

## **Victim Assistance**

### **Know Your Rights**

You have the right to be assisted by campus authorities if you chose to report a crime of domestic violence, dating violence, sexual assault, and/or stalking to law enforcement. You are not required to file a criminal complaint. If you choose to, Windward Community College will provide you with support throughout the process.

You have the right to change academic, living, transportation, or working situations to avoid a hostile environment. Windward Community College will work with you to make accommodations for your safety while on and leaving campus property.

You have the right to obtain and/or enforce a no contact directive issued by the institution or protective/restraining order issued by a court of law that can be enforced anywhere in the United States, no matter where you obtain it. A violation of it can result in criminal charges.

### **How to Obtain Orders of Protection in Hawai'i:**

You may request a **District Court** temporary restraining order (TRO) if the person harassing or abusing you:

- Is not someone to whom you are married or were married.
- Is not a relative.
- Has never lived with you.
- Is not someone with whom you had a child.
- Is not a dating partner.

**On O`ahu**, District Court temporary restraining orders (TRO) can be obtained at Honolulu District Court, Regular Claims Division, located at 1111 Alakea Street, third floor, (808) 538-5151

You may request a Family Court temporary restraining order (TRO) if the person harassing or abusing you:

- Is someone you are married to or were married to.
- Is a family member.
- Lives or had lived with you.
- Is someone with whom you had a child.
- Is or was in a dating relationship with you.

Call the Adult Client Services Branch of Family Court (ACSB) and be prepared to briefly provide details about the abuse. This includes physical and psychological abuse, verbal threats and property damage.

- **O`ahu** - (808) 538-5959
- **Maui** - (808) 244-2706
- **Hawai`i** - (808) 969-7798
- **Kaua`i** - (808) 482-2330

Call hours: 7:45 a.m. through 4:15 p.m., Monday through Friday, except for holidays. After the ACSB worker receives information about your abuse and the person against whom you are filing charges, you will be scheduled for an appointment at the Family Court. During this appointment, your request for the TRO will be filed for the judge's review.

The **application process** takes up to 2 hours for Petitioners to complete their petitions. Petitioners are then asked to return at 2:00 p.m. to pick up their TRO documents. Please arrange for childcare, if necessary.

## **Mental Health Counseling**

WCC provides short-term counseling to assist students in managing personal life challenges. To schedule an appointment with a mental health counselor, Karla Silva call 808-235-7468 or visit **Hale Akoakoa** 220.

Windward Community College's mental health counseling services are considered a confidential resource where students can seek assistance related sex discrimination and gender-based violence in a confidential manner. Confidential resources of the campus will not share information about or received from a student, without the student's express written permission, unless imminent threat to life or of bodily injury exists, or there is a legal obligation to reveal such information, e.g., in an employment context or suspected abuse or neglect of a minor.

## **Community Resources**

State of Hawaii Community Mental Health Center – Windward CMHC Kaneohe Clinic  
45-691 Kea`ahala Road, Kaneohe, HI 96744  
808-233-3775

<http://health.hawaii.gov/amhd/home/about-us/>

Mental Health America of Hawaii

<http://mentalhealthhawaii.org>

## **Preserving Evidence**

If you are a victim of sexually assault, preserving any available evidence, including the results of Sexual Assault Forensic Examination (SAFE), blood tests for “date rape” drugs, and/or testing urine, allows you to leave open the option of criminal prosecution in the future without obligating you to make an immediate decision.

Physical evidence is crucial in helping to prosecute assailants in cases of rape or sexual assault. Physical evidence must be collected in a timely manner by a certified medical facility.

Prior to a medical/legal exam, victims of rape or assault **should not**:

- Bathe,
- Change clothes,
- Douche,
- Use the toilet (if possible),
- Smoke, or
- Clean the bed/linen/area where they were assaulted

If victims do not opt for forensic evidence collection, health care providers can still treat injuries. If you are a female seeking emergency medical services from a hospital, you should be aware that all Hawai'i hospitals are required to provide information about and access to emergency contraception following a sexual assault, even if you choose not to undergo an acute forensic examination or choose not to report the sexual assault to law enforcement.

Victims of **stalking** should **save** evidence such as:

- Any letters,
- Notes,
- Emails,
- Phone calls,
- Videos,
- Photos,
- Texts,
- Social media postings (Facebook, Twitter, etc),
- Computer screenshots,
- Voicemails, or any other form of evidence that would be helpful.

