

# SAN JOSÉ STATE UNIVERSITY



## 2024 ANNUAL SECURITY REPORT

JEANNE CLERY DISCLOSURE OF CAMPUS SECURITY POLICIES & CAMPUS  
CRIME STATISTICS ACT (20 U.S.C. § 1092(F))  
Clery Crime Statistics 2021-2023

Main Campus  
Moss Landing Marine Laboratories  
Reid-Hillview Airport  
South Campus  
Timpany Center

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Report Version Published and Distributed: October 2024

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# SAN JOSÉ STATE UNIVERSITY ANNUAL SECURITY REPORT

## Message from the Vice President

SJSU Community,

San José State University is dedicated to ensuring a safe and healthy environment for our nearly 40,000 students, staff, faculty, and visitors. A vital part of this commitment is keeping our community informed and engaged about issues that affect our campus.

I am pleased to share this year's Annual Security Report, prepared in accordance with the Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act (Clery Act). This report aims to enhance safety and awareness by outlining our crime reporting policies, safety and security protocols, crime prevention programs, victim assistance services, fire safety information, and more. It also includes statistics on Clery crimes reported on or near our campuses over the past three calendar years.

While this report does not cover every aspect of campus safety, it provides an important overview that I hope you find valuable. We will update the report as needed to reflect ongoing safety policies and initiatives throughout the year.

Kind regards,

Charlie Faas  
Vice President of Administration and Finance

## San José State University Preparing the Annual Security Report

This Annual Security Report (ASR) is prepared by the Director of Clery Compliance and Strategic Campus Safety Initiatives. The process used for preparing this report is comprehensive and involves ongoing collaboration with various internal entities including Student Conduct and Ethical Development, Student Involvement, Title IX, University Housing Services, University Personnel, University Police Department (UPD) and more. These entities provide reports of Clery crimes they've received as well as information regarding various aspects of their department policies, operations and education program efforts pertaining to university safety and security. Clery crime information is gathered from individuals at SJSU locations designated as "Campus Security Authorities" (CSAs), who are required to promptly report allegations of Clery crimes that occur within a Campus' Clery Geography that are reported to them. There are external law enforcement agencies that provide primary law enforcement jurisdiction and response services to some of SJSU's Clery-reportable campus, non-campus and public property areas. Those agencies include the San José Police Department, Santa Clara County Sheriff's Office and Monterey County Sheriff's Office. Consistent with the CSU systemwide policy on compliance with the Clery Act, the UPD conducts documented outreach to those agencies requesting Clery information and forwards the responses received, if any, to the university Clery compliance official.

All policy and procedure references in this report apply to the following San José State University campus locations:

- Main Campus (San José, CA)
- Moss Landing Marine Laboratories (Moss Landing, CA)
- Reid-Hillview Airport (San José, CA)
- South Campus (San José, CA)
- Timpany Center (San José, CA)

Crime statistics are classified and counted pursuant to the Clery Act statute and applicable guidelines. The locations where those crimes were reported to have occurred fall into one of the following geography classifications:

- **On Campus:** Consists of any building or property owned or controlled by SJSU within the same reasonably contiguous geographic area and used by the university in direct support of, or in a manner related to our educational purposes. This includes academic, administrative and residence hall buildings. Locations controlled by another entity but still owned by SJSU are also included in this category. They are frequently used by students and support SJSU's institutional purposes.
- **Campus Residence Halls:** Residence halls are a subset of on campus geography. This means that Clery statistics for our residence halls are represented in both the "On Campus" and "Campus Residential" geography categories of this report.
- **Noncampus:** The first type of noncampus location is any building or property that is owned or controlled by a student organization that is officially recognized by SJSU. The second type of noncampus location is any building or property that is owned or controlled by SJSU, used in direct support of (or in relation to) our educational purposes, is frequently used by students, is not within the same reasonably contiguous geographic area of the campus and does not meet the standard to be considered a separate campus for Clery purposes.
- **Public Property:** Consists of two limited areas. The first is public property within the campus boundary. The second is public property that's immediately adjacent to, and accessible from the campus boundary.

## Clery Crime Statistics 2021 to 2023

### Main Campus

#### Murder/NonNegligent Manslaughter

Year	Campus Residential	Campus Total	Noncampus	Public Property
2021	0	0	0	0
2022	0	0	0	1
2023	0	0	0	0

#### Negligent Manslaughter

Year	Campus Residential	Campus Total	Noncampus	Public Property
2021	0	0	0	0
2022	0	0	0	0
2023	0	0	0	0

#### Rape

Year	Campus Residential	Campus Total	Noncampus	Public Property
2021	3	4	2	1
2022	22*	24	4	0
2023	9†	16	0	0

#### Fondling

Year	Campus Residential	Campus Total	Noncampus	Public Property
2021	6	10	1	0
2022	1	9	1	1
2023	2	8	0	0

#### Incest

Year	Campus Residential	Campus Total	Noncampus	Public Property
2021	0	0	0	0

\* The number of reported instances of rape increased over the previous year due to a report alleging multiple acts committed over a period of time. Statistics in the "Campus Residential" column are a subset of the "Campus Total" column. This means the numbers for on-campus housing are reflected in both columns. They do not add together for a total.

† Since the initial release of this report, this statistic has been updated in accordance with federal law as the university learned of information necessary to classify or reclassify acts in this crime category.



Year	Campus Residential	Campus Total	Noncampus	Public Property
2022	0	0	0	0
2023	0	0	0	0

Statutory Rape

Year	Campus Residential	Campus Total	Noncampus	Public Property
2021	0	0	0	0
2022	0	0	0	0
2023	0	0	1	0

Robbery

Year	Campus Residential	Campus Total	Noncampus	Public Property
2021	0	2	0	1
2022	0	3	0	0
2023	1	4	0	0

Aggravated Assault

Year	Campus Residential	Campus Total	Noncampus	Public Property
2021	1	3	0	0
2022	3	5	5	0
2023	5	14	3	0

Burglary

Year	Campus Residential	Campus Total	Noncampus	Public Property
2021	0	34	2	0
2022	1	24	1	0
2023	0	13	1	0

Motor Vehicle Theft

Year	Campus Residential	Campus Total	Noncampus	Public Property
2021	0	5	0	0
2022	0	9	1	1
2023	0	12	1	0

Arson

Year	Campus Residential	Campus Total	Noncampus	Public Property
2021	0	3	0	0
2022	0	0	0	1
2023	0	9	0	1

Domestic Violence

Year	Campus Residential	Campus Total	Noncampus	Public Property
2021	7	9	0	0
2022	26 <sup>‡</sup>	32	0	1
2023	8	22	0	2

Dating Violence<sup>§</sup>

Year	Campus Residential	Campus Total	Noncampus	Public Property
2021	0	0	0	0
2022	0	0	0	0
2023	0	0	0	0

Stalking

Year	Campus Residential	Campus Total	Noncampus	Public Property
2021	0	0	0	1
2022	2	6	0	0
2023	2	22	0	0

Arrests for Weapons Law Violations

Year	Campus Residential	Campus Total	Noncampus	Public Property
2021	1	8	0	2
2022	0	8**	1	1
2023	1	37	1	3

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<sup>‡</sup> The number of reported instances of domestic violence increased over the previous year due to a report alleging multiple acts committed over a period of time. Statistics in the "Campus Residential" column are a subset of the "Campus Total" column. This means the numbers for on-campus housing are reflected in both columns. They do not add together for a total.

<sup>§</sup> In accordance with state laws and recommendations from the CSU Chancellor's Office, dating violence offenses are disclosed within the domestic violence offense category.

\*\* Statistic has been updated in accordance with federal law as the university learned of information necessary to classify or reclassify acts in this crime category.

Arrests for Drug Law Violations

Year	Campus Residential	Campus Total	Noncampus	Public Property
2021	2	79	5	4
2022	5	87	3	8
2023	8	139	7	11

Arrests for Alcohol Law Violations

Year	Campus Residential	Campus Total	Noncampus	Public Property
2021	0	0	0	0
2022	0	3	0	0
2023	0	5	1	0

Referrals to Disciplinary Action for Weapons Law Violations

Year	Campus Residential	Campus Total	Noncampus	Public Property
2021	0	0	0	0
2022	0	0	0	0
2023	2	2	0	0

Referrals to Disciplinary Action for Drug Law Violations

Year	Campus Residential	Campus Total	Noncampus	Public Property
2021	3	3	0	0
2022	5	5	0	0
2023	41	42	0	0

Referrals to Disciplinary Action for Liquor Law Violations

Year	Campus Residential	Campus Total	Noncampus	Public Property
2021	18	18	0	0
2022	3	3	0	0
2023	10	10	0	0

Moss Landing Marine Laboratories

Murder/NonNegligent Manslaughter

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Negligent Manslaughter

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Rape

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Fondling

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Incest

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Statutory Rape

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Robbery

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Aggravated Assault

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Burglary

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Motor Vehicle Theft

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Arson

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Domestic Violence

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Dating Violence

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Stalking

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Arrests for Weapons Law Violations

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Arrests for Drug Law Violations

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Arrests for Alcohol Law Violations

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Referrals to Disciplinary Action for Weapons Law Violations

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Referrals to Disciplinary Action for Drug Law Violations

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Referrals to Disciplinary Action for Liquor Law Violations

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Reid-Hillview Airport

Murder/NonNegligent Manslaughter

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Negligent Manslaughter

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Rape

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Fondling

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Incest

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Statutory Rape

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Robbery

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Aggravated Assault

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Burglary

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Motor Vehicle Theft

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Arson

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0



Domestic Violence

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Dating Violence

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Stalking

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Arrests for Weapons Law Violations

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Arrests for Drug Law Violations

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Arrests for Alcohol Law Violations

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Referrals to Disciplinary Action for Weapons Law Violations

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Referrals to Disciplinary Action for Drug Law Violations

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Referrals to Disciplinary Action for Liquor Law Violations

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

South Campus

Murder/NonNegligent Manslaughter

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Negligent Manslaughter

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Rape

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Fondling

Year	Campus Total	Noncampus	Public Property
2021	3	0	0
2022	0	0	0
2023	3	0	0

Incest

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Statutory Rape

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Robbery

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Aggravated Assault

Year	Campus Total	Noncampus	Public Property
2021	0	0	1
2022	0	0	1
2023	1	0	0

Burglary

Year	Campus Total	Noncampus	Public Property
2021	15	0	0
2022	6	0	0
2023	7	0	0

Motor Vehicle Theft

Year	Campus Total	Noncampus	Public Property
2021	2	0	0
2022	2	0	0
2023	4	0	0

Arson

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Domestic Violence

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Dating Violence

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Stalking

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	1	0	0
2023	0	0	0

Arrests for Weapons Law Violations

Year	Campus Total	Noncampus	Public Property
2021	3	0	0
2022	0	0	0
2023	3	0	0

Arrests for Drug Law Violations

Year	Campus Total	Noncampus	Public Property
2021	1	0	0
2022	5	0	1
2023	7	0	0

Arrests for Alcohol Law Violations

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	1	0	0
2023	0	0	0

Referrals to Disciplinary Action for Weapons Law Violations

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Referrals to Disciplinary Action for Drug Law Violations

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Referrals to Disciplinary Action for Liquor Law Violations

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Timpany Center

Murder/NonNegligent Manslaughter

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Negligent Manslaughter

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Rape

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Fondling

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Incest

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Statutory Rape

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Robbery

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Aggravated Assault

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Burglary

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	1	0	0
2023	0	0	0

Motor Vehicle Theft

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Arson

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Domestic Violence

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Dating Violence

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Stalking

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Arrests for Weapons Law Violations

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Arrests for Drug Law Violations

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Arrests for Alcohol Law Violations

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Referrals to Disciplinary Action for Weapons Law Violations

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0

Referrals to Disciplinary Action for Drug Law Violations

Year	Campus Total	Noncampus	Public Property
2021	0	0	0
2022	0	0	0
2023	0	0	0



Referrals to Disciplinary Action for Liquor Law Violations

<b>Year</b>	<b>Campus Total</b>	<b>Noncampus</b>	<b>Public Property</b>
<b>2021</b>	0	0	0
<b>2022</b>	0	0	0
<b>2023</b>	0	0	0

## Unfounded Crimes

### Main Campus

Year	Total Unfounded Crimes
2021	4
2022	2
2023	4 <sup>††</sup>

### Moss Landing Marine Laboratories

Year	Total Unfounded Crimes
2021	0
2022	0
2023	0

### Reid-Hillview Airport

Year	Total Unfounded Crimes
2021	0
2022	0
2023	0

### South Campus

Year	Total Unfounded Crimes
2021	0
2022	0
2023	0

### Timpany Center

Year	Total Unfounded Crimes
2021	0
2022	0
2023	0

Pursuant to 34 CFR 668.46(c)(2)(iii), if sworn or commissioned law enforcement personnel fully investigate a reported crime and, based on the results of this investigation and evidence, determine that the crime report is false or baseless, the report is considered “unfounded”. Only sworn or commissioned law enforcement personnel may “unfound” a crime report for purposes of reporting under this section. The recovery of stolen property, the low value of stolen property, the refusal of the victim to cooperate with the prosecution, and the failure to make an arrest do not “unfound” a crime report.

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<sup>††</sup> Since the initial release of this report, this statistic has been updated in accordance with federal law as the university learned of information necessary to classify or reclassify acts in this crime category.

## Hate Crimes

### Main Campus

2021 - There were no reported hate crimes.

2022 - There were two hate crimes reported in 2022. The first report was for an on-campus battery assault based on race. The second report was for an on-campus battery assault based on ethnicity.

2023 - There were two hate crimes reported in 2023. The first report was for an on-campus battery assault based on national origin. The second report was for an on-campus act of intimidation based on ethnicity.

### Moss Landing Marine Laboratories

2021 - There were no reported hate crimes.

2022 - There were no reported hate crimes.

2023 - There were no reported hate crimes.

### Reid-Hillview Airport

2021 - There were no reported hate crimes.

2022 - There were no reported hate crimes.

2023 - There were no reported hate crimes.

### South Campus

2021 - There were no reported hate crimes.

2022 - There were no reported hate crimes.

2023 - There was one hate crime reported in 2023. The report was for an on-campus battery assault based on sexual orientation.

### Timpany Center

2021 - There were no reported hate crimes.

2022 - There were no reported hate crimes.

2023 - There were no reported hate crimes.

A Hate Crime is a criminal offense that manifests evidence that the victim was intentionally selected because of the perpetrator's bias against the victim. Hate crimes includes any offense in the following group: murder and nonnegligent manslaughter, sexual assault including rape, fondling, incest and statutory rape, robbery, aggravated assault, burglary, motor vehicle theft, arson, larceny-theft, simple assault, intimidation, destruction/damage/vandalism of property.

Bias is a preformed negative opinion or attitude toward a group of persons based on their race, gender, gender identity, religion, disability, sexual orientation, ethnicity, or national origin.

Hate crime reporting is considered for all Clery geography including on campus, residential facilities, noncampus buildings or property, and public property.

## Procedures for Students and Others to Report Criminal Actions or Other Emergencies on Campus

### Main and South Campus

Main Campus is located at One Washington Square, San José, CA 95192

South Campus is located at 1125 South Seventh Street, San José CA 95112

Dial 9-1-1 in an emergency situation that requires immediate assistance from public safety services. Blue Light direct connect emergency telephones are located throughout the main campus. Push the red button to connect directly to a 9-1-1 dispatcher. If a crime, suspicious incident, or security problem is observed, all persons, including students and employees, are encouraged and requested to report the information to University Police Department immediately. The department will respond by taking the following action(s) as necessary:

- Dispatch police and/or San José Fire Department to the scene of the reported incident
- Investigate the incident
- Take appropriate action(s) to identify, apprehend and or prosecute the person(s) responsible
- Take action(s) and/or make appropriate notifications

Emergency and non-emergency situations can be reported to the University Police Department at 408-924-2222.

### Moss Landing Marine Laboratories

Moss Landing Marine Laboratories is located at 8272 Moss Landing Road, Moss Landing, CA 95039

Dial 9-1-1 in an emergency situation that requires immediate assistance from public safety services. Report non-emergency criminal actions to Monterey County Sheriff's Department at 831-755-3700 located at 1414 Natividad Rd, Salinas, CA 93906.

### Reid-Hillview Airport

Reid-Hillview Airport is located at 2105 Swift Avenue, San José, CA 95148

Dial 9-1-1 in an emergency situation that requires immediate assistance from public safety services. Report non-emergency criminal actions to San José Police Department at 408-277-8900 located at 201 West Mission Street, San José, CA 95110.

### Timpany Center

Timpany Center is located at 730 Empey Way, San José, CA 95128

Dial 9-1-1 in an emergency situation that requires immediate assistance from public safety services. Report non-emergency criminal actions to Santa Clara County Sheriff's Office at 408-299-2311 located at 55 West Younger Avenue, San José, CA 95110. Anonymous tips can be emailed to [SHF.SOTips@shf.sccgov.org](mailto:SHF.SOTips@shf.sccgov.org).

## Additional Incident Reporting Options for All Campus Locations

### Behavioral Intervention Team

408-924-6339

<https://www.sjsu.edu/bit/>

### Student Conduct and Ethical Development Office

408-924-5985

<https://www.sjsu.edu/studentconduct/>

### Office of Title IX and Equal Opportunity

408-924-7289

<https://www.sjsu.edu/titleixeo/>

### University Ombudsperson

408-924-5995

<https://www.sjsu.edu/ombudsperson/>

## Voluntary and Confidential Reporting

California law allows victims of specific criminal offenses the right to request to be listed as a confidential victim in a law enforcement agency's report. Being listed as a confidential victim in a law enforcement agency's report prevents the law enforcement agency from disclosing the confidential victim's name and address as a matter of public record. The University Police Department will accept voluntary, confidential reports of crime for purposes of inclusion in the university's annual disclosure of crime statistics. A report may be made directly to the department through a written or verbal disclosure that includes a request to remain confidential to the extent permitted by law.

The University Police Department will also accept voluntary, anonymous reports of crime for purposes of inclusion in the university's annual disclosure of crime statistics. Any victim, witness or third party can choose to report a crime without providing their personal identifying information. A report may be made directly to the department through a written or verbal disclosure that includes a request to remain anonymous.

The university supports the practice of its professional counselors informing their clients as appropriate about voluntary crime reporting options available to them, though at the time of this publication there is no specific university policy or procedure in place to that effect.

Note: all publicly available record keeping will be maintained without the inclusion of personally identifiable information about the victim.

## Crime of Violence Disclosures

The institution will, upon written request, disclose to the alleged victim of a crime of violence or a non-forcible sex offense, the report on the results of any disciplinary proceeding conducted by the institution against a student who is the alleged perpetrator of such a crime or offense. If the alleged victim is deceased as a result of such crime or offense, the next of kin of such a victim shall be treated as the alleged victim.

## California Education Code section 67380(a)(6)(A)

Pursuant to California Education Code section 67380(a)(6)(A), Campus Security Authorities (CSAs) who receive reports from employees or students of a Part I violent crime, sexual assault or hate crime that occurred in an on or noncampus location as defined by the Clery Act, may not disclose to UPD or local law enforcement agencies the names of the victims or the alleged assailant, unless the victim consents to disclosing their name after being informed of their right to have their personally identifying information withheld. The name of the alleged assailant may be disclosed, however, if all of the following conditions are met:

- The alleged assailant represents a serious or ongoing threat to the safety of students, employees, or the institution; and
- The immediate assistance of the local law enforcement agency is necessary to contact or detain the alleged assailant.

## Timely Warning Policy

This policy describes the procedures that will be used to provide members of the community with information to aid in preventing them from becoming victims of crimes posing a serious or ongoing threat to the Campus communities. It is intended to provide faculty, staff, and students with timely information about Clery reportable crimes occurring within the defined Clery Geography of their Campuses, and to comply with the Timely Warning requirements of the Jeanne Clery Act.

As required by the Clery Act, CSU Campuses will keep their Campus communities informed by providing a timely warning when appropriate.

- Upon receipt of a Campus Security Authority (CSA) report of a Clery crime on Clery Geography, a Timely Warning analysis shall be completed and documented by the Clery Director. The Clery Director shall have authority to delegate this responsibility as appropriate. It is not necessary to document the completed Timely Warning analysis for referrals to disciplinary action.
- If it is determined that the report includes a Clery crime on Clery Geography, the Clery Director and Chief of Police (or management designee) will confer to analyze the known pertinent facts to determine whether they constitute a serious or ongoing threat to the Campus community. The unavailability of the Clery Director shall not unduly delay the issuance of a Timely Warning.
- If a CSA report includes 1) a Clery crime 2) on Clery Geography and 3) a discernible serious or ongoing threat, a timely warning as described below shall be issued expeditiously.
- In the absence of any of these three elements, no timely warning will be issued.
- The Chief of Police (or the management designee) shall have ultimate authority and responsibility for determining whether to issue a Timely Warning.

