I. Purpose and Scope of Policy

St. Thomas University is committed to providing a safe and hospitable environment in which students and all members of the St. Thomas community can learn, work, interact, and flourish. In compliance with federal law, and in particular the Jeanne Clery Act and the Campus Sexual Violence Elimination Act (“SaVE Act”), the University has adopted policies and procedures to prevent and respond to incidents of sexual assault, domestic violence, dating violence, and stalking. The Policy and Procedures on Sexual Assault, Domestic Violence, Dating Violence, and Stalking [herein “Policy and Procedures”] apply to all members of the St. Thomas community, including students, faculty, administrators, staff, and visitors, and to incidents occurring on or off campus. It is the responsibility of each member of the St. Thomas community to become acquainted with and to comply with the rules set forth in this policy.

Sexual assault, domestic violence, dating violence and stalking will not be tolerated, and offenders will be subject to University disciplinary proceedings and sanctions, and possible criminal penalties. The University administration is dedicated to providing consistent, caring, and timely responses to reported incidents of sexual assault, domestic violence, dating violence, and stalking involving members of the University community