

Crime Definitions

Consent

While North Carolina law does not define “Consent,” Duke University defines Consent as follows:

- An affirmative decision to engage in mutually acceptable sexual activity freely given by clear actions and/or words. Consent may not be inferred from silence, passivity, or lack of active resistance alone.
- A current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- Consent is not freely given when the individual is incapacitated (defined further below).
- Consent is not freely given when the individual is coerced into sexual activity, such as, for example, through the use of physical force, threat of physical or emotional harm, undue pressure, isolation, or confinement.
- **Consent may be withdrawn at any time.** Once withdrawn, sexual activity must cease.

The perspective of a reasonable person will be the basis for determining whether a Respondent knew, or reasonably should have known, whether a Complainant was able to freely give consent and whether consent was given. Additionally, being intoxicated or incapacitated does not diminish one’s responsibility to obtain consent and will not be an excuse for Prohibited Conduct.

Sexual Misconduct:

Duke Sexual Misconduct:

Under Duke’s policy, sexual misconduct includes sex/gender-based harassment, sexual assault, sexual exploitation, relationship violence (domestic and dating violence), and stalking. These terms are defined in Duke’s Policy on Prohibited Discrimination, Harassment and Related Misconduct, which can be accessed at <https://oie.duke.edu/knowledge-base/policies-statements-and-procedures>.

Note: The specific North Carolina laws regarding the offenses below may be located within the Duke University Annual Security Report (“ASR”) at the section entitled, “Sexual Assault, Domestic Violence, Dating Violence, and Stalking.” See <https://police.duke.edu/news-stats/clery> for the link to the current ASR.

Sexual Assault:

An offense classified as a sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

Under Duke's policy, sexual assault is defined as any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

Domestic Violence:

Under Duke's policy, a felony or misdemeanor crime of violence committed by:

- A current or former spouse or intimate partner of the victim
- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction
- 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.

Dating Violence:

Under Duke's policy, any act of violence committed by a 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 is determined based on a consideration of:

- The length
- Type
- Frequency

of interactions between the persons involved in the relationship.

Stalking:

Under Duke's policy, a course of conduct (including cyberstalking) directed at a specific person that would cause a reasonable person to fear for his/ her/their safety or the safety of another, or to suffer substantial emotional distress.

Bystander Intervention:

A bystander is someone other than the affected individual who is present when an act of

- Dating violence
- Domestic violence
- Stalking and/or
- Sexual violence is occurring or
- When a situation is occurring in which a reasonable person feels as though some protective action is required to prevent sexual violence, dating violence, domestic violence, or stalking.

Bystanders, if active, can prevent harm or intervene before a situation gets worse.

Examples of active bystander intervention include:

- Not leaving an overly intoxicated person in a bar/ party alone
- Walking a classmate to their car after class
- Calling police when a potentially violent situation is unfolding
- Not leaving an unconscious person alone
(alerting an RA, EMS, campus police, etc.)
- Intervening when someone is belittled, degraded, or emotionally abused, such as walking the affected individual away from the abuser or contacting others for help like the counseling center, RA, Police, or the Dean.