As time passes, evidence may dissipate or become lost or unavailable, thereby making investigation, possible prosecution, disciplinary proceedings, or obtaining orders of protection related to the incident more difficult.

If a victim chooses not to make a criminal complaint regarding an incident, he or she nevertheless should consider speaking with the local law enforcement to preserve evidence in the event that the victim changes his or her mind at a later date.

## QUICK FACTS

A Sexual Assault Forensic Examination (SAFE) will preserve evidence in case the student decides to pursue criminal charges and may be done up to 84 hours after an

assault.

Don't urinate before going to the hospital. Date rape drugs leave your body quickly. Rohypnol stays in the body for several hours, and can be detected in the urine up to 72 hours after taking it. GHB leaves the body in 12 hours.

Some kinds of evidence may only be collected within a short period of time after an assault, delaying action to preserve evidence immediately after an assault may reduce the chances for a successful criminal prosecution in the future.

While submitting to a SAFE medical exam, and/or other testing may be emotionally traumatic in the immediate aftermath of an assault, some local hospitals have specially trained clinicians who are experienced in helping survivors through the process.

### Community Resources

The Sex Abuse Treatment Center – Kapi'olani Medical Center for Women & Children  
**24 Hour Hotline: 808-524-7273**  
<http://satchawaii.com/get-help-what-to-do-overview.aspx>

## Confidentiality

While the University recognizes the importance of privacy and confidentiality in these matters, only offices designated as “confidential,” such as Mental Health Counseling, will not report any information to the Title IX Coordinator. These conversations are kept strictly confidential and, except in rare, extreme circumstances (including imminent risk of harm to self or others), nothing will be shared without your permission. All other University personnel and programs will uphold the privacy of all parties to the extent practicable, but once the University has notice of alleged prohibited behavior, the Title IX Coordinator, the EEO/AA Office, and/or other appropriate University office is obligated to take appropriate action.

## Retaliation

The University prohibits and will not tolerate retaliation. Retaliation is adverse actions taken against a person because of his/her good faith participation in the following types of protected activities:

- 1) Seeking advice or assistance about a discrimination concern or possible incident of sexual violence;
- 2) Opposing or filing an informal or formal complaint against conduct reasonably believed to constitute discrimination or sexual violence; or

- 3) Testifying, assisting, or participating in an investigation or other proceeding related to a complaint of discrimination or sexual violence.

Adverse actions are actions that would dissuade a reasonable person from making or supporting a complaint under EP1.204.

Examples of adverse actions that might constitute retaliation include a significant change in one's status, such as suspension, unsatisfactory or unfair evaluations, unfair grades, unfair assignments, firing, failing to promote, reassignment with significantly different responsibility or a decision causing a significant change in benefits, direct or implied threats, coercion, harassment, intimidation, or encouragement of others to retaliate.

Procedure – A retaliation complaint, allegation, or report will be reviewed as a separate offense under EP1.204, that is, a person can be found responsible for retaliation even if not found to be responsible for the underlying reported sex discrimination or gender-based violence. All complaints, allegations or reports of retaliation under EP1.204 should be made and processed by the same procedures set forth in policy.

## **Standard of Review**

Preponderance of the Evidence – In determine whether alleged behavior violates The University of Hawai'i's Executive Policy EP1.204 (Interim) on Sex Discrimination and Gender-Based Violence, Windward Community College will consider the totality of the facts and circumstances involved in the incident, including the nature of the alleged behavior and the context in which it occurred, and determine whether it is more likely than not that the alleged prohibited behavior occurred.

Jurisdiction – In circumstances involving third parties or conduct that occurred outside of a University-sponsored program or activity, Windward Community College will decided whether EP1.204 applies to a reported incident or complaint on a case-by-case basis.

## **Windward Community College's Reporting and Investigation Procedures**

In accordance with University of Hawai'i Executive Policy EP1.204 (Interim) on Sex Discrimination and Gender-Based Violence, all employee and student related violations of the policy shall be handled in the following manner:

### **Formal Investigation and Resolution**

- 1) Notice of Charge
  - a) A Notice of Charge shall be issued by a Title IX Coordinator when:
  - b) An Informal Resolution has not been accomplished;

- c) The Reporting Party requests a Formal Investigation/files a written complaint; or
- d) Because of the frequency or severity of the allegations, the Title IX Coordinator determines a University-initiated investigation is warranted.