Each reported incident must be analyzed on a case-by-case basis. All known factors shall be considered in the case-by-case analysis to determine whether a timely warning should be issued. No single factor should govern the decision regarding the issuance of a timely warning. Campuses are prohibited from circumventing a case-by-case analysis by issuing a blanket rule that timely warnings will be issued for all reports of any given Clery reportable crime. Requests from an outside law enforcement agency to refrain from issuing a timely warning is insufficient grounds on its own for not issuing or delaying the issuing of a timely warning, unless the Chief of Police concurs that by issuing a timely warning, an identified risk can be articulated that would compromise the law enforcement efforts of the outside agency investigating the crime to gather evidence and/or apprehend suspect(s).

The case-by-case analysis will involve reviewing relevant factors including, but not limited to, the following, if known:

- The timing of the report: shortly after the occurrence of the crime vs. days or weeks after the occurrence of the crime, i.e., a "cold report"
- Physical injury to the victim
- Use of weapons
- Forced entry used and/or tools used in commission of the crime
- A suspect arrested or incapacitated by injury
- A suspect that is identified or otherwise can be located by law enforcement
- A suspect that is out of the area
- A victim who fears for their safety from the suspect
- A clear modus operandi and/or pre-planning indicated
- Multiple suspect(s) involved
- A pattern of similar crimes established
- The possible risk of compromising law enforcement efforts, such as to gather evidence and/or apprehend suspect(s), if a warning was issued

### Additional Considerations

The Clery Director (or management designee) shall notify the Campus president, as soon as practicable, that a timely warning will be or has been issued.

The Chief of Police (or management designee) is responsible for collaborating with surrounding law enforcement agencies to encourage them to share information with University Police Department (UPD) about crimes reported to local law enforcement that occur in Clery Geography.

Nothing in this policy precludes Campuses from maintaining a Campus policy about informing, re-publicizing and/or sharing with the Campus community crimes or other informational notices, (e.g., traffic advisories, events, prevention information) the Campus deems may be of interest to the Campus community. Such a policy is separate and distinct from the Timely Warning Policy. Such notices must differ in appearance or be distributed in a manner that assures that members of the community understand such notices are different from a timely warning notification required by the Clery Act; members of the Campus community should not be misled to believe such notices are timely warnings.

## Contents of a Timely Warning

When a timely warning is issued it shall be entitled "Timely Warning Crime Bulletin" and contain the following:

- A statement that reads, "This Timely Warning Bulletin is being issued in compliance with the Jeanne Clery Act and the purpose is to provide preventative information to the Campus community to aid members from becoming the victim of a similar crime."
- Identify the Clery reportable crime that occurred (i.e., rape, burglary, motor vehicle theft, arson, etc.)
- The date, time, and location the crime occurred
- The date the Timely Warning Bulletin is issued
- Description of the suspect when deemed appropriate, and if there is sufficient detail. Only include a description of the suspect when the descriptors provided by the reporting party could reasonably lead to conclusive identification of the perpetrator(s)
- At least three preventative tips or points of information specifically related to the circumstances of the crime which occurred that could help others from becoming the victim of a similar crime
- The phone number of UPD and a statement encouraging community members to report all information about crimes to UPD
- If appropriate, the phone number of support services

The Timely Warning shall not include, under any circumstances, the name of the victim, or information so specific (i.e., specific address or dorm room number or floor) that would or likely could identify the victim of the crimes of Sexual Violence, Rape, Dating Violence, Domestic Violence, or Stalking. Timely Warning Bulletins should use gender-inclusive and culturally appropriate language and avoid victim blaming and bias language.

## Methods of Distribution

Timely warnings will be distributed as quickly as possible in a manner that will likely reach the entire Campus community. Distribution methods vary from Campus to Campus and include, but are not limited to, any of the following:

- All employee and student email distribution
- University website
- Public area video display monitors
- Hard copies posted on Campus building entrance doors
- Press Release

This list is not intended to be exhaustive or intended to prioritize the method of distribution. The Chief of Police will confer with the Clery Director (or management designee), if available, to determine the most appropriate method(s) to distribute a Timely Warning. In the absence of the Clery Director (or management designee), the Chief of Police will determine the appropriate method of distribution. Campuses are required to maintain a list of the methods of distribution for timely warnings and include said list in the Campus's Annual Security Report.



## Emergency Notification Policy

This policy describes the procedures that will be used to immediately notify the Campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students and/or employees occurring on the Campus, as required by the Clery Act.

Any member of the Campus community with information believed to constitute a significant emergency or a dangerous situation that poses an imminent or immediate threat shall report the information to University Police Department (UPD) and/or by calling "911." Examples include, but are not limited to, the following types of incidents:

- Severe weather warning (e.g., flash flooding, tsunami, hurricane, etc.)
- Environmental emergency within an on-campus facility (e.g., hazardous chemical spill, fire, earthquake, building collapse)
- Criminal activity with an imminent threat to Campus community (e.g., active shooter, murder, fleeing suspect with a weapon)
- Public Health Emergency (e.g., measles outbreak, swine flu outbreak, etc.)

Once UPD has received the report, the Chief of Police (or management designee) will, without delay and taking into account the safety of the community, confer with any appropriate public official (e.g., fire chief, health department) and any Campus officials responsible for managing the on-campus emergency, if available, to confirm both: 1) a legitimate emergency or dangerous situation exists impacting on-Campus geography; and 2) the emergency or dangerous situation poses an immediate or imminent threat to members of the on-campus community. This confirmation process may include, but is not limited to, visual observation, officer investigation, the assistance of key Campus administrators, local or Campus first responders, and/or official government reporting through agencies such as the National Weather Service.

If both of the above factors are not met, no emergency notification is required. If it is determined that both of the above factors are met, then an emergency notification as described below shall be issued. The Chief of Police (or management designee) will confer with the Clery Director, if available, to prepare the content of the notification and determine which members of the Campus community are threatened and need to be notified. The content of the message will be developed based on a careful but swift analysis of the most critical facts.

Once the notification is prepared, the Chief of Police and/or the Clery Director (or their management designees) will, without delay and taking into account the safety of the community, transmit the emergency notification unless doing so would delay the ability to mitigate and/or contain the emergency, including the ability to provide immediate, life saving measures. If an emergency notification is issued, a timely warning is not required for the same incident.

### Contents of the Emergency Notification

The emergency notification shall contain the following information:

- A statement as to what the emergency or dangerous situation is, in specific terms (e.g., chemical spill, active shooter, building fire)
- A statement providing direction as to what actions the receiver of the message should take to ensure their own safety
- A statement as to where or when additional information may be obtained

The Chief of Police and/or Clery Director (or management designees) will provide updates to the emergency notification with pertinent updates or direction to persons for their safety when new information becomes available. Updates will be provided in regular intervals until the emergency has been mitigated or no longer poses an imminent threat, e.g., fire is out, and building has re-opened.

### Methods of Distribution

Emergency Notifications will be distributed as quickly as possible in a manner that will likely reach the segment(s) of the on-campus community threatened by the emergency. Segmentation will be considered by the Chief of Police (or management designee) by evaluating which persons are likely to be at risk based on the circumstances at the time and notifying those persons.

Segmentation should not be considered if making this determination would delay issuing the emergency notification. The Chief will determine if notification to the larger community is appropriate. Distribution methods, including distribution to the larger community, vary from Campus to Campus and depending on the nature of the emergency, may include:

- A Campus mass notification system, including but not limited to phone, Campus email, or text messaging. Systems should provide currently enrolled students, faculty and staff the ability to adjust their subscription preferences to select multiple contact methods from text messages, emails and phone calls, or if desired, to 'opt out' of the service and not receive any notifications
- Audio/visual message boards
- Audible alarms/sirens
- Campus public address systems
- In person or door-to-door notifications in a building or residence halls
- Local media
- Social media
- Other means appropriate under the circumstances, which campuses shall disclose in their ASRs as applicable.

### Testing and Evacuation System

Testing of the Emergency Notification System and evacuation will be done at least once annually. The Tests may be announced or unannounced. Tests must be scheduled, contain drills, exercises and appropriate follow-through activities, and be designed for assessment and evaluations of emergency plans and capabilities. However, the campus emergency response and evacuation procedures will be publicized in conjunction with at least one test per calendar year. Each Test will be documented to include a description of the exercise, the date of the Test, the start and end times of the Test, and whether the Test was announced or unannounced. The California State University Emergency Management policy describes these Tests and defines responsibility for their completion. A copy of the documentation will be provided to the Clery Director.

## Security of and Access to Campus Facilities, and Security Considerations for the Maintenance of Campus Facilities

### Main and South Campus

To help ensure the physical security of students, faculty and staff, buildings on the Main Campus and South Campus require Tower Identification Cards to gain access. This security precaution helps to minimize unauthorized individuals from entering campus buildings. Business hours are appropriately posted. The grounds and facilities are patrolled by University Police 24 hours a day, 7 days a week, including during non-business hours.

Access to the Main Campus residence halls is restricted to residents, their authorized guests and authorized university staff. Entry to residence hall facilities is controlled by means of a centralized access control system managed by Housing and Residential Education, Facilities Services, and University Police. All residents must present a valid access card in order to enter any of the residence halls. The buildings are also monitored by housing staff to ensure access is only to authorized personnel. The six residence halls have video surveillance to assist with security. The video monitors are used primarily for forensic purposes and are not monitored 24 hours a day. South Campus does not have residence hall facilities.

### Moss Landing Marine Laboratories

Access to the Moss Landing Marine Laboratories are generally open during posted business hours. The Moss Landing Director (or their designee) is available on-site when the respective campus is open. After-hours access is facilitated by means of a mechanical key locking system managed by the Moss Landing Marine Labs Director. The facilities are patrolled by the respective law enforcement agency with primary jurisdiction over the location on a non-fixed schedule.

The Moss Landing Director is responsible for conducting on-going, general security surveys of the facilities. The Director (or designee: Environmental Health & Safety Officer and/or Facilities Manager) meets with SJSU Main Campus police officials to discuss issues relevant to safety and security. Students and others who encounter unsafe conditions, or have other concerns with the Moss Landing location should contact the Moss Landing Marine Labs Director.

### Reid-Hillview Airport

Access to Reid-Hillview is generally open during posted business hours. A university Aviation Department Administrator (or their designee) is available on-site when the respective campus is open. After-hours access is facilitated by means of a mechanical key locking system managed by the Aviation Department Administrator. The facilities are patrolled by the respective law enforcement agency with primary jurisdiction over the location on a non-fixed schedule.

The Aviation Department Administrator is responsible for conducting on-going, general security surveys of the facilities. Students and others who encounter unsafe conditions, or have other concerns with the Reid-Hillview Airport location should contact the Aviation Department Administrator.

### Timpany Center

Access to Timpany Center is generally open during posted business hours. The Programs and Operations Director (or their designee) is available on-site when the respective campus is open. After-hours access is facilitated by means of a mechanical key locking system managed by the Programs and Operations Director. The facilities are patrolled by the respective law enforcement agency with primary jurisdiction over the location on a non-fixed schedule.

The Programs and Operations Director is responsible for conducting on-going, general security surveys of the facilities. Students and others who encounter unsafe conditions, or have other concerns with the Timpany Center location should contact the Programs and Operations Director.

### Systemwide Law Enforcement Policy, Law Enforcement Authority

Persons employed and compensated as members of a California State University police department, when so appointed and duly sworn, are peace officers. However, such peace officers shall not exercise their powers or authority\*\* except (a) at the headquarters or upon any campus of the California State University and in an area within one mile of the exterior boundaries of each campus or the headquarters, and in or about other grounds or properties owned, operated, controlled, or administered by the California State University, or by trustees or the state on behalf of the California State University, and (b) as provided in Section 830.2 of the Penal Code.

The arrest authority outside the jurisdiction of the CSU Police Department includes (Penal Code § 830.2(c); Penal Code § 836):

- a. When the officer has probable cause to believe the person committed a felony.
- b. When the officer has probable cause to believe the person has committed a misdemeanor in the presence of the officer and the officer reasonably believes there is immediate danger to person or property or of escape.
- c. When the officer has probable cause to believe the person has committed a misdemeanor for which an arrest is authorized even if not committed in the presence of the officer such as certain domestic violence offenses and there is immediate danger to person or property or of escape or the arrest is mandated by statute.
- d. When authorized by a cross jurisdictional agreement with the jurisdiction in which the arrest is made.
- e. In compliance with an arrest warrant.

On duty arrests will not generally be made outside the jurisdiction of this department except in cases of hot or fresh pursuit, while following up on crimes committed within the State, or while assisting another agency.

On duty officers who discover criminal activity outside the jurisdiction of the State should when circumstances permit, consider contacting the agency having primary jurisdiction before attempting an arrest.

California State University encourages accurate and prompt reporting of crime. All members of the Campus community are encouraged to promptly contact the UPD and/or other appropriate police agencies when they have been the victim of, or have witnessed criminal actions, including when the victim of crime elects to or is unable to make such a report.

UPD has a Memorandum of Understanding (MOU) with the San José Police Department which details operational authority pursuant to Education Code § 67381, including which law enforcement agency has operational responsibility for the investigation of violent crimes (Part 1 crimes) in certain geographical boundaries.

The Moss Landing Marine Laboratories location does not maintain a security department. Local law enforcement officials patrol on or near the campus but University Police do not have a written

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\*\* Including the authority to make arrests

agreement or contract with them for these services. Individuals at the Moss Landing Marine Laboratories are strongly encouraged to report non-emergency criminal actions to the Monterey County Sheriff's Department at 831-755-3700. Always dial 9-1-1 in the event of an emergency.

The Reid-Hillview Airport location does not maintain a security department. Local law enforcement officials patrol on or near the campus but University Police do not have a written agreement or contract with them for these services at this location. Individuals at the Reid-Hillview Airport are strongly encouraged to report non-emergency criminal actions to the San José Police Department at 408-277-8900. Always dial 9-1-1 in the event of an emergency.

The Timpany Center location does not maintain a security department. Local law enforcement officials patrol on or near the campus but University Police do not have a written agreement or contract with them for these services at this location. Individuals at Timpany Center are strongly encouraged to report non-emergency criminal actions to the Santa Clara County Sheriff's Office at 408-299-2311. Always dial 9-1-1 in the event of an emergency.

## Security Awareness and Crime Prevention Programs

### Main and South Campus

#### Active Shooter Presentations (Run, Hide, Fight)

UPD aims to enhance preparedness through a community approach by providing training on issues such as active shooter awareness upon request. Active shooter situations are very unpredictable in nature so, in an effort to better prepare community members, active shooter presentations are facilitated upon request.

#### Building Emergency Team

The Building Emergency Team consists of trained SJSU employees who have accepted the responsibility to provide for the safe evacuation of buildings and to perform safety related duties during campus emergencies. Each facility has a designated Senior Building Coordinator who helps to supervise and train their building's team. The Building Emergency Team program is designed to provide for the safe and rapid evacuation of SJSU buildings in the event of an emergency.

#### New Student and Employee Orientations

Students, faculty and staff are informed of services offered by University Police at various orientation sessions throughout the year upon request. The presentations give an overview of common crimes and highlight ways to maintain personal safety, emergency preparedness and residence hall security. Upon request, crime prevention programs and sexual assault prevention programs are offered to any requestor from the university community. In addition to seminars, information – in the form of newsletters, flyers, posters, articles, displays and social media is disseminated to students and employees throughout the academic year.

#### Rape Aggression Defense (R.A.D. Training)

This is a comprehensive, women-only course that begins with awareness, prevention, risk reduction and risk avoidance, and progresses to basic, hands-on self-defense training. R.A.D is not a martial arts program. The course is taught by UPD's nationally certified R.A.D. instructors.

#### Safety Escorts

Safety Escorts are provided upon request by UPD personnel, primarily by Police Cadets. Cadets also perform ongoing checks of Blue Light Phones and elevator phones reporting those in need of repair. During the day, Cadets perform patrols of the heavily trafficked campus quad and adjacent

areas to deter, detect, and report inappropriate usage of campus facilities and any suspicious persons or activities.

#### Security Cameras

Security cameras are installed at various locations throughout campuses which can aid in deterring crime, assisting police in criminal investigations, and protecting the safety and property of the campus community. Camera systems at Main Campus and South Campus are managed by authorized UPD Personnel in accordance with CSU and University Police Department security camera policies.

### **Moss Landing Marine Laboratories**

#### Building Emergency Team

The Building Emergency Team consists of trained SJSU employees who have accepted the responsibility to provide for the safe evacuation of buildings and to perform safety related duties during campus emergencies. Each facility has a designated Senior Building Coordinator who helps to supervise and train their building's team. The Building Emergency Team program is designed to provide for the safe and rapid evacuation of SJSU buildings in the event of an emergency.

#### New Student and Employee Presentations

Students and employees are informed of safety procedures and practices at various orientation and training sessions throughout the year upon request. Presentation topics include but are not limited to an overview of general safety and crime prevention strategies, emergency preparedness, workplace violence prevention, active shooter response training and laboratory safety. Safety information is also disseminated to students and employees throughout the year.

#### Security Cameras

Security cameras are installed at various locations throughout campus which can aid in deterring crime, assisting police in criminal investigations, and protecting the safety and property of the campus community. Camera systems at Moss Landing are managed by the Facilities Manager.

### **Reid-Hillview Airport**

Students are informed of safety procedures and practices by the Aviation Department Administrator and/or Faculty each semester. Topics include but are not limited to an overview of general safety, emergency preparedness and laboratory safety. Safety information is also disseminated to students as needed during the year. There are no crime prevention programs offered at this location.

### **Timpany Center**

Staff are informed of safety procedures and practices by the Programs and Operations Manager throughout the year. Topics include but are not limited to an overview of general safety, emergency preparedness and response. There are no crime prevention programs offered at this location.

## Monitoring and Recording Crime Activity at Noncampus Locations of Student Organizations

### Main and South Campus

A noncampus location of a student organization refers to any building or property owned or controlled by a student organization that is officially recognized by the institution. Certain Greek Life chapters are the only student organizations officially recognized by SJSU that own or control any buildings or property. Members of these organizations lease privately owned and managed homes designated for their chapters located in the residential neighborhood near the Main Campus.

In accordance with the Memorandum of Understanding (MOU) established between UPD and the San José Police Department, UPD has primary jurisdictional authority to monitor and respond to criminal activity occurring in noncampus locations of officially recognized Greek Life student organizations. Public and private properties immediately adjacent to these noncampus locations of student organizations are under the primary jurisdiction of the San José Police Department.

UPD works closely with other law enforcement agencies to receive information about incidents that may affect the university community and properties. In the event of reported criminal activity involving a noncampus location of an officially recognized student organization, UPD will make reasonable efforts to obtain reports and information from the responding law enforcement agency.

### Moss Landing Marine Laboratories, Reid-Hillview Airport and Timpany Center

There are no officially recognized student organizations that own or control noncampus facilities at these locations.

## Possession, Use, Sale and Enforcement of Federal and State Alcohol and Drug laws

All SJSU students, faculty, staff, and visitors are subject to SJSU policies, as well as local, state, and federal laws regarding the unlawful possession, manufacturing, distribution, sale, or use of alcohol and illegal drugs. The unlawful manufacturing, distribution, possession, sale or use of illicit drugs and alcohol on university property or as any part of its activities is prohibited. While the State of California has passed laws regarding medical and recreational marijuana use, marijuana remains classified as an illegal substance under federal law. As a result, the University as a Title IV participating institution does not recognize medical marijuana authorization cards and does not allow marijuana on university property or as any part of its activities.

The University Police Department (UPD) enforces laws pertaining to alcohol and drugs at many SJSU owned, controlled and officially recognized locations. External law enforcement agencies also enforce laws pertaining to alcohol and drugs at activities and locations that may or may not be owned, controlled and officially recognized by the university. Individuals found to be in violation of applicable laws may be subject to arrest or citation. Students, faculty and staff in violation of alcohol and drug laws may also be referred to the Offices of Student Conduct or University Personnel for administrative discipline.

SJSU's comprehensive Drug and Alcohol Abuse Prevention Program (DAAPP) document can be located at the following web address: <https://www.sjsu.edu/clery/docs/SJSU-Drug-and-Alcohol-Abuse-Prevention-Program.pdf>

## Sexual Violence Prevention

The California State University (CSU) promotes a safe living, learning, and working environment through systemwide policies and through a variety of campus educational programs provided to students, faculty, and staff. The CSU prohibits dating violence, domestic violence, sexual misconduct/sexual assault, sexual exploitation, and stalking, and provides programs to prevent, educate, and promote awareness of these topics, in accordance with the CSU Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, Sexual Exploitation, Dating Violence, Domestic Violence, Stalking, and Retaliation (“Nondiscrimination Policy”). These prohibited behaviors are also crimes as defined by 34 C.F.R. §668.46, and California criminal definitions.

