MEMORANDUM

TO:  Vice Presidents and Chancellors
     Undergraduate Student Government Association, All Campuses
     Graduate Student Organization, UH Mānoa
     Faculty Senates, All Campuses
     The Hawai‘i Government Employees Association
     The United Public Workers
     The University of Hawai‘i Professional Assembly
     UH Commission on the Status of Women

FROM:  David McClain
        Interim President

SUBJECT:  Draft Sexual Assault Executive Policy and Procedural Guidelines

Attached for your review is a draft “Sexual Assault Policy and Procedural Guidelines” for the UH System. We would appreciate receiving your comments by May 31, 2005.

The purpose of this new Executive Policy is to assist each campus in complying with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (part of the Higher Education Act of 1965). The Clery Act was named in memory of Jeanne Clery, a 19-year-old college student who was raped and murdered while asleep in her residence hall room. Her parents joined with other campus crime victims and persuaded Congress to enact this law, which was originally known as the “Crime Awareness and Campus Security Act of 1990.” The Act provides basic rights to victims of sexual assault and requires the disclosure of campus crime statistics.

The draft UH “Sexual Assault Policy and Procedural Guidelines” was developed by the EEO/AA Office in consultation with Beverly McCreary, UHM Gender Equity Counselor; Mary Perreira, Community Colleges Director of EEO/AA; and Jayne Bopp, Project Coordinator for the Program Against Violence to Women.
May 12, 2005
Page 2

Please send your comments by May 31st to:

Mie Watanabe
EEO/AA Office
UH Mānoa Campus
Administrative Services Building 1, Room 102
2442 Campus Road
Honolulu, HI 96822

Ph: (808) 956-6423
Fax: (808) 956-5804
Email: mie@hawaii.edu

The policy specifically incorporates much of the language in the Clery Act. If you would like more information regarding the law’s requirements, please refer to the following sources or call the EEO/AA Office:

Clery Act requirements for sexual assault procedures [see item (8)(A)-(C)]:
http://www.securityoncampus.org/schools/cleryact/text.html

FBI Uniform Crime Reporting definitions:
http://www.securityoncampus.org/schools/cleryact/definitions.html

Hawai’i Sexual Assault Law (click on HRS 0707-0730 to -0741)
http://www.capitol.hawaii.gov/hrscurrent/Vol14_Ch0701-0853/HRS0707/

Thank you for your attention to this matter.

Enclosure

c: Vice President for Legal Affairs
   EEO/AA Coordinators
   Deans of Students
   Campus Security Administrators
   Women’s Centers
INTRODUCTION AND POLICY STATEMENT

The University of Hawai‘i (“University”) is committed to creating a community free from violence. Sexual assault is prohibited by law and is a serious offense that violates the basic standards of behavior expected of members of the University community. The University will not tolerate acts of sexual assault. The University will take appropriate action to prevent, correct, and discipline behavior that is found to violate this policy. This policy reflects the University’s systemwide commitment to creating an environment that is free from harassment, exploitation, intimidation or assault.

OBJECTIVE

The purpose of this policy is to provide guidance for campuses regarding compliance with the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (part of the Higher Education Act of 1965), which is referred to as the “Clery Act.”

RESPONSIBILITY

The Chancellors are charged with the responsibility and authority to implement this policy for their campuses.

DEFINITIONS

A. The following definitions are in accordance with the Federal Bureau of Investigation’s Uniform Crime Reporting Program.

1. Sex Offenses – Forcible
   Sexual offenses in this category are forcible and/or against the person’s will; or not forcible or against the person’s will 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 (this includes someone who is incapacitated due to drugs or alcohol).

a) Forcible Rape: The carnal knowledge of a person.

b) Forcible Sodomy: Oral or anal sexual intercourse with another person.

c) Sexual Assault with an Object: The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person.

d) Forcible Fondling: The touching of the private body parts of another person for the purpose of sexual gratification.

2. Sex Offenses – Nonforcible
Sexual offenses in this category are unlawful, nonforcible sexual intercourse.

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

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

B. Hawai‘i Revised Statutes, Hawai‘i Penal Code Part V. Sexual Offenses, §§707-741, define four degrees of sexual assault, including forcible and nonforcible sexual offenses. The degrees are based upon the amount of force used by the assailant and the harm done to the victim.

V. PROCEDURAL GUIDELINES

A. Prevention

Chancellors or their designees are charged with implementing education programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses. Education and information should be available through multiple sources. Examples include: campus security, new student and new employee orientations, campus women’s centers, residence halls, and campus health and counseling services.

B. Guidelines for campus procedures

Chancellors or their designees must implement procedures for their respective campuses for responding to reports of sexual assault. Chancellors may use this Executive policy and procedure or develop a similar protocol tailored to the
organizational structure of their respective campus. However, such a protocol must contain certain elements in accordance with the Clery Act:

1. Procedures concerning who to contact, the importance of preserving evidence, and to whom the alleged offense should be reported

2. Option to notify law enforcement, including on-campus and local police, and the option to be assisted by campus authorities if the person so chooses

3. Information regarding on- and off-campus counseling, mental health, and other student services for victims of sex offenses

4. Notice to students regarding the options to change the victim’s academic and living situations after an alleged sex offense, if requested and reasonably available

5. On-campus procedures for disciplinary action in cases of alleged sexual offenses. Both the accuser and accused must be notified of:
   a) the opportunity to have a representative or support person present during the on-campus investigation and disciplinary proceedings
   b) the outcomes of any on-campus disciplinary proceeding (in a manner consistent with Chapter 92F HRS)

6. Notice of possible sanctions that may be imposed following a final determination of an on-campus disciplinary procedure

C. Protocol

The University’s first responsibility in responding to reports of sexual assault is attending to the needs of the persons affected by the offense (e.g., the individual who reports being sexually assaulted, roommates, or family members). All reports of sexual assault are taken with utmost seriousness, and the student or employee will be referred to appropriate persons or units for assistance.