2) A Notice of Charge shall be provided to all parties to the Complaint and provide:

- a) A summary of the allegations;
- b) A copy of the complaint procedures;
- c) A confidentiality statement;
- d) A non-retaliation statement;
- e) A request that the Respondent respond in writing to the allegations by a specified response deadline; and
- f) The named parties to the Complaint, unless the Reporting Party requests to remain anonymous for University-initiated investigations.

3) Voluntary Agreement

At any time during the course of a formal investigation and resolution process, the parties may voluntarily agree to resolve any allegations of prohibited behavior, in lieu of findings and sanctions under EP1.204.

4) Fact-Finding Investigation

The Title IX Coordinator shall transmit the Notice of Charge to the Investigating Officer(s) to conduct a Fact-Finding Investigation. In matters involving claims by a University employee against another University employee, the appropriate University EEO/AA Office shall conduct the Fact-Finding Investigation.

The Investigating Officer(s) will:

- a) Interview the Reporting Party, Responding Party, relevant witnesses, and individuals with unique knowledge pertinent to the Notice of Charge in order to gather and ascertain case facts and circumstances; and
- b) Collect all documents, notes and photographs of the incident sites, and materials relevant to the case, to include consultation and research notes and the resulting analysis and organization will be considered confidential.

Each party may have a union agent or an advisor of their choice accompany them to any meeting or related proceeding to advise them. The University administrative investigatory process is dictated by the University, and therefore:

- a) The union agent or advisor cannot speak for the Reporting or Responding party nor dictate the line or rationale of questioning;
- b) Involved parties, e.g., the Reporting Party, Responding Party, or witnesses, will not be allowed to be present during the interviews of others; and

- c) Involved parties cannot question or cross-examine others during the investigatory interviews.

The Title IX Coordinator, and the EEO/AA Office, has the discretion to consolidate multiple complaints into a single investigation if evidence relevant to one incident may also be relevant to others.

#### 5) Fact-Finding Report

Upon completion of the Fact-Finding Investigation, a Fact-Finding Report shall be submitted to a designated Decision Maker and must contain, at a minimum:

- a) The Investigating Officer's statement on the alleged violations of EP1.204;
- b) Definitions of the relevant standards set forth in EP1.204;
- c) The Investigating Officer's summary of statements of the interviewed parties;
- d) The Investigating Officer's summary and inventory of all evidence gathered during the investigation;
- e) A presentation of all evidence gathered;
- f) Any mitigating circumstances, unique considerations, identified discrepancies or conflict, and/or issues of credibility; and
- g) Any other relevant information as appropriate.

#### 6) Decision Maker

In consultation with the Title IX Coordinator for each campus, the Chancellor shall designate a Decision Maker for the purposes of implementing Findings and Sanctions under EP1.204. In the event of a Complaint regarding a System employee, in consultation with EEO/AA Office, the President or designee shall designate a Decision Maker for the purposes of implementing Findings and Sanctions under EP1.204. For incidents that directly involve multiple campuses, a single Decision Maker shall be assigned by the President or designee, in consultation with the Director of the Office of Institutional Equity, based on the facts and circumstances.

Based on the Fact-Finding Report submitted, the Decision Maker shall:

- a) Determine whether, based on the Preponderance of the Evidence Standard, a violation of EP1.204 has occurred; and
- b) Impose any sanctions as deemed appropriate.

#### 7) Outcome Report and Notification Requirements

Upon reviewing the Fact-Finding Report, the Decision Maker may request more information from the Investigator. Once the Decision Maker determines that there is sufficient evidence and information to make a decision, they shall issue an Outcome Report. The Outcome Report shall contain:

- a) The Decision Maker's determination of whether EP1.204 was violated;
- b) Sanctions imposed, if any;
- c) Any accommodations the University will provide to the Reporting Party or safety measure(s) for the University community, if applicable;
- d) Whether any systemic remedies are being considered or implemented;
- e) If appropriate, a recommendation that the matter be referred for additional disciplinary review; and
- f) The appropriate method for filing an appeal.

The Reporting and Responding parties to a Formal Investigation shall receive the Outcome Report, redacted of any personally identifiable information, as appropriate. While federal privacy laws limit disclosure of certain information in disciplinary proceedings, the following notifications are required by law:

- a) Title IX Requirement – Both the Reporting and Responding Party shall be informed in writing of the outcome of a Formal Investigation. This includes sanctions imposed that directly relate to the Reporting Party.
- b) Clery Act Requirement – In any formal Investigation involving sexual violence, both parties shall be informed of the outcome and the sanctions imposed. Accordingly, the University shall not require the Reporting Party to abide by a non-disclosure agreement, in writing or otherwise.