The CSU provides comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to stop dating violence, domestic violence, sexual misconduct/sexual assault, sexual exploitation, and stalking before they occur through the promotion of behaviors that foster healthy relationships, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe directions.

The CSU’s prevention programs and initiatives are sustained over time and focus on increasing awareness and understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual misconduct/sexual assault, sexual exploitation, and stalking, using a range of strategies with audiences throughout the CSU community. This includes both community-wide or audience-specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent violence, reduce perpetration, promote safety and a culture of respect.

Campus programs must include primary prevention and awareness training: (1) for all new Students<sup>§§</sup>; and new Employees; (2) refresher programs at least annually for all Students; (3) twice a year for all Students who serve as advisors in residence halls; (4) annually for all Student members of fraternities and sororities; (5) annually for all Student athletes and coaches; and (6) annually for all Employees consistent with their role in responding to and reporting incidents. Ongoing prevention and awareness campaigns for all Students and Employees will also be conducted. The CSU system will provide online training for all Employees and each campus will provide online training for all Students. All training must be consistent with the applicable CSU policy and state and federal regulations.

Each campus must assess which student organizations participate in activities that may place Students at risk and ensure that they receive annual supplemental training focused on situations the group’s members may encounter.

To ensure that all Students receive the necessary information and training enumerated above on dating violence, domestic violence, sexual misconduct/sexual assault, sexual exploitation, and stalking, campuses should impose consequences such as registration holds on those Students who do not participate in and complete such mandatory training.

## Training for Employees

Training will be mandatory for all employees within six months of their initial hiring, and on an annual basis thereafter. Such training will include, but not be limited to: what constitutes discrimination, harassment, retaliation, sexual misconduct/sexual assault, dating and domestic

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<sup>§§</sup> This includes incoming transfer, graduate, online, and extended education Students. The programs should occur no later than the first few weeks of the semester.



violence, sexual exploitation and stalking under applicable law; the rights and responsibilities of each Employee relating to discrimination, harassment, retaliation, sexual misconduct/sexual assault, dating and domestic violence, sexual exploitation and stalking including the duty to report and exceptions; the protection against retaliation for Employees who report discrimination, harassment, retaliation, sexual misconduct, dating and domestic violence, sexual exploitation and stalking; the procedures provided under the CSU Nondiscrimination Policy for filing, investigating and resolving a complaint; and the option and method for filing complaints with external government agencies such as the Department of Fair Employment and Housing (DFEH) and the Equal Employment Opportunity Commission (EEOC).

Under Cal. Govt. Code § 12950.1, each campus shall provide supervisory Employees at least two hours of interactive sexual harassment training within six months of the Employee's assignment to a supervisory position and every two years thereafter. Each campus shall maintain documentation of the delivery and completion of these trainings. For detailed guidance regarding the definition of "supervisor" and the implementation of this training, campuses shall consult Coded Memoranda HR 2005-35 and other applicable policies.

### **Prevention and Awareness Programming**

California State University campuses provide primary prevention programs to all incoming students and new employees. California State University campuses provide ongoing prevention programs to all students and employees during their time at the institution. To comply with CSU Policy and 34 C.F.R. §668.46., campus-specific programs to prevent dating violence, domestic violence, sexual misconduct/sexual assault, sexual exploitation, and stalking will include:

1. A statement that the CSU prohibits dating violence, domestic violence, sexual misconduct/sexual assault, sexual exploitation, and stalking as defined under CSU policy and 34 C.F.R. §668.46.
2. The definitions of "dating violence," "domestic violence," "sexual assault," and "stalking" in the applicable jurisdiction, California (California Penal Code) and the definitions under CSU policy (to also include the CSU policy definition of "sexual exploitation").
3. The definition of "consent," in reference to sexual activity, in the applicable jurisdiction, California (California Penal Code), and the definition of "affirmative consent" under CSU policy.
4. Common facts and myths about the causes of sexual misconduct/sexual assault.
5. A description of safe and positive options for bystander intervention, as exemplified below.
6. Information on risk reduction, exemplified below.
7. Information regarding campus, criminal, and civil consequences of engaging in acts of sexual misconduct/sexual assault, sexual exploitation, dating and domestic violence, and stalking.
8. Information about reporting, adjudication, and disciplinary procedures as required by 34 C.F.R. §668.46 and as described in the procedures under the CSU Nondiscrimination Policy.

### **Information About Campus Reporting, Adjudication, and Discipline Procedures**

Campus training programs will reference the procedures outlined in the CSU Nondiscrimination Policy that victims/survivors may follow if an incident of dating violence, domestic violence, sexual misconduct/sexual assault, sexual exploitation, or stalking has occurred. Training programs will also reference information about preserving evidence, reporting to the appropriate authorities, confidentiality options, available protective and supportive measures.

Campuses apply the relevant CSU policy and procedures when responding to all reports of dating violence, domestic violence, sexual misconduct/sexual assault, sexual exploitation, or stalking. Campuses shall establish processes to provide a print and/or digital copy of the "Rights and Options for Victims" as outlined in the CSU Nondiscrimination Policy to any community member who reports experiencing such harm, regardless of whether the incident occurred on or off campus.

Campus training programs regarding the procedures for reporting and addressing reports of dating violence, domestic violence, sexual misconduct/sexual assault, sexual exploitation, and stalking will include the following:

- A statement explaining that the campus' primary concern is the safety of members of the campus community; that the use of alcohol or drugs never makes the victim/survivor at fault for sexual misconduct/sexual assault, sexual exploitation, dating or domestic violence, or stalking; that Students who experience or witness sexual misconduct/sexual assault, sexual exploitation, dating or domestic violence, or stalking should not be deterred from reporting incidents out of a concern that they might be disciplined for related violations of drug, alcohol, or other CSU policies; and that Students who experience or witness sexual misconduct/sexual assault, sexual exploitation, dating or domestic violence, or stalking shall not be subject to discipline for related violations of conduct policies at or near the time of the misconduct unless the violation is egregious (including actions that place the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.)
- A statement that "CSU policy prohibits retaliation against a person who: reports sex discrimination, sexual harassment, sexual misconduct/sexual assault, sexual exploitation, dating or domestic violence, or stalking; assists someone with a report of such conduct; or participates in any manner in a related investigation or resolution.
  - Retaliation means that a substantial motivating reason for an Adverse Action taken against a person was because the person has or is believed to have:
    - Exercised their rights under this policy,
    - Reported or opposed conduct which was reasonably and in good faith believed to be in violation of this policy,
    - Assisted or participated in an investigation/proceeding under this policy, regardless of whether the Complaint was substantiated,
    - Assisted someone in reporting or opposing a violation of this policy or assisted someone in reporting or opposing Retaliation under this policy.
    - Adverse Action means an action engaged in by the Respondent that has a substantial and material adverse effect on the Complainant's ability to participate in a university program, activity, or employment. Minor or trivial actions or conduct not reasonably likely to do more than anger or upset a Complainant does not constitute an Adverse Action.
    - Retaliation may occur whether or not there is a power or authority differential between the individuals involved.
- What someone should do if they have experienced or witnessed sexual misconduct/sexual assault, sexual exploitation, dating or domestic violence, or stalking.
- Individuals to whom incidents may be reported along with information regarding what degree of confidentiality may be maintained by those individuals.

- The availability of, and contact information for, campus and community resources for victims/survivors of sexual misconduct/sexual assault, sexual exploitation, dating or domestic violence, or stalking.
- A description of campus and systemwide policies and disciplinary procedures available for addressing alleged violations and the consequences of violating these policies, including the fact that such proceedings shall:
  - Provide a prompt, fair, and impartial investigation and resolution; and,
  - Be conducted by officials who receive annual training on issues related to sexual misconduct/sexual assault, sexual exploitation, dating or domestic violence, or stalking and how to conduct an investigation and hearing process that protects the safety of victims/survivors and promotes accountability.
- The fact that the Complainant and the Respondent will be afforded the same opportunities to have others present during a disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the Advisor of their choice.
- The fact that both the Complainant and the Respondent shall be simultaneously informed in writing of:
  - The outcome of any disciplinary proceedings that arises from an allegation of a sex discrimination, sexual harassment, sexual misconduct/sexual assault, sexual exploitation, dating or domestic violence, or stalking.
  - The CSU's procedures for the Complainant or Respondent to appeal the results of the disciplinary proceeding.
  - Any change to the disciplinary results that occurs prior to the time such results become final.
  - When disciplinary results become final.
- Possible sanctions or remedies the campus may impose following the final determination of a campus disciplinary procedure regarding sexual misconduct/sexual assault, sexual exploitation, dating or domestic violence, or stalking.
- How the campus will protect the confidentiality of Complainants, including how publicly available recordkeeping (e.g., campus Clery reports) will be accomplished without the inclusion of identifying information about the Complainant to the extent permissible by law.
- That all students and employees must receive written notification about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims/survivors, both on campus and in the community.\*\*\*
- That all students and employees who report being a victim/survivor of sexual misconduct/sexual assault, sexual exploitation, dating or domestic violence, or stalking must receive written notification of available assistance in, and how to request changing academic, living, transportation, and working situations, if requested and if such accommodations are reasonably available, regardless of whether the victim/survivor chooses to report the incident to campus police or local law enforcement.

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\*\*\* San José State University complies with this requirement by providing this information to the campus community in writing each year through CSUlearn assignment.

- Procedures victims/survivors are recommended to follow if sexual misconduct/sexual assault, sexual exploitation, dating or domestic violence, or stalking has occurred, as well as the fact that the following written information must be provided to victims:
  - The importance of preserving evidence following an incident of sexual misconduct/sexual assault, sexual exploitation, dating or domestic violence, or stalking, which may also be used to obtain a temporary restraining or other protective order.
  - The name and contact information of the campus Employee(s) to whom the alleged incident should be reported.
  - Reporting to law enforcement and campus authorities, including the option to: (a) notify law enforcement authorities, including on-campus and local police; (b) be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and, (c) decline to notify such authorities.
  - Where applicable, the rights of victims/survivors and the campus' responsibilities regarding orders of protection, no contact directives, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court.

## Risk Reduction

The CSU provides community members with information and strategies for risk reduction designed to decrease perpetration, promote bystander intervention and healthy relationships, empower marginalized voices, and support victims/survivors. Information and strategies for risk reduction help promote safety and help individuals and communities address conditions that facilitate violence.

### Sexual Misconduct/Sexual Assault

The CSU is committed to maintaining a safe campus for all members of the CSU community. Risk reduction strategies are focused on creating a culture of respect, reducing the risk for perpetration and for victimization. It is important to emphasize that only those who engage in sexual misconduct/sexual assault, dating violence, domestic violence, sexual exploitation, and stalking are responsible for those actions. With this in mind, the following tips provide some possible strategies to help promote a caring community and mitigate personal risk.

- Communication is key to healthy relationships and healthy sexual interactions. Obtain Affirmative Consent from your partner for all sexual activity.
  - Affirmative Consent means an informed, affirmative, conscious, voluntary, and mutual agreement to engage in sexual activity.
  - Engaging in any sexual activity without first obtaining Affirmative Consent to the specific activity is Sexual Misconduct, whether or not the conduct violates any civil or criminal law.
  - Affirmative Consent can be withdrawn or revoked at any time.
  - Affirmative Consent to sexual activity in the past does not mean consent in future – there must be voluntary consent for all sexual activity.
  - Lack of protest, resistance, or mere silence does not equal Affirmative Consent.
  - Sexual activity between a minor (a person younger than 18 years old) and a person who is at least 18 and two years older than the minor always constitutes Sexual Misconduct, even if there is Affirmative Consent to all sexual activity.
- Do not engage in sexual activity with someone who is incapacitated.

- A person who is incapacitated by alcohol or drugs cannot give Affirmative Consent.
- A person who is unconscious or asleep cannot give Affirmative Consent.
- A person's own intoxication or incapacitation does not diminish their responsibility to obtain Affirmative Consent from any person with whom they engage in sexual activity.
- Signs that someone does not respect the importance of consent:
  - They pressure or guilt you into doing things you may not want to do.
  - They suggest you "owe" them something (including sexual acts) because you're dating or because they have done or claim to have done something for you.
  - They react negatively with sadness, anger, or resentment if you don't consent to something or don't do so immediately

[Source: [Love Is Respect](#)]

#### Dating/Domestic Violence

Common signs of abusive behavior in a relationship

According to the National Domestic Violence Hotline, one feature shared by most abusive relationships is that an abusive partner tries to establish or gain power and control through many different methods, at different moments. Even one or two of the following behaviors is a red flag that a partner may be abusive.

- Showing extreme jealousy of friends or time spent away from a partner.
- Preventing or discouraging one's partner from spending time with friends, family members, or peers.
- Insulting, demeaning, or shaming a partner, especially in front of other people.
- Preventing one's partner from making their own decisions about working or attending school.
- Controlling finances in the household without discussion, including taking a partner's money or refusing to provide money for necessary expenses.
- Pressuring one's partner to have sex or perform sexual acts they are not comfortable with.
- Pressuring a partner to use drugs or alcohol.
- Threatening to harm or take away a partner's children or pets.
- Intimidating one's partner with weapons
- Destroying a partner's belongings or home

If you notice warning signs in your relationship or that of someone you care about, remember there are support resources available on your campus, including individuals with whom you can speak confidentially and who can assist you with making a safety plan. A good starting place for a list of resources is your campus Title IX webpage. You can also contact the National Domestic Violence Hotline at 1.800.799.SAFE (7233), which is free and confidential.

[Source: National Domestic Violence Hotline]

- Abusive behaviors can be difficult to recognize in a relationship, even if you are the one engaging in them. In addition to some of the common signs of abusive behavior outlined above, ask yourself if your partner:

- o Seems nervous around you,
- o Seems afraid of you,
- o Flinches, cringes, or retreats when you are emotional,
- o Seems scared, or unable to contradict you or speak up around you, and/or
- o Restricts their own interactions with friends, family, coworkers, or others in order to avoid upsetting you

If you recognize the behaviors above in yourself, or in how your partner reacts, these could be signs that you are hurting them. This can be a difficult realization to come to but it's vital that you do so if you want to change and stop harming your partner. By acknowledging that your actions are harmful and taking responsibility for them, you can continue to progress on the path toward correcting them.

You could consider contacting the psychological counseling center on your campus to speak with a counselor confidentially, or you could contact the National Domestic Violence Hotline at 1.800.799.SAFE (7233), which is free and confidential.

[Source: [National Domestic Violence Hotline](#)]

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[Source: National Domestic Violence Hotline]

### Stalking

#### Respecting boundaries

If someone tells you that they do not want you to contact them or do something like visit their home or send them gifts, or if they have stopped interacting with you, respect their choice. Everyone has the right to set boundaries.

## Recognizing stalking behaviors

A person who engages in stalking may:

- Repeatedly call or send other unwanted communication such as text messages, emails, social media messages, letters, etc.
- Follow the person and seem to “show up” wherever they are.
- Send unwanted gifts.
- Damage home, car, or other property.
- Monitor phone calls or computer use.
- Drive or linger near the home, school, or work of the person they are stalking.
- Use other people to try and communicate with the person they are stalking, like children, family, or friends.

[Source: [Victim Connect Resource Center](#)]

Below are some tips from the Stalking Prevention Awareness and Resource Center (SPARC) regarding steps one can take if they are experiencing stalking

- Trust your instincts – if you/someone feels they are in immediate danger or fear a threat of harm, call 911
- Keep a record or log of each contact with the stalker
- Save evidence when possible, such as emails, text messages, postings on social media, etc.

Know that there are support resources available on each CSU campus, including individuals with whom individuals can speak confidentially and who can assist in making a safety plan and/or seeking a protective order. A good starting place for a list of resources is your campus Title IX webpage.

## Bystander Intervention

The California State University and the campuses provide training on 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 dating violence, domestic violence, sexual misconduct/sexual assault, sexual exploitation, 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. Information about bystander intervention is included in a variety of prevention, outreach, and awareness programs across the CSU.

This training encourages employees and students to:

- Notice the Event
- Interpret the Event as a Problem
- Assume Personal Responsibility
- Learn How to Help
- And Step Up by utilizing the “4 Ds” – Direct, Distract, Delegate, and Delay
  - Direct – Directly addressing the situation.
  - Distract – Making a simple (or elaborate) distraction to diffuse the situation.
  - Delegate – Finding someone else to address the concern.

- Delay – Checking in with the person after to see if you can do anything to support them.

### CSU Policy Definitions

Definitions of conduct that is prohibited under CSU policy are found in Article VII of the CSU Nondiscrimination Policy. These definitions are applicable in relation to the University's administrative processes and may differ from the criminal law definitions (California) found in Appendix A.

### Written Notification

The title IX Coordinator will provide Complainants alleging Sexual Misconduct, Sexual Exploitation, Dating Violence, Domestic Violence or Stalking, with the information in Attachment D to the CSU Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, Sexual Exploitation, Dating Violence, Domestic Violence, Stalking, and Retaliation - Rights and Options for Victims of Sexual Misconduct/Sexual Assault, Sexual Exploitation, Dating and Domestic Violence, And Stalking. This same information is provided in writing to all students and employees within the CSU Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, Sexual Exploitation, Dating Violence, Domestic Violence, Stalking, and Retaliation, and as part of annually assigned training.

This written notice (annually to all students and employees, and specifically to complaints as outlined above) includes the information below, including:

- Supportive measures
- Rights and options available throughout the reporting process and/or the duration of any formal or informal complaint resolution process, including campus and criminal reporting options, available advocates, preserving evidence, medical Care and treatment, and protective orders.
- Existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available

You have the right to be offered and receive reasonably available support services and supportive measures, available both on and off campus. You do not have to file a formal complaint or a criminal complaint in order to receive support services and/or supportive measures. Supportive services and supportive measures include, but are not limited to, counseling, victim/survivor advocates, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The Title IX Coordinator, University Police Department and victim/survivor advocate on your campus can provide some of these services directly and/or provide you with information about and a referral to these and additional resources on and off campus for support.

### Supportive Measures

Supportive Measures are individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent regardless of whether a Formal Complaint is filed. Supportive Measures are designed to restore or preserve equal access to CSU education programs or activities, or the workplace without unreasonably burdening the other Party, including to protect the safety of all Parties or the educational or work environment.



Supportive Measures may include counseling, extensions of deadlines or other course or work-related adjustments, modifications of work or class schedules, campus escorts, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The Title IX Coordinator/DHR Coordinator is responsible for coordinating the effective implementation of Supportive Measures. Supportive Measures will remain confidential except when it is not possible to maintain confidentiality in order to provide the Supportive Measures.

The following is a list of on-campus and off-campus resources that offer a variety of services in the areas of victim advocacy, counseling, health, mental health, legal assistance, visa and immigration assistance, student financial aid and other areas. Campus advocates can help provide information about and referral to any of these resources if requested. These resources are available to victims/survivors whether or not they choose to make a criminal or administrative report.

- Campus Survivor Advocate: 408-924-7300
- Counseling and Psychological Services (CAPS): 408-924-5910
- University Police Department: 408-924-2222
- Student Health Center: 408-924-6122
- After hours nurse advice line: 866-935-6347
- Employee Assistance Program (EAP): 800-367-7474
- YWCA Silicon Valley 24-hour Sexual Assault and Domestic Violence Support Line: 800-572-2782
- Asian Women's Home 24/7 Hotline: 408-279-2962
- Next Door Solutions to Domestic Violence 24/7 Hotline: 408-279-2962
- Santa Clara Valley Medical Center Emergency Services: 408-885-5000
- The Office for Title IX and Equal Opportunity: 408-924-7290
- Behavioral Intervention Team: 408-924-6339
- University Ombudsperson: 408-924-5995
- Respondent Consultant: 408-924-2278 and 408-924-2558

Regardless of whether a victim/survivor decides to maintain confidentiality, these individuals will still assist victims/survivors in receiving other necessary protection and support, such as victim advocacy, medical, mental health services, and/or legal services. However, these individuals may have limited ability to assist a victim/survivor with university academic support or accommodations, or changes to university-based living or working schedules, as such accommodations likely require the involvement of other University officials.

Individuals should contact the university Title IX Coordinator if they wish to request an accommodation:

Office of Title IX and Equal Opportunity  
Clark Hall Room 126  
408-924-7290 (8:00am - 5:00pm)  
669-877-0620 (after-hours voicemail/text line)  
titleixeo@sjsu.edu  
<https://www.sjsu.edu/titleixeo/>

## Reporting Options

### Reporting to University Administration

Complaints of discrimination, harassment, sexual misconduct and sexual assault, dating and domestic violence, sexual exploitation, and stalking may be addressed through the University administrative process<sup>†††</sup>. A complainant or reporting party can report an incident to the University by contacting the Title IX Coordinator on their campus. A complainant has the right to have a support person present with them while making a complaint.

