



**Michigan
Technological**
University

University Policy 1.14

Michigan Technological University Title IX Policy

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Michigan Technological University does not discriminate in its employment practices or in its educational programs or activities on the basis of sex and gender. Michigan Tech also prohibits retaliation against any person opposing discrimination or participating in any discrimination investigation or complaint process internally or externally. Reports of misconduct, questions regarding Title IX, and concerns about noncompliance should be directed to the Title IX Coordinator. For a complete copy of the policy or more information, please contact the Title IX Coordinator or the Assistant Secretary of Education within the Office of Civil Rights (OCR). <https://www.mtu.edu/title-ix/>

Section 1: Introduction

1.1 Policy Statement

Michigan Technological University (Michigan Tech) is committed to creating and maintaining a learning and working environment that is free from unlawful discrimination based on sex in accordance with Title IX of the Higher Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in education programs or activities; Title VII of the Civil Rights act of 1964 (Title VII), which prohibits sex discrimination in employment; and the Campus Sexual Violence Elimination Act, Clery Act, and the Violence Against Women Act (VAWA). Sexual Harassment and Retaliation under this Policy will not be tolerated by Michigan Tech and is grounds for disciplinary action, up to and including, permanent dismissal from Michigan Tech and/or termination of employment.

1.2 Purpose

Michigan Tech takes all reported sexual misconduct and harassment seriously. Michigan Tech will promptly discipline any individuals within its control who are found responsible for violating this Policy. Additionally, reported sexual misconduct, harassment, and retaliation that does not meet the definitions and jurisdiction of this policy will be referred for review under the [Student Code of Community Conduct](#) and [Board of Trustees Policy 5.3](#) in compliance with VAWA and Clery Act.

1.3 Applicability

This Policy applies to students and employees as follows:

1.3.1 To Students

Where the Respondent is a student at Michigan Tech at the time of the alleged conduct, the alleged conduct includes Sexual Harassment and Non-Harassment Title IX Discrimination under this Policy, the alleged conduct occurs in Michigan Tech's Education Program and Activity, the alleged conduct occurs against a person in the United States, and the Complainant is participating in or attempting to participate in Michigan Tech's Education Program or Activity.

1.3.2 To Employees

Where the Respondent is an employee at Michigan Tech at the time of the alleged conduct, where the alleged conduct includes Sexual Harassment and Non-Harassment Title IX Discrimination under this Policy, the alleged conduct occurs in Michigan Tech's Education Program and Activity, the alleged conduct occurs against a person in the United States, and the Complainant is participating in or attempting to participate in Michigan Tech's Education Program or Activity.

1.3.3. Culture of Sexual Harassment or Non-Harassment Title IX Discrimination

Allegations related to a culture of Sexual Harassment or Non-Harassment Title IX Discrimination by a group, organization, department, division, or the University as a whole will be investigated and resolved as closely as possible to this policy. Resolutions for a group, organization, division or the University will be communicated with the highest-ranking member of the group, organization, department, division, or the University.

1.4 Title IX Coordinator and Key Title IX Officials

The Title IX Coordinator is the Michigan Tech administrator who oversees Michigan Tech's compliance with Title IX. The Title IX Coordinator is responsible for the administrative response to reports and Formal Complaints of Sexual Harassment. The Title IX Coordinator is available to discuss the grievance process, coordinate supportive measures, explain Michigan Tech policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators to facilitate these responsibilities.

Any member of the Michigan Tech community may contact the Title IX Coordinator with questions. Title IX Coordinator and Deputy Title IX Coordinator contact information is as follows:

Laura Putwen
Title IX Coordinator (Interim)
Institutional Equity
Administration Building, Room 310
906-487-3310
titleix@mtu.edu

Kirsti Arko, PhD
Director of Title IX
Assistant Director, Institutional Equity
Administration Building, Room 310
906-487-3310
karko@mtu.edu

Beth Lunde-Stockero
Deputy Title IX Coordinator

Executive Director, Institutional Equity
Administration Building, Room 310
906-487-3310
blunde@mtu.edu

Susan Sullivan
Deputy Title IX Coordinator
Assistant Director, Institutional Equity
Administration Building, Room 310
906-487-3310
susulliv@mtu.edu

In addition to the Title IX Coordinator, Michigan Tech appoints investigators (2.3.14), decision makers (2.3.5) and informal resolution facilitators (Section 8) who have roles in the formal grievance process.

The Title IX Coordinator, Deputy Title IX Coordinators, investigators, decisionmaker(s), and informal resolution facilitators will receive annual training in compliance with Title IX. All administrators in these roles will not rely on sex and gender stereotypes and will provide impartial investigations and adjudications of Formal Complaints of Sexual Harassment. All materials used to train these administrators will be publicly made available on Michigan Tech's website in accordance with Title IX requirements.

The Title IX Coordinator, Deputy Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

1.5 Notification

Michigan Tech will use University electronic mail (email) for purposes of communication and notification under this Policy.

1.6 Free Speech

Freedom of speech and principles of academic freedom are central to the mission of institutions of higher education. Constitutionally protected expression cannot be considered Sexual Harassment under this Policy

1.7 Dissemination of Policy

This Policy will be made available to all Michigan Tech administrators, faculty, staff, and students both online and in Michigan Tech student catalog(s) and any employee handbook of operating procedures.

1.8 Effective Date

The effective date of this Policy is August 27, 2021.

1.9 Modification and Review of Policy

Michigan Tech reserves the right to modify this policy to take into account applicable legal requirements. Michigan Tech will regularly review this policy to determine whether modifications should be made.

1.10 Retaliation and False Statements Prohibited

Neither Michigan Tech nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

1.10.1

Alleged violations of Retaliation will be referred to the Office of Academic and Community Conduct for students and Human Resources for employees.

1.10.2

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this Policy.

1.10.3

Charging an individual with a Student Code of Community Conduct violation or Employee Discipline/Discharge provision for making a materially false statement in bad faith in the course of a grievance proceeding under this policy does not constitute retaliation prohibited under this policy, but it may be considered false reporting. However, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

1.11 Amnesty

Reporting Sexual Harassment is encouraged at Michigan Tech. Thus, it is imperative that individuals share information when participating in an investigation without fear of potential consequences for minor policy violations including, but not limited to, underage consumption of alcohol or the use of illicit drugs. Michigan Tech offers parties and witnesses amnesty from such minor violations but may include educational opportunities for individuals in lieu of a finding of responsibility or punitive sanctions.

1.12 Other University Policies

This Policy takes precedence over other University policies and procedures concerning Sexual Harassment under Title IX in the event of a conflict. Other applicable policies include:

1.12.1 Student Code of Community Conduct

<https://www.mtu.edu/conduct/student-conduct/>

1.12.2 Board of Trustees Bylaw and Policies 5.01-5.03

<https://www.mtu.edu/bot/governance/policies/chapter5/sections/5.01-5.05.html#5.1>

1.12.3 General University Policy 1.02

Minors Involved in University-sponsored Programs or Programs Held in University Facilities - <https://www.mtu.edu/policy/policies/general/1-02/>

1.12.4 General University Policy 1.03

Consensual Relations - <https://www.mtu.edu/policy/policies/general/1-03/>

1.12.5 Human Resource University Policy 6.06

Employee Code of Conduct - <https://www.mtu.edu/policy/policies/hr/6-05/>

1.13 Additional Violations from Above Policies

Alleged violations of the [Student Code of Community Conduct](#) and/or the [Board of Trustees Policy 5.01-5.03](#) that arise from the same events as alleged sexual misconduct under this Policy will be investigated and resolved under the grievance process in this Policy unless the Sexual Harassment has been dismissed under [Section 5.2](#) of this Policy.

1.14 Americans with Disabilities Act (ADA) of 1990 Statement

Michigan Tech is committed to the full inclusion of individuals with disabilities and to the continuous improvement of the accessibility of our campus, programs and activities.

1.14.1 Students

A student requesting any accommodations related to filing a report and/or participating in the grievance process should contact Disability Services as soon as possible so that appropriate arrangements can be made. For more information go to: <https://www.mtu.edu/success/disability/>

1.14.2 Employees

An employee requesting any accommodations related to filing a report and/or participating in the grievance process should contact Institutional Equity as soon as possible so that appropriate arrangements can be made. From more information go to: <https://www.mtu.edu/equity/access-disability/>

1.14.3 Non-University Witnesses

A non-university witness requesting any accommodations related to their participation in the grievance process should contact Institutional Equity as soon as possible so that appropriate arrangements can be made. For more information go to:

<https://www.mtu.edu/equity/access-disability/>

Section 2: Definitions

2.1 Definitions of Prohibited Conduct Under this Policy

2.1.1 Sexual Harassment

means conduct on the basis of sex that satisfies one or more of the following:

2.1.1.i

An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;

2.1.1.ii

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 recipient's education program or activity¹; or

2.1.1.iii

Sexual Assault, Dating Violence, Domestic Violence or Stalking as defined in this Policy

2.1.2 Sexual Assault ²

means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, including Rape, Fondling, Incest, and Statutory Rape as defined in this Policy.

