TITLE: **SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE AND STALKING POLICY**

DATE(S) OF POLICY AND POLICY REVISION APPROVALS: **October 17, 2023**, **December 18, 2014**; **February 16, 2010**

This section of the College’s Title IX and Sexual Misconduct Policy is written to comply with Pennsylvania Department of Education requirements and Article XX-G Act 55 of 2022.

Any act of sexual violence, domestic violence, dating violence or stalking, including but not limited to *sexual assault* (Pa. Title 18 Section 3124.1) and *rape* (Pa. Title 18 Section 3121), violates Pennsylvania law as well as the standards of conduct of Luzerne County Community College and is prohibited on any College campus or facility as well as facilities used by the College for educational programs and/or sponsored activities. LCCC is committed to the education of students, faculty, and staff about sexual and domestic/dating violence and stalking, to the prevention of these acts involving members of the campus community, and to the provision of an appropriate response when any of these acts occur. Prevention/education/ awareness programs, training and communication regarding sexual violence, stalking, and domestic and dating violence occur regularly at the College.

Sexual violence is a broad term and includes: rape, incest, child sexual abuse, intimate partner violence, sexual exploitation, human trafficking, unwanted sexual contact, sexual harassment, exposure, and voyeurism. Sexual violence occurs when someone is forced or manipulated into unwanted sexual activity without their consent. The term “consent” means a willingness to participate in a mutually agreed upon sexual activity indicated by words and or actions that are informed, freely and actively given, and mutually understood.

As used in the offenses above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. The absence of resistance does not demonstrate consent. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion**: Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**Consent is** knowing, voluntary, with explicit permission by word or action to engage in sexual activity. [[1]](#footnote-1)

Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or after that, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the Luzerne County Community College to determine whether its policy has been violated. The existence of a consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

The College encourages the timely reporting of any incident of sexual assault, domestic violence, dating violence and stalking to an appropriate party (see the Sexual Assault, Domestic Violence, Dating Violence, and Stalking Reporting Procedure). However, the victim maintains the right not to report such incidents to the College or to law enforcement. If the incident is reported to the College, all information will be held as strictly confidential to the extent permitted by law. Publicly available recordkeeping will be accomplished without including identifying information about the victim, to the extent permissible by law**.**

The College is obligated under law to report any instance of sexual assault, domestic and dating violence, and stalking incidents to local law enforcement, provided, however, that,If the victim prefers, her/his name will not be included in the crime report submitted to law enforcement. The victim will be advised of her/his option to contact local law enforcement and provided with legal information regarding such crimes.

LCCC employs Campus Security Officers and professionals who are trained to assist victims in reporting crimes and obtaining help, including immediate medical care, counseling and other essential services. The College also maintains information on both internal and external services available to students who are victims of sexual assault, domestic or dating violence, and stalking. This information will be provided to any individual reporting such an incident to the College. If an incident of sexual assault, domestic or dating violence, or stalking is reported to any employee of the College, the employee is obligated to report the incident to the College Safety and Security Office and/or the Student Development Office, even if the individual who reported the incident doesn't want any action taken. If the reporting individual wishes, they may remain anonymous to the extent permitted by law.

All reports of sexual assault, domestic or dating violence, and stalking incidents occurring on College-owned or College-operated property will be fully investigated by the College with consent of the victim, with appropriate disciplinary action taken (in the event the perpetrator is an LCCC employee or student). All such investigations will afford both the accuser and the accused the right to have others present during proceedings; the accuser and the accused shall be notified of the outcome of College disciplinary proceedings. College sanctions will be imposed in accordance with College disciplinary procedures for employees and students found to have violated this policy. Sanctions include, but are not limited to, suspension and expulsion. An employee committing sexual assault, domestic or dating violence or stalking is subject to internal disciplinary proceedings with sanctions up to employment termination in accordance with College disciplinary procedures and/or collective bargaining agreements as relevant to the employee. An individual criminally charged with sexual assault, domestic or dating violence, or stalking may be subject to prosecution under Pennsylvania law. College employee and peer confidentiality is not protected in a court of law.

I. Definition of Terms per Pennsylvania Statutes

Rape: A person commits a felony of the first degree when she/he engages in sexual intercourse with a complainant: 1. By forcible compulsion

1. By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution
2. Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring.
3. Where the person has substantially impaired the complainant’s power to appraise or control her or his conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.
4. Who suffers from a mental disability which renders the complainant incapable of consent.

Sexual Assault: A person commits a felony of the second degree when the person engages in sexual intercourse or deviate sexual intercourse with a complainant without the complainant’s consent.

Domestic Violence: The occurrence of one or more of the following acts between [family or household members:](http://www.womenslaw.org/laws_state_type.php?id=10027&state_code=PA&open_id=all#content-4203) 1) attempting to cause or causing (with or without a deadly weapon) bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, aggravated indecent assault, indecent assault or incest; 2) placing another in reasonable fear of immediate serious bodily injury; 3) false imprisonment; 4) physical or sexual abuse of a child; or 5) engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, under circumstances which place the person in reasonable fear of bodily injury.

