Sex Offense & Consent Definitions

The following offenses (1-4) and terminology (5) are defined:

1. Sexual Assault
2. Domestic Violence
3. Dating Violence
4. Stalking
5. Consent

Each type of offense is defined by:

   a) General Description
   b) Federal/Clery Definitions
   c) Oregon Revised Statutes (if applicable)
   d) OHSU Student Conduct Code

1. SEX OFFENSES

**General Description**

**Sexual assault**: Rape is vaginal, anal and/or oral penetration without consent. Fondling is any sexual contact without consent. Consent is a free and clearly given yes, not the absence of a no, and cannot be received when a person is incapacitated by alcohol or drugs. (Adapted from ATIXA, at: https://atixa.org/resources/free-resources/)

**Federal/Clery Act Definitions**

**Sex Offenses**: Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

**Rape**: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

**Fondling**: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

**Sex Offenses, Nonforcible**: Unlawful, nonforcible sexual intercourse.

**Incest**: Nonforcible sexual intercourse between persons who are related to each other within the degrees herein marriage is prohibited by law.

**Statutory Rape**: Nonforcible sexual intercourse with a person who is under the statutory age of consent

**Oregon State Statutes**

163.355 Rape in the third degree. (1) A person commits the crime of rape in the third degree if the person has sexual intercourse with another person under 16 years of age. (2) Rape in the third degree is a Class C felony. [1971 c.743 §109; 1991 c.628 §1]

163.365 Rape in the second degree. (1) A person who has sexual intercourse with another person commits the crime of rape in the second degree if the other person is under 14 years of age. (2) Rape in the second degree is a Class B felony. [1971 c.743 §110; 1989 c.359 §1; 1991 c.628 §2]

163.375 Rape in the first degree. (1) A person who has sexual intercourse with another person commits the crime of rape in the first degree if: (a) The victim is subjected to forcible compulsion by the person; (b) The victim is under 12 years of age; (c) The victim is under 16 years of age and is the person’s sibling, of the whole or half blood, the person’s child or the person’s spouse’s child; or (d) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness. (2) Rape in the first degree is a Class A felony. [1971 c.743 §111; 1989 c.359 §2; 1991 c.628 §3]
163.385 Sodomy in the third degree. (1) A person commits the crime of sodomy in the third degree if the person engages in deviate sexual intercourse with another person under 16 years of age or causes that person to engage in deviate sexual intercourse. (2) Sodomy in the third degree is a Class C felony. [1971 c.743 §112]

163.395 Sodomy in the second degree. (1) A person who engages in deviate sexual intercourse with another person or causes another to engage in deviate sexual intercourse commits the crime of sodomy in the second degree if the victim is under 14 years of age. (2) Sodomy in the second degree is a Class B felony. [1971 c.743 §113; 1989 c.359 §3]

163.405 Sodomy in the first degree. (1) A person who engages in deviate sexual intercourse with another person or causes another to engage in deviate sexual intercourse commits the crime of sodomy in the first degree if: (a) The victim is subjected to forcible compulsion by the actor; (b) The victim is under 12 years of age; (c) The victim is under 16 years of age and is the actor’s brother or sister, of the whole or half blood, the son or daughter of the actor or the son or daughter of the actor’s spouse; or (d) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness. (2) Sodomy in the first degree is a Class A felony. [1971 c.743 §114; 1989 c.359 §4]

163.408 Unlawful sexual penetration in the second degree. (1) Except as permitted under ORS 163.412, a person commits the crime of unlawful sexual penetration in the second degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and the victim is under 14 years of age. (2) Unlawful sexual penetration in the second degree is a Class B felony. [1981 c.549 §2; 1989 c.359 §5; 1991 c.386 §2]

163.411 Unlawful sexual penetration in the first degree. (1) Except as permitted under ORS 163.412, a person commits the crime of unlawful sexual penetration in the first degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and: (a) The victim is subjected to forcible compulsion; (b) The victim is under 12 years of age; or (c) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness. (2) Unlawful sexual penetration in the first degree is a Class A felony. [1981 c.549 §3; 1989 c.359 §6; 1991 c.386 §2]

166.065 Sexual Harassment. (1) A person commits the crime of sexual harassment if the person intentionally: (1)(A)(a) Harasses or annoys another person by subjecting another person to offensive physical contact; and (4)(a) the offensive physical contact consists of touching the sexual or other intimate parts of the other person.

163.415 Sexual abuse in the third degree. (1) A person commits the crime of sexual abuse in the third degree if: (a) The person subjects another person to sexual contact and: (A) The victim does not consent to the sexual contact; or (B) The victim is incapable of consent by reason of being under 18 years of age; or (b) For the purpose of arousing or gratifying the sexual desire of the person or another person, the person intentionally propels any dangerous substance at a victim without the consent of the victim. (2) Sexual abuse in the third degree is a Class A misdemeanor. (3) As used in this section, “dangerous substance” means blood, urine, semen or feces. [1971 c.743 §115; 1979 c.489 §1; 1991 c.830 §1; 1995 c.657 §11; 1995 c.671 §9; 2009 c.616 §1]

163.425 Sexual abuse in the second degree. (1) A person commits the crime of sexual abuse in the second degree when: (a) The person subjects another person to sexual intercourse, deviate sexual intercourse or, except as provided in ORS 163.412, penetration of the vagina, anus or penis with any object other than the penis or mouth of the actor and the victim does not consent thereto; or (b)(A) The person violates ORS 163.415 (1)(a)(B); (B) The person is 21 years of age or older; and (C) At any time before the commission of the offense, the person was the victim’s coach as defined in ORS 163.426. (2) Sexual abuse in the second degree is a Class C felony. [1971 c.743 §116; 1983 c.564 §1; 1991 c.386 §14; 1991 c.830 §2; 2009 c.876 §2]