¹ A severe, pervasive, and objectively offensive assessment includes, but is not limited to, a consideration of the frequency of the offensive conduct, the nature of the unwelcome sexual acts or words, such as whether the harassment was physical, verbal or both; whether the harassment was merely an offensive utterance; and the number of victims involved and the relationship between the parties including, but not limited to, the ages of the harasser and the victim. In evaluating whether conduct is severe, pervasive, and objectively offensive, Michigan Tech will look at the totality of the circumstances, expectations and relationships.

² See Appendix B

2.1.2.i Rape³

means 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

2.1.4.ii Fondling⁴

means 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 Incapacity.

2.1.5.iii Incest⁵

means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

2.1.6.iv Statutory Rape⁶

means sexual intercourse with a person who is under the statutory age of consent.

2.1.7 Dating Violence⁷

means 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 shall be determined based on a consideration of the following factors:

- (a) The length of the relationship,
- (b) The type of relationship,
- (c) The frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

³ Rape as defined in the Uniform Crime Reporting Program (UCR) includes: Forcible Rape: The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity. Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Sexual Assault with and Object: —To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

⁴ Fondling is referred to as Forcible Fondling in the UCR.

⁵ Incest is a Nonforcible Offense in the UCR. See Appendix B

⁶ Statutory Rape is a Nonforcible Offense in the UCR. See Appendix B

⁷ See Appendix B

2.1.8 Domestic Violence⁸

includes felony or misdemeanor crimes of violence⁹ committed by:

- (1) a current or former spouse or intimate partner of the victim,
- (2) a person with whom the victim shares a child in common,
- (3) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- (4) a person similarly situated to a spouse of the victim under the domestic or family violence laws of Michigan, or
- (5) 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 Michigan.

2.1.9 Stalking¹⁰

means engaging in a Course of Conduct directed at a specific person that would cause a Reasonable Person to—

- (1) fear for his or her safety or the safety of others; or
- (2) suffer Substantial Emotional Distress.

2.2 Definitions Related to Sexual Harassment

2.2.1 Consent

is the affirmative, conscious, and voluntary expression to engage in sexual activity through clear words or actions. Consent is ongoing and can be revoked by words or actions at any point during the interaction. When consent is withdrawn or can no longer be given, sexual activity must stop. Consent cannot be given when it is the result of coercion, intimidation, force, or threat of harm

It is the responsibility of each person to ensure they have consent from the other to engage in the sexual activity. Lack of protest, lack of resistance, or silence do not, alone, constitute consent.

The existence of a dating relationship or past sexual relations between the Complainant and Respondent will never by itself be assumed to be an indicator of consent (nor will subsequent sexual relations or dating relationship alone suffice as evidence of consent to prior conduct).

The Respondent's belief that the Complainant consented will not provide a valid defense unless the belief was actual and reasonable. In making this determination, the decision

⁸ See Appendix B

⁹ See Crime of Violence Definition 2.2.3

¹⁰ See Appendix B

maker(s) will consider all of the facts and circumstances the Respondent knew, or by a reasonable person standard, should have known at the time.

In particular, the Respondent's belief is not a valid defense where:

- (1) The Respondent's belief arose from the Respondent's own intoxication or recklessness;
- (2) The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively Consented; or
- (3) The Respondent knew, or by a reasonable person standard should have known at the time, that the Complainant was unable to knowingly and willingly consent because the Complainant was incapacitated, in that the Complainant was:
 - (a) asleep or unconscious,
 - (b) involuntarily restrained,
 - (c) unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication, and/or
 - (d) unable to communicate due to a mental or physical condition.

2.2.2 Course of Conduct

means two or more acts, including, but not limited to, acts in which the individual 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.

2.2.3 Crime of Violence

Crime of violence refers to prohibited conduct where the respondent uses, or threatens to use, violent force against another person. Crimes of violence include crimes committed with and without weapons. Crimes of violence include, but are not limited to: murder, voluntary manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, the use or unlawful possession of a firearm, or explosive material.

2.2.4 Incapacitation

means that a person lacks the ability to actively agree to sexual activity because the person is asleep, unconscious, under the influence of alcohol or other drugs such that the person does not have control over their body, is unaware that sexual activity is occurring, or their mental, physical or developmental abilities render them incapable of making rational informed decisions. Incapacitated is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking, using drugs, or taking medication.

A person violates this policy when they engage in sexual activity with another person who is incapacitated and a reasonable person in the same situation would have known

that the person is incapacitated. Incapacitation can be voluntary or involuntary. Signs of incapacitation may include, without limitation: sleep; total or intermittent unconsciousness; lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; emotional volatility; combativeness; vomiting; incontinence; unresponsiveness; and inability to communicate coherently. Incapacitation is an individualized determination based on the totality of the circumstances.

2.2.5 Reasonable Person

means a reasonable person under similar circumstances and with similar identities to the victim.

2.2.6 Substantial Emotional Distress

means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

2.3 Other Defined Terms

2.3.1 Advisor

is an individual who supports a Complainant or Respondent through a Title IX process. Parties may have an advisor that may serve in a limited role during the investigation of a Formal Complaint. During the investigation phase of the grievance process, advisors may review the investigation report and attend meetings with their party. Advisors must be provided to parties in a live hearing that adjudicates an allegation of sexual harassment. In the hearing, advisors are responsible for asking questions of other parties or witnesses. In addition to participating in the hearing, the advisor may meet with their complainant or respondent and review the investigative report and any information or evidence gathered to prepare relevant questions for the hearing. Parties may choose their own advisor, which can be a trained Michigan Tech Title IX Advisor or an advisor of their choice not affiliated with Michigan Tech, including but not required to be an attorney.

2.3.2 Business Day

means any weekday not designated by Michigan Tech as a holiday or administrative closure day. When calculating a time period of business days specified in this policy, the business day of the event that triggers a time period is excluded.

2.3.3 Complainant

means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment and/or Non-Harassment Title IX Discrimination. Complainants and respondents are referred to collectively as “parties” throughout this policy.

2.3.4 Confidential Employee

means an individual who will not report any information about an incident to the Title IX Coordinator without the complainant's permission. Counselors in the Center for Student Mental Health and Well-Being, My Student Support Program (My SSP), Director of Student-Athlete Wellness and Clinical Counselor, Michigan Tech Ombuds, and Michigan Tech Employees Assistance Program (EAP) counselors are confidential employees.

2.3.5 Decision Maker(s)

Decision makers are responsible for conducting the live Title IX hearing to adjudicate allegations of sexual harassment against students, faculty, or staff and/or reviewing appeals of the hearing or dismissal of a formal complaint. During live hearings, the decision maker(s) is responsible for ensuring that it is conducted in an orderly manner, controls the conduct of all participants and attendees of the hearing, determines relevance of cross-examination questions, and renders a written determination regarding the responsibility of the respondent's alleged conduct charges in an impartial, neutral, and objective manner. During the hearing, this responsibility may fall to one individual or a panel of individuals. Title IX decision makers must be trained in Title IX regulations and require annual training. Michigan Tech may use an outside independent contractor as a decision maker.

2.3.6 Disciplinary Sanctions

Disciplinary sanctions are imposed only after a finding of responsibility through the grievance process or an agreement through the informal resolution process.

2.3.7 Education Program of Activity

includes locations, events, or circumstances over which Michigan Tech exercises substantial control over both the respondent and the context in which the Sexual Harassment and/or Non-Harassment Title IX Discrimination occurs. This includes conduct that occurs on Michigan Tech property, during any Michigan Tech activity, or in any building owned or controlled by a student organization that is officially recognized by Michigan Tech.

2.3.8 Formal Complaint

means a document filed by a complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a respondent and requesting that Michigan Tech investigate the allegation of sexual harassment.

2.3.9 Official with Authority

means an individual who has the authority to institute corrective measures and is required to report Sexual Harassment to the Title IX Coordinator. Officials with Authority include: Beth Lunde-Stockero, Title IX Deputy Coordinator, Susan Sullivan, Title IX

Deputy Coordinator, Kirsti Arko, Director of Title IX, Laura Putwen, Director of Community Conduct, Renee Hiller, Director of Human Resources.

2.3.10 Remedies

are designed to restore or preserve equal access to Michigan Tech's Education Program or Activity. Remedies may include, but are not limited to, the same individualized services as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

2.3.11 Respondent

means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment and/or Non-Harassment Title IX Discrimination. Complainants and respondents are referred to collectively as "parties" throughout this Policy.

2.3.12 Retaliation

Engaging in any adverse action, directly or indirectly, including through someone else, that is intended to coerce, harass, intimidate, threaten, harm, or improperly influence any person because they:

- 1) make, or intend to make, a report, complaint, grievance, or allegation of prohibited conduct under any University policy or rule, or under any law;
- 2) participate in or cooperate with any University proceedings such as, but not limited to, a conduct or grievance proceeding; or
- 3) appear as a witness.

