

DEFINITION OF AFFIRMATIVE CONSENT

Under New York State Law, Affirmative Consent is defined as follows:

Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

Please note that to comply with the above definition of Affirmative Consent, you should remember the following:

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

POLICY FOR ALCOHOL AND/OR DRUG USE AMNESTY IN SEXUAL AND INTERPERSONAL VIOLENCE CASES

The health and safety of every student at the State University of New York and its State-operated and community colleges is of utmost importance. SUNY Downstate recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. SUNY Downstate strongly encourages students to report incidents of domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to SUNY Downstate officials or law enforcement will not be subject to SUNY Downstate's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

[This policy applies to students and refers to the student conduct code, not to academic or external policies and requirements. Further, students in clinical programs may also be subject to professional standards beyond the campus conduct code. In a clinical setting, being under the influence of alcohol or drugs while performing patient care cannot be overlooked.]