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NDS POLICIES ON SEXUAL MISCONDUCT

Clery Act Reporting

The federal **Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)** requires colleges and universities, both public and private, participating in federal student aid programs to disclose campus safety information, and imposes certain basic requirements for handling incidents of sexual violence and emergency situations. Disclosures about crime statistics and summaries of security policies are made once a year in an Annual Security Report (ASR), and information about specific crimes and emergencies is made publicly available on an ongoing basis throughout the year.

The Clery Act is named in memory of [Jeanne Clery](#) who was raped and murdered in her residence hall room by a fellow student she did not know on April 5, 1986. Her parents [championed](#) laws requiring the disclosure of campus crime information, and the federal law that now bears their daughter's name was first enacted in 1990. It has been amended regularly over the last two decades to keep up with changes in campus safety with the most recent update in 2013 to expand the law's requirements concerning the handling of sexual violence (see the summary of the [Campus Sexual Violence Elimination Act](#) for additional information about these requirements).

NDS Policies on Sexual Misconduct

Notre Dame Seminary Graduate School of Theology is committed to provide a learning, working, and living environment that promotes integrity, civility, and mutual respect in an environment free from sexual misconduct as provided in Title IX and other applicable laws. NDS has adapted definitions, policies, and procedures on sexual misconduct from the Louisiana Board of Regents Uniform Policy on Sexual Misconduct.

NDS has implemented policies and procedures to prevent acts of sexual misconduct and shall take prompt and appropriate action to investigate and effectively discipline those accused of such conduct in a manner consistent with the law and due process. NDS will provide support and assistance to complainants of sexual misconduct and shall report instances of sexual misconduct in accordance with law.

Scope of the Policies

The NDS Policies on Sexual Misconduct apply to all students and employees of Notre Dame Seminary, whether on or off campus attending NDS programs or activities. In addition, this policy applies to all contracted vendors and third parties.

Definitions

NDS will use the federal and state definitions of the following terms when making all decisions regarding sexual misconduct including publication of definitions, disciplinary decisions, Clery reporting decisions, campus climate decisions, and training and prevention decisions.

Sexual Misconduct: A sexual act or contact of a sexual nature that occurs, regardless of personal relationship, without the consent of the other person(s), or that occurs when the person(s) is unable to give consent or whose consent is coerced or obtained in a fraudulent

manner. Sexual misconduct includes, but is not limited to, sexual assault, sexual abuse, violence of a sexual nature, sexual harassment, non-consensual sexual intercourse, sexual exploitation, video voyeurism, contact of a sexual nature with an object, or the obtaining, posting or disclosure of intimate descriptions, photos, or videos without the express consent of the persons depicted therein, as well as dating violence, domestic violence and stalking.

Sexual Assault as defined by the Clery Act: an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program

Sexual Assault as defined by Louisiana State Law:

Non-Consensual Sexual Intercourse: Having or attempting to have sexual intercourse, cunnilingus, or fellatio without Consent. Sexual intercourse is defined as anal or vaginal penetration by a penis, tongue, finger, or inanimate object.

Non-Consensual Sexual Contact: Any intentional sexual touching, or attempted sexual touching, without Consent.

Sexual Exploitation: An act attempted or committed by a person for sexual gratification, financial gain, or other advancement through the abuse or exploitation of another person's sexuality. Examples of sexual exploitation include, but are not limited to, non-consensual observation of individuals who are undressed or engaging in sexual acts, non-consensual audio- or videotaping of sexual activity, prostituting another person, allowing others to observe a personal consensual sexual act without the knowledge or consent of all involved parties, and knowingly exposing an individual to a sexually transmitted infection without that individual's knowledge.

Stalking as defined by Clery Act: Intentional and repeated following OR harassing that would cause a reasonable person to feel alarmed OR that would cause a reasonable person to suffer emotional distress OR 2. Intentional and repeated uninvited presence at another person's: home, work place, school, or any other place which would cause a reasonable person to be alarmed OR would cause a reasonable person to suffer emotional distress as a result of verbal or behaviorally implied threats of death, bodily injury, sexual assault, kidnapping or any other statutory criminal act to the victim OR any member of the victim's family OR any person with whom the victim is acquainted 34 CFR 668.46(a)(ii)