2.3.13 Supportive Measures

means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to Michigan Tech's Education Programs or Activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Michigan Tech's educational environment, or deter sexual harassment. Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

2.3.14 Title IX Investigator

Formal complaints of sexual harassment under Title IX must be properly investigated. Investigators are neutral and impartial fact-finders who gather evidence regarding an

allegation against students, faculty, or staff. It is the investigators responsibility to adhere to prescribed timelines. The investigators are responsible for completing an investigative report at the conclusion of the investigation that fairly summarizes all relevant evidence and information gathered during the investigation. Title IX investigators are required to be trained annually under the regulations.

Section 3: Reporting Sexual Harassment and Preservation of Evidence

3.1 Reporting to Michigan Tech

3.1.1 Reporting to Title IX Coordinator

Reports of Sexual Harassment may be made to the Title IX Coordinator in any of the following ways, by anyone, at any time: email, phone, online form, or mail. Reports may be made to the Title IX Coordinator in person at the Title IX Office, Administration Building, Room 310, during normal business hours. After Title IX Sexual Harassment has been reported to the Title IX Coordinator, the Title IX Coordinator will promptly offer supportive measures to the complainant, regardless of whether the complainant was the reporter of the Sexual Harassment.

3.1.2 Reporting to Officials with Authority

The following positions are Officials with Authority: Title IX Coordinator, Deputy Title IX Coordinators, Director of Title IX, Director of Human Resources, Director of the Office of Academic and Community Conduct. If Officials with Authority are notified of Sexual Harassment, they will promptly report such Sexual Harassment to the Title IX Coordinator.

3.1.3 Reporting to Confidential Employees

Counselors of the Center for Student Mental Health and Well-Being, counselors of My Student Support Program (My SSP), Director of Student-Athlete Wellness and Clinical Counselor, Michigan Tech Ombuds, and Michigan Tech Employees Assistance Program (EAP) counselors are confidential employees. Reports made to confidential employees are considered confidential reports and will not be reported to the Title IX Coordinator without the complainant's permission and will not constitute actual notice to Michigan Tech.

3.1.4 Notification to All Other Michigan Tech Employees¹¹

All Michigan Tech employees, including faculty and staff, are strongly encouraged to report allegations of gender discrimination, sexual harassment, sexual assault, dating

¹¹ See Appendix A for more information on employee reporting requirements.

violence, domestic violence and stalking to the Title IX Coordinator(s) to maximize the institution's ability to investigate and potentially address and eliminate the misconduct.

3.1.5 Anonymous Reporting

Anonymous reports may be made by telephone or online to Michigan Tech's Public Safety and Police Services Tip Line (<https://www.mtu.edu/tips/>) or electronically to the Title IX Coordinator (https://cm.maxient.com/reportingform.php?MichiganTech&layout_id=15). A decision to remain anonymous, however, may greatly limit Michigan Tech's ability to stop the alleged conduct, collect evidence, or take action against parties accused of violating this Policy.

3.2 Reporting to Law Enforcement

Reports may be filed with Michigan Tech Public Safety and Police Services and local law enforcement agencies. The Title IX Coordinator can assist with contacting law enforcement agencies. Law enforcement investigations are separate and distinct from Michigan Tech Title IX investigations.

Michigan Tech Department of Public Safety and Police Services
206 MacInnes Drive
Houghton, MI 49931
906-487-2216 or 911

Houghton City Police Department
616 Sheldon Ave, Unit 101
Houghton, MI 49931
906-482-2121 or 911

Houghton County Sheriff
403 East Houghton Avenue
Houghton, MI 49931
906-482-0055 or 911

3.3 Reporting to Outside Agencies

Students and employees may report to external agencies.

3.3.1 Reporting to Outside Agencies for Students

Office for Civil Rights
U.S. Department of Education
1350 Euclid Avenue, Suite 325
Cleveland, Ohio 44115
216-522-4970

Michigan Department of Health and Human Services
47420 State Hwy M26, Suite 62
Houghton, MI 49931
906-482-0500

3.3.2 Reporting to Outside Agencies for Employees

U.S. Equal Employment Opportunity Commission
Patrick V. McNamara Building
477 Michigan Avenue, Room 865
Detroit, Michigan 48226
800-669-4000

Michigan Department of Civil Rights
Capitol Tower Building
110 West Michigan Avenue, Suite 800
Lansing, MI 48933
Phone: 517-335-3165
To file a complaint call: 899-482-3604

3.3.3 Outside Agency Confidential Support and Resources

Dial Help, Inc.
www.dialhelp.org
Call: 800-562-7622 or Text: 906-356-3337

Barbara Kettle Gundlach Shelter
www.bkgshelterhome.org
906-337-5623

Michigan Tech Employee Assistance Program (EAP)
Northstar EAP
906-225-3145
<https://northstareap.com/>
For additional information regarding benefit, visit:
www.mtu.edu/hr/current/benefits/docs/eap-benefits.pdf

Michigan Sexual Assault Hotline
855-864-2374

RAINN National Sexual Assault Hotline
800-656-4673

National Domestic Violence Hotline
800-799-7233

Michigan Department of Health & Human Services
Domestic Violence Helpline, 888-799-7233
Sexual Assault Helpline, 800-656-4673

3.4 Time Limits on Reporting

There are no time limits on reporting Sexual Harassment to the Title IX Coordinator or Michigan Tech. If the respondent is no longer subject to Michigan Tech's Education Program or Activity or significant time has passed, Michigan Tech will have limited ability to investigate, respond and/or provide disciplinary remedies and sanctions.

3.5 Michigan Tech Federal & State Reporting Obligations

Certain Michigan Tech employees, called Campus Security Authorities, have a duty to report certain incidents of misconduct to comply with the Clery Act. Campus Security Authorities are not required to report personally identifiable information for Clery Act purposes, but statistical information must be sent regarding the type of incident that occurred and its general location (e.g., on or off-campus) for publication in an annual report of crime statistics, called the Annual Security Report. Statistics published in the Annual Security Report help to provide the campus community with a clearer picture of the extent and nature of campus crime, but the statistics do not personally identify complainants or respondents. Reports by Campus Security Authorities are not official police reports and do not initiate criminal investigations. When Sexual Assault, Domestic Violence, Dating Violence, and/or Stalking are reported under the Clery Act, Michigan Tech must issue timely warnings for such incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community. Michigan Tech will not disclose a complainant's name and other identifying information in a timely warning but will provide sufficient information for Michigan Tech community members to make informed safety decisions in response to potential danger.

3.6 Preservation of Evidence

Michigan Tech recognizes that a complainant may need time to decide whether to report an incident of Sexual Harassment to the police and/or Michigan Tech. The purpose of this section is to provide complainants with suggestions on preserving evidence while they decide whether to report an incident. Michigan Tech encourages complainants, as soon as possible after experiencing Sexual Assault to take steps to preserve evidence such as:

- (a) Have a forensic sexual assault nurse examination performed as soon as possible after the incident, but no later than 72-96 hours after the incident.
- (b) When possible, prior to having a forensic sexual assault nurse examination performed, avoid: changing clothing, bathing, showering, using a douche, using the bathroom, brushing one's teeth, drinking liquids, washing one's hands or face, or combing one's hair;

- (c) Preserve any clothing, sheets, or other materials (items containing bodily fluids should be stored in cardboard boxes or paper bags);
- (d) Preserve or capture electronic communications such as text messages, e-mails, social media posts or exchanges (e.g., Snapchat, Facebook, Twitter);
- (e) Preserve or capture video, audio (e.g., voice mail messages), or photographs, including those stored on smartphones or other devices; and
- (f) Preserve any other physical, documentary, and/or electronic data that might be helpful to an investigator.

Section 4: Initial Response to Reported Sexual Harassment

Upon receipt of a report of Sexual Harassment, the Title IX Coordinator will promptly contact the complainant, regardless of whether the complainant was the individual who initiated the report. During the initial contact with the complainant, the Title IX Coordinator will:

- (1) Provide the complainant with notice of their rights and options.
- (2) Explain the process for filing a Formal Complaint;
- (3) Explain the Grievance Process;
- (4) Discuss the availability of supportive measures regardless of whether a Formal Complaint is filed;
- (5) Consider the complainant's wishes with respect to supportive measures

Section 5: Formal Complaint

Michigan Tech will investigate all allegations of Sexual Harassment in a Formal Complaint.

5.1 Filing a Formal Complaint

A Formal Complaint must:

- (1) Contain an allegation of Sexual Harassment against a respondent;
- (2) Request that Michigan Tech investigate the allegation; and
- (3) Be signed by the Complainant or Title IX Coordinator.

To file a formal complaint:

https://cm.maxient.com/reportingform.php?MichiganTech&layout_id=28

In limited circumstances, if a complainant does not sign a Formal Complaint, the Title IX Coordinator may sign a Formal Complaint. In determining whether to sign a Formal Complaint, the Title IX Coordinator will consider factors that include but are not limited to:

- (a) Whether there have been other reports of Sexual Harassment or other relevant misconduct concerning the same Respondent whether or not the incidents occurred while the Respondent was a Michigan Tech student or employee;

- (b) Whether the Respondent threatened further Sexual Harassment or other misconduct against the complainant or others;
- (c) Whether the alleged Sexual Harassment was committed by multiple perpetrators;
- (d) The nature and scope of the alleged Sexual Harassment including whether the Sexual Harassment was perpetrated with a weapon;
- (e) The ages and roles of the complainant and the respondent;
- (f) Whether Michigan Tech can pursue the investigation without the participation of the complainant (e.g., whether there are other available means to obtain relevant evidence of the alleged Sexual Harassment such as security cameras or physical evidence);
- (g) Whether the report reveals a pattern of perpetration (e.g., perpetration involving illicit use of drugs or alcohol) at a given location or by a particular group.

