations on campus

(See General Policy above)

#### **G. Sexual Assault committed by student members of Greek letter organizations, other registered organizations, athletic teams, or clubs:**

Allegations involving members of registered student organizations may be reported to the Judicial Affairs Office for an investigation by the University.

#### **H. When a victim reports to UCSB and to the police:**

It is possible that the District Attorney may decide not to prosecute a case that Judicial Affairs Office has determined has merit and should be heard by the Conduct Committee. The reason for this is the lower standard of evidence required in the University student judicial system. In the criminal justice system the standard is “beyond reasonable doubt,” whereas in the campus judicial system the standard is “preponderance of evidence.” It is also possible that both the criminal justice system and the campus system may decide to hear the case.

The District Attorney and the Judicial Affairs Office may both refuse a case based on the lack of evidence. This does not mean a sexual assault did not occur, but only that it would be difficult, if not impossible, to prove even with the University’s lower standard of evidence.

#### **I. When a UCSB student is convicted of a sexual offense or is accused of committing a sexual assault off campus and there is a concern about the perpetrator’s continuing presence on campus:**

The University may exercise jurisdiction if the perpetrator of an off-campus assault is a student. If the victim does not wish to initiate the campus judicial process, but there is concern about the continuing presence of the perpetrator on campus, the University may be able to take action. The Dean of Students and Judicial Affairs Office, in consultation with the victims, the police, the District Attorney, the Housing Officials (if applicable), the RPEP, and any other persons who may have information, will assist in making a judgment as to the action that should be taken against a student solely for the purpose of protecting members of the UCSB community from possible imminent threats of harm. The primary consideration is the safety of the campus community. In other words, if there is reason to believe that the presence on campus of the accused will lead to further harm to the victim or harm to others (see Sec. 105.05 of the Campus Regulations), then the University will do whatever possible to protect the community.

#### **J. When the perpetrator is a non-student but a member of the campus community (e.g., faculty, staff, administrator):**

Faculty and lecturers fall under the jurisdiction of the Office of Academic Personnel in the Executive Vice Chancellor’s Office. Teaching Assistants and graduate students are under the jurisdiction of the Judicial Affairs Office. Staff are under the jurisdiction of the Personnel Office. Administrators who are not staff should be reported directly to the Chancellor.

#### **K When a non-student, non-affiliate assaults a student on or off campus—can the University do anything? What can you do?**

1. The University’s role may be limited to a police response and providing counseling and support services to the victim.

2. Things a victim can do—restraining orders and all other avenues available through the criminal or civil justice system. Please consult with the RPEP to know your options.

# UCSB

# SEXUAL

# ASSAULT

# POLICY AND

# PROCEDURES

## APPENDIX

### Resources for help for survivors

•UCSB Office of Judicial Affairs	893-4467
•UCSB Rape Prevention Education Program	893-3778
•UCSB Counseling Services	893-4411
•UCSB Educational Opportunity Program	893-3235
•Santa Barbara Rape Crisis Center	564-3696
•Domestic Violence Solutions for Santa Barbara County	964-5245
•Child Abuse Listening and Mediation	965-2376
•Private or religious therapists, law enforcement	

### Resources for those accused of sexual assault

•UCSB Office of Judicial Affairs	893-4467
•UCSB Rape Prevention Education Program	893-3778
•UCSB Counseling Services	893-4411
•Child Abuse Listening and Mediation	965-2376
•Anger Management	682-7229
•Private or religious therapists	

\*for education, information, and referrals; not for advocacy. If both victim and accused seek assistance at the RPEP, each will be seen by a different staff member, and appointments will never be at the same time.

For information on crime statistics at UCSB and in the surrounding community, see the following web site: <http://www.sa.ucsb.edu/policies/CrimeStatistics.htm>.

If you need this information in another format, call 893-4569 and request a copy of the campus safety brochure.