Stalking as defined by Louisiana state law: Stalking is the intentional and repeated following or harassing of another person that would cause a reasonable person to feel alarmed or to suffer emotional distress. Stalking shall include but not be limited to the intentional and repeated uninvited presence of the perpetrator at another person's home, workplace, school, or any place which would cause a reasonable person to be alarmed, or to suffer emotional distress as a result of verbal or behaviorally implied threats of death, bodily injury, sexual assault, kidnaping, or any other statutory criminal act to himself or any member of his family or any person with whom he is acquainted. La. RS § 14:40.2(A) "Harassing" means the repeated pattern of verbal communications or nonverbal behavior without invitation which includes but is not limited to making telephone calls, transmitting electronic mail, sending messages via a third party, or sending letters or pictures. "Pattern of conduct" means a series of acts over a period of time, however short, evidencing an intent to inflict a continuity of emotional distress upon the

person. Constitutionally protected activity is not included within the meaning of pattern of conduct. La. RS § 14:40.2(C)

Domestic Violence definition in Clery Act: Violence, including but not limited to sexual or physical abuse or the threat of such abuse, committed by a current or former spouse or intimate partner or any other person from whom the Alleged Victim is protected under federal or Louisiana law. Felony or misdemeanor crime of violence committed:

- By a current or former spouse or intimate partner of the victim;
- By a person with whom the victim shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred

Family violence definition in Louisiana law: means any assault, battery, or other physical abuse which occurs between family or household members, who reside together or who formerly resided together. La. RS § 46.2121.1(2)

Domestic abuse definition in Louisiana law: Includes but is not limited to physical or sexual abuse and any offense against the person as defined in the Criminal Code of Louisiana, except negligent injury and defamation, committed by one family or household member against another. La. RS 46:2132(3)

Dating Violence definition in Clery Act: Violence, including but not limited to sexual or physical abuse or the threat of such abuse, committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Alleged Victim. The existence of such a relationship will be determined based on a consideration of the length and type of relationship and the frequency of interaction.

Dating Violence definition in Louisiana law: "Dating violence" includes but is not limited to physical or sexual abuse and any offense against the person as defined in the Criminal Code of Louisiana, except negligent injury and defamation, committed by one dating partner against the other. La. RS § 46.2151(C) For purposes of this Section, "dating partner" means any person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- (1) The length of the relationship.
- (2) The type of relationship.
- (3) The frequency of interaction between the persons involved in the relationship.

Although the following definitions are not defined by state and/or federal law, the following definitions shall also be used in institutional policy and in the implementation thereof by all Louisiana public postsecondary education institutions.

Sexual Harassment: Unwelcome conduct of a sexual nature when i) submission to such conduct is made either explicitly or implicitly a term or condition of a person's employment or education; ii) submission to or rejection of such conduct by a person is used as the basis for a decision affecting that person's employment or education; or iii) such conduct has the purpose or effect of unreasonably interfering with a person's employment or education, or creating an intimidating, hostile, or offensive employment or educational environment, and has no legitimate relationship to the subject matter of a course or academic research. Sexual Harassment also includes non-sexual harassment or discrimination of a person because of the person's sex and/or gender, including harassment based on the person's nonconformity with gender stereotypes. For purposes of this Policy, the various forms of prohibited Sexual Harassment are referred to as "Sexual Misconduct."

Retaliation: Acts or attempted acts for the purpose of interfering with any report, investigation, or proceeding under this Policy, or as retribution or revenge against anyone who has reported Sexual Misconduct or Relationship Violence or who has participated (or is expected to participate) in any manner in an investigation, or proceeding under this Policy. Prohibited retaliatory acts include, but are not limited to, intimidation, threats, coercion, or discrimination. Title IX prohibits Retaliation. For purposes of this Policy, an attempt requires a substantial step towards committing a violation.

Consent: Consent to engage in sexual activity must exist from beginning to end of each instance of sexual activity. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage in a specific sexual activity. Silence alone, without actions evidencing permission, does not demonstrate Consent. Consent must be knowing and voluntary. To give Consent, a person must be of legal age. Assent does not constitute Consent if obtained through Coercion or from an individual whom the Alleged Offender knows or reasonably should know is incapacitated. The responsibility of obtaining Consent rests with the person initiating sexual activity. Use of alcohol or drugs does not diminish one's responsibility to obtain Consent. Consent to engage in sexual activity may be withdrawn by any person at any time. Once withdrawal of Consent has been expressed, the sexual activity must cease. Consent is automatically withdrawn by a person who is no longer capable of giving Consent. A current or previous consensual dating or sexual relationship between the Parties does not itself imply Consent or preclude a finding of responsibility.