5.2 Dismissal of Formal Complaint

5.2.1 Required Dismissal

The Title IX Coordinator will dismiss a Formal Complaint for purposes of Sexual Harassment if:

- (1) The conduct alleged in the Formal Complaint would not constitute Sexual Harassment as defined in this Policy even if proved;
- (2) The conduct alleged did not occur in Michigan Tech's Education Program or Activity; or
- (3) The Conduct alleged in the Formal Complaint did not occur against a person in the United States.

Dismissal of a Formal Complaint does not preclude action under other provisions of the Michigan Tech's policies and procedures. If a Formal Complaint is dismissed under Title IX, the matter will be reviewed to determine whether the matter will be pursued under Michigan Tech's Student Code of Community Conduct, Board of Trustees Policy 5.3 or other Michigan Tech Policies.

5.2.2 Permissive Dismissal

The Title IX Coordinator may dismiss a Formal Complaint or any allegations within the Formal Complaint, if at any time during the investigation or hearing:

- (1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations within the Formal Complaint,
- (2) The Respondent is no longer enrolled or employed by Michigan Tech, or
- (3) Specific circumstances prevent Michigan Tech from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations within the Formal Complaint.

5.2.3 Appeal of Dismissal.

Either party may appeal the dismissal of a Formal Complaint or any allegations therein. See Section 7 for bases and process for appeals.

5.3 Consolidation of Formal Complaints

The Title IX Coordinator may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent or by more than one Complainant against one or more Respondents where the allegations arise out of the same facts or circumstances.

Section 6: Grievance Process

The grievance process within this Policy is designed to treat complainants and respondents equitably. Remedies are provided to a complainant where a determination of responsibility for Sexual Harassment has been made against the respondent and Disciplinary Sanctions are not imposed against a respondent prior to the completion of the grievance process.

6.1 General Grievance Information

6.1.1 Burden of Proof and Burden of Gathering Evidence

All investigations and proceedings, including hearings, relating to Sexual Harassment will be conducted using a “preponderance of the evidence” (more likely than not) standard. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on Michigan Tech, not the parties.

6.1.2 Presumption of Not Responsible

The respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the grievance process.

6.1.3 Time Frames for Grievance Process

Michigan Tech strives to complete the grievance process within one hundred and twenty (120) business days. Temporary delays and/or extensions of the time frames within this policy may occur for good cause. Written notice will be provided to the parties of the delay and/or extension of the time frames with explanation of the reasons for such action. Examples of good cause for delay/extensions include but are not limited to considerations such as the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

6.1.4 Medical Records

Michigan Tech will not access, consider, disclose, or otherwise use party’s records that are that are made or maintained by a physician, psychiatrist, psychologist, or other

recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless Michigan Tech obtains that party's voluntary, written permission to do so for the grievance process within the Policy.

6.1.5 Privileged Information

Michigan Tech will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding the privilege has waived the privilege.

6.1.6 Range of Disciplinary Sanctions and Remedies

6.1.6.i Student Sanction

Written Warning, Probation, Suspension, Expulsion

6.1.6.ii Student Remedies

Student remedies may include but are not limited to: education training, change in living location, limited campus access, no contact order, counseling, well-being assessment, loss of privileges, community service

6.1.6.iii Employee Sanction

Sanctions may include but are not limited to: informal warning, progressive formal discipline, suspension and/or termination. The decision maker may consult with Michigan Tech Human Resources.

6.1.6.iv Employee Remedies

Employee remedies may include but are not limited to: education training, change in supervisor, change in shift and/or job duties, relocation of office, counseling, well-being assessments, no-contact order.

6.1.7 Notice of Meetings, Interviews, and Hearings

Parties and witnesses will be provided notice of any meeting, interview, and/or hearing with sufficient time to prepare to participate. This notice will include the date, time, location, participants and purposes of the meeting, interview and/or hearing.

6.2 Notice of Allegations

Upon receipt of a Formal Complaint, the investigator will provide Notice of Allegations to the parties who are known.

The Notice of Allegations will include:

- (1) Notice of the party's rights and options;
- (2) Notice of Michigan Tech's grievance process;
- (3) Notice of Michigan Tech's informal resolution process and options;
- (4) Notice of the allegations of Sexual Harassment including:
 - (a) the identities of the parties involved in the incident, if known,
 - (b) the conduct allegedly constituting Sexual Harassment, and
 - (c) the date and location of the incident, if known;
- (5) Notice that the Respondent is presumed not responsible of the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- (6) Notice that the parties may have an advisor of their choice, who may be, but is not required to be an attorney, and that the advisor may inspect and review evidence as explained in section 6.3.2 of this policy;
- (7) Notice of the Michigan Tech Student Code of Community Conduct and the Employee Discipline/Discharge provision that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

The Notice of Allegations will be updated and written notice provided to the parties if at any time during the investigation, Michigan Tech decides to investigate allegations about the complainant or respondent that are not included in the initial Notice of Allegations.

6.3 Investigation of Formal Complaint

Michigan Tech will conduct an investigation following a Formal Complaint and Notice of Allegations. During all meetings and interviews the parties may be accompanied by an advisor of their choice, which can be, but is not required to be an attorney. During the investigation stage of the grievance process, the advisor's role is limited to assisting, advising, and/ or supporting a complainant or respondent. An advisor is not permitted to speak for or on behalf of a complainant or respondent or appear in lieu of a complainant or respondent during the investigation phase of the grievance process.

6.3.1 Opportunity to Provide Information and Present Witnesses

Each party will be provided an equal opportunity to provide information to the investigator and present witnesses for the investigator to interview. The information provided by the parties can include inculpatory and exculpatory evidence. The witnesses can include both fact witnesses and expert witnesses.

6.3.2 Opportunity to Inspect and Review Evidence

Each party will be provided an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence upon which Michigan Tech does not intend to rely upon in reaching a determination regarding responsibility. This review includes inculpatory and exculpatory evidence that is obtained by a party, witness, or other source. Each party and their advisor (if any) will be provided an electronic copy of the

evidence for inspection and review. The parties will have ten (10) business days to review and submit a written response to the investigator. The investigator will consider the written responses prior to completing an investigative report. All evidence provided during the inspection and review phase will be available at any hearing for the parties to use during the hearing, including for purposes of cross examination.

6.3.3 Investigative Report

Following the opportunity to inspect and review evidence directly related to the allegations raised in the Formal Complaint, the investigator will create an investigative report that fairly summarizes relevant evidence obtained during the investigation.

6.3.4 Review of Investigative Report

At least ten (10) Business Days prior to a hearing, the investigator will provide each party and the party's advisor (if any) an electronic copy of the investigative report for their review and written response.

6.3.5 Investigative Timeframe

The investigation of a Formal Complaint will be concluded within 90 Business Days of the filing of a Formal Complaint. The parties will be provided updates on the progress of the investigation, as needed.

6.4 Live Hearing

After the investigation, Michigan Tech will provide for a live hearing for all Formal Complaints of Sexual Harassment that have not been dismissed per [Section 5.2](#) or resolved by informal resolution under [Section 8](#). At the request of either party, or at the discretion of the Title IX Coordinator, Michigan Tech will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the other party or witness answering questions.

6.4.1 Information at the Hearing

The following information/evidence will be available in electronic form at the hearing:

- (1) Evidence from the investigation, including the evidence directly related to the allegations that was reviewed by the parties, regardless of whether it was incorporated into the report.
- (2) The investigation report and any attachments/appendices.

6.4.2 Decision-maker(s)

The decision-maker(s) will be appointed by Michigan Tech and will not be the Title IX Coordinator or investigator. The decision-maker(s) will be trained, impartial, and without a conflict of interest. The decision-maker(s) will be a Michigan Tech employee or external individual designated by Michigan Tech

6.4.3 Challenge to the Decision-maker(s)

Either party may challenge the appointment of a decision-maker(s), based on conflict of interest or bias, in writing to the Title IX Coordinator, no less than five (5) Business Days prior to the scheduled hearing.

6.4.4 Advisor's Role at the Hearing

Each party must have an advisor present at the hearing.

The advisor's role is limited to supporting, advising, and assisting the party during the hearing and conducting questioning (cross-examination) of participants. Advisors are required to follow rules of decorum enforced by the decision-maker(s). Failure to follow rules of decorum by an advisor may result in removal of an advisor from the hearing. If a party does not have an advisor present at the live hearing, Michigan Tech will appoint the party with an advisor without fee or charge.

6.4.5 Recording of the Hearing

Michigan Tech will create an audio or audiovisual recording of all live hearings and make the recording available to the parties for inspection or review upon request.

