

Some factors considered to determine whether an individual is incapacitated due to alcohol, drugs, or other substances and therefore not able to give consent include, but are not limited to: whether the individual became sick due to intoxication, the individual's ability to communicate and/or slurred speech, the individual's coordination (ex. ability to walk, dress/undress, perform simple tasks), and any other action that would be indicative of a decreased level of cognitive functioning. The existence of any one of these factors may support a finding of incapacitation, and thus the inability to consent to sexual activity. The mere presence of alcohol, drugs, or other substances does not equate to an inability to give consent. Stated differently, it is possible for an individual to have alcohol, drugs, or other substances in their system and not be incapacitated.

- b. Unconscious, asleep, or in a state of shock.
- c. Under the age of consent as defined by the jurisdiction in which the act occurred, which, in Alabama, is less than 16 years of age.
- d. Mentally or physically impaired and not reasonably able to give consent.

“Coercion” for purposes of this Policy is the use of expressed or implied threats or intimidation for the purpose of obtaining sexual favors, which would place a reasonable person in fear of immediate harm. Threatening or intimidating behavior may include emotional abuse, threats to reputation, public humiliation, threats to others and possessions (including pets), or financial harm, among others.

“Force” for purposes of this Policy is the use of physical violence or intimidation to overcome another person's free will.

#### TITLE IX SEXUAL OR GENDER-BASED HARASSMENT<sup>9</sup>

**Sexual Harassment**<sup>10</sup> includes conduct on the basis of sex, which may include unwelcome sexual advances, requests for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, non-verbal, graphic, physical, or otherwise, when the conditions outlined in (1) and/or (2), below, are present.

**Gender-based Harassment** includes unwelcome harassment directed at an individual and based on gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when the conditions outlined in (1) and/or (2), below, are present.

- (1) An employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct (often referred to as “quid pro quo” harassment); or
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity (often referred to as “hostile environment” harassment). In evaluating conduct, the University will consider the totality of known circumstances, including, but not limited to:
  - The frequency, nature and severity of the conduct;
  - Whether the conduct was physically threatening;
  - Whether the incident involved severe humiliation rather than was merely offensive;
  - The effect of the conduct on the Complainant's mental or emotional state;
  - Whether the conduct was directed at more than one person;
  - Whether the Complainant was offended by the conduct;
  - Whether the conduct arose in the context of other discriminatory conduct;
  - Whether the conduct unreasonably interfered with the Complainant's educational or work performance and/or University programs or activities; and
  - Whether the conduct implicates concerns related to academic freedom or protected speech.

<sup>9</sup> Reports of Title VII Sexual and Gender-Based Harassment will be addressed under [UA's Equal Opportunity and Discriminatory Harassment Policy](#).

<sup>10</sup> Under Title IX, Sexual Harassment includes Sexual Assault, Dating Violence, Domestic Violence, Stalking, and Title IX Sexual Harassment. Charges for allegations of these types of Prohibited Conduct will be based on the specific definitions herein and the specific conduct alleged.