Dating Violence: The use of abusive behaviors, including, but not limited to, Internet, electronic, written, verbal, sexual or physical contact by a person to harm, threaten, intimidate or control a current or former dating partner, regardless of sex, sexual orientation or gender identity. Dating violence may be an isolated incident or a repeated course of conduct.

Stalking: A person commits the crime of stalking when the person either (1) engages in a course of conduct or repeatedly commits acts toward another person, including following the person without proper authority, under circumstances which demonstrate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person; or (2) engages in a course of conduct or repeatedly communicates to another person under circumstances which demonstrate or communicate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person.

Other Related Offenses:

* Aggravated Indecent Assault (18 Pa.C.S. 3125)
* Indecent Assault (18 Pa.C.S. 3126)
* Indecent Exposure (18 Pa.C.S. 3127)
* Involuntary Deviate Sexual Intercourse (18 Pa.C.S. 3123)

1. Reporting Procedure

The College provides resources to support a student or staff member who has been sexually assaulted or is the victim of domestic or dating violence or stalking. Appropriate contact persons include the Vice President of Enrollment Management and Student Affairs, the Title IX Coordinator, or the Dean of HR (if applicable). Any act of sexual assault, domestic violence, dating violence and stalking occurring on College-owned or College operated property should be reported to the College’s Campus Safety and Security Department (570-740-0304).If the reported act occurred off campus, it may be reported to the Nanticoke Police Department or other local law enforcement authorities by dialing 911.

A detailed Sexual Assault, Domestic Violence, Dating Violence, And Stalking Reporting Procedure is available on the College web site [www.luzerne.edu](http://www.luzerne.edu/) on the Safety and Security page.

1. Intervention and Response:

Campus Safety and Security officials who are informed of an incident of sexual assault, domestic violence, dating violence or stalking will:

* + use reasonable best efforts to ensure the victim is no longer in danger and is in a safe locale, and inform the victim of the need for a safe environment
  + advise the victim of his/her option to contact or not contact law enforcement, regardless of where the incident took place.
  + notify the victim that the College, like other entities, is a mandated reporter and therefore has a legal obligation to report the incident to law enforcement, but if the victim prefers, her/his name will not be included in the crime report submitted to law enforcement • explain that no legal action will be taken by the College without the victim’s consent and that the victim can decline to speak to law enforcement if she/he so chooses
  + assist the victim in reporting the crime to law enforcement, if she/he chooses to do so, or notify law enforcement on the victim's behalf if requested to do so by the victim
  + use reasonable best efforts to ensure confidentiality of the victim to the extent permitted by law and inform victim of actions that will be taken to ensure confidentiality, including how publicly available recordkeeping will be accomplished without including identifying information about the victim, to the extent permissible by law
  + inform the victim of counseling and academic support options, as well as all other resources and support services available for victims of sexual assault, domestic violence, dating violence and stalking, both internally and externally
  + assist the victim in dealing with legal and medical authorities and making arrangements for transportation and provide necessary emotional support and information as needed
  + provide the victim with written notice of her/his rights, the procedure for investigating the incident, and the disciplinary actions and possible sanctions that may be imposed on students/employees found guilty of violation of the sexual assault, domestic violence, dating violence and stalking policy
  + inform the victim of the importance of seeking immediate and follow-up medical attention for the following reasons: to assess and treat any physical injuries; to determine the risk of sexually transmitted diseases or pregnancy; to take preventive measures; and to gather evidence that could aid criminal prosecution
  + advise the victim of the importance of preserving evidence
  + if applicable, advise the victim not to bathe as this will destroy evidence that supports a legal case against an assailant if there is a choice to prosecute
  + advise the victim that physical evidence should be collected immediately, ideally within 24 hours of the incident, and that even if no physical injuries are present, the collection of physical evidence is strongly recommended to maintain all legal options
  + inform the victim of the institution’s responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court
  + inform the victim of her/his right to change academic or working situations to avoid a hostile environment, and provide victim with options for, and/or available assistance in, changing academic or working situations, transportation, and living arrangements
  + notify the appropriate law enforcement authorities having jurisdiction on the incident
  + report the incident to the College’s Title IX Coordinator
  + include the incident in the annual Clery Act crime statistics report

The College’s Campus Security Department (570-740-0304) will assist with making arrangements for transportation to the hospital if needed. If desired, the College staff will contact the Victims Resource Center (570-823-0765) so that a supportive individual may be with the victim throughout the procedure.

The Vice President of Enrollment Management and Student Affairs and/or the Title IX Coordinator or the Dean of Human Resources (if applicable) will initiate a follow-up inquiry to ascertain if the victim has received/ is receiving appropriate psychological, medical or general support.

The College will report all acts of sexual assault, domestic violence, dating violence and stalking that occur within the geography defined by the Clery Act on its Annual Security Report in compliance with the Campus Sexual Violence Elimination Act/Jeanne Cleary Act. Any person who violates this policy shall be subject to action in accordance with College policies and procedures and/or the appropriate collective bargaining agreement and, if reported to law enforcement, local, state and federal laws.

1. The Pennsylvania definition of consent is applicable to criminal prosecutions for sex offenses in The Commonwealth of Pennsylvania but may differ from the definition used on campus to address policy violations. [↑](#footnote-ref-1)