6.4.6 Hearing Process Facilitator

Michigan Tech may designate a hearing process facilitator to coordinate the hearing, including, but not limited to, coordination and scheduling of the hearing; the logistics of physical or virtual rooms for parties and/or witnesses, including separation of the parties; ensuring all technology is working appropriately; ensuring the parties have access to electronic documents during the hearing; distributing materials; etc. The facilitator may also be the Title IX Coordinator. The facilitator may invite the parties and their advisors, separately, to a meeting prior to the hearing to review the hearing process for the purpose of ensuring a smooth hearing. This meeting is separate from the pre-hearing conference discussed below.

6.4.7 Pre-Hearing Matters

In order to streamline the hearing process, the decision-maker(s) may request the submission of questions prior to the hearing through electronic submission and/or a pre-hearing conference.

6.4.7.i Pre-Hearing Submission of Questions

The decision-maker(s) may request the parties to submit questions, in writing prior to the hearing. This submission does not preclude the Advisor from asking additional questions live during the hearing. The decision-maker(s) may allow for the pre-hearing submission of questions regardless of whether a prehearing conference occurs.

6.4.7.ii Pre- Hearing Conference

The decision-maker(s) may hold a pre-hearing conference. During the pre-hearing conference, parties and their Advisors will be asked to submit, in writing, any questions they wish to ask during the live hearing so that the decision-maker(s) can be prepared to respond to relevancy at the hearing. This conference does not preclude the Advisor from asking additional questions live during the hearing.

At the pre-hearing conference, the decision-maker(s) may also hear arguments regarding the relevance of the evidence identified in the investigation report as relevant or not relevant, and/or directly related to the allegations.

6.4.8 Participants in the Hearing

Participants at the hearing include the decision-maker(s), the investigator(s) who conducted the investigations, the parties, advisors to the parties, witnesses, Title IX Coordinator and anyone providing authorized accommodations. In addition, Michigan Tech may have a hearing facilitator present. Any witnesses scheduled to participate in the hearing must have been first interviewed by the investigator(s) or have provided a written statement or answered questions from the investigator in writing.

6.4.9 Hearing Process and Phases

The live hearing will include the following phases:

6.4.9.i Notice of Hearing

After the investigative report has been completed and at least ten (10) business days prior to the date set for the hearing, the parties and their Advisors (if any) will be provided with a Notice of the Hearing. The Notice will include the date, time, location, name of the decision-maker(s), names of all participants in the hearing, and the location (virtual or in person) of the hearing.

6.4.9.ii Opening Statements

Each party will have the opportunity to present an opening statement to the decision-maker(s).

6.4.9.iii Questions of Hearing Participants (Parties and Witnesses)

(1) By the Decision-maker(s):

The decision-maker(s) will ask initial questions of the participants at the hearing.

(2) By the Advisors:

After the decision-maker(s) asks questions of a participant, each party's advisor will be permitted to ask relevant questions and follow up questions orally, directly, and in real time of the participant. The parties are never permitted to ask questions of participants directly. The

questioning of participants by advisors will be conducted in the following manner:

- (a) A question is asked by an advisor.
- (b) Before a participant answers the questions, the decision-maker(s) determines whether the question is relevant.
- (c) If the question is determined relevant by the decision-maker(s), the participant answers the question. If the question is determined not to be relevant by the decision-maker(s), the decision-maker(s) must explain the decision to exclude a question as not relevant.

(3) Evidence and Questions Excluded:

(a) Sexual Predisposition or Prior Sexual Behavior of the Complainant: Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

(b) Privileged Information: No person will be required to disclose information protected under a legally recognized privilege. The decision-maker(s) must not allow into evidence or rely upon any questions or evidence that may require or seek disclosure of such information, unless the person holding the privilege has waived the privilege. This includes information protected by the attorney-client privilege.

(c) Medical Records: Evidence or records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, are not permitted to be used during a hearing unless the party provides voluntary, written permission to do so for the grievance process within this Policy.

6.4.9.iv Closing Statements

Each party will have the opportunity to present a closing statement to the decision-maker(s).

6.4.10 Determination Regarding Responsibility

Within five (5) business days of the live hearing, the decision-maker(s) will issue a written determination regarding responsibility using the preponderance of the evidence

standard. The decision-maker(s) will provide the complainant and the respondent with the written determination simultaneously. The determination regarding responsibility becomes final either on the date that Michigan Tech provides the parties with the written determination of the result of the appeal, if an appeal is filed, or, if an appeal is not filed, the date on which an appeal would no longer be considered timely.

The written notice will include:

- (1) Identification of the allegations potentially constituting Sexual Harassment.
- (2) A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held.
- (3) Findings of fact supporting the determination.
- (4) Conclusions regarding the application of this Policy to the facts.
- (5) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions that Michigan Tech imposes on the respondent, and whether remedies designed to restore or preserve equal access to Michigan Tech's education program or activity will be provided by Michigan Tech to the complainant.¹²
- (6) The procedures and permissible bases for the complainant and respondent to appeal.

Section 7: Appeals

Either party may appeal the determination regarding responsibility, or the dismissal of a Formal Complaint or any allegations therein within three (3) Business Days of the receipt of the determination regarding responsibility or dismissal. The appeals must be made in writing and delivered to the Title IX Coordinator.

7.1 Bases for Appeal

Appeals of the determination of responsibility or the dismissal of a Formal Complaint may be made on the following grounds:

- (a) Procedural irregularity that affected the outcome of the matter;
- (b) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.
- (c) The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

¹² The Title IX Coordinator is responsible for the implementation of any remedies.

(d) Severity of Sanction and remedy appeals will be considered on the “severity of sanction and remedies” by the explanation of why the sanction and remedies should be reconsidered. The appeal must show that the degree of the outcome leveled was not within the exercise of good faith discretion by the University, and therefore should result in a stated lesser or greater sanction. Employee cases cannot be appealed on this ground.

7.2 Appeal Procedures

If an appeal is submitted, Michigan Tech will:

- (1) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
- (2) Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator or the Title IX Coordinator.
- (3) Provide the non-appealing party with five (5) Business Days from receipt of the notification of appeal to submit a written statement in support of the outcome of the determination or dismissal.
- (4) Issue a written decision describing the result of the appeal and the rationale for the result which can be one of the following:
 - (a) Affirm the decision-maker’s determination regarding the respondent’s responsibility and affirm the disciplinary sanctions and remedies, if applicable;
 - (b) Affirm the decision-maker’s determination regarding the respondent’s responsibility and amend the disciplinary sanctions and remedies, if applicable;
 - (c) Remand the process back to the hearing stage for the decision-maker to remedy any procedural irregularity or consider any new evidence;
 - (d) Reverse the decision-maker’s determination of the respondent’s responsibility and amend the disciplinary sanctions and remedies, if applicable; or
 - (e) Affirm or amend the sanctions and/or remedies outlined in the determination issued under this Policy.
- (5) Provide the written decision simultaneously to both parties.

7.3 Appeal Timeframe

The appellate decision-maker(s) will release the written decision within ten (10) Business Days of receiving the appeal.

Section 8: Information Resolution Process

At any time after a Formal Complaint has been signed and before a determination regarding responsibility has been reached, the parties may voluntarily agree to participate in an informal resolution facilitated by Michigan Tech, that does not involve a full investigation and adjudication. Types of informal resolution include, but are not limited to, mediation, facilitated dialogue, conflict coaching, and restorative justice and resolution by agreement of the parties.

8.1 Information Resolution Notice

Prior to entering the informal resolution process, Michigan Tech will provide the parties a written notice disclosing:

- (1) The allegations;
- (2) The requirements of the informal resolution process, including the right of any party to withdraw from the informal resolution process and resume the grievance process and the circumstances which preclude parties from resuming a Formal Complaint arising from the same allegations;
- (3) Consequences resulting from the informal resolution process, including that the records will be maintained for a period of seven (7) years but will not be used by investigators or decision-makers if the formal grievance process resumes.

8.2 Informal Resolution Agreement

Prior to entering the informal resolution process, the parties must voluntarily agree, in writing to the use of the informal resolution process.

8.3 Informal Resolution Availability

The informal resolution process is not permitted to resolve allegations that an employee committed Sexual Harassment against a student.

8.4 Informal Resolution Timeframe

Informal resolutions of a Formal Complaint will be concluded within 45 days of notice to Michigan Tech that both parties wish to proceed with the informal resolution process. Such notice that the parties wish to proceed with an informal resolution process will “pause” the counting of the timeframe to conclude the Grievance Process of this Policy, should the informal resolution process fail and the parties continue with the Grievance Process.

8.5 Informal Resolution Documentation

Any final resolution pursuant to the Informal Resolution process will be documented and kept for seven (7) years. However, no recording of the informal resolution process will be made and all statements made during the informal resolution process will not be used for or against either party (and the decision-maker(s) and/or appellate decision-maker(s) may not consider any such statement made during informal resolution) should the parties resume the grievance process. Failure to comply with an informal resolution agreement may result in disciplinary action.