In the event a member of the University community reports being sexually assaulted, the following steps should be taken:

1. **Seek medical treatment**
   Any person who reports being sexually assaulted is urged to seek medical treatment for injuries, sexually transmitted diseases, and possible pregnancy from the campus’s student health service or at the emergency room of any local hospital.
A forensic medical exam to preserve evidence of an assault can be performed within 72 hours of a sexual assault by a certified agency. Victims of sexual assault are encouraged to have such an exam even if they do not wish to formally report the assault. To preserve as much evidence as possible, victims should not perform any personal hygiene until the exam is done.

2. Report incidents of sexual assault to law enforcement officials

   a) Any member of the campus community who reports being sexually assaulted is encouraged to file a report with local police and/or with Campus Security. Campus Security will assist the individual in contacting the police and can provide referrals to on- and off-campus resources to assist victims of sex offenses.

   b) Persons who report being sexually assaulted may contact their campus Dean of Students or Equal Employment Opportunity/Affirmative Action ("EEO/AA") Officer. These offices can provide assistance in notifying local police or Campus Security. They can also provide referrals to on- and off-campus resources such as campus women's centers, campus counselors, and off-campus sex abuse treatment centers.

   Incidents reported to the University under this policy will be addressed promptly. The University has the right to proceed with an investigation of the complaint at any time. University proceedings need not await the disposition of any related criminal investigation or prosecution.

3. Students may use on-campus procedures and file complaints with the Dean of Students

   Students may file formal complaints of sexual assault with the campus Dean of Students. The Dean of Students or designee is responsible for investigating the complaint.

   Appropriate predecisional relief may be granted the victim in changing academic, student employment, or campus residence situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available.

   a) Both the complainant and the individual charged with sexual assault are entitled to have a representative or observer present during a complaint investigation or on-campus student disciplinary proceeding.

   b) The individual charged with sexual assault is entitled to due process and will be given an opportunity to respond to the allegations.
c) Both the complainant and the individual charged will be informed of the outcome of any on-campus student disciplinary proceeding brought alleging a sexual assault.

4. **Employees may use on-campus procedures and file complaints with the EEO/AA Officer.**
   Employees may file formal sexual assault complaints with the campus EEO/AA Officer. The EEO/AA Officer or designee is responsible for investigating the complaint.

   Appropriate predecisional relief may be granted the victim in changing the employment situation after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available.

   a) Both the complainant and the individual charged with sexual assault are entitled to have a representative or observer present during a complaint investigation.

   b) The individual charged with sexual assault is entitled to due process and will be given an opportunity to respond to the allegations.

   c) Both the complainant and the individual charged will be informed of the decision maker's determination. Information regarding the outcome will be handled according to applicable policies and collective bargaining agreements.

D. Confidentiality

Efforts to maintain confidentiality will be exercised to the greatest extent possible; however, appropriate members of the campus community will be informed that an incident of sexual assault has been reported. Certain information may need to be disclosed to appropriate administrators, the respondent, and witnesses in order to conduct the investigation. Information may also be disclosed if required by law, rule, regulation, or by order of the court or arbitrator pursuant to the appropriate collective bargaining agreement.

VI. **RIGHT TO ALTERNATIVE PROCEDURES**

   It is the right of any individual to pursue other avenues of recourse which may include initiating civil action or seeking redress under state criminal statutes and/or federal law.

VII. **VICTIM ASSISTANCE AND SUPPORT**

   The Chancellors or their designees are charged with identifying and developing a protocol for on-campus units to provide assistance and support to victims of sexual assault. Each
campus shall also develop and make available a list of appropriate off-campus resources for sexual assault victims.

VIII. SANCTIONS

For students and excluded employees (excluded from collective bargaining unit), the University will impose disciplinary sanctions against any individual who has been found to have violated this policy.

Students sanctions shall be imposed after due process as provided by the Campus Student Conduct Code. Possible sanctions include, but are not limited to, suspension or dismissal from campus.

Excluded employees: for employees who are not covered by collective bargaining agreements, sanctions shall be imposed after due process and in accordance with appropriate University policies and procedures. Possible sanctions include, but are not limited to, suspension or termination from employment.

Included employees: for employees included in a collective bargaining unit, the responsible administrator will follow the negotiated collective bargaining agreement provisions related to disciplinary actions.

IX. NONRETAILATION POLICY

The University prohibits and will not tolerate retaliation against persons who report sexual assault or otherwise exercise their rights under this policy. Retaliation is a separate complaint and will be investigated accordingly.

The right of individuals to use lawful means to defend themselves against charges of sexual assault is not abridged by this policy. Such a right and the prohibition against retaliation are not mutually exclusive.

X. POLICY DISSEMINATION

The Chancellors or their designees shall be responsible for the distributing this policy and making it accessible to students and employees.