#### 8) Right to Appeal – Students

Both parties have equal rights to an impartial appeal under the Reporting and Investigation Procedures. During the appeal process, all imposed restrictions and interim measure and disciplinary sanctions will remain in place pending the outcome of the appeal.

The appropriate method for filing an appeal will be contained in the Outcome Report. If either party files an appeal, Windward Community College will notify the other party in writing.

If an appeal is properly filed, the appropriate Appeal Officer will examine the information presented. The Appeal Officer may then decide within 7 calendar days to:

- a) Uphold the original decision;
- b) Grant the appeal if the clear weight of the evidence shows the determination was erroneous;
- c) Remand the case because of substantial relevant information that was not presented, and reasonably could not have been presented during the investigation; or
- d) Remand the case because of procedural unfairness.

The decision upon appeal rendered shall be final and binding within Windward Community College and the University of Hawai'i.

## 9) Right to Appeal – Employee

Employees who are Reporting Parties have rights to appeal equivalent to students' rights to appeal, as stated above. For all included Responding Parties covered by collective bargaining, appeals of disciplinary actions shall be filed in accordance with the University's Administrative Procedure A9.110. During the appeals process, all imposed restrictions, interim measures, and disciplinary actions will remain in place pending the outcome of the appeal, and subject to the provisions of any applicable collective bargaining agreement.

### **Range of Possible Sanctions - Students**

If found in violation of the University of Hawai'i's policy on Sex Discrimination and Gender –Based Violence sanctions shall be imposed based on the severity of the prohibited behavior, as well as the responding party's past record. For all possible sanctions, Students are subject to several kinds of sanctions, as listed:

#### **Warning**

A Warning is a formal written admonition.

#### **Disciplinary Probation**

Disciplinary Probation is a more serious admonition assigned for a definite amount of time. It implies that any future violation, of whatever kind, during that time, may be grounds for suspension, suspension with conditions, or in especially serious cases, expulsion from the University. Disciplinary probation will be taken into account in judging the seriousness of any subsequent infraction even if the probationary period has expired.

#### **Suspension**

Suspension is removal from membership in, or employment by, the institution for a specified period of time.

#### **Suspension with Conditions**

Suspension with Conditions is removal from membership in, or employment by the institution for at least the period of time specified by the suspension, with the suspension to continue until certain conditions, stipulated by the appropriate body applying this sanction, have been fulfilled. These conditions may include, but are not limited to, restitution of damages, formal apology, or counseling.

#### **Withholding of Degree**

In cases involving soon-to-graduate or graduate students, the institution may withhold a student's degree for a specified period of time. This penalty is imposed instead of suspension at the end of a soon-to-graduate student's current academic term where all other degree requirements have been met.

### **Expulsion/Discharge**

Expulsion/Discharge is permanent removal from membership in, or employment by the institution.

### **Censure**

Censure can be added to any of the other sanctions listed above, except warning. Censure indicates the institution's desire to underscore the seriousness of the violation and the absence of mitigating circumstances and to convey that seriousness in response to future authorized inquiries about the given individual's conduct.

### **Restrictions of Access to Space, Resources, and Activities**

In addition to any of the sanctions listed above, restrictions may be placed on access to space and/or resources or on participation in activities so as to limit opportunities for contact among the parties.

### **Other Sanctions**

The Decision Maker of a disciplinary process may also impose other sanctions, such as work assignments, essays, and/or service to the institution; counseling; participation in alcohol or other drug education programs; restorative justice activities; or other assignments that the Decision Maker deems appropriate.

### **Range of Possible Sanctions - Employees**

Sanctions or appropriate administrative action may be imposed in accordance with applicable collective bargaining agreements. Possible sanctions for all employees may include disciplinary action up to and including termination.

### **Educational Refresher Programs**

When appropriate, an employee or student may be required to participate in educational refresher programs. While ordinarily considered as training and not considered as a Sanction, Educational Refresher Programs may be required as part of the University's goal to prevent the recurrence of inappropriate conduct.

Relevant information remains on an employee's personnel records in accordance with the applicable collective bargaining agreement.

For complete information on the University of Hawai'i's policy and procedures on Sex Discrimination and Gender-Based Violence please visit:

<http://www.hawaii.edu/policy/docs/temp/ep1.204.pdf>