Section 9: Procedures for the Resolution of Non-Harassment Title IX Discrimination Complaints

9.1 Applicability

The procedures in this section shall be used to investigate and resolve reported Title IX matters that allege discrimination that falls outside of the Sexual Harassment Policy (“Non-Harassment Title IX Discrimination”). These procedures shall be used in conjunction with the Sexual Harassment Policy for purposes of identification of key Title IX officials ([Section 1.4](#)) definitions ([Section 2.0](#)) and reporting options ([Section 3.0](#))

Discrimination prohibited under this policy includes: the exclusion from participation in, denial of the benefits from, or subjection to unfavorable treatment in any University Education Program or Activity on the basis of sex, including sexual orientation or gender identity.

9.2 Advisors

Complainants and Respondents may be accompanied by an advisor of their choice throughout the investigation. An advisor’s role is limited to assisting, advising, and/ or supporting a Complainant or Respondent. An advisor is not permitted to speak for or on behalf of a Complainant or Respondent or appear in lieu of a Complainant or Respondent.

9.3 Investigation Procedures

If the allegations fall within the scope of this policy and the matter does not resolve using the informal resolution process, the University will conduct a prompt, thorough, and impartial investigation of the reported discrimination. The Title IX Coordinator or their designee will appoint one or more investigators who will conduct investigative meetings, gather information and evidence, and make an independent determination as to whether a violation of the policy occurred using a preponderance of the evidence standard.

The Respondent is presumed not responsible until a determination has been reached by the investigator.

9.3.1 Notice of Allegations

A written Notice of Allegations will be sent to the Complainant and Respondent, constituting the initiation of the investigation. The Notice of Allegations will contain a summary of the allegation(s) or conduct at issue. This will include the identities of the parties involved, the date and location of the incident (if known), and a link to the appropriate policies. Once the Notice of Allegations has been sent to the parties, the investigation begins.

9.3.2 Investigation Process

The Complainant and Respondent will have an equal opportunity to be heard, identify witnesses, and provide information and evidence. The investigator will gather additional

information and evidence as appropriate, including, but not limited to, social media information, text messages, email messages, videos, and other records. The investigator has the discretion to determine the relevance of information and witnesses and decide whether information or evidence should be excluded as irrelevant. After parties meet with the investigator, each party will receive a copy of the notes from their meeting and be provided an opportunity to review and comment.

9.3.3 Investigation Timeline

The University strives to complete the investigation within sixty (60) business days from the issuance of the Notice of Allegations. All extensions of this time frame will be communicated with the parties in writing.

9.3.4 Investigative Report & Findings Letter

At the conclusion of the investigation, the investigator will draft an investigative report. A representative from Institutional Equity will review the written report to determine if there is a violation of University Policy based upon a “preponderance of evidence” standard. Simultaneous notification of the finding will be provided to both the Complainant and Respondent.

9.3.5 Sanction

If the Responding Party is found responsible, sanction determinations will be made in collaboration with the Director of Human Resources and the Responding Party’s supervisor or appropriate designee if the Respondent is an employee, or the Director of Community Conduct if the Respondent is a student. If the Responding Party is found not responsible or there is no finding, no sanctions will be imposed. See [section 6.1.6](#) for sanction information.

9.4 Appeal

The Complainant or Respondent may appeal the decision of the investigator based only on the following grounds:

- (a) The existence of a procedural irregularity that materially affected the outcome;
- (b) The existence of new evidence that was not reasonably available at the time the determination regarding responsibility that could have affected the outcome;
- (c) The Title IX Coordinator and/or investigator(s) had an undisclosed conflict of interest or bias that affected the outcome
- (d) Severity of Sanction and remedy appeals will be considered on the “severity of sanction and remedies” by the explanation of why the sanction and remedies should be reconsidered. The appeal must show that the degree of the outcome leveled was not within the exercise of good faith discretion by the University, and therefore should result in a stated lesser or greater sanction. Employee cases cannot be appealed on this ground.

Appeals must be made in writing and submitted to the Title IX Coordinator (titleix@mtu.edu) within ten (10) business days of the receipt of the final decision. The appellate decision maker will notify the other non-appealing party of the appeal and allow for written response from the non-appealing party. A determination regarding the appeal will be made by the appellate decision maker within thirty (30) calendar days.

9.5 Acceptance of Responsibility

The Respondent may, at any time, request to resolve the investigation process or resolve specific allegation(s) by accepting responsibility for the alleged misconduct. The Title IX Coordinator will complete a summary report of the information gathered. The Title IX Coordinator will consider the request. If the request is granted, a determination of the appropriate sanction will be made in collaboration with the Director of Human Resources and the Responding Party's supervisor or appropriate designee, if the Respondent is an employee, or the Director of Community Conduct if the Respondent is a student.

9.6 Informal Resolution

The Complainant and Respondent may agree to Informal Resolution at any time prior to a determination regarding responsibility if the Title IX Coordinator deems the matter appropriate for Informal Resolution.¹³ The Title IX Coordinator will consider the following when determining whether to permit a matter to move to Informal Resolution:

- (a) The nature of the allegations;
- (b) The dynamics of power or control associated with the alleged offense or the parties involved;
- (c) The Respondent's prior known conduct;
- (d) Whether there would be a continuing safety threat to the University community after resolution of allegations;
- (e) Whether multiple parties are involved;
- (f) Any other factor deemed relevant by the Title IX Coordinator in the interest of overall University safety or safety of the parties involved.

Participation in Informal Resolution is a choice, and either party can request to end Informal Resolution process and pursue an investigation at any time, including if Informal Resolution is unsuccessful at resolving the matter. Similarly, either party can request to end an investigation and pursue Informal Resolution at any time, though entering Informal Resolution must be agreed to in writing by the parties.

If an agreement is reached through Informal Resolution, the parties will be provided simultaneously with a Notice of Outcome. An appeal of the Informal Resolution process or result is not permitted.

¹³ The Title IX Coordinator may, at any time, withdraw approval for the Informal Resolution and return the matter to investigation.

9.7 Retaliation

Retaliation is prohibited. See section 1.10 Retaliation and False Statements Prohibited, for more information.

9.8 Intersection of Policies

The procedures in this policy are the exclusive means of resolving complaints of alleged violations of Title IX involving complaints of Non-Harassment Title IX Discrimination brought against University faculty, staff, or students. To the extent there are any inconsistencies between these procedures and other University grievance, complaint, or discipline procedures, these complaint resolution procedures will control the resolution of complaints alleging Non-Harassment Title IX Discrimination.

Section 10: Emergency Removal and Administrative Leave

10.1 Emergency Removal

At any time after the Title IX Coordinator is on notice of Sexual Harassment, Michigan Tech may remove a respondent on an emergency basis.

Michigan Tech will only conduct an emergency removal after:

- (1) Undertaking an individualized safety and risk analysis,
- (2) Determining that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal, and
- (3) Providing the Respondent with notice and an opportunity to challenge the decision to the Title IX Coordinator, within two (2) Business Days following the removal.

10.2 Administrative Leave

Michigan Tech may place a non-student employee respondent on administrative leave during the pendency of the grievance process in this Policy.

Section 11: Record Keeping

Michigan Tech will maintain all of the documentation related to reports of Sexual Harassment, Formal Complaints, the grievance process, and information resolution process for seven years in accordance with state and federal records laws and requirements. The documentation of all records are private and confidential to the extent possible under law. Student records of the grievance process are disciplinary records under Family Education Rights and Privacy Act (FERPA). Employee records of the grievance process are subject to the Freedom of Information Act (FOIA) and applicable state laws, and included in the employee's official employment record.

Section 12: Additional Conduct Violations Related to This Policy

Alleged violations of the terms in this section will be sent to the Office of Academic and Community Conduct for student respondents or Human Resources for employee respondents for investigation and adjudication. Alleged violations include:

- (a) Retaliation,
- (b) False Reporting,
- (c) Interference with Grievance Process (Disruptive Behavior),
- (d) No Contact Directive Violations

Section 13: THIS STATE SCHOOL AID ACT OF 1979 (EXCERPT) Act 94 or 1974

388.1865b Reduction of operations funding; failure to submit title IX certification for sexual assault training.¹⁴

¹⁴ See Appendix B

Appendix A

Reporting Expectations and Requirements for All Michigan Tech Faculty and Staff

All Michigan Tech employees, including faculty and staff, are strongly encouraged to report allegations of gender discrimination, sexual harassment, sexual assault, dating violence, domestic violence and stalking to the Title IX Coordinator(s) to maximize the institution's ability to investigate and potentially address and eliminate the misconduct. The employee should NOT attempt to determine if the harassment or violence actually did occur, or if a hostile environment is being created.

The information that should be reported includes all the relevant information that the individual has shared and that may be useful in the investigation. This includes names of the alleged respondent, the student/employee who experienced the alleged harassment/violence, any other student/employee involved, and the date, time, and location of the alleged incident.