The University will protect the privacy of everyone involved in a report to the greatest degree possible under applicable law and University policy. Personally identifiable information about the involved parties will be shared only on a need-to-know basis, e.g., to those who are investigating/adjudicating the report or those involved in providing support services. By only sharing personally identifiable information with individuals on a need-to-know basis, the University will maintain as confidential any supportive measures and remedies provided to the parties, to the extent that maintaining such confidentiality would not impair the ability of the University to provide supportive measures and remedies.

The CSU does not publish the name of victims/survivors or other identifiable information regarding victims/survivors in the Daily Crime Log or in the crime statistics that are disclosed in the *Annual Security and Fire Safety Report*. Furthermore, if a Timely Warning is issued on the basis of a report of sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the name of and other personally identifiable information about the victim/survivor will be withheld.

### The importance of preserving evidence

Victims/survivors are encouraged to preserve all physical evidence, including but not limited to: clothing worn during the assault, bed sheets, and/or photos of any injuries. This evidence may be helpful in proving that a crime occurred, in the event the victim/survivor chooses to report now or in the future. It may also be helpful in obtaining a court-ordered protective or restraining order. If a victim/survivor does not have any evidence preserved, they still have an option to report the crime and request a medical evidentiary examination.

Victims/survivors of sexual misconduct, sexual assault, sexual exploitation, stalking, dating violence and domestic violence are also encouraged to preserve evidence by saving text messages, instant messages, social networking pages, other communications, pictures, logs or other copies of documents that may be useful to University investigators or police should the victim/survivor decide to report now or in the future.

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<sup>†††</sup> Refer to Disciplinary Procedures on page 52

## Reporting to law enforcement and making a criminal report

If your physical safety is at imminent risk, we encourage you to seek immediate assistance from the police.

Some forms of misconduct prohibited under the Nondiscrimination Policy may also be prohibited by law. You have a right to be informed of law enforcement options and information regarding the availability of a criminal or civil prosecution for victims of crime.

It is a victim's/survivor's choice to report a crime. You have the right to report or decline to report an incident to law enforcement. You have the right to not be forced, coerced, or pressured into reporting to law enforcement.

A victim/survivor may report an incident to law enforcement at any time. In the event of an emergency where immediate assistance is required, a victim/survivor should dial 9-1-1 to be connected with the nearest police department. If there is no emergency, victims/survivors can file a police report at any time in the jurisdiction where the assault occurred. A confidential victim advocate can assist the victim/survivor in filing the report if requested.

Victims/survivors of crimes such as sexual assault, sexual exploitation, stalking, dating violence, domestic violence, abuse, threats of abuse and/or serious harassment all have a right to petition the court in the appropriate jurisdiction for a protective order (also referred to as a restraining order).

Your Campus Advocate, University Police Department and Title IX Coordinator are all able to provide you with more information about pursuing criminal prosecution, civil prosecution and/or protective orders.

A victim/survivor of specific offenses [enumerated in California Government Code section 7923.615(b)(1)] has the right to request to be listed as a confidential victim in a law enforcement agency's report. Being listed as a confidential victim in a law enforcement agency's report prevents the law enforcement agency from disclosing the confidential victim's name and address as a matter of public record. However, the confidential victim's information can be released to the prosecutor, parole officers of the Department of Corrections and Rehabilitation, hearing officers of the parole authority, probation officers of county probation departments, or other persons or public agencies where authorized or required by law. Please see California Penal Code section 293 for more information.

Employees of the University Police Department have a duty to report to the Title IX Coordinator / DHR Administrator any time they know or have reason to know of incidents that may violate this Nondiscrimination Policy, so that the Title IX Coordinator or DHR Administrator can carry out their duties under the law and under this Nondiscrimination Policy. At a minimum, the information to be reported includes all the information authorized to be disclosed under the law in response to records requests, but without requiring a formal request<sup>\*\*\*</sup>. Such information includes but is not limited to the time, substance, and location of all complaints or requests for assistance received by University Police and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the

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\*\*\* See Government Code 7923.615

victim, the factual circumstances surrounding the crime or incident, the identity of the alleged perpetrator, and a general description of any injuries, property, or weapons involved<sup>§§§</sup>.

For certain sex offenses<sup>\*\*\*\*</sup> the victim has the right to affirmatively request from University Police, after being informed of their options, that the victim's identity remain confidential<sup>++++</sup>. However, even if the victim requests confidentiality of identity, the University Police should specifically ask the victim if the victim's name can be provided to the Title IX Office so that the Title IX Coordinator can contact the victim to discuss supportive measures that can be offered. And in all cases, even when the victim requests confidentiality, the identity of the alleged perpetrator (if known) must be reported to the Title IX Coordinator.

## Protective Orders

### Civil reporting options & protective orders

A victim/survivor may choose to file a civil lawsuit against the alleged offender, whether or not criminal charges have been filed. A civil lawsuit provides an opportunity to recover actual money damages, which may include compensation for medical expenses, lost wages, pain, suffering and emotional distress. An Advocate can assist a victim/survivor with identifying the necessary steps and processes for filing a lawsuit if requested.

### Court-Ordered Restraining Orders

A victim/survivor may choose to obtain a restraining order (such as a domestic violence restraining order or a civil harassment restraining order). Restraining orders must be obtained from a court in the jurisdiction where the incident occurred. Restraining orders can help protect a victim/survivor who has experienced or is reasonably in fear of physical violence, sexual violence, domestic violence, dating violence and stalking.

### Emergency Protective Order (EPO)

An Emergency Protective Order (EPO) is a type of restraining order that only law enforcement can ask for by calling a judge. Typically, this is done by an officer responding to the scene of a domestic violence incident. Judges are available to issue EPOs 24 hours a day. The EPO takes effect immediately and can last up to seven calendar days. The judge can order the alleged abuser to leave the domicile and stay away from the victim and their children for up to a week. This provides the victim with time to go to court to request a temporary restraining order.

### Temporary Domestic Violence Restraining Order (TRO)

A TRO is a type of protective order. In order to obtain one, the victim/survivor must fill out paperwork explaining the facts and why a protective order is needed. If a judge agrees that

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<sup>§§§</sup> See Government Code 7923.615

<sup>\*\*\*\*</sup> See Penal Code Sections 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6.

<sup>++++</sup> Additionally, the confidential victim's information can be released to the prosecutor, parole officers of the Department of Corrections and Rehabilitation, hearing officers of the parole authority, probation officers of county probation departments, or other persons or public agencies where authorized or required by law. Please see California Penal Code section 293 for more information.

protection is needed, the judge will issue a temporary restraining order. Temporary restraining orders usually last until the court hearing date, typically 20 to 25 days after the petition is filed.

### Criminal Protective Order (CPO)

When there is a claim that a domestic violence incident occurred, a criminal charge (or charges) may be filed by a prosecutor (such as the City Attorney or District Attorney) against the person who allegedly committed the criminal act. The prosecutor commonly asks a judge to issue a Criminal Protective Order while the criminal case proceeds. A CPO typically requires the defendant (the person who allegedly committed the criminal act) to stay away from and not to hurt, threaten, or communicate with the victim/accuser. If the defendant is convicted of or pleads guilty to the criminal charge(s), the CPO may last for up to ten years after the case is over.

### Civil Harassment Restraining Order

This type of court order is available to individuals who have been harassed by any of the following: a neighbor, roommate (as long as no dating/romantic relationship existed or exists), friend, family member more than two degrees removed (e.g., an aunt/uncle, niece/nephew, cousin, or more distant relative), stranger, or another person not closely related to the victim of the harassment.

An individual who has been civilly harassed by a current or former spouse/partner, or someone with whom a dating/romantic relationship existed, or a close relative (parent, child, brother, sister, grandmother, grandfather, in-law) may qualify for a domestic violence restraining order but would not qualify for a civil harassment restraining order.

### The CSU, Restraining Orders and Protective Orders

The CSU complies with California law in recognizing restraining orders and protective orders. If you obtain a restraining order a copy should be provided to your campus Police Department. In order to comply with the restraining order, Title IX Coordinators, DHR Administrators, Advocates and/or the University Police Department on your campus may assist with setting up escorts, establishing special parking arrangements, changing classroom or employment locations, or additional measures as needed. Victim/Survivor Advocates on your campus can offer assistance with obtaining a restraining order.

### Disciplinary Procedures

Disciplinary procedures for sexual misconduct/sexual assault, sexual exploitation, dating and domestic violence, and stalking will provide a prompt, fair, and impartial process and resolution, outlined in the following excerpts from the [CSU Nondiscrimination Policy](#). As required by law, the excerpts in this Annual Security Report capture the steps, decisionmakers, and anticipated timelines for both formal and informal resolution processes, as applicable. For details beyond the steps, decisionmakers, and anticipated timelines, please see the policy.

The campus Title IX Coordinator is the designated administrator to receive reports of Discrimination, Harassment, Sexual Misconduct, Sexual Exploitation, Dating Violence, Domestic Violence, Stalking, and Retaliation.

Office of Title IX and Equal Opportunity  
Clark Hall Room 126  
One Washington Square  
San José, CA 95192-0126  
408-924-7290 (8:00am - 5:00pm)

669-877-0620 (after-hours voicemail/text line)

[titleixeo@sjsu.edu](mailto:titleixeo@sjsu.edu)

<https://www.sjsu.edu/titleixeo/>

Complaints alleging violations of this Nondiscrimination Policy against a President, Title IX Coordinator / DHR Administrator, the Chancellor, or member of the Board of Trustees will be made to the Office of Civil Rights Programming & Services at [CO-Complaints@calstate.edu](mailto:CO-Complaints@calstate.edu). Any person may report an alleged violation of the Nondiscrimination Policy.

Reports may be made at any time, and individuals are encouraged to report an alleged violation of the Nondiscrimination Policy regardless of how much time has passed. The University's ability to interview witnesses and otherwise investigate or act, however, may be limited by various factors, including the passage of time, fading witness memories, and/or preservation of evidence. In all cases, the Title IX Coordinator/DHR Administrator is available to discuss Supportive Measures with the Complainant at any time, regardless of how much time has passed since the incident described in the report.

The University's primary concern is the safety of the campus community. Any person who reports an alleged violation of the Nondiscrimination Policy should discuss any concerns about safety with the Title IX Coordinator/DHR Administrator

The Nondiscrimination Policy prohibits Retaliation. If a Student or Employee is reluctant to report because they fear Retaliation, they should discuss their concerns with the Title IX Coordinator/DHR Administrator as soon as possible.

Any Student who participates as a Complainant or witness in a Complaint process (including investigation or hearing) relating to Sex-based Harassment that falls under these Procedures will not be disciplined for related violations of the Standards for Student Conduct at or near the time of the incident, unless the University determines that the violation was egregious. The University may, however, take other appropriate action including having an educational discussion with the Student. Egregious conduct includes, but is not limited to, action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

#### Simultaneous Written Notification

Communication with the Parties regarding a Complaint, an investigation, or hearing will be sent to their designated CSU campus email address, unless the Party has specifically requested in writing to the Title IX Coordinator/DHR Administrator, Investigator, or Hearing Coordinator that communication be sent to a different email address. Communication with Parties who are neither Students nor Employees will be sent to an email address that they provide. Any communications relating to the outcome of an investigation or hearing, including any changes to the outcome or when the outcome becomes final, will be provided in writing to the Complainant and the Respondent at the same time.

#### Outreach to Complainant

After receiving a report, the Title IX Coordinator/DHR Administrator will assess the report and provide outreach to the possible Complainant named in the report. This outreach will include the following:

- a. A statement that the University has received a report of conduct that may be prohibited by the Nondiscrimination Policy (e.g. Discrimination, Harassment, Sex-based Harassment,

Sexual Misconduct, Sexual Harassment, Sexual Exploitation, Dating Violence, Domestic Violence, Stalking, Prohibited Consensual Relationship, or Retaliation.)

- b. A description of the role of the Title IX Coordinator/DHR Administrator.
- c. A request for the Complainant to meet with the Title IX Coordinator/DHR Administrator, or other designated employee, to discuss the Complainant's options and next steps.
- d. A statement that the Complainant can be accompanied by an Advisor of their choice during any meeting relating to the report and any subsequent Complaint process.
- e. Information regarding counseling, resources, and potential Supportive Measures.
- f. An explanation of how the University responds to reports of Nondiscrimination Policy violations and a description of potential disciplinary consequences.
- g. A summary of the investigation procedures.
- h. A statement regarding the importance of preserving evidence.
- i. A statement that the Complainant may, but is not required to, report to law enforcement any allegations that could constitute criminal behavior.
- j. A statement that retaliation for making a Complaint or participating in a Complaint process is prohibited by the Nondiscrimination Policy.

In addition to the information provided in the outreach communication, the Title IX Coordinator/DHR Administrator will provide Complainants alleging Sexual Misconduct, Sexual Exploitation Dating Violence, Domestic Violence or Stalking, with the information in Attachment D - Rights and Options for Victims of Sexual Misconduct/Sexual Assault, Sexual Exploitation, Dating And Domestic Violence, And Stalking.

#### **Initial Assessment & Intake Meeting**

The Title IX Coordinator/DHR Administrator will offer to conduct an intake meeting with any Complainant who responds to outreach communication, or otherwise makes a report of a potential Nondiscrimination Policy violation to discuss the Complainant's options, explain the available processes (including informal resolution and the formal complaint resolution process), and provide information about Supportive Measures. The Title IX Coordinator/DHR Administrator will consider the need for a follow-up meeting with the Complainant, as appropriate. Any subsequent investigation will include an interview with the Complainant conducted by the assigned investigator. The investigatory interview will be intended to build upon and clarify the information provided during intake.

All persons involved in implementing these procedures (e.g., the campus Title IX Coordinator and any Deputy Title IX Coordinator(s), Investigators, Human Resource Directors and Hearing Officers presiding over hearings) shall have relevant annual training on issues related to Sex Discrimination, Sexual Harassment, Sexual Misconduct, Sexual Exploitation, Dating and Domestic Violence, and Stalking. Such annual training shall include the CSU complaint processes, as well as the handling, investigation, and analysis of complaints of Sex Discrimination, Sexual Harassment, Sexual Misconduct, Sexual Exploitation, Dating and Domestic Violence, and Stalking. The annual training shall also address applicable confidentiality issues, especially with respect to the Title IX Coordinator's duty to weigh any victim's request for confidentiality against the duty to provide a safe and nondiscriminatory environment for all members of the campus community. For matters involving Sexual Misconduct, Sexual Exploitation, Dating and Domestic Violence, and Stalking, the

training shall also include how to conduct an investigation and hearing process that protects the safety of the person(s) involved and promotes accountability.

The Complainant and Respondent may choose to be accompanied by one Advisor of their choice, who may be, but is not required to be, an attorney or a union representative during meetings or any stage of the Complaint process.

The University will not limit the choice or presence of the Advisor for the Complainant or Respondent in any meeting or proceeding. However, the unavailability of a specific Advisor will not unduly interfere with prompt scheduling.

A Party's Advisor may not answer questions regarding the subject matter of the investigation for the Complainant or the Respondent. However, the Advisor may observe and consult with the Complainant or Respondent.

The Parties also have the right to consult with an attorney, at their own expense, or a union representative at any stage of the process if they wish to do so.

### Confidentiality Requests and Requests Not to Investigate

#### Confidentiality Requests

The University will maintain confidentiality of reports, Complaints, and associated processes whenever possible. When necessary, to protect the campus community and to facilitate investigations and/or Supportive Measures, certain information may be shared on a "need-to-know" basis. Therefore, the University cannot guarantee confidentiality.

#### Requests not to Investigate

When a Complainant requests that no investigation occur, the Title IX Coordinator/DHR Administrator will balance the request against the University's duty to provide a safe and non-discriminatory environment for all members of the campus community. In cases where the Complainant does not want to pursue an investigation, the Title IX Coordinator/DHR Administrator should inform the Complainant that the ability to take corrective action may be limited.

The Title IX Coordinator/DHR Administrator will consider, at a minimum:

- a. The Complainant's request not to proceed with initiation of a Complaint;
- b. The Complainant's reasonable safety concerns regarding initiation of a Complaint;
- c. The risk that additional acts of Discrimination, Harassment, or Retaliation would occur if a Complaint is not initiated;
- d. The severity of the alleged Discrimination, Harassment, or Retaliation including whether the conduct, if established, would require the removal of a Respondent from campus or imposition of another Disciplinary Sanction to end the Discrimination, Harassment, or Retaliation and prevent its recurrence;
- e. Whether the Respondent poses an imminent threat to the campus community, which may include violence, threats of violence, use of a weapon, physical restraints, or unwanted physical contact.
- f. The age and relationship of the Parties, including power imbalance and whether the Respondent is an Employee of the University;
- g. The scope of the alleged conduct, including information suggesting a pattern (such as multiple or prior reports of misconduct against the Respondent), ongoing conduct, or conduct alleged to have impacted multiple individuals;
- h. Whether the University is able to conduct a thorough investigation and obtain relevant evidence without the Complainant's cooperation;



- i. The availability of evidence to assist a decisionmaker (Investigator or Hearing Officer) in determining whether Discrimination, Harassment, or Retaliation occurred;
- j. Whether the University could end the alleged Discrimination, Harassment, or Retaliation and prevent its recurrence without initiating the formal complaint resolution process; and
- k. For Employee Complainants, the University will also consider its obligation to maintain a safe work environment in determining whether an investigation is necessary.
  - a. The Title IX Coordinator/DHR Administrator will document the basis for the decision to initiate or to not initiate the investigation based on this assessment criteria.

*Decision to Proceed with Complaint*

Based on the assessment criteria above, the Title IX Coordinator/DHR Administrator has discretion to initiate an investigation without the Complainant's participation.

When the Title IX Coordinator/DHR Administrator decides to proceed with an investigation without a Complainant's participation, the Title IX Coordinator/DHR Administrator will make the Complaint on behalf of the University. The Title IX Coordinator/DHR Administrator will remain neutral in applying the Nondiscrimination Policy and these Procedures. In these cases, the Title IX Coordinator/DHR Administrator will provide the impacted party with the same notices, updates, and opportunities to participate as the Respondent throughout the investigation and, where applicable, hearing process, unless the impacted party confirms in writing that they do not want to receive these communications and do not wish to participate in the process. The impacted party may rescind this notice at any time in writing to the Title IX Coordinator/DHR Administrator.

When the Title IX Coordinator/DHR Administrator initiates an investigation without the Complainant's participation, the Complainant will be informed in advance of the Title IX Coordinator/DHR Administrator disclosing the Complainant's identity and details of the Complaint or report to the Respondent, or initiating an investigation. The Title IX Coordinator/DHR Administrator will work with campus partners to take steps to arrange reasonable safety measures for the Complainant if appropriate. At the Complainant's request, the Title IX Coordinator/DHR Administrator will inform the Respondent that the Complainant asked the University not to investigate or seek discipline.

A Student Complainant will not be required to participate in an investigation if they do not wish to do so.

*Decision not to proceed with investigation:*

If a request for confidentiality or no investigation is granted, the Title IX Coordinator/DHR Administrator will nevertheless take reasonable steps to limit the effects of the alleged Discrimination, Harassment, or Retaliation, and prevent its recurrence without initiating formal action against the Respondent or revealing the identity of the Complainant. Examples include increased temporary monitoring, supervision, or security at locations or activities where the alleged misconduct occurred; providing additional training and education materials for students and employees; or conducting climate surveys. Reasonable steps will be taken to provide for the safety of a Complainant while keeping the Complainant's identity confidential as appropriate and if possible. These steps may include changing living arrangements or course schedules, assignments, or tests. The Complainant will be notified that the steps the campus will take may be limited by the request for confidentiality.

## Supportive Measures

The University will offer and coordinate Supportive Measures as appropriate for the Complainant and/or Respondent to restore or preserve that person's access to the University's education programs, activities, employment, or to provide support during the University's formal complaint resolution process or during the informal resolution process. Supportive Measures may include, but are not limited to: counseling; extensions of deadlines and other course-related adjustments; changes to employee reporting line; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more Parties; leaves of absence; changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to Discrimination, Harassment, and Retaliation.

The Title IX Coordinator/DHR Administrator will describe and offer Supportive Measures to Complainants during the initial assessment (even if no Complaint is made or the Complaint is ultimately not investigated), and to Respondents during an initial meeting.

The Title IX Coordinator/DHR Administrator is responsible for coordinating the effective implementation of Supportive Measures if requested and reasonably available.

### Review of Supportive Measures (Applies only to Reports or Complaints of Sex-based Harassment)

A Complainant or Respondent may request modification or reversal of a decision to provide, deny, modify, or terminate Supportive Measures applicable to them.