Incapacitation An individual is considered to be incapacitated if, by reason of mental or physical condition, the individual is manifestly unable to make a knowing and deliberate choice to engage in sexual activity. Being drunk or intoxicated can lead to Incapacitation; however, someone who is drunk or intoxicated is not necessarily Incapacitated, as Incapacitation is a state beyond drunkenness or intoxication. Individuals who are asleep, unresponsive or unconscious are Incapacitated. Other indicators that an individual may be Incapacitated include, but are not limited to, inability to communicate coherently, inability to dress/undress without assistance, inability to walk without assistance, slurred speech, loss of coordination, vomiting, or inability to perform other physical or cognitive tasks without assistance.

Coercion is the use of express or implied threats, intimidation, or physical force which places an individual in fear of immediate harm or physical injury or causes a person to engage in unwelcome sexual activity. Coercion also includes administering a drug, intoxicant, or similar substance with the intent to impair that person's ability to Consent prior to engaging in sexual activity.

Responsible Employee: Each institution must designate and publish the names and contact information for easily accessible institution employees as Responsible Employees who have the authority to take action to redress sexual violence and have been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX Coordinator or other appropriate school designee. However, an institutional decision to make all institution employees mandatory reporters of suspected or known sexual harassment or sexual misconduct to the Title IX Coordinator or other appropriate school designee does not render all institutional employees to be Responsible Employees. Employees who are authorized or required by law to keep information confidential by virtue of the employee's professional role such as Counseling Staff or similar shall not be designated as mandated reporters of sexual harassment or as Responsible Employees.

Options for Reporting

NDS students have several options in which to report a sexual assault. If you have been sexually assaulted:

- **If you are in a dangerous situation and fear for your safety:** Call the New Orleans Police Department at 911.
- **Seek medical care.** You may need to receive medical treatment for injuries, and you may even have injuries of which you are not aware of.
- **We HIGHLY encourage you to seek care at the Sexual Assault Nurse Examiner (SANE) Program at University Medical Center which is the only location in Orleans Parish where evidence (A Rape Kit) can be collected. You will not be required to file a police report,** but by seeking care at LSU-SANE, you will have more options available in the future if you decide to file a police report.
- **Know that you are not alone.** There are people who can help you process what you are experiencing and explain the options available to you.
- **It is your choice to determine when and in what manner you recover from your trauma.** It is up to you to make the decisions that will be best for you.
- **Remember, the assault was not your fault.**

Procedures for Reporting

NDS encourages victims of sexual violence or any form of sexual misconduct to talk to somebody about what happened – so victims can get the support they need, and so the seminary can respond appropriately. Different employees on campus have different abilities to maintain a victim's confidentiality.

- Some are required to maintain near complete confidentiality; talking to them is sometimes called a “privileged communication.” This means that they are **not required to report any information** about an incident to the Title IX coordinator without a victim’s permission.

The employees in this category would be the Spiritual Director – Fr. Joseph Palermo and the Counselor – Mr. Mario Sacasa.

- Other employees may talk to a victim in confidence, and **generally only report to the Seminary that an incident occurred without revealing any personally identifying information**. Disclosures to these employees will not trigger a College investigation into an incident against the victim’s wishes. While maintaining a victim’s confidentiality, these individuals or their office should report the nature, date, time, and general location of an incident to the Title IX Coordinator. This limited report – which includes no information that would directly or indirectly identify the victim – helps keep the Title IX Coordinator informed of the general extent and nature of sexual violence on and off campus so the coordinator can track patterns, evaluate the scope of the problem, and formulate appropriate campus-wide responses. Before reporting any information to the Title IX Coordinator, these individuals will consult with the victim to ensure that no personally identifying details are shared with the Title IX Coordinator.

The employees in this category would be the Registrar – Dr. Rebecca Maloney and the Director of MA Programs – Dr. Chris Baglow and the Director of Pastoral Formation and Field Education – Fr. Joseph Krafft.