163.426 Crime category classification for sexual abuse in the second degree. (1) As used in this section, “coach” means a person who instructs or trains an individual or members of a team in a sport. (2) The Oregon Criminal Justice Commission shall classify sexual abuse in the second degree as described in ORS 163.425 (1) as a crime category 8 of the sentencing guidelines grid of the commission if: (a) The victim is incapable of consent by reason of being under 18 years of age; (b) The offender is 21 years of age or older; and (c) At any time before the commission of the offense, the offender was the victim’s coach. [2009 c.876 §1]

163.427 Sexual abuse in the first degree. (1) A person commits the crime of sexual abuse in the first degree when that person: (a) Subjects another person to sexual contact and: (A) The victim is less than 14 years of age; (B) The victim is subjected to forcible compulsion by the actor; or (C) The victim is incapable of consent by reason of being mentally defective, mentally incapacitated or physically helpless; or (b) Intentionally causes a person under 18 years of age to touch or contact the mouth, anus or sex organs of an animal for the purpose of arousing or gratifying the sexual desire of a person. (2) Sexual abuse in the first degree is a Class B felony. [1991 c.830 §3; 1995 c.657 §12; 1995 c.671 §10]
2. DOMESTIC VIOLENCE

a) General Description

Intimate partner violence: Intimate partner/relationship violence can be defined as a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner. Abuse can be physical, sexual, emotional, economic or psychological acts or threats of actions that influence another person. This includes any behaviors that frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame or injure someone.

Relationship abuse can happen to anyone regardless of race, economic status, gender, sexual orientation, or where one lives. People stay in abusive relationships for many reasons including: fear, belief that their abuser needs help and will change, and because they care about the person.

b) Federal/Clery Definition

Domestic violence (42 USC § 13925) (1) A felony or misdemeanor crime of violence committed-(i) By a current or former spouse or intimate partner of the victim (ii) By a person with whom the victim shares a child in common; (iii) By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner (iv) By a person similarly situated to a spouse of the victim under the domestic violence laws of the jurisdiction in which the crime of violence occurred, or (v) 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. (2) For the purposes of complying with the requirements of this section and section 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

c) Oregon Revised Statutes

Domestic Violence (ORS 107.700)

Domestic Violence: Abuse between family or household members. Family or household members: Spouses or former spouses; adults related by blood, marriage or adoption; persons cohabitating or who have cohabitated; persons in a past or present sexually intimate relationship; unmarried parents of a child.

Abuse: The occurrence of one or more of the following acts within a domestic or dating relationship: (a) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury. (b) Intentionally, knowingly or recklessly placing another in fear of imminent bodily injury. (c) Causing another to engage in involuntary sexual relations by force or threat of force

3. DATING VIOLENCE

a) General Description

Intimate partner violence: Intimate partner/relationship violence can be defined as a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner. Abuse can be physical, sexual, emotional, economic or psychological acts or threats of actions that influence another person. This includes any behaviors that frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame or injure someone.

Relationship abuse can happen to anyone regardless of race, economic status, gender, sexual orientation, or where one lives. People stay in abusive relationships for many reasons including: fear, belief that their abuser needs help and will change, and because they care about the person.

b) Federal/Clery Act Definition

Dating violence (42 USC § 13925)* Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. 1) The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of the interaction between the persons involved in the relationship. 2) For the purpose of this definition-Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. ii. Dating violence does not include acts covered under the definition of domestic violence. 3) For the purposes of complying with the requirements of this section and section 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.
4. STALKING

a) General Description

Stalking is repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of a member of the community, or the safety of any of the immediate family members of the community. Stalking is unpredictable and dangerous.

b) Federal/Clery Act Definition

**Stalking (42 USC § 13925)**

1. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to-
   
   (i) Fear for the person's safety or the safety of others; or
   
   (ii) Suffer substantial emotional distress

2. For the purposes of this definition-
   
   (i) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device or means, follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property. (ii) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. (iii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim

c) Oregon Revised Statutes

**Stalking (ORS 163.732)**

1. A person commits the crime of stalking if: (a) The person knowingly alarms or coerces another person or a member of that person's immediate family or household by engaging in repeated and unwanted contact with the other person; (b) It is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact; and (c) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's immediate family or household.

5. CONSENT

a) General Description

Consent is a free and clearly given yes, not the absence of a no, and cannot be received when a person is incapacitated by alcohol or drugs. (Adapted from ATIXA, at: [https://atixa.org/resources/free-resources/](https://atixa.org/resources/free-resources/))

b) Oregon Revised Statutes

**Incapacity to Consent Definition—Oregon Revised Statutes (163.315)**

1. A person is considered incapable of consenting to a sexual act if the person is: (a) Under 18 years of age; (b) Mentally defective; (c) Mentally incapacitated; or (d) Physically helpless. (2) A lack of verbal or physical resistance does not, by itself, constitute consent but may be considered by the trier of fact along with all other relevant evidence. [1971 c.743 §105; 1999 c.949 §2; 2001 c.104 §52]

d) Student Code of Conduct

**Incapacity to Consent Definitions** -

A. **Mental disorder**: a person suffers from a mental disease or disorder that renders that person incapable of appraising the nature of the conduct or another person.

B. **Mental incapacitation**: a person is rendered incapable of appraising or controlling one’s own conduct at the time of the alleged offense because of the influence of a controlled or intoxicating substance or because of any act committed upon the person without consent.

C. **Physical helplessness**: a person is unconscious or for any other reason is physically unable to communicate unwillingness to engage in an act.

**Explicit Consent** – Voluntary, non-coerced and clear communication indicating a willingness to engage in a particular act. "Explicit consent" includes an affirmative verbal response or voluntary acts unmistakable in their meaning.