Employees should explain to the student/employee that they are not a confidential resource before a student/employee reveals something that they may want to keep confidential. If a person begins talking about the incident(s) with no warning, interrupt immediately (but nicely) and inform them that the conversation cannot be considered confidential. Assure them that you want to be supportive, but if they do not want the incident(s) to potentially be reported then they should make an appointment with a confidential resource. In emergency situations, where a person's health or safety is in immediate danger, call 911

A report to the Title IX Coordinator does not necessarily lead to a full investigation. Any action is typically determined based on the complainant's choices. However, the Title IX Coordinator will make a safety assessment to determine if there is a safety risk to the community. If it is likely that there is continued risk, the Title IX Coordinator may have to proceed without the complainant's consent.

Students with Reporting Requirements

There are some students on campus who are expected to report incidents of gender discrimination, sexual harassment, sexual assault, dating violence, domestic violence and stalking. Supervisors will provide additional information on the specific reporting requirements and protocol. Students who may be expected to report include, but are not limited to, resident assistants (RAs), orientation team leaders (OTLs), graduate teaching assistants (GTA), graduate teaching instructors (GTI), and athletics graduate assistants.

Appendix B

Michigan Compiled Laws (MCL)

DOMESTIC AND SEXUAL VIOLENCE (EXCERPT)
Act 389 of 1978

400.1501 Definitions.

Sec. 1. As used in this act:

(a) "Board" means the Michigan domestic and sexual violence prevention and treatment board created under Executive Order No. 2012-17.

(b) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

(c) "Department" means the department of health and human services.

(d) "Domestic violence" means the occurrence of any of the following acts by a person that is not an act of self-defense:

(i) Causing or attempting to cause physical or mental harm to a family or household member.

(ii) Placing a family or household member in fear of physical or mental harm.

(iii) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.

(iv) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(e) "Family or household member" includes any of the following:

(i) A spouse or former spouse.

(ii) An individual with whom the person resides or has resided.

(iii) An individual with whom the person has or has had a dating relationship.

(iv) An individual with whom the person is or has engaged in a sexual relationship.

(v) An individual to whom the person is related or was formerly related by marriage.

(vi) An individual with whom the person has a child in common.

(vii) The minor child of an individual described in subparagraphs (i) to (vi).

(f) "Fund" means the domestic violence prevention and treatment fund created in section 5.

(g) "Prime sponsor" means a county, city, village, or township of this state, or a combination thereof, or a private, nonprofit association or organization.

History: 1978, Act 389, Eff. Oct. 1, 1978;—Am. 2000, Act 84, Eff. July 1, 2000;—Am. 2018, Act 281, Eff. Sept. 27, 2018.

Popular name: Domestic Violence Prevention and Treatment Act

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.145e Dissemination of sexually explicit visual material of another person; prohibition; exceptions; other violations of law; violation; penalty; definitions.

Sec. 145e. (1) A person shall not intentionally and with the intent to threaten, coerce, or intimidate disseminate any sexually explicit visual material of another person if all of the following conditions apply:

(a) The other person is not less than 18 years of age.

(b) The other person is identifiable from the sexually explicit visual material itself or information displayed in connection with the sexually explicit visual material. This subdivision does not apply if the identifying information is supplied by a person other than the disseminator.

(c) The person obtains the sexually explicit visual material of the other person under circumstances in which a reasonable person would know or understand that the sexually explicit visual material was to remain private.

(d) The person knows or reasonably should know that the other person did not consent to the dissemination of the sexually explicit visual material.

(2) Subsection (1) does not apply to any of the following:

(a) To the extent content is provided by another person, a person engaged in providing:

(i) An interactive computer service as that term is defined in 47 USC 230;

(ii) An information service, telecommunications service, or cable service as those terms are defined in 47 USC 153;

(iii) A commercial mobile service as defined in 47 USC 332;

(iv) A direct-to-home satellite service as defined in 47 USC 303(v); or

(v) A video service as defined in 2006 PA 480, MCL 484.3301 to 484.3315.

(b) A person who disseminates sexually explicit visual material that is part of a news report or commentary or an artistic or expressive work, such as a performance, work of art, literary work, theatrical work, musical work, motion picture, film, or audiovisual work.

(c) A law enforcement officer, or a corrections officer or guard in a correctional facility or jail, who is engaged in the official performance of his or her duties.

(d) A person disseminating sexually explicit visual material in the reporting of a crime.

(3) This section does not prohibit a person from being charged with, convicted of, or punished for another violation of law committed by that person while violating or attempting to violate this section.

(4) A person who violates subsection (1) is guilty of a crime and punishable as provided in section 145f.

(5) As used in this section:

(a) "Disseminate" means post, distribute, or publish on a computer device, computer network, website, or other electronic device or medium of communication.

(b) "Nudity" means displaying a person's genitalia or anus or, if the person is a female, her nipples or areola.

(c) "Sexually explicit visual material" means a photograph or video that depicts nudity, erotic fondling, sexual intercourse, or sadomasochistic abuse.

History: Add. 2016, Act 89, Eff. July 25, 2016.

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.520b Criminal sexual conduct in the first degree; circumstances; felony; consecutive terms.

Sec. 520b. (1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

- (a) That other person is under 13 years of age.
- (b) That other person is at least 13 but less than 16 years of age and any of the following:
 - (i) The actor is a member of the same household as the victim.
 - (ii) The actor is related to the victim by blood or affinity to the fourth degree.
 - (iii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.
 - (iv) The actor is a teacher, substitute teacher, or administrator of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled.
 - (v) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.
 - (vi) The actor is an employee, contractual service provider, or volunteer of a child care organization, or a person licensed to operate a foster family home or a foster family group home in which that other person is a resident, and the sexual penetration occurs during the period of that other person's residency. As used in this subparagraph, "child care organization", "foster family home", and "foster family group home" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111.
- (c) Sexual penetration occurs under circumstances involving the commission of any other felony.
- (d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:
 - (i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
 - (ii) The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes, but is not limited to, any of the circumstances listed in subdivision (f).
- (e) The actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.
- (f) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes, but is not limited to, any of the following circumstances:
 - (i) When the actor overcomes the victim through the actual application of physical force or physical violence.
 - (ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute these threats.
 - (iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute this threat. As used in this subdivision, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.
 - (iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes that are medically recognized as unethical or unacceptable.
 - (v) When the actor, through concealment or by the element of surprise, is able to overcome the victim.
- (g) The actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
- (h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:
 - (i) The actor is related to the victim by blood or affinity to the fourth degree.
 - (ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(2) Criminal sexual conduct in the first degree is a felony punishable as follows:

- (a) Except as provided in subdivisions (b) and (c), by imprisonment for life or for any term of years.
- (b) For a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age by imprisonment for life or any term of years, but not less than 25 years.

(c) For a violation that is committed by an individual 18 years of age or older against an individual less than 13 years of age, by imprisonment for life without the possibility of parole if the person was previously convicted of a violation of this section or section 520c, 520d, 520e, or 520g committed against an individual less than 13 years of age or a violation of law of the United States, another state or political subdivision substantially corresponding to a violation of this section or section 520c, 520d, 520e, or 520g committed against an individual less than 13 years of age.

(d) In addition to any other penalty imposed under subdivision (a) or (b), the court shall sentence the defendant to lifetime electronic monitoring under section 520n.

(3) The court may order a term of imprisonment imposed under this section to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction.

History: Add. 1974, Act 266, Eff. Apr. 1, 1975;—Am. 1983, Act 158, Eff. Mar. 29, 1984;—Am. 2002, Act 714, Eff. Apr. 1, 2003;—Am. 2006, Act 165, Eff. Aug. 28, 2006;—Am. 2006, Act 169, Eff. Aug. 28, 2006;—Am. 2007, Act 163, Eff. July 1, 2008;—Am. 2012, Act 372, Eff. Apr. 1, 2013;—Am. 2014, Act 23, Imd. Eff. Mar. 4, 2014.

Constitutionality: The provision in the criminal sexual conduct statute which permits elevation of a criminal sexual conduct offense from a lesser to a higher degree on the basis of proof of personal injury to the victim in the form of mental anguish is not unconstitutionally vague. People v Petrella, 424 Mich 221; 380 NW2d 11 (1985).

Compiler's note: Section 2 of Act 266 of 1974 provides:

“Saving clause.

“All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act.”

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.520c Criminal sexual conduct in the second degree; felony.

Sec. 520c. (1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

- (a) That other person is under 13 years of age.
- (b) That other person is at least 13 but less than 16 years of age and any of the following:
 - (i) The actor is a member of the same household as the victim.
 - (ii) The actor is related by blood or affinity to the fourth degree to the victim.
 - (iii) The actor is in a position of authority over the victim and the actor used this authority to coerce the victim to submit.
 - (iv) The actor is a teacher, substitute teacher, or administrator of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled.
 - (v) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.
 - (vi) The actor is an employee, contractual service provider, or volunteer of a child care organization, or a person licensed to operate a foster family home or a foster family group home in which that other person is a resident and the sexual contact occurs during the period of that other person's residency. As used in this subdivision, "child care organization", "foster family home", and "foster family group home" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111.
- (c) Sexual contact occurs under circumstances involving the commission of any other felony.
- (d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:
 - (i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
 - (ii) The actor uses force or coercion to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f).
- (e) The actor is armed with a weapon, or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon.
- (f) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f).
- (g) The actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
- (h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:
 - (i) The actor is related to the victim by blood or affinity to the fourth degree.
 - (ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.
 - (i) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, the department of corrections who knows that the other person is under the jurisdiction of the department of corrections.
 - (j) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, a private vendor that operates a youth correctional facility under section 20g of the corrections code of 1953, 1953 PA 232, MCL 791.220g, who knows that the other person is under the jurisdiction of the department of corrections.
 - (k) That other person is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor is an employee or a contractual employee of or a volunteer with the county or the department of corrections who knows that the other person is under the county's jurisdiction.
 - (l) The actor knows or has reason to know that a court has detained the victim in a facility while the victim is awaiting a trial or hearing, or committed the victim to a facility as a result of the victim having been found responsible for committing an act that would be a crime if committed by an adult, and the actor is an employee or contractual employee of, or a volunteer with, the facility in which the victim is detained or to

which the victim was committed.

(2) Criminal sexual conduct in the second degree is a felony punishable as follows:

(a) By imprisonment for not more than 15 years.

(b) In addition to the penalty specified in subdivision (a), the court shall sentence the defendant to lifetime electronic monitoring under section 520n if the violation involved sexual contact committed by an individual 17 years of age or older against an individual less than 13 years of age.

History: Add. 1974, Act 266, Eff. Apr. 1, 1975;—Am. 1983, Act 158, Eff. Mar. 29, 1984;—Am. 2000, Act 227, Eff. Oct. 1, 2000;—Am. 2002, Act 714, Eff. Apr. 1, 2003;—Am. 2006, Act 171, Eff. Aug. 28, 2006;—Am. 2007, Act 163, Eff. July 1, 2008;—Am. 2012, Act 372, Eff. Apr. 1, 2013.

Compiler's note: Section 2 of Act 266 of 1974 provides:

“Saving clause.

“All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act.”

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.520d Criminal sexual conduct in the third degree; felony.

Sec. 520d. (1) A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exist:

- (a) That other person is at least 13 years of age and under 16 years of age.
 - (b) Force or coercion is used to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in section 520b(1)(f)(i) to (v).
 - (c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
 - (d) That other person is related to the actor by blood or affinity to the third degree and the sexual penetration occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.
 - (e) That other person is at least 16 years of age but less than 18 years of age and a student at a public school or nonpublic school, and either of the following applies:
 - (i) The actor is a teacher, substitute teacher, or administrator of that public school, nonpublic school, school district, or intermediate school district. This subparagraph does not apply if the other person is emancipated or if both persons are lawfully married to each other at the time of the alleged violation.
 - (ii) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.
 - (f) That other person is at least 16 years old but less than 26 years of age and is receiving special education services, and either of the following applies:
 - (i) The actor is a teacher, substitute teacher, administrator, employee, or contractual service provider of the public school, nonpublic school, school district, or intermediate school district from which that other person receives the special education services. This subparagraph does not apply if both persons are lawfully married to each other at the time of the alleged violation.
 - (ii) The actor is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.
 - (g) The actor is an employee, contractual service provider, or volunteer of a child care organization, or a person licensed to operate a foster family home or a foster family group home, in which that other person is a resident, that other person is at least 16 years of age, and the sexual penetration occurs during that other person's residency. As used in this subdivision, "child care organization", "foster family home", and "foster family group home" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111.
- (2) Criminal sexual conduct in the third degree is a felony punishable by imprisonment for not more than 15 years.

History: Add. 1974, Act 266, Eff. Apr. 1, 1975;—Am. 1983, Act 158, Eff. Mar. 29, 1984;—Am. 1996, Act 155, Eff. June 1, 1996;—Am. 2002, Act 714, Eff. Apr. 1, 2003;—Am. 2007, Act 163, Eff. July 1, 2008;—Am. 2012, Act 372, Eff. Apr. 1, 2013.

Compiler's note: Section 2 of Act 266 of 1974 provides:

“Saving clause.

“All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act.”

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.520e Criminal sexual conduct in the fourth degree; misdemeanor.

Sec. 520e. (1) A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if any of the following circumstances exist:

(a) That other person is at least 13 years of age but less than 16 years of age, and the actor is 5 or more years older than that other person.

(b) Force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the following circumstances:

(i) When the actor overcomes the victim through the actual application of physical force or physical violence.

(ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute that threat.

(iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute that threat. As used in this subparagraph, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.

(iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable.

(v) When the actor achieves the sexual contact through concealment or by the element of surprise.

(c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(d) That other person is related to the actor by blood or affinity to the third degree and the sexual contact occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(e) The actor is a mental health professional and the sexual contact occurs during or within 2 years after the period in which the victim is his or her client or patient and not his or her spouse. The consent of the victim is not a defense to a prosecution under this subdivision. A prosecution under this subsection shall not be used as evidence that the victim is mentally incompetent.

(f) That other person is at least 16 years of age but less than 18 years of age and a student at a public school or nonpublic school, and either of the following applies:

(i) The actor is a teacher, substitute teacher, or administrator of that public school, nonpublic school, school district, or intermediate school district. This subparagraph does not apply if the other person is emancipated or if both persons are lawfully married to each other at the time of the alleged violation.

(ii) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(g) That other person is at least 16 years old but less than 26 years of age and is receiving special education services, and either of the following applies:

(i) The actor is a teacher, substitute teacher, administrator, employee, or contractual service provider of the public school, nonpublic school, school district, or intermediate school district from which that other person receives the special education services. This subparagraph does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(ii) The actor is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(h) The actor is an employee, contractual service provider, or volunteer of a child care organization, or a person licensed to operate a foster family home or a foster family group home, in which that other person is a resident, that other person is at least 16 years of age, and the sexual contact occurs during that other person's residency. As used in this subdivision, "child care organization", "foster family home", and "foster family

group home" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111.

(2) Criminal sexual conduct in the fourth degree is a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$500.00, or both.

History: Add. 1974, Act 266, Eff. Apr. 1, 1975;—Am. 1983, Act 158, Eff. Mar. 29, 1984;—Am. 1988, Act 86, Eff. June 1, 1988;—Am. 1994, Act 213, Eff. Oct. 1, 1994;—Am. 1996, Act 155, Eff. June 1, 1996;—Am. 2000, Act 227, Eff. Oct. 1, 2000;—Am. 2000, Act 505, Eff. Mar. 28, 2001;—Am. 2002, Act 714, Eff. Apr. 1, 2003;—Am. 2007, Act 163, Eff. July 1, 2008;—Am. 2012, Act 372, Eff. Apr. 1, 2013.

Compiler's note: Section 2 of Act 266 of 1974 provides:

“Saving clause.

“All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act.”

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.81 Assault or assault and battery; penalties; previous convictions; exception; “dating relationship” defined.

Sec. 81. (1) Except as otherwise provided in this section, a person who assaults or assaults and batters an individual, if no other punishment is prescribed by law, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(2) Except as provided in subsection (3), (4), or (5), an individual who assaults or assaults and batters his or her spouse or former spouse, an individual with whom he or she has or has had a dating relationship, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(3) An individual who assaults or assaults and batters an individual who is pregnant and who knows the individual is pregnant is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(4) An individual who commits an assault or an assault and battery in violation of subsection (2) or (3), and who has previously been convicted of assaulting or assaulting and battering an individual described in either subsection (2) or subsection (3) under any of the following, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both:

(a) This section or an ordinance of a political subdivision of this state substantially corresponding to this section.

(b) Section 81a, 82, 83, 84, or 86.

(c) A law of another state or an ordinance of a political subdivision of another state substantially corresponding to this section or section 81a, 82, 83, 84, or 86.

(5) An individual who commits an assault or an assault and battery in violation of subsection (2) or (3), and who has 2 or more previous convictions for assaulting or assaulting and battering an individual described in either subsection (2) or subsection (3) under any of the following, is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both:

(a) This section or an ordinance of a political subdivision of this state substantially corresponding to this section.

(b) Section 81a, 82, 83, 84, or 86.

(c) A law of another state or an ordinance of a political subdivision of another state substantially corresponding to this section or section 81a, 82, 83, 84, or 86.

(6) This section does not apply to an individual using necessary reasonable physical force in compliance with section 1312 of the revised school code, 1976 PA 451, MCL 380.1312.

(7) As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 75081;—Am. 1994, Act 64, Eff. July 1, 1994;—Am. 1999, Act 270, Eff. July 1, 2000;—Am. 2000, Act 462, Imd. Eff. Jan. 10, 2001;—Am. 2001, Act 189, Eff. Apr. 1, 2002;—Am. 2001, Act 190, Eff. Apr. 1, 2002;—Am. 2012, Act 366, Eff. Apr. 1, 2013;—Am. 2016, Act 87, Eff. July 25, 2016.

Former law: See section 29 of Ch. 153 of R.S. 1846, being CL 1857, § 5739; CL 1871, § 7538; How., § 9103; CL 1897, § 11498; CL 1915, § 15220; CL 1929, § 16736; Act 167 of 1879; and Act 54 of 1929.