This request will be reviewed by an appropriate and impartial Employee:

- a) If the original decision about Supportive Measures was made by a person with authority delegated by the Title IX Coordinator/DHR Administrator, the review will be conducted by the Title IX Coordinator/DHR Administrator.
- b) If the original decision about Supportive Measures was made by the Title IX Coordinator/DHR Administrator, the review will be conducted by a Systemwide Director for Civil Rights.

If the reviewer determines that the decision to provide, deny, modify, or terminate the Supportive Measure was inconsistent with the Nondiscrimination Policy's requirements, expectations, or standards for Supportive Measures, they may modify or reverse the decision. In making this determination, the reviewer should consider:

- a) Do the Supportive Measures unreasonably burden a Complainant or Respondent?
- b) Are the Supportive Measures punitive?
- c) Are the Supportive Measures reasonably available and restore access to the CSU's programs, activities, or employment?
- d) Are the Supportive Measures being offered or provided during the informal resolution process or formal complaint resolution process?

A Complainant or Respondent may also seek additional modification or termination of a Supportive Measure applicable to them if circumstances change materially by contacting the Title IX Coordinator / DHR Administrator.

The University will not share information about any Supportive Measures with anyone other than the person to whom they apply, including informing one Party of Supportive Measures provided to another Party, unless necessary to provide the Supportive Measure or restore or preserve a Party's access to the CSU's education programs, activities, or employment, or when otherwise required by state or federal law.

### No-Contact Directives

No-contact directives may be issued as a Supportive Measure, Remedy, or in connection with an Informal Resolution Agreement, with or without an investigation. When reasonably requested by a Complainant or otherwise needed to protect health and safety or to preserve the integrity of the investigation, the University will issue an interim no-contact directive, which may be unilateral (prohibiting the Respondent from contacting the Complainant) or mutual (prohibiting the Parties from contacting each other) while the investigation is pending.

No-contact directives that are not part of an Informal Resolution Agreement must meet the following requirements:

1. No-contact directives that limit an individual's movement on a University campus may only be issued where the conduct alleged is egregious or where an objective threat of physical harm exists.
2. A mutual no-contact directive (applicable to both Parties) may only be issued prior to an investigation outcome. Mutual no-contact directives will not be issued automatically. The Title IX Coordinator/DHR Administrator must consider, based on the circumstances of each case, whether a mutual no-contact directive is necessary or justifiable to protect the Respondent's safety or well-being, or to address concerns about interference with an investigation.
3. If there is a finding that the Nondiscrimination Policy has been violated and a mutual no-contact directive is already in effect, unless there are extenuating circumstances, the no-contact directive will promptly be converted to a unilateral no-contact directive (applicable only to the Respondent).
4. Any no-contact directive (whether mutual or unilateral) will be delivered to both Parties in writing and will be accompanied by a written explanation of the terms of the directive and the consequences for violating the no-contact directive. A no-contact directive is intended to be temporary and should be periodically assessed to confirm the continued need for, and appropriateness of, its specific terms (conditions), including whether it should be mutual (applicable to both Parties), or unilateral (only applicable to the Respondent).
5. Violations of no-contact directives will be addressed by the campus Student Conduct Administrator in the same manner as any violation of the Student Conduct Code if the Respondent is a Student, or by Human Resources or Faculty Affairs, if the Respondent is an Employee. If the alleged violation of the no-contact directive is itself a violation of the Nondiscrimination Policy, the matter will be referred to the Title IX Coordinator/DHR Administrator.

In considering the reasonableness and terms of a requested no-contact directive, the Title IX Coordinator/DHR Administrator may consider various factors, including the need expressed by the Complainant or Respondent; the ages of the Parties involved; the nature of the allegations and their continued effects on the Complainant or Respondent; whether the Parties continue to interact directly in the University's education program or activity, including through student employment,

shared residence or dining facilities, class, or campus transportation; and whether steps have already been taken to mitigate the harm from the Parties' interactions, such as implementation of a civil protective order.

### **Criminal Complaints and Concurrent Investigations**

Complainants will be informed during the intake meeting of their right to make a criminal complaint with University police or other appropriate law enforcement agencies. The Title IX Coordinator/DHR Administrator will offer to assist the Complainant and will assure them that filing a criminal complaint will not unreasonably delay the University's investigation. The University will typically not wait until the conclusion of a criminal investigation to begin its own investigation. Although it may be necessary to temporarily delay the investigation while law enforcement is gathering evidence, once notified that law enforcement has completed the fact gathering portion of their investigation, the University will promptly resume and complete its own investigation. Individuals who first report to University police will be encouraged to also make a Complaint with the Title IX Coordinator/DHR Administrator.

#### **Interim Suspension**

An interim suspension may be considered for a Student Respondent, where there is reasonable cause to believe that interim suspension of that Student is necessary to protect the personal safety of persons within the Campus community or Campus property, and to ensure the maintenance of order during an investigation. Such interim suspensions will be implemented in accordance with the procedures under the Student Conduct Process and will only remain in effect during the Complaint process until determined to be no longer necessary. In determining whether an interim suspension is necessary, the Title IX Coordinator/DHR Administrator will coordinate with the Student Conduct Administrator to ensure appropriate on-going assessment and implementation occurs.

#### **Emergency Removal – Applies only to Reports or Complaints of Sex-based Harassment:**

The University may remove a Respondent from its education programs or activities, including Student employment, on an emergency basis in the absence of a Complaint, before an investigation concludes or where no investigation or hearing is pending. Prior to the removal, an individualized safety and risk analysis will be conducted. The removal is referred to as an "Emergency Removal," and has the effect of an Interim Suspension, as set forth in the Student Conduct Process, including that during the period of the Emergency Removal, the Student may not, without prior written permission from the University president or designee, enter any campus of the CSU. As with Interim Suspensions in the Student Conduct Process, the president or vice president designee, in consultation with the Title IX Coordinator/DHR Administrator, will determine whether there is an imminent and serious threat to the health or safety of a Complainant or any Students, Employees, or other persons arising from the allegations of Sex-based Harassment that justifies removal.

Where a determination is made that justifies Emergency Removal, the Respondent will be provided with notice and given an opportunity to challenge the decision immediately following the removal, in accordance with the procedures in the Student Conduct Process. This includes the right to a hearing within 10 Working Days of a request by the Respondent for such a hearing to determine if there is an imminent and serious threat to the health or safety of a Complainant or any Students, Employees, or other persons arising from the allegations of Sex-based Harassment that justifies removal. The hearing will be conducted under the Student Conduct Process and not these Procedures as they relate to hearings.

#### Administrative Leave

A campus may place a non-student Employee on Administrative Leave (sometimes referred to as Temporary Suspension) in accordance with applicable Collective Bargaining Agreements or CSU policies while the Complaint process is pending.

#### Transcript Notations

If a Respondent withdraws, transfers, or disenrolls from the University pending an investigation or disciplinary proceeding concerning a violation of the Nondiscrimination Policy, transcript notations may be appropriate and will be addressed under the Student Conduct Process. As appropriate to the situation, the University may place an administrative hold on registration transactions, release of records, and transcripts of a Student who has been sent written notice of a pending investigation or disciplinary matter concerning that Student, and may withhold awarding a degree otherwise earned until the completion of the investigation or disciplinary process, including the completion of all sanctions imposed.

### Complaints

When the Title IX Coordinator/DHR Administrator receives a Complaint, they will determine whether to open an investigation after making a preliminary inquiry into the allegations. An investigation may not be warranted where the reported information does not allege facts with enough specificity or include conduct that would, even if true, constitute a violation of the Nondiscrimination Policy. These determinations will be documented in writing by the Title IX Coordinator/DHR Administrator and maintained in accordance with systemwide records retention policies.

When more than one Complainant or more than one Respondent is involved, references in these Procedures to a Party, Complainant, or Respondent include the plural, as applicable.

#### Complaints Accepted for Investigation

Within 10 Working Days of the date of an intake meeting or receipt of a request for investigation from the Complainant (whichever is later), or making a determination that an investigation is necessary without a request from or participation by the Complainant, the Title IX Coordinator/DHR Administrator will send a Notice of Investigation to the Complainant and Respondent.

#### Complaint Not Accepted for Investigation

If the Title IX Coordinator/DHR Administrator determines that the Complaint does not allege a violation of the Nondiscrimination Policy, the Title IX Coordinator/DHR Administrator will, within 10 Working Days of the date of the intake or receipt of a written request for investigation (whichever is later), notify the Complainant in writing that the Complaint will not be investigated without further information. The Title IX Coordinator/DHR Administrator may refer the Complaint to another campus office if appropriate and will notify the Complainant of any referral. The Title IX Coordinator/DHR Administrator will retain a record of the Complaint, the written determination and any referrals made to another campus office.

#### Discretionary Dismissal

At any time after a Complaint has been accepted for investigation, it is within the discretion of the Title IX Coordinator/DHR Administrator to dismiss a Complaint, or any part of a Complaint, if:

- A. The Complainant notifies the Title IX Coordinator/DHR Administrator in writing that they would like to withdraw the Complaint or any part of it, or

- B. If the specific circumstances prevent the University from reasonably gathering evidence necessary to reach a determination as to the Complaint or part of the Complaint.

### Dismissal of a Complaint - Applies only to Complaints of Sex-based Harassment

The Title IX Coordinator/DHR Administrator may dismiss a Complaint of Sex-based Harassment if:

- a. The University is unable to identify the Respondent after taking reasonable steps to do so;
- b. The Respondent is not participating in the University's education program or activity and is not employed by the University;
- c. The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator/DHR Administrator declines to initiate a Complaint, and the University determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute Sex-based Harassment even if proven; or
- d. The University determines the conduct alleged in the Complaint, even if proven, would not constitute Sex-based Harassment. Before dismissing the Complaint, the University will make reasonable efforts to clarify the allegations with the Complainant. Complaints that are dismissed on this basis may be referred to another process or another campus office for review under other potentially applicable policies or codes of conduct (such as the grade appeal process, student code of conduct, employee grievance procedures, ADA process, to be addressed as unprofessional conduct, etc.).

When a complaint is dismissed, the University will promptly notify the Complainant of the basis for the dismissal in writing. If the dismissal occurs after the Respondent has been notified of the allegations, then the University will also notify the Respondent of the dismissal in writing and the basis for it. When a Complaint is dismissed, the University will, at a minimum:

- a. Offer Supportive Measures to the Complainant as appropriate;
- b. If the Respondent has been notified of the allegations, offer Supportive Measures to the Respondent as appropriate; and
- c. Take other prompt and effective steps, as appropriate, through the Title IX Coordinator/DHR Administrator to ensure that Sex-based Harassment does not continue or recur within the University's education program or activity.

The University will notify the Complainant that a dismissal may be appealed and will provide the Complainant with an opportunity to appeal the dismissal of a Complaint. If the dismissal occurs after the Respondent has been notified of the allegations, then the University will also notify the Respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:

- a. Procedural irregularity occurred that would have likely changed the outcome of the decision to dismiss;
- b. New evidence that was not reasonably available at the time of the dismissal and would have likely changed the outcome of the decision to dismiss; or

- c. The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.

Appeals will be submitted to the Civil Rights Appeals Unit at the Chancellor's Office and will be addressed to:

Civil Rights Appeals Unit  
Office of the Chancellor  
401 Golden Shore  
Long Beach, California 90802  
<mailto:CO-Appeals@calstate.edu>

1. If a Party is unable to submit an appeal or a response to an appeal electronically, they should contact the campus Title IX Coordinator/DHR Administrator for assistance.
2. When an appeal is submitted, the Civil Rights Appeals Unit will notify the other Party and the campus Title IX Coordinator/DHR Administrator in writing. The non-appealing Party may submit a written statement in support of or challenging the dismissal no later than 5 Working Days after the notice of appeal. Within 10 Working Days of the Civil Rights Appeals Unit's receipt of the appeal, the Civil Rights Appeals Unit will notify the Parties (via email and at the same time) of its decision.
3. The Civil Rights Appeals Unit will not consider evidence that was not introduced to the campus during the Complaint review process unless the new evidence was not reasonably available at the time of the Complaint review.
4. The Civil Rights Appeals Unit has discretion to extend the timelines for the dismissal appeal process for good cause or for any reasons deemed to be legitimate by the Civil Rights Appeals Unit. This includes the time for filing an appeal and the time for the Civil Rights Appeals Unit to respond to the appeal. The Civil Rights Appeals Unit will notify the Parties and the Title IX Coordinator/DHR Administrator of any extensions of time granted pertaining to any portion of the appeal process.
5. The Civil Rights Appeals Unit appeal response is final and concludes the discretionary dismissal process under these Procedures.

### Consolidation

The University may consolidate Complaints of Discrimination, Harassment, or Retaliation against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against another Party, when the allegations of Discrimination, Harassment, or Retaliation arise out of the same or substantially similar facts or circumstances. The Title IX Coordinator/DHR Administrator will determine whether a Complaint should be consolidated (subject to FERPA and other applicable privacy laws). In addition, during the course of the investigation, the investigation may reveal the existence of additional or different violations of the Nondiscrimination Policy, which may also be consolidated following notification to the Parties. Depending on the timing and circumstances, the Title IX Coordinator/DHR Administrator retains discretion to resolve Complaints using the same investigator or following the resolution of the initial Complaint, such as through appropriate Disciplinary Sanctions.

## Student Grade Appeals

Grade appeals that allege a violation of the Nondiscrimination Policy proceed under the campus procedures per *CSU Grading, Repetition of Courses, Academic Renewal, and Appeals Policy* (or any superseding policy) and under these Procedures as follows:

1. The Student will promptly request a grade appeal and note that the grade appeal procedure should be paused until such time as the campus investigation and any appeal process under these Procedures have concluded.
2. The determination whether a violation occurred under the Nondiscrimination Policy will be provided to the campus grade appeal committee, and the committee will be bound by the determination when the grade appeal process resumes.

## Alternative Resolution Process

### Informal Resolution

The Parties may voluntarily choose to participate in an informal resolution process to resolve an alleged violation of the Nondiscrimination Policy. The filing of a formal Complaint is not required to initiate the informal resolution process.

#### General Principles

The Title IX Coordinator / DHR Administrator has discretion to determine whether it is appropriate to offer an informal resolution process and may decline to allow informal resolution despite the request of one or more of the Parties. Circumstances when the Title IX Coordinator/DHR Administrator may decline to allow informal resolution include but are not limited to:

- i. When they determine that the alleged conduct would present a future risk of harm to others.
- ii. When the Complaint involves allegations made by a Student against an Employee. Informal resolution in these cases is generally discouraged and may be permitted with the approval of the Systemwide Director for Civil Rights assigned to the University following a request by the Title IX Coordinator/DHR Administrator. In addition, any informal resolution agreement between a Student and an Employee will be reviewed by the assigned Systemwide Director for Civil Rights prior to being finalized.

The Title IX Coordinator/DHR Administrator will conduct or oversee the informal resolution process and conduct an initial and on-going assessment as to whether the process should continue.

Prior to approving an informal resolution, the Title IX Coordinator/DHR Administrator will consult with the appropriate administrator responsible for discipline.

The Title IX Coordinator/DHR Administrator will make the final determination on all informal resolution processes regarding whether the terms agreed to by the Parties are appropriate considering all of the circumstances of the Complaint.

When the informal resolution process is offered, and to the extent necessary, the Title IX Coordinator/DHR Administrator will also take other appropriate prompt and effective steps to ensure that the alleged violations of the Nondiscrimination Policy do not continue or recur within the University's education programs, activities, or employment.



Neither Party will be required or pressured to participate in an informal resolution process. The Title IX Coordinator/DHR Administrator must obtain the Parties' voluntary written consent to participate in the informal resolution process and must not require waiver of the right to an investigation and determination of a Complaint as a condition of enrollment or continuing enrollment, employment or continuing employment, or exercise of any other right.

The person facilitating the informal resolution process must not be the same person as the Investigator or the Hearing Officer in the formal complaint resolution process. A Title IX Coordinator/DHR Administrator may facilitate the informal resolution process. When the Title IX Coordinator/DHR Administrator facilitates the informal resolution process, they cannot serve as the Investigator. In addition, any informal resolution agreements facilitated by the Title IX Coordinator/DHR Administrator must be signed by the assigned Systemwide Director for Civil Rights.

The person facilitating the informal resolution process must not be the same person as the Investigator or the Hearing Officer in the formal complaint resolution process. A Title IX Coordinator/DHR Administrator may facilitate the informal resolution process. When the Title IX Coordinator/DHR Administrator facilitates the informal resolution process, they cannot serve as the Investigator. In addition, any informal resolution agreements facilitated by the Title IX Coordinator/DHR Administrator must be signed by the assigned Systemwide Director for Civil Rights.

Any person facilitating an informal resolution process will receive appropriate training and must be free from a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

*Notice of Informal Resolution Process*

Before beginning the informal resolution process, the Title IX Coordinator/DHR Administrator will explain in writing to the Parties:

- a. The allegations;
- b. The requirements of the informal resolution process;
- c. That any Party has the right to withdraw from the informal resolution process and begin or continue with the formal complaint resolution process at any time before agreeing to a resolution;
- d. The Parties' right to consult with an Advisor;
- e. Any resolution must be in writing and signed by both Parties and the Title IX Coordinator/DHR Administrator;
- f. That if the Parties agree to a resolution at the end of the informal resolution process, they cannot begin or continue with the formal complaint process in relation to the same allegations;
- g. The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the Parties; and
- h. What information the University will maintain and whether and how the University could disclose such information for use in the formal complaint resolution process if such procedures begin or resume.

Potential Terms

Potential terms that may be included in an informal resolution agreement include, but are not limited to:

- a. Apology, written or verbal;
- b. Relocation or removal from a residence hall or other University provided housing, subject to availability;
- c. Changes in academic arrangements, such as changing class sections or locations;
- d. Changes in work schedules or locations;
- e. Limitations on or agreements related to participation in and/or presence in/at events, extracurricular activities, student organizations, recreational facilities, athletics, etc.
- f. Participation in and/or successful completion of alcohol or drug education or counseling;
- g. Participation in counseling services for mental or behavioral health;
- h. Participation in specific educational opportunity or training;
- i. Voluntary educational, mentoring, coaching, or counseling sessions, which may or may not include stipulations, such as proof of successful completion or statement of active participation from the mentor / coach / counselor;
- j. Verbal counseling or warnings;
- k. Collaborative agreements on behavioral or institutional changes;
- l. No-contact directives, or other restrictions on contact, communication, and/or interactions between the Parties;
- m. Restrictions on Respondent's movement or access to specific locations at the University;
- n. Alternative seating arrangements for graduation;
- o. Complainant sharing of an impact statement with the Respondent;
- p. Admission or acceptance of responsibility for causing harm and/or the alleged conduct;
- q. Community service;
- r. Voluntary participation in formal disciplinary action for Respondent;
- s. Restrictions on the Respondent's participation in one or more University programs or activities or attendance at specific events, including restrictions the University could have imposed as Remedies or Disciplinary Sanctions had it determined at the conclusion of the formal complaint resolution process that a violation of the Nondiscrimination Policy occurred; or
- t. Other mutually agreed upon outcomes or resolutions.
  - Any agreed-upon Remedies and Disciplinary Sanctions agreed to in an informal resolution have the same effect as Remedies given and Disciplinary Sanctions imposed following an investigation or hearing.

### Timeframe

The informal resolution process may take place at any time before a determination of responsibility is made, but no later than 60 Working Days after both Parties provide voluntary, written consent to participate in the informal resolution process. The Parties and the Title IX Coordinator / DHR Administrator may agree to one or more extensions of the 60 Working Day deadline, which will be confirmed in writing. The timeline of the formal complaint resolution process will be paused during the pendency of any informal resolution process.

### Written Agreement-Not Subject to Appeal

The terms of any informal resolution must be in writing and signed by the Parties and the Title IX Coordinator/DHR Administrator. Use of electronic signatures is permitted. A signed agreement to an Informal Resolution is final and is not appealable by either Party.

### Restrictions on Mediation Between the Parties

Mediation between the Parties cannot be used, even on a voluntary basis, to resolve Sexual Misconduct, Sexual Exploitation, Dating Violence, Domestic Violence, or Stalking Complaints.

### Acceptance of Responsibility

The Respondent may, at any time during the investigation or hearing process, prior to an Investigator or Hearing Officer issuing their determination, choose to accept responsibility for the alleged conduct prohibited under the Nondiscrimination Policy.

Before a Respondent accepts responsibility for the alleged misconduct, the Title IX Coordinator / DHR Administrator or designee will discuss with the Respondent that the matter will be referred to the University president or designee for a decision regarding an appropriate Disciplinary Sanction, and that the acceptance of responsibility could – but will not necessarily – be regarded as a mitigating factor that results in less severe sanctions.

Acceptance of responsibility will only be recognized if the Respondent accepts responsibility by signing a written document prepared by the Title IX Coordinator / DHR Administrator that describes the range of Disciplinary Sanctions that the president or designee will consider in reaching a decision about Disciplinary Sanctions.

If the Respondent has accepted responsibility in writing, the Title IX/DHR office will issue a brief written summary of the allegations and a statement that the Respondent has accepted responsibility. The written summary will be sent to both the Complainant and the Respondent.

Within 5 Working Days of receiving the written summary from the Title IX/DHR Office, each Party may submit to the Title IX Coordinator / DHR Administrator an impact statement or other statement regarding discipline that is no more than 2000 words in length. The document is an opportunity for each Party to suggest disciplinary outcomes and to provide information that they believe is important for the president or designee to consider when reaching a sanction decision. The Student Conduct Administrator and/or Title IX Coordinator / DHR Administrator will also submit a written statement regarding aggravating and mitigating factors (that is, factors that would warrant a more severe or less severe sanction), including whether the Respondent was previously found to have violated the Standards for Student Conduct or the Nondiscrimination Policy. These written statements will be provided to the president or designee who will decide an appropriate sanction.

The Parties may appeal the sanction only on the grounds that the sanction(s) imposed was objectively unreasonable, or arbitrary based on the conduct for which the Respondent accepted responsibility. The appeal process will otherwise be in accordance with Appeal Procedures below.

Where there is an acceptance of responsibility regarding some but not all of the alleged conduct, the investigation and hearing process will continue to conclusion, unless otherwise resolved through Informal Resolution

## Investigations-The Formal Complaint Resolution Process

### Purpose of the Investigation and Resolution Process

The investigation and resolution of Complaints under these Procedures is not intended to be an adversarial process between the Complainant, the Respondent, and witnesses. Rather, it is a process and opportunity for the University to educate students, provide an environment free from Discrimination, Harassment, and Retaliation, and comply with its obligations under law. The University will provide for adequate, reliable, and impartial investigation of Complaints. The University will treat Complainants and Respondents equitably.

#### Cooperation in the Investigation Process

All Employees, and Students who are not Parties to the Complaint, are required to cooperate with the investigation and other processes set forth in these Procedures, including but not limited to, attending meetings and interviews, and being forthright and honest during the process.

#### Written Notice

The University will provide a Party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the Party to prepare to participate.

#### Prohibition on Retaliation

The University strictly prohibits Parties or witnesses from engaging in Retaliation against anyone for reporting or filing a Complaint, assisting or participating in an investigation or hearing, interfering with a Party's or witness's rights or privileges under the Nondiscrimination Policy, or for assisting someone else in reporting or opposing conduct prohibited by the Nondiscrimination Policy. Any acts of Retaliation are subject to disciplinary action.

### Privacy

The University will take reasonable steps to protect the privacy of the Parties and witnesses, including ensuring compliance with the Family Educational Rights and Privacy Act (FERPA) and other applicable privacy laws. During the formal complaint resolution process, beginning with the Notice of Investigation and concluding when the deadline for an appeal has passed or the Civil Rights Appeals Unit has issued its final response, the Parties and witnesses are prohibited from using or disclosing the information or records obtained through the formal complaint resolution process. This prohibition shall not restrict the ability of the Parties to obtain and present evidence, including by speaking to witnesses, consulting with family members, confidential resources, or Advisors, or otherwise preparing for or participating in the formal complaint resolution process. These restrictions also do not apply to information learned through other means, such as personal experience, or to disclosures made during another administrative proceeding or through litigation. For especially sensitive materials, including but not limited to recordings and medical records, the University will provide such records for viewing or inspection only -- and not for copying or possessing. The Parties and their Advisors may be asked to sign written acknowledgements

agreeing to these restrictions on disclosure and re-disclosure. Whether or not such acknowledgements are signed, violations of these prohibitions, including disregarding any restrictions on the use of records (such as re-disclosing records to unauthorized individuals or copying records that are provided for viewing only), may subject a Student or Employee to discipline.

### **Standard and Burden of Proof**

The standard of proof for hearings and investigations under these Procedures is the Preponderance of the Evidence. Preponderance of the Evidence is a standard of proof that determines whether alleged conduct more likely than not occurred based on the evidence presented or facts available at the time of the decision. The responsibility is not on the Parties – but on the University – to conduct an investigation that gathers sufficient evidence to determine whether Discrimination, Harassment, or Retaliation occurred. The Complainant does not have the burden to prove, nor does the Respondent have the burden to disprove, the underlying allegation or allegations of misconduct. The University presumes that the Respondent is not responsible for the alleged conduct until a determination is made at the conclusion of the formal complaint resolution process.

### **Role of the Title IX Coordinator / DHR Administrator in the Investigation Process**

The Title IX Coordinator/DHR Administrator will either investigate the Complaint or assign this task to an Investigator. If assigned to an Investigator, the Title IX Coordinator/DHR Administrator will supervise and oversee the investigation, including reviewing all draft investigation reports before they are final to ensure that the investigation complies with these Procedures. If the Title IX Coordinator/DHR Administrator investigates the Complaint, a Systemwide Director or other appropriately trained administrator will review all draft investigation reports in the place of the Title IX Coordinator/DHR Administrator.

### **Neutrality of Process**

The University requires that any Title IX Coordinator/DHR Administrator, investigator, or decisionmaker not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. A decisionmaker may be the same person as the Title IX Coordinator/DHR Administrator or investigator. The Title IX Coordinator/DHR Administrator will take affirmative steps to ensure that anyone involved in conducting investigations, finding facts, and making disciplinary decisions in a matter will be impartial, neutral, and free from actual conflicts of interest. A conflict of interest exists if a person has a personal relationship with one of the Parties or witnesses, has a reporting employment relationship with a Party, or has demonstrated actual bias towards a Party or witness or towards Complainants or Respondents in general. Mere belief or opinion does not constitute evidence of bias or conflict of interest.

### **Investigation Where a Respondent Does Not Participate**

The Respondent will not be found to have violated the Nondiscrimination Policy solely because the Respondent did not participate in the investigation or hearing process. Nor will the Respondent be found not to have violated the Nondiscrimination Policy solely because a Complainant or other witness did not participate in the investigation or hearing process.

### **Timeframe, Extensions, and Status Updates**

The University has established the following timeframes for the major stages of the formal complaint resolution process:

<b>Stage</b>	<b>Timeframe</b>
Complaint accepted or not accepted for investigation	Within 10 Working Days of the date of the intake or receipt of a written request for investigation (whichever is later)
Investigation – Review of Evidence Response Submission	10 Working Days from date Preliminary Investigation Report sent to Parties
Investigation – Final Investigation Report	100 Working Days from the date the Notice of Investigation is sent to Parties
Notice of Hearing	At least 20 Working Days prior to date of hearing
Hearing Officer’s Decision Report	15 Working Days from end of hearing
Final Decision from President or Designee	10 Working Days from receipt of Hearing Officer’s sanction recommendation
Appeal Submission	10 Working Days from date Notice of Investigation Outcome (non-hearing) or Final Decision (hearing) is sent to the Parties
Appeal Determination	30 Working Days after receipt of the written appeal

The University has also established the following process that allows for the reasonable extension of timeframes in these Procedures on a case-by-case basis for good cause. A Party, Investigator, and/or Hearing Officer may request a reasonable extension of the timeframes in these Procedures at any time from the Title IX Coordinator/DHR Administrator. The Title IX Coordinator/DHR Administrator may also initiate a reasonable extension of the timeframes in these Procedures at any time. For an extension to be granted, the following process must be followed:

1. Good cause for the extension must exist. Good cause may include:
  - a) To ensure the integrity and thoroughness of the investigation;
  - b) The reasonable absence of a Party, Party's advisor, or witness;
  - c) To comply with a request by law enforcement, including a concurrent law enforcement investigation;<sup>2</sup>
  - d) Based on the need to provide language assistance, disability accommodations, or other modifications to allow the full participation of a Party or witness;
  - e) Academic breaks or exam periods;
  - f) A particularly complex investigation or hearing process, such as one involving multiple Complainants, multiple Respondents, a large number of witnesses, voluminous evidence, or length of the written record;
  - g) The severity and extent of the alleged misconduct; or
  - h) Other extenuating or unforeseen circumstances that are not within the control of the University, Party, witnesses, Investigator, or Hearing Officer.
2. The Title IX Coordinator/DHR Administrator is the final decision-maker with respect to all extensions
3. The Parties receive written notice from the Title IX Coordinator/DHR Administrator or designee that an extension is necessary and an explanation for the delay. The notice will

indicate if the extension alters the timeframes for the major stages of the Complaint process and provide a new estimated timeline.

#### Requests for Extensions

While requests for delays by the Parties and witnesses may be considered, the University cannot unduly or unreasonably delay the prompt resolution of a Complaint under the Nondiscrimination Policy.

- a. Students – As required by California law, the Title IX Coordinator/DHR Administrator will not unreasonably deny a Student Party's request for an extension during periods of examinations or academic breaks.
- b. Employees – The fact that an Employee is off contract or between semesters, without more, does not excuse an Employee from their expected participation in the Complaint resolution process.

#### Status Updates

In addition to the communications at each major stage of the process, the University will provide a status update to the Complainant and Respondent every 30-days, beginning from the date that the Notice of Investigation is issued until the Notice of Investigation Outcome or Final Decision is issued to the Parties, unless a Party requests in writing not to receive these updates.

- a. For cases of Sex-based Harassment, the Title IX Coordinator/DHR Administrator shall notify the Complainant of any Disciplinary Sanctions imposed against a Respondent.
- b. The Civil Rights Appeals Unit will provide status updates to the Parties and Title IX Coordinator/DHR Administrator as required by the timelines in these Procedures.
- c. In addition, either Party may, at any time, request from the Title IX Coordinator/DHR Administrator a status updates regarding investigation, hearing, and appeal timeframes.

#### **Reasonable Accommodations**

Any person with a Disability who seeks reasonable accommodations to participate in the Complaint submission or investigation process will be referred to the appropriate campus administrator (for Students, the services for students with disabilities administrator, and for Employees the appropriate human resources administrator) who may consult with the Title IX Coordinator/DHR Administrator to determine the reasonableness of a requested accommodation.

#### **Notices of Investigation**

The University will prepare Notices of Investigation for the Parties upon initiation of the formal complaint resolution process. The Notices of Investigation must be issued to the Parties in writing, at the same time, and with sufficient time and information for the Parties to prepare a response before any initial interview. A Notice of Investigation must include the following information:

1. An overview summary of the Complaint allegations (e.g., "who," "what," "when," and "where"), including the identities of the Parties, the conduct alleged to constitute Discrimination, Harassment, or Retaliation, and the date(s) and location(s) of the alleged incident(s);
2. A copy of, or internet link to, these Procedures and the Nondiscrimination Policy, as well as a summary of the alleged Nondiscrimination Policy violations;

3. A summary of the Nondiscrimination Policy formal complaint resolution process, including the right to appeal and the informal resolution process;
4. That Retaliation is prohibited;
5. The Respondent is presumed not responsible for the alleged conduct until a determination is made at the conclusion of the formal complaint resolution process. Prior to such a determination, the Parties will have an opportunity to provide Relevant evidence to a trained, impartial decisionmaker (Investigator or Hearing Officer);
6. The estimated timeline for completion of the investigation;
7. Information regarding counseling and other Supportive Measures;
8. The Parties may have one Advisor of their choice who may be, but is not required to be, an attorney or union representative;
9. The Parties will have an equal opportunity to access the Relevant and not otherwise impermissible evidence used in the investigation;
10. A statement that the Complainant and Respondent will have equal opportunities to identify Relevant witnesses and evidence in connection with the investigation and at any hearing, including the ability to:
  - a. Submit documentary information to the Investigator;
  - b. Submit a list of potential witnesses to the Investigator; or
  - c. Request that the Investigator attempt to collect additional relevant evidence;
11. A statement that any evidence available, but not disclosed during the investigation might not be considered in any findings made, including at any hearing, and likely will not be considered for purposes of appeal;
12. A statement that the Standards for Student Conduct prohibits furnishing false information to a University official, faculty member, or campus office;
13. A statement that the Complainant and Respondent will be provided with periodic status updates in accordance with the timelines established in these Procedures; and
14. A statement regarding the possible range of Disciplinary Sanctions. If new but related allegations are raised during the investigation that are materially different from those described in the Notice of Investigation, the Title IX Coordinator / DHR Administrator will issue a revised Notice of Investigation to the Parties, along with a corresponding revised timeline for completion, if appropriate.

### **Respondent Initial Meeting**

In the Notice of Investigation, the Title IX Coordinator/DHR Administrator will offer to have an initial meeting with the Respondent. This meeting is not intended to be investigatory in nature. At this meeting, the Title IX Coordinator / DHR Administrator will explain the allegations against the Respondent, as well as the investigation process and the Respondent's rights during the process. The Title IX Coordinator/DHR Administrator will also explain that during the investigation process the Respondent and the Complainant will have the opportunity to present evidence, identify witnesses, and review evidence.



## Gathering Evidence

During the investigation, the Investigator will take reasonable steps to gather all Relevant evidence from the Parties, witnesses, or other sources, including interviews with the Complainant, the Respondent, and Relevant witnesses. The University will provide an equal opportunity for the Parties to present fact witnesses and other inculpatory (meaning that it shows or tends to show a person's involvement in the alleged conduct) and exculpatory (meaning that it shows or tends to show that a person was not involved in the alleged conduct) evidence that is Relevant. The Investigator will interview the Parties and Relevant witnesses and review documents and physical evidence. As appropriate to the investigation, the Investigator may conduct follow-up interviews or request responses to questions in writing.

### Opportunity to Submit Evidence and Identify Witnesses

The Complainant and Respondent will be asked to identify witnesses and provide other Relevant information, such as documents, communications, and other available evidence. The Parties are encouraged to provide all Relevant information as soon as possible to facilitate a prompt resolution to the Complaint. The Investigator may receive any information presented by the Parties, but the Investigator, not the Parties, is responsible for gathering Relevant evidence. If a Party or witness declines to voluntarily provide material information or delays in doing so, the University's ability to conduct a prompt, thorough, and equitable investigation may be impacted. The University will not restrict the ability of either Party to discuss the allegations under investigation or to gather and present Relevant evidence. Parties and witnesses must not engage in actions that could be considered Retaliation, including confronting, threatening, intimidating, attempting to influence, or otherwise taking inappropriate actions against any Party, witness, or anyone else participating in the investigation or hearing process. The Investigator will document the steps taken to gather evidence, even when those efforts are not successful.

### Bases for Declining a Request to Gather Evidence

The Investigator will gather evidence and ask questions proposed by the Parties, except as follows:

- a. The Investigator determines that the questions are repetitive, irrelevant, or harassing.
- b. The request seeks information that can be reasonably and adequately obtained by the requesting Party from other independent or publicly available sources.
- c. The burden of obtaining the information is likely to substantially outweigh the benefit that the evidence bears on a disputed issue.
- d. The requested information can be reasonably obtained through other means less likely to intrude on a person's privacy.

## Investigations Involving Allegations of Sex Discrimination

The University will review all evidence gathered through the investigation and determine what Relevant evidence may be considered. Questions are Relevant when they seek evidence that may aid in showing whether or not the alleged conduct occurred, and evidence is Relevant when it may aid a decisionmaker in determining whether or not the alleged conduct occurred.

1. Impermissible evidence is evidence that is not allowed to be accessed, considered, or otherwise used by the University, except to determine if one of the exceptions listed below applies. The following types of evidence, and questions seeking that evidence, are impermissible, regardless of whether they are Relevant:

- a. Evidence protected by a privilege recognized by state or federal law (unless waived by the Party or witness holding the privilege);
  - b. A Party's or witness's private medical records maintained by a physician, psychologist, or other recognized professional or paraprofessional (unless the Party or witness voluntarily consents to its use in writing); or
  - c. Evidence that relates to the Complainant's or Respondent's sexual interests or prior or subsequent sexual conduct (unless offered to prove someone other than the Respondent committed the alleged conduct or offered to prove how the Parties communicated consent in prior or subsequent consensual, sexual relations).
    - i. Where the Investigator allows consideration of evidence about a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent, the fact that the Complainant and Respondent engaged in other consensual sexual relations with one another is never sufficient, by itself, to establish that the conduct in question was consensual.
    - ii. Prior consensual, sexual conduct between the Complainant and the Respondent does not prevent the University from finding that the conduct alleged in the Complaint constitutes Sex-based Harassment or otherwise violates the Nondiscrimination Policy.
2. Before allowing the consideration of any evidence of sexual history of the Complainant or the Respondent under this section, the Investigator will provide a written explanation to the Parties as to why consideration of the evidence is permissible under this section.

*Expert Witnesses*

In rare cases, an Investigator may need to consult medical, forensic, technological, or other experts when expertise on a topic is needed to achieve a fuller understanding of the issues under investigation. In such cases, the Investigator must consult with the Title IX Coordinator/DHR Administrator prior to engaging an expert witnesses.

*Preliminary Investigation Report*

The University will provide each Party and the Party's Advisor, if any, with an equal opportunity to access the evidence that is relevant to the allegations of Discrimination, Harassment, or Retaliation and not otherwise impermissible evidence.

Before finalizing the investigation, the Investigator will share with the Complainant and Respondent a preliminary investigation report, along with all Relevant evidence gathered. The preliminary investigation report will list any evidence offered by the Parties or any other witnesses that the Investigator concluded are not Relevant. This evidence will be available for review upon request. The preliminary investigation report will:

- a. Describe the allegations.
- b. Describe the investigative process to date.
- c. Set forth the relevant policy language and the Preponderance of Evidence Standard.
- d. Describe the evidence presented and considered.

- e. Identify the material facts – disputed and undisputed – with explanations as to why any material fact is disputed.

#### Access to Preliminary Investigation Report

The Investigator, in consultation with the Title IX Coordinator/DHR Administrator, will use discretion in determining how to provide the Parties with secure access to the preliminary investigation report. The University will take reasonable steps to prevent and address the Parties' and their Advisors' unauthorized disclosure of information and evidence obtained solely through the formal complaint resolution process.

#### Review of Evidence

Each Party will be given a reasonable opportunity to respond to the preliminary investigation report and any attached evidence and ask questions. The opportunity to review and respond to the preliminary investigation report is known as the "review of evidence" process. The Parties will have 10 Working Days to review the evidence. Each Party may:

- a. Respond to the evidence in writing.
- b. Request that the Investigator gather additional evidence or ask specific questions to the other Party and other witnesses.
- c. Identify additional witnesses.

#### Conclusion of Review of Evidence

The Investigator will share with the Parties the answers to questions posed during the review of evidence and additional Relevant evidence gathered. This will be shared with all Parties, who may then respond to any new evidence and ask questions. The Investigator determines when it is appropriate to conclude the review of evidence process.

### Final Investigation Report

#### Final Investigation Report (Hearing Required)

In matters where a hearing is not required, a final investigation report will be provided to the Parties along with a Notice of Investigation Outcome.

- a. The final investigation report will include:
  - i. A summary of the allegations,
  - ii. The investigation process,
  - iii. The Preponderance of the Evidence standard,
  - iv. A detailed description of the evidence considered,
  - v. Analysis of the evidence including relevant credibility evaluations,
  - vi. Appropriate findings, and
  - vii. Relevant exhibits and documents attached to the written report.

- b. The Notice of Investigation Outcome will attach the final investigation report and include the following:
  - i. A summary of the allegations and the investigative process.
  - ii. That the Preponderance of the Evidence standard was employed.
  - iii. A summary of the findings of fact.
  - iv. A determination as to whether the Nondiscrimination Policy was violated, and if so, any Remedies to be afforded to the Complainant.
  - v. Notice of Parties' right to appeal under these procedures.
- c. The notice will usually be delivered to the Parties electronically. If the notice includes a determination that there was a violation of the Nondiscrimination Policy, the Title IX Coordinator/DHR Administrator will notify the appropriate University administrator responsible for discipline of the investigation outcome and provide a copy of the final investigation report. This notice will include the appeal rights available to the Respondent prior to the initiation of any Disciplinary Sanctions.

*Final Investigation Report (Hearing Not Required)*

The final investigation report will include all of the information included in the preliminary investigation report as well as additional Relevant evidence received during the review of evidence. Any relevant evidence provided by the Parties or witnesses, or otherwise gathered by the Investigator, will be attached to the final investigation report, or made available for review by the Parties. Evidence offered by the Parties or any other witnesses that the Investigator concluded is not Relevant will be noted but not included in the final investigation report and should be available at the time of the hearing such that it can be provided to the Hearing Officer if requested.

## Hearings

As part of the formal complaint resolution process for Sex-based Harassment cases, the CSU will provide a live hearing that enables the decisionmaker – “the Hearing Officer” – to question the Parties and witnesses to assess a Party’s or witness’s credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations.

A hearing will be provided when:

1. Both Parties are Students, or either the Complainant or Respondent is a Student; AND
2. The Complaint includes allegations of Sex-based Harassment. The Complainant and Respondent will be treated equitably throughout the pre-hearing and hearing processes.

## Privacy

The University will take reasonable steps to protect the privacy of the Parties and witnesses during the hearing process, provided that the steps do not restrict the ability of the Parties to obtain and present evidence, including by speaking to witnesses (subject to the University’s prohibition on Retaliation), consulting with their family members, confidential resources, or Advisors, or otherwise preparing for or participating in the process.

Pre-Hearing Schedule and Response Deadlines:

*Role of the Hearing Coordinator*

The Hearing Coordinator (either the student conduct administrator, Title IX Coordinator, or other appropriate administrator) is the person responsible for coordinating the hearing process. The Hearing Coordinator will act as liaison between the Parties and the Hearing Officer on procedural matters and therefore may not be the Investigator assigned to the matter. The Hearing Coordinator may appropriately delegate administrative tasks but should have overall supervision of the hearing coordination process.

*Notice of Hearing-20 Working Days Prior to Hearing*

The Parties will be sent a written notice of the hearing at least 20 Working Days before the hearing. The notice will include the date, time, location, and purpose of the hearing as well as the name of the Hearing Officer. The notice is considered received on the date it is sent.

*Submission of Proposed Witness List*

No later than 15 Working Days before the hearing, each Party will provide to the Hearing Coordinator a proposed witness list that includes the names of, and current contact information for, that Party's proposed witnesses as well as an explanation of the relevance of each proposed witness' testimony.

*Information Regarding Advisors and Support Persons*

A Party may be accompanied at the hearing by one Advisor (for consultation) and one Support Person (for emotional support) of their choice. No later than 15 Working Days before the hearing, the Parties will provide to the Hearing Coordinator the name of, and contact information for, the Party's Advisor and Support Person (if any).

*Objections to the Hearing Officer*

A Hearing Officer will not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent. Objections to the assigned Hearing Officer will be made in writing to the Hearing Coordinator no later than 15 Working Days before the hearing.

- a) The objection may only be based on an actual conflict of interest. An actual conflict of interest exists if the Hearing Officer has a personal relationship with one of the Parties or witnesses or has demonstrated actual bias towards a Party or witness, or complainants or respondents generally.
- b) The fact that the Hearing Officer has previously served as a hearing officer in a University proceeding is not a conflict of interest. Mere belief or opinion does not constitute evidence of actual bias or conflict of interest.
- c) The Hearing Coordinator will determine if there is a conflict of interest. In that event, the Parties will be notified in writing of the name of the new Hearing Officer. The date for the hearing may need to be rescheduled. Any objection to the new Hearing Officer will be made following the same process described above.

*Location of Hearing-15 Working Days Prior to Hearing*

Generally, the University will conduct hearings with the Parties physically present in separate locations using videoconferencing technology that allows the Hearing Officer and the Parties to simultaneously see and hear the Party or witness while that person is speaking. Any objections from a Party about being out of the physical presence of the Hearing Officer will be made in writing no later than 15 Working Days before the hearing.

#### *Space and Technology Needs*

Any Party who anticipates that they will not have a private space from which to participate in the hearing and/or technology access, including a reliable internet connection, should notify the Hearing Coordinator no later than 15 Working Days before the hearing so that the Hearing Coordinator can assist with appropriate arrangements for a private on-campus space and technology access.

#### *Disability Accommodations*

Any Party who requires a disability accommodation to facilitate their full participation in the hearing should notify the Hearing Coordinator no later than 15 Working Days before the hearing. The Hearing Coordinator will refer such requests to the appropriate campus administrator (for Students, the services for students with disabilities administrator, and for Employees the appropriate human resources administrator), who may consult with the Hearing Coordinator to determine the reasonableness of a requested accommodation.

#### *Notification to Witnesses and Facilitation of Witness Participation*

No later than 10 Working Days before the hearing, the Hearing Coordinator will share the witness list with the Parties and notify each witness of the date, time, and location of or how to access the hearing. a. The campus will direct Employee and Student witnesses to attend the hearing where the witnesses are timely identified to the Hearing Coordinator. b. The University will accommodate Student and Employee witnesses, including arranging for them to be excused from class attendance or work duties where necessary. Witnesses will be instructed to promptly direct any questions or concerns about their attendance at the hearing to the Hearing Coordinator. c. Any Employees, including those in bargaining units, who fail to comply with the directive may be subject to discipline under the applicable provisions of their collective bargaining agreement or other University policy. d. Students who fail to comply may be subject to discipline depending on the circumstances.

#### *Submission of Proposed Questions*

No later than 5 Working Days prior to the hearing, the Parties will submit a list of proposed questions to the Hearing Coordinator, who will share these with the Hearing Officer. Proposed questions will not be shared with the other Party or witnesses in advance of the hearing.

#### *Questions/Concerns About the Witness List*

No later than 5 Working Days before the hearing, the Parties will submit to the Hearing Coordinator any objections to, or questions about, the witness list.

#### *Pending Requests*

: No later than 1 Working Day before the hearing, the Hearing Officer will resolve all pending requests regarding participation at the hearing. The Hearing Coordinator will give prompt notice to the Parties (and witnesses) as appropriate.

#### *Role of Hearing Officer in Pre-Hearing Matters*

The Hearing Officer will make all determinations regarding pre-hearing matters, including which witnesses will participate and which questions, if submitted, are Relevant and will promptly notify the hearing coordinator who, in turn, will promptly notify the Parties. The Hearing Officer may also identify and request witnesses from the final investigation report not previously listed by the Parties attend the hearing.

#### Audio Recording of Hearing

The University will make an official audio recording of the hearing. No other recording of the hearing is permitted. The recording is University property. The audio recording will be retained by the University in accordance with the records retention policy. Parties may request to review the recording.

#### Hearing Attendees and Participants

1. The following individuals are permitted to attend the hearing:
2. The Parties
3. The Hearing Office
4. Witnesses while they are answering questions
5. The Title IX Coordinator/DHR Administrator
6. The Hearing Coordinator
6. The Student Conduct Administrator
7. One Advisor per Party
8. One Support Person per Party
9. An appropriate Chancellor's Office administrator University police or security officer, or other individuals may be present as necessary for security, technological support, language assistance or other approved reasonable accommodation but will not participate in the hearing.

#### Role of Advisors and Support Persons

The Parties may each be accompanied at the hearing by one Advisor and one Support Person. An Advisor and Support Person may observe and consult with the Parties. However, during the hearing, the Advisor and Support Person will not make the opening statement or speak regarding the substance or the process of the hearing. Parties may make a request to the Hearing Officer for a break to speak with their Advisor or Support Person.

#### Party Failure to Appear

If a Party does not appear at the hearing without good cause, the hearing will proceed as scheduled. Whether good cause exists is determined by the Hearing Officer.

The Respondent will not be found to have violated the Nondiscrimination Policy solely because the Respondent or other witness failed to appear at the hearing. Nor will the Respondent be found not to have violated the Nondiscrimination Policy solely because a Complainant or other witness failed to appear at the hearing.

#### Participant Conduct

Abusive or otherwise disorderly behavior that causes a material disruption will not be tolerated. The Hearing Officer may excuse anyone from the hearing (including either Party or their Advisor or Support Person) whose behavior causes a material disruption. The Hearing Officer, at their discretion, may postpone the hearing when a participant has been excused. In making this decision, the Hearing Officer will consider the equity of postponement for both Parties.

#### New Evidence

Generally, the Parties may not introduce evidence, including witnesses and their statements, at the hearing that the Party did not identify during the investigation and that was available at the time of the investigation. The Hearing Officer has discretion to accept for good cause, or exclude, new evidence offered during the pre-hearing stage or at the hearing.

### Opening Statements

Each Party will be given an opportunity to make an opening statement of no longer than 10 minutes. An opening statement is intended to give the Parties the opportunity to share their perspective regarding the facts and discuss the core disputes in the investigation. It should focus on the facts of the matter and not be argumentative. The Parties will not make closing statements.

### Questioning

All questions will be asked by the Hearing Officer. The Hearing Officer may ask questions of the Complainant, Respondent, Investigator, any campus official (e.g., Title IX Coordinator / DHR Administrator or Student Conduct Administrator), and any witness.

1. The process for proposing and asking Relevant and not otherwise impermissible questions and follow-up questions of Parties and witnesses, including questions challenging credibility, will:
  - a. Allow the Hearing Officer to ask such questions, and
  - b. Allow each Party to propose such questions that the Party wants asked of any Party or witness and have those questions asked by the Hearing Officer, subject to the procedures for evaluating and limiting questions described below.
2. Procedures for the Hearing Officer to evaluate the questions and limitations on questions:
  - a. The Hearing Officer will determine whether a proposed question is Relevant and not otherwise impermissible before the question is posed and will explain any decision to exclude a question as not relevant or otherwise impermissible.
  - b. Questions that are unclear or harassing of the Party or witness being questioned will not be permitted.
  - c. The Hearing Officer will give a Party an opportunity to clarify or revise a question that the Hearing Officer determines is unclear or harassing. If the Party sufficiently clarifies or revises the question, the question will be asked.
  - d. The Parties may also submit written follow-up questions to the Hearing Officer during the hearing, at appropriate times designated by the Hearing Officer.
  - e. The Hearing Officer will ask the questions proposed by the Parties except for questions that:
    - i. Seek information that is unreasonably duplicative of evidence in the Hearing Officer's possession;
    - ii. Are not relevant to material disputed issues, are repetitive, argumentative or harassing or unduly intrude on a witness' privacy;
    - iii. Relate to the Complainant's or Respondent's sexual interests or prior or subsequent sexual conduct, unless offered to prove someone other than the Respondent committed the alleged conduct;
    - iv. Relate to the existence of a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent unless the evidence is relevant to how the Parties communicated consent in prior or subsequent consensual sexual relations.
      1. Note: If the Hearing Officer allows consideration of evidence about a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent the mere fact that the Complainant and Respondent engaged in other



consensual sexual relations with one another is never sufficient, by itself, to establish that the conduct in question was consensual.

2. The Hearing Officer shall provide a written explanation to the Parties as to why consideration of the evidence is consistent with this section in the Hearing Officer's Report.

*Party or Witness Failure to Participate*

The Hearing Officer may choose to place less or no weight upon statements by a Party or witness who refuses to respond to questions deemed Relevant and not impermissible. The Hearing Officer will not draw an inference about whether alleged conduct occurred based solely on a Party's or witness's refusal to respond to such questions.

*Questions, Concerns, and Objections to Questions Posed*

At the hearing, each Party will have an opportunity to ask questions, submit concerns, or note an objection to questions posed. All such questions, concerns, or objections will be submitted in writing to the Hearing Officer. The Hearing Officer is not required to respond to an objection, other than to include it in the record.

*Hearing Officer Discretion to Rephrase or Decline Questions*

The Hearing Officer has the authority and duty to decline or rephrase any question that the Hearing Officer deems to be repetitive, irrelevant, or harassing. Formal rules of evidence applied in courtroom proceedings (e.g., California Evidence Code) do not apply in the hearing. However, the Hearing Officer may take guidance from the formal rules of evidence.

*The Hearing Officer's Report*

The Hearing Officer will prepare a written report that includes findings of facts and conclusions about whether the Respondent violated the Nondiscrimination Policy.

1. The report will include:
  - a. A description of the alleged conduct and potential Nondiscrimination Policy violations, which should correspond with those detailed in the Notice of Investigation and any amended notices.
  - b. Information about the policy and procedures that the University used to evaluate the allegations.
  - c. A summary of any procedural issues raised by the Parties before or during the hearing.
  - d. The definition of the Preponderance of the Evidence standard and a statement that this was the standard applied by the Hearing Officer in reaching their determinations
  - e. Any material evidence identified by the Parties or witnesses that the Hearing Officer determined was not Relevant (or duplicative) and the reason why the evidence was not considered to be Relevant.
  - f. A list of all questions submitted by the Parties at the hearing, and if any questions were not asked, why.
  - g. The Hearing Officer's evaluation of the Relevant and not otherwise impermissible evidence including an analysis of the credibility of the Parties and witnesses, when credibility assessments are required to resolve factual disputes. Credibility

determinations will not be based on a person's status as a Complainant, Respondent, or witness.

- h. A determination whether the alleged conduct occurred and if the conduct violated the Nondiscrimination Policy.
  - i. When the Hearing Officer finds that a violation of the Nondiscrimination Policy occurred, any Disciplinary Sanctions the University will impose on the Respondent, whether Remedies other than the imposition of Disciplinary Sanctions will be provided by the University to the Complainant, and, to the extent appropriate, other students identified by the University to be experiencing the effects of the violation of the Nondiscrimination Policy.
  - j. The procedures and permissible bases for the Complainant and Respondent to appeal.
2. The Title IX Coordinator will review the Hearing Officer's report to ensure compliance with the Nondiscrimination Policy.
  3. The Hearing Coordinator will notify the Parties at the same time and in writing of the determination as to whether the alleged conduct and violation of the Nondiscrimination Policy occurred and will include a copy of the Hearing Officer's report. This notification will be issued within 15 Working Days of the end of the hearing, unless an extension is granted by the Title IX Coordinator/DHR Administrator. The notification will also include information regarding the Parties' appeal rights. The Student Conduct Administrator or other appropriate administrator will also be notified of the Hearing Officer's determination.

*Hearing Outcome – No Violation Found*

If no violation is found, the Hearing Coordinator will notify the Parties of the outcome and their appeal rights, as described above. The University president or designee will also be notified.

*Hearing Outcome – Violation Found*

If there is a determination that a violation of the Nondiscrimination Policy occurred, as appropriate, the Title IX Coordinator will:

1. Coordinate the provision and implementation of Remedies to a Complainant and other people the University identifies as having had equal access to its education programs or activities limited or denied by the Nondiscrimination Policy violation.
2. Coordinate the imposition of any Disciplinary Sanctions on a Respondent, including notification to the Complainant of any such Disciplinary Sanctions;
3. Take other appropriate prompt and effective steps to ensure that Sex-based Harassment does not continue or recur within the University's education programs or activities; and
4. Comply with the Nondiscrimination Policy procedures before the imposition of any Disciplinary Sanctions against a Respondent.

*Statements from Parties, Title IX Coordinator, and Appropriate Administrator*

If the Hearing Officer finds a violation of the Nondiscrimination Policy, the Parties may submit to the Hearing Coordinator an impact statement or other statement regarding discipline. The statement is an opportunity for the Parties to suggest disciplinary outcomes and to provide information that they believe is important for the Hearing Officer to consider. The statement may not be more than 2000 words in length and will be submitted to the Hearing Coordinator no later than 5 Working Days after the Hearing Officer's report is sent to the Parties.

The appropriate administrator and/or the Title IX Coordinator/DHR Administrator will also submit to the Hearing Coordinator a written statement regarding aggravating and mitigating factors no later than 5 Working Days after the Hearing Officer's report is sent to the Parties. The Hearing Coordinator will provide these statements to the Hearing Officer. Any information in the impact statement relied upon by the Hearing Officer in making their Disciplinary Sanction recommendation will be shared with the other Party with the president (or designee's) final decision and notification.

*Recommendation as to Disciplinary Sanctions*

Within 5 Working Days after receiving and considering the statements described above, the Hearing Officer will update their Hearing Officer's report to include the recommended Disciplinary Sanctions and submit it to the president (or designee).

*Final Decision and Notification*

Within 10 Working Days of receipt of the Hearing Officer's report, the president (or designee) will review the Investigation Report and the Hearing Officer's report and issue a decision concerning the appropriate Disciplinary Sanction.

1. **Adoption of Sanctions** – The president (or designee) may impose the recommended sanctions, adopt a different sanction or sanctions, or reject sanctions altogether. If the president adopts a sanction other than what is recommended by the Hearing Officer or rejects sanctions altogether, the president must set forth the reasons in the Decision Letter.
2. **Remedies** – The University may also provide Remedies, which may include counseling, extensions of deadlines or other course or work-related adjustments, modifications of work or class schedules, Campus escorts, restrictions on contact between the Parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the Campus, and other similar measures. The Title IX Coordinator/DHR Administrator is responsible for determining the reasonableness of the requested Remedy and coordinating the effective implementation of Remedies
3. **Decision Letter** – The Decision Letter will include:
  - a. The outcome of the hearing, including any sanction imposed, and the name of the Respondent.
  - b. A copy of the Hearing Officer's Report, including the Hearing Officer's recommended Disciplinary Sanctions.
  - c. Notice of the Complainant's and Respondent's right to appeal.
4. **Notification of Final Decision** – The president will send the Decision Letter electronically to the Respondent and Complainant at the same time.
  - a. The decision will also be sent to the appropriate administrator and the Hearing Officer.
  - b. The president will also send the Decision Letter to the Title IX Coordinator/DHR Administrator so that they may determine whether any additional Remedies or other Supportive Measures will be afforded or undertaken to maintain a safe and nondiscriminatory University environment.
  - c. A copy of the Decision Letter issued to the Complainant will be redacted as to findings regarding conduct that does not constitute a "crime of violence," Sexual Misconduct, Dating Violence, Domestic Violence, or Stalking (34 C.F.R. § 99.31 et seq.).

- d. Unless the University and Parties are notified that an appeal has been filed, the president's (or designee's) sanction decision becomes final 11 Working Days after the date of the Decision Letter.

## Appeal Procedures

For Complaints alleging Sex-based Harassment, either Party may file an appeal. For Complaints involving allegations of Discrimination, Harassment, Prohibited Consensual Relationships, or Retaliation only the non-prevailing Party may appeal.

### Filing an Appeal to the Chancellor's Office

A written appeal may be submitted to the Chancellor's Office Civil Rights Programming & Services Appeals Unit ("Civil Rights Appeals Unit") no later than 10 Working Days after the date of the Notice of Investigation Outcome (non-hearing cases) or Final Decision (hearing cases). All arguments and/or evidence supporting the appeal must be submitted by the deadline to file the appeal. Arguments or evidence submitted after the appeal submission deadline will not be considered by the Civil Rights Appeals Unit. A written appeal may not exceed 3,500 words, excluding exhibits. Appeals will be submitted to:

Civil Rights Appeals Unit  
Systemwide Human Resources  
Office of the Chancellor  
401 Golden Shore Long Beach, California 90802  
[CO-Appeals@calstate.edu](mailto:CO-Appeals@calstate.edu)

Electronic submission to the email address listed above is the preferred method of submitting appeals.

### Bases for Appeal

An appeal will be based only on one or more of the appeal issues listed below:

1. There was no reasonable basis for the findings or conclusions that resulted in the investigation or hearing outcome.
2. Procedural errors occurred that would have likely changed the outcome of the investigation or hearing.
3. New evidence is available that would change the outcome and that was not reasonably available when the Investigator's or Hearing Officer's determination was made.
4. The Title IX Coordinator/DHR Administrator, Investigator, or Hearing Officer had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would change the outcome.
5. The sanctions imposed was objectively unreasonable, or arbitrary based on substantiated conduct. (For Acceptance of Responsibility cases or Appeal reversals).

### Issues and Evidence on Appeal

The issues and evidence raised on appeal will be limited to those raised and identified during the investigation or hearing, unless new evidence that was not reasonably available at the time of the investigation or hearing and that could change the investigation or hearing outcome becomes available after the University investigation or hearing was completed and is submitted by the appealing Party. The Civil Rights Appeals Unit may conduct an interview, at their discretion, with the appealing Party to clarify the written appeal.

### **Acknowledgement of Appeal**

The Civil Rights Appeals Unit will provide prompt written acknowledgement of the receipt of the appeal to the appealing Party, and will provide written notification of the appeal, including a copy of the appeal, to the non-appealing Party and the campus Title IX Coordinator/DHR Administrator. The notice will include the right of the non-appealing Party and the University to provide a response to the appeal within 10 Working Days of the date of the notice. The appeal response will be limited to 3,500 words, excluding exhibits. Any response to the appeal received by the Civil Rights Appeals Unit will be provided to the appealing Party for informational purposes only.

### **Reasonable Accommodation**

The Civil Rights Appeals Unit will provide reasonable accommodations to any Party or witness in the appeal process with a qualified Disability upon request by the person needing the accommodation. A reasonable accommodation may include an extension of time under these Procedures. The timeframe for the Civil Rights Appeals Unit Response will automatically be adjusted for the time needed, if any, to provide reasonable accommodations. The Civil Rights Appeals Unit will consult with the appropriate university administrator (for Students, the services for students with disabilities administrator, and for Employees the appropriate human resources administrator) to determine the reasonableness of a requested accommodation.

### **Scope of Review**

The Civil Rights Appeals Unit will not conduct a new investigation; however, the Civil Rights Appeals Unit may make reasonable inquiries to determine if the new evidence could have affected the investigation or hearing determination. On appeal, the Civil Rights Appeals Unit does not reweigh the evidence, re-decide conflicts in the evidence, or revisit determinations made by the Investigator or Hearing Officer about the credibility or reliability of witnesses and the Parties.

### **Civil Rights Appeals Unit Response**

The Civil Rights Appeals Unit response will include a summary of the issues raised on appeal, a summary of the evidence considered, the Preponderance of the Evidence standard, and the determinations reached regarding the issues identified within the written appeal. A copy of the final Civil Rights Appeals Unit response will be forwarded to the Complainant, the Respondent, and the Title IX Coordinator/DHR Administrator. The appeal response determination is final and is not subject to further appeal.

### **Reopening a University Investigation or Hearing**

If the Civil Rights Appeals Unit review determines that an issue raised on appeal would have affected the investigation outcome or hearing outcome, the investigation or hearing will be remanded back to the University and the investigation or hearing reopened at the campus level. The Civil Rights Appeals Unit will return the matter to the University and will specify in writing the timeline by which a reopened investigation or hearing must be completed. The Civil Rights Appeals Unit will notify the Parties of the reopening of the investigation or hearing and the timeline for completion of the reopened investigation or hearing. The University will complete the reopened investigation or hearing and provide the Civil Rights Appeals Unit with an amended final investigation report or Hearing Officer report. The University will also provide the Parties with amended notices of investigation outcome or final decision, and such notices will provide the non-prevailing Party the opportunity to appeal. Upon receipt of the amended final investigation report/final decision, if the outcome remains unchanged, the Chancellor's Office will contact the original appealing Party to determine whether that Party wishes to continue with the appeal. If the

outcome is reversed by the University, the non-prevailing Party will be given an opportunity to appeal.

### Reversal by Civil Rights Appeals Unit

If the Civil Rights Appeals Unit determines that no reasonable fact finder (Investigator or Hearing Officer) could have made the findings as determined by the Investigator or Hearing Officer, the Civil Rights Appeals Unit may vacate and reverse the investigation or hearing outcome, but only with respect to whether the Nondiscrimination Policy was violated (and not with respect to factual findings). If the Civil Rights Appeals Unit vacates and reverses the investigation or hearing outcome, it will notify the Parties at the same time and in writing, as well as the Title IX Coordinator/DHR Administrator. Following a reversal of an investigation or hearing outcome by the Civil Rights Appeals Unit, the decision is final and is not subject to further appeal. In the event that the final outcome has been reversed by the Civil Rights Appeals Unit and a sanction will be imposed by the University, both Parties have a right to appeal the sanction only. If a sanction is found to be objectively unreasonable, or arbitrary based on substantiated conduct, the matter will be sent back to the University for reconsideration of the sanction.

### Timeline for Response to Appeal

The Civil Rights Appeals Unit will respond to the appealing Party no later than 30 Working Days after receipt of the written appeal, unless the timeline has been extended pursuant to Section L below.

### Timelines and Extensions

The Civil Rights Appeals Unit has discretion to extend the timelines for the appeal process for good cause or for any reasons deemed to be legitimate by the Civil Rights Appeals Unit. This includes the time for filing an appeal, the time for a reopened investigation or hearing to be completed, and the time for the Civil Rights Appeals Unit to respond to the appeal. The Civil Rights Appeals Unit will notify the Parties and the Title IX Coordinator/DHR Administrator of any extensions of time granted pertaining to any portion of the appeal process.

### Disciplinary Sanctions and Remedies

The University will not impose discipline on a Respondent for violations of the Nondiscrimination Policy unless: 1) there is a determination at the conclusion of the formal complaint resolution that the Respondent engaged in prohibited Discrimination, Harassment, or Retaliation<sup>\*\*\*\*\*</sup>; or 2) where discipline is agreed to as part of an informal resolution process.

If there is a determination that Discrimination, Harassment, or Retaliation occurred, the Title IX Coordinator/DHR Administrator will, as appropriate:

1. Coordinate the provision and implementation of Remedies to a Complainant and other people the University identifies as having had equal access to the University's education program or activity limited or denied by Discrimination, Harassment, or Retaliation;
2. Coordinate the imposition of any Disciplinary Sanctions on a Respondent, including notification to the Complainant of any such Disciplinary Sanctions;

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\*\*\*\*\* As used in these Procedures, the phrase "Discrimination, Harassment, or Retaliation" is inclusive of all forms of Prohibited Conduct outlined in the Nondiscrimination Policy, including Sex Discrimination.

3. Take other appropriate prompt and effective steps to ensure that Discrimination, Harassment, or Retaliation does not continue or recur within the University's education programs, activities, or employment; and
4. Comply with these Procedures before the imposition of any Disciplinary Sanctions against a Respondent.

Students who are found to have violated the Nondiscrimination Policy will be subject to discipline in accordance with state and federal requirements, student conduct rules, and other CSU policies. Sanctions for Students determined to have violated the Nondiscrimination Policy are identified in the Student Conduct Process: restitution, loss of financial aid, educational and remedial sanctions, denial of access to campus or persons, disciplinary probation, suspension, and expulsion. The University may also temporarily or permanently withhold a degree. Other sanctions and remedies may be agreed upon through the Informal Resolution process.

Employees who are found to have violated the Nondiscrimination Policy will be subject to discipline that is appropriate for the violation and in accordance with state and federal requirements and other CSU policies and applicable collective bargaining agreements. The possible sanctions for Employees determined to have violated the Nondiscrimination Policy are education, training, counseling, reprimand, unpaid suspension of varying lengths, demotion, and/or termination.

### Registered Sex Offenders

California's sex offender registration laws require convicted sex offenders to register their status with the University police department if they are enrolled, residing, attending, carrying on a vocation (i.e., contractor or vendor on campus for more than 30 days in the year), or working with or without compensation for the institution. All public information available in California about registered sex offenders, to include the ability to look-up offenders by name, residence address, and zip code, is on the California Department of Justice Megan's law web site at <https://www.meganslaw.ca.gov/>

### Missing Student Notification Procedures for On-campus Student Housing Facilities

Any report that is made about a resident missing from on-campus housing, including but not limited to reports made by Housing & Residence Life Department staff, are required to be immediately referred to the University Police Department. All reports regarding missing students living in on-campus housing would be deemed official reports and there is no specific timeframe within which a person must be missing in order to be considered a missing resident report. A report does not have to only come from on-campus housing representatives in order to be considered an official report. If any member of the university community has reason to believe that a student who resides in on-campus housing is missing they should immediately notify the University Police Department in-person or by calling 408 924-2222.

Pursuant to California Penal Code § 14211 and as a matter of department policy the UPD will not require a minimum time frame to pass before initiating a missing person investigation. During the investigation a report will be generated and investigators will conduct specific notification procedures to designated contacts and local law enforcement agencies in accordance with applicable state and federal laws. For all reports that fall under this policy, UPD will notify a custodial parent or guardian and the designated confidential contact(s), if any, without delay. This also applies when the student is under 18 years of age and not an emancipated minor. The institution will notify the local law enforcement agency without delay.

In addition to and separate from the registering of an emergency contact, students residing in on-campus housing have the option to identify a confidential contact to be notified by the University in the event the student is determined to be missing. Students who wish to identify a confidential contact may do so when completing the Housing application and at any time online through the Housing Portal. Only authorized university officials and law enforcement personnel in furtherance of a missing person investigation may have access to this information.

### **Fire Safety Report**

The 2024 Annual Fire Safety Report is available at the following link:

<https://www.sjsu.edu/clery/docs/SJSU-Annual-Fire-Safety-Report.pdf>



## Appendix A: Jurisdictional Definitions<sup>§§§§§§</sup>

### Rape (CA Penal Code Chapter 1 Section 261)

(a) Rape is an act of sexual intercourse accomplished under any of the following circumstances:

(1) If a person who is not the spouse of the person committing the act is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent. This paragraph does not preclude the prosecution of a spouse committing the act from being prosecuted under any other paragraph of this subdivision or any other law.

(2) If it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

(3) If a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused.

(4) If a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets any one of the following conditions:

(A) Was unconscious or asleep.

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(5) If a person submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.

(6) If the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(7) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official"

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<sup>§§§§§§</sup> Note that these are not the definitions used to compile the statistics at the beginning of these document. The federal definitions of Rape, fondling, incest, statutory rape, domestic violence, dating violence, and stalking are used for the statistics, as required by federal law.

means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(b) For purposes of this section, the following definitions apply:

“Duress” means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.

“Menace” means any threat, declaration, or act that shows an intention to inflict an injury upon another.

### Sodomy (CA Penal Code Chapter 1 Section 286)

Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy.

(b) (1) Except as provided in Section 288, any person who participates in an act of sodomy with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(2) Except as provided in Section 288, any person over 21 years of age who participates in an act of sodomy with another person who is under 16 years of age shall be guilty of a felony.

(c) (1) Any person who participates in an act of sodomy with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) (A) Any person who commits an act of sodomy when the act is accomplished against the victim’s will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of sodomy with another person who is under 14 years of age when the act is accomplished against the victim’s will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for 9, 11, or 13 years.

(C) Any person who commits an act of sodomy with another person who is a minor 14 years of age or older when the act is accomplished against the victim’s will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

(3) Any person who commits an act of sodomy where the act is accomplished against the victim’s will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(d) (1) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy when the act is accomplished

against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person or where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for five, seven, or nine years.

(2) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy upon a victim who is under 14 years of age, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 10, 12, or 14 years.

(3) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy upon a victim who is a minor 14 years of age or older, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

(e) Any person who participates in an act of sodomy with any person of any age while confined in any state prison, as defined in Section 4504, or in any local detention facility, as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(f) Any person who commits an act of sodomy, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(g) Except as provided in subdivision (h), a person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant

and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of sodomy, where the victim is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for three, six, or eight years.

(j) Any person who commits an act of sodomy, where the victim submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for three, six, or eight years.

(k) Any person who commits an act of sodomy, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(l) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury, or death.

#### Oral Copulation (CA Penal Code Chapter 1 Section 287)

(a) Oral copulation is the act of copulating the mouth of one person with the sexual organ or anus of another person.

(b) (1) Except as provided in Section 288, any person who participates in an act of oral copulation with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(2) Except as provided in Section 288, any person over 21 years of age who participates in an act of oral copulation with another person who is under 16 years of age is guilty of a felony.

(c) (1) Any person who participates in an act of oral copulation with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) (A) Any person who commits an act of oral copulation when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of oral copulation upon a person who is under 14 years of age, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

(C) Any person who commits an act of oral copulation upon a minor who is 14 years of age or older, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 6, 8, or 10 years.

(3) Any person who commits an act of oral copulation where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(d) (1) Any person who, while voluntarily acting in concert with another person, either personally or by aiding and abetting that other person, commits an act of oral copulation (A) when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, or (B) where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, or (C) where the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for five, seven, or nine years.

Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime described under paragraph (3), that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(2) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of oral copulation upon a victim who is under 14 years of age, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 10, 12, or 14 years.

(3) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of oral copulation upon a victim who is a minor 14 years of age or older, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

(e) Any person who participates in an act of oral copulation while confined in any state prison, as defined in Section 4504 or in any local detention facility as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(f) Any person who commits an act of oral copulation, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for a period of three, six, or eight years. As used in this

subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the oral copulation served a professional purpose when it served no professional purpose.

(g) Except as provided in subdivision (h), any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison, for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of oral copulation, where the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(j) Any person who commits an act of oral copulation, where the victim submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(k) Any person who commits an act of oral copulation, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(l) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

## Bigamy, Incest, and the Crime against Nature (CA Penal Code Chapter 1 Section 285 and Section 289)

### Section 285

Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who being 14 years of age or older, commit fornication or adultery with each other, are punishable by imprisonment in the state prison.

### Section 289

(a) (1) (A) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of sexual penetration upon a child who is under 14 years of age, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

(C) Any person who commits an act of sexual penetration upon a minor who is 14 years of age or older, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 6, 8, or 10 years.

(D) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(2) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(b) Except as provided in subdivision (c), any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(c) Any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(d) Any person who commits an act of sexual penetration, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(e) Any person who commits an act of sexual penetration when the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(f) Any person who commits an act of sexual penetration when the victim submits under the belief that the person committing the act or causing the act to be committed is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(g) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.



(h) Except as provided in Section 288, any person who participates in an act of sexual penetration with another person who is under 18 years of age shall be punished by imprisonment in the state prison or in a county jail for a period of not more than one year.

(i) Except as provided in Section 288, any person over 21 years of age who participates in an act of sexual penetration with another person who is under 16 years of age shall be guilty of a felony.

(j) Any person who participates in an act of sexual penetration with another person who is under 14 years of age and who is more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(k) As used in this section:

(1) "Sexual penetration" is the act of causing the penetration, however slight, of the genital or anal opening of any person or causing another person to so penetrate the defendant's or another person's genital or anal opening for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object.

(2) "Foreign object, substance, instrument, or device" shall include any part of the body, except a sexual organ.

(3) "Unknown object" shall include any foreign object, substance, instrument, or device, or any part of the body, including a penis, when it is not known whether penetration was by a penis or by a foreign object, substance, instrument, or device, or by any other part of the body.

(l) As used in subdivision (a), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury or death.

(m) As used in this section, "victim" includes any person who the defendant causes to penetrate the genital or anal opening of the defendant or another person or whose genital or anal opening is caused to be penetrated by the defendant or another person and who otherwise qualifies as a victim under the requirements of this section.

#### Fondling (CA Penal Code Chapter 9. Section 243.4, Assault and Battery)

(a) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

(b) Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

(c) Any person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at the time unconscious of the nature of the

act because the perpetrator fraudulently represented that the touching served a professional purpose, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

(d) Any person who, for the purpose of sexual arousal, sexual gratification, or sexual abuse, causes another, against that person's will while that person is unlawfully restrained either by the accused or an accomplice, or is institutionalized for medical treatment and is seriously disabled or medically incapacitated, to masturbate or touch an intimate part of either of those persons or a third person, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

(e)(1) Any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery, punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. However, if the defendant was an employer and the victim was an employee of the defendant, the misdemeanor sexual battery shall be punishable by a fine not exceeding three thousand dollars (\$3,000), by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Notwithstanding any other provision of law, any amount of a fine above two thousand dollars (\$2,000) which is collected from a defendant for a violation of this subdivision shall be transmitted to the State Treasury and, upon appropriation by the Legislature, distributed to the Civil Rights Department for the purpose of enforcement of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), including, but not limited to, laws that proscribe sexual harassment in places of employment. However, in no event shall an amount over two thousand dollars (\$2,000) be transmitted to the State Treasury until all fines, including any restitution fines that may have been imposed upon the defendant, have been paid in full.

(2) As used in this subdivision, "touches" means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim.

(f) As used in subdivisions (a), (b), (c), and (d), "touches" means physical contact with the skin of another person whether accomplished directly or through the clothing of the person committing the offense.

(g) As used in this section, the following terms have the following meanings:

(1) "Intimate part" means the sexual organ, anus, groin, or buttocks of any person, and the breast of a female.

(2) "Sexual battery" does not include the crimes defined in Section 261 or 289.

(3) "Seriously disabled" means a person with severe physical or sensory disabilities.

(4) "Medically incapacitated" means a person who is incapacitated as a result of prescribed sedatives, anesthesia, or other medication.

(5) "Institutionalized" means a person who is located voluntarily or involuntarily in a hospital, medical treatment facility, nursing home, acute care facility, or mental hospital.

(6) "Minor" means a person under 18 years of age.

(h) This section shall not be construed to limit or prevent prosecution under any other law which also proscribes a course of conduct that also is proscribed by this section.

(i) In the case of a felony conviction for a violation of this section, the fact that the defendant was an employer and the victim was an employee of the defendant shall be a factor in aggravation in sentencing.

(j) A person who commits a violation of subdivision (a), (b), (c), or (d) against a minor when the person has a prior felony conviction for a violation of this section shall be guilty of a felony, punishable by imprisonment in the state prison for two, three, or four years and a fine not exceeding ten thousand dollars (\$10,000).

### **Statutory Rape (CA Penal Code, Chapter 1, Section 261.5)**

(a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a "minor" is a person under the age of 18 years and an "adult" is a person who is 18 years of age or older.

(b) A person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor.

(c) A person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

(d) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

(e) (1) Notwithstanding any other provision of this section, an adult who engages in an act of sexual intercourse with a minor in violation of this section may be liable for civil penalties in the following amounts:

(A) An adult who engages in an act of unlawful sexual intercourse with a minor less than two years younger than the adult is liable for a civil penalty not to exceed two thousand dollars (\$2,000).

(B) An adult who engages in an act of unlawful sexual intercourse with a minor at least two years younger than the adult is liable for a civil penalty not to exceed five thousand dollars (\$5,000).

(C) An adult who engages in an act of unlawful sexual intercourse with a minor at least three years younger than the adult is liable for a civil penalty not to exceed ten thousand dollars (\$10,000).

(D) An adult over 21 years of age who engages in an act of unlawful sexual intercourse with a minor under 16 years of age is liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000).

(2) The district attorney may bring actions to recover civil penalties pursuant to this subdivision. From the amounts collected for each case, an amount equal to the costs of pursuing the action shall be deposited with the treasurer of the county in which the judgment was entered, and the remainder shall be deposited in the Underage Pregnancy Prevention Fund, which is hereby created in the State Treasury. Amounts deposited in the Underage Pregnancy Prevention Fund may be used only for the purpose of preventing underage pregnancy upon appropriation by the Legislature.

(3) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against a person who violates this section with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and a defendant shall not be denied probation because of their inability to pay the fine permitted under this subdivision.

(f) A person convicted of violating subdivision (d) who is granted probation shall not complete their community service at a school or location where children congregate.

#### **Incest (CA Penal Code, Chapter 1, Section 285)**

Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who being 14 years of age or older, commit fornication or adultery with each other, are punishable by imprisonment in the state prison.

#### **Abuse: (CA Family Code, 6203 (definitions) and 6211)**

(a) For purposes of this act, "abuse" means any of the following:

(1) To intentionally or recklessly cause or attempt to cause bodily injury.

(2) Sexual assault.

(3) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

(4) To engage in any behavior that has been or could be enjoined pursuant to Section 6320.

(b) Abuse is not limited to the actual infliction of physical injury or assault.

"Domestic violence" is abuse perpetrated against any of the following persons:

(a) A spouse or former spouse.

(b) A cohabitant or former cohabitant, as defined in Section 6209.

(c) A person with whom the respondent is having or has had a dating or engagement relationship.

(d) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 commencing with Section 7600) of Division 12).

(e) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(f) Any other person related by consanguinity or affinity within the second degree.

### **Domestic Violence/Dating Violence (CA Penal Code, Chapter 2, Section 273.5 and Section 243)**

#### **CA Penal Code 273.5**

(a) Any person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim described in subdivision (b) is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000), or by both that fine and imprisonment.

(b) Subdivision (a) shall apply if the victim is or was one or more of the following:

(1) The offender's spouse or former spouse.

(2) The offender's cohabitant or former cohabitant.

(3) The offender's fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship.

(4) The mother or father of the offender's child.

#### **CA Penal Code 243(e)**

(1) When a battery (willful and unlawful use of force or violence upon the person of another) is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail for a period of not more than one year, or by both that fine and imprisonment.

#### **Stalking: CA Penal Code, Chapter 2, Section 646.9**

Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

#### **Stalking: CA Penal Code, Chapter 2, Section 653m**

(a) Every person who, with intent to annoy, telephones or makes contact by means of an electronic communication device with another and addresses to or about the other person any obscene language or addresses to the other person any threat to inflict injury to the person or property of the person addressed or any member of his or her family, is guilty of a misdemeanor. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith.

(b) Every person who, with intent to annoy or harass, makes repeated telephone calls or makes repeated contact by means of an electronic communication device, or makes any combination of calls or contact, to another person is, whether or not conversation ensues from making the telephone call or contact by means of an electronic communication device, guilty of a misdemeanor. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith or during the ordinary course and scope of business.

**Consent to Sexual Activity (CA Penal Code, Chapter 1, section 261.6 and section 261.7)**

- a) Consent is positive cooperation in act or attitude pursuant to an exercise of free will. The Person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.
- b) A current or previous dating or marital relationship shall not be sufficient to constitute consent where consent is at issue in a prosecution under section 261, 286, 287, or 289, or former section 262 or 288a
- c) This section shall not affect the admissibility of evidence or the burden of proof on the issue of consent.

In prosecutions under Section 261, 286, 287, or 289, or former Section 262 or 288a, in which consent is at issue, evidence that the victim suggested, requested, or otherwise communicated to the defendant that the defendant use a condom or other birth control device, without additional evidence of consent, is not sufficient to constitute consent.