- Thirdly, some employees are **required to report all the details of an incident** (including the identities of both the victim and alleged perpetrator) to the Title IX coordinator. A report to these employees (called “responsible employees”) constitutes a report to the Seminary – and generally obligates the Seminary to investigate the incident and take appropriate steps to address the situation and to resolve the matter promptly and equitably. A responsible employee must report to the Title IX coordinator all relevant details about the alleged sexual violence shared by the victim and that the College will need to determine what happened – including the names of the victim and alleged perpetrator(s), any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident. A responsible employee should not share information with law enforcement without the victim’s consent or unless the victim has also reported the incident to law enforcement. Responsible employees will not pressure a victim to request confidentiality, but will honor and support the victim’s wishes, including for the Seminary to fully investigate an incident. By the same token, responsible employees will not pressure a victim to make a full report if the victim is not ready to.

These employees include the Director of Facilities – Mr. Travis Gehrkin, the Rector/President – Fr. James Wehner, the Vice-Rector – Fr. Deo Ekisa, and all NDS faculty members.

This policy is intended to make students aware of the various reporting and confidential disclosure options available to them – so they can make informed choices about where to turn should they become a victim of sexual violence. NDS encourages victims to talk to someone identified in one or more of these groups.

NOTE: While these professional and non-professional counselors and advocates may maintain a victim’s confidentiality vis-à-vis the Seminary, they may have reporting or other obligations under state law.

ALSO NOTE: If the Seminary determines that the alleged perpetrator(s) pose a serious and immediate threat to the NDS community the Rector/President and/or the Campus Security Authorities (CSAs) may be called upon to issue a timely warning to the community. Any such warning should not include any information that identifies the victim.

If the Seminary determines that it cannot maintain a victim’s confidentiality, NDS will inform the victim prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the Seminary’s response. NDS will remain ever mindful of the victim’s well-being, and will take ongoing steps to protect the victim from retaliation or harm and work with the victim to create a safety plan. Retaliation against the victim, whether by students or NDS employees, will not be tolerated.

NDS will also:

- assist the victim in accessing other available victim advocacy, academic support, counseling, disability, health or mental health services, and legal assistance both on and off campus (see portion of policy identifying these);
- provide other security and support, which could include issuing a no-contact order, helping arrange a change of living or working arrangements or course schedules (including for the alleged perpetrator pending the outcome of an investigation) or adjustments for assignments or tests; and,
- inform the victim of the right to report a crime to campus or local law enforcement – and provide the victim with assistance if the victim wishes to do so.

NDS may not require a victim to participate in any investigation or disciplinary proceeding. Because NDS is under a continuing obligation to address the issue of sexual violence campus-wide, reports of sexual violence (including non-identifying reports) will also prompt the Seminary to consider broader remedial action – such as increased monitoring, supervision or security at locations where the reported sexual violence occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/victimization surveys; and/or revisiting its policies and practices. **If NDS determines that it can respect a victim’s request for confidentiality,** the Seminary will also take immediate action as necessary to protect and assist the victim.

Anonymous Reporting

Although NDS encourages victims to talk to someone, the Seminary provides a means for anonymous reporting. If a student or employee would like to anonymously report evidence of

sexual misconduct, the student or employee can email the Rector/President with the information. Please know that personally identifying information from the email may serve as notice to the College for the purpose of triggering an investigation.

Off-campus Counselors and Advocates

Off-campus counselors, advocates, and health care providers will also generally maintain confidentiality and not share information with the Seminary unless the victim requests the disclosure and signs a consent or waiver form.

Following is contact information for these off-campus community resources:

[Metropolitan Center for Women and Children](#)

Phone: (504) 837-5400

24/7 Crisis Hotline: (504) 837-5400

Toll Free: 1-888-411-1333 (Louisiana Domestic Violence Hotline)

Assists individuals affected by family violence, dating violence, sexual assault, and stalking

[New Orleans Family Justice Center](#)

Phone: (504) 592-4005

24/7 Crisis Hotline: (504) 866-9554

Assists individuals affected by family violence, dating violence, sexual assault, and stalking

[VIA Link](#)

Toll Free Phone: (800) 749-2673

Direct phone: (504) 269-2673

24 hour crisis call center for the Metro New Orleans Area providing short-term crisis counseling, information on social service agencies in the 10 parish service area, and comprehensive referrals to meet caller's specific needs.

[Sexual Assault Nurse Examiner \(SANE\) Program](#)

[Louisiana State University Interim Hospital](#)

(504) 903-3000

2021 Perdido Street (Emergency Room off Gravier St.)

New Orleans, LA 70112

Nurses with special training in sexual assault provide exams and care for victims of sexual assault. Only location in Orleans parish where forensic evidence (a rape kit) can be collected for sexual assault victims.

[New Orleans Sexual Assault Response Team \(SART\)](#)

A collaboration of agencies working together to strengthen New Orleans's response to sexual assault. This site provides information about sexual assault.

NOTE: While these off-campus counselors and advocates may maintain a victim's confidentiality vis-à-vis the College, they may have reporting or other obligations under state law.

Some Facts about Sexual Abuse

There are many reasons why a physical exam is important after experiencing sexual abuse.

Some reasons include the following:

- to determine the presence of sexually transmitted diseases, pregnancy, or DNA evidence,
- to obtain the history of occurred,
- to identify and document evidence of injury or infection,
- to diagnose and treat any injuries resulting from the attack,
- to assess safety and make a report to the police if needed,
- to document findings in such a way that information can be effectively and accurately presented, if requested by a law enforcement agency, and
- to help to ensure well being.

Victims over 18 years old should remember that even if they do have a full exam and a rape kit is completed, they are not obligated to make a police report.

Once a decision is made to get an exam done, the following information could help:

- There are several hospitals in this area that are specially equipped to help victims of sexual assault.
- In New Orleans, LSU interim hospital, also known as University Hospital, at 2021 Perdido St. has the SANE (Sexual Assault Nurse Examiner) program called the SAFE Center to assist adult victims. Children's Hospital has a CARE program for child victims of sexual assault. If the assault has occurred within 72 hours, the child needs to be seen in the ER. If the assault is older than 72 hours, it is best that the child is seen in a clinic type setting of the CARE cottage.
- Once the victim arrives at any hospital, the victim should ask for a SANE nurse or the person who handles sexual assault cases.
- The nurse will explain options available to victims, and will give information about the available Safe centers.
- Victims over 18 years old should remember that even if they do have a full exam and a rape kit is completed, they are not obligated to make a police report.
- If the victim decides to file a report, the SANE nurse will contact the police.

If the victim decides to call the police after the assault, the following information could help:

- Remember, the first officers arriving on the scene are there to help, to ensure safety, and to gather information.
- Who, what, and where are the most common questions the police might ask. They know talking about the assault might be difficult, but the information can be used to be able to provide the appropriate resources.
- The victim should ensure her/ his own safety before calling the police; this is the police's first concern.
- The 911 operator will fill a complaint and will ask questions about the incident. This will help the officers assist the victim better.

- Avoid bathing, urinating, wiping, eating or drinking because such actions could cause evidence to be destroyed. Do not discard the clothing worn during the attack. If a change of clothes is necessary, the clothes worn during the attack should be put in a paper bag and given to the police officers.
- In most sex crimes a detective will be called to the scene. If the victim has not gone to the hospital for a medical exam yet, the detective will transport you. The detective will also interview any witnesses, exam the scene, and attempt to apprehend the perpetrator.
- If questioned about the investigation, direct questions to the director or supervisor of the case. Any questions after the arrest can be directed to the District Attorney handling the case.

If sexual assault victims have any questions, need services, or need someone to talk to, please call the Metro 24-hour crisis hotline: 504-837-5400

The information above was taken from the Metropolitan Center for Women and Children website: <http://www.mcwcgno.org/gethelp/sexual-assault.html>

Prevention and Awareness Programs

NDS requires annual participation of their students in education and prevention programs that include, but are not limited to: (a) awareness programs; (b) bystander intervention programs; (c) ongoing prevention and awareness campaigns; (d) primary prevention programs; and (e) education on risk reduction. NDS will document all training programs and maintain attendance lists.

Awareness Programs

Awareness programs consist of community-wide or audience-specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce sexual misconduct.

Bystander Intervention

Bystander intervention consists of 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 assault, or stalking. It also 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.

Ongoing Prevention and Awareness Campaigns

Ongoing prevention and awareness campaigns must consist of programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to, and skills for addressing, dating violence, domestic violence, sexual assault, and stalking, using a range of strategies with audiences throughout the institution.

Prevention Programs

Primary prevention programs must consist of initiatives and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe directions.

Risk Reduction

Risk reduction consists of options designed to decrease perpetration and bystander inaction and to increase empowerment for victims to promote safety and to help individuals and communities address conditions that facilitate violence. Additional options may include designation and publication of “red zones” (i.e., times and places of high incidence of crimes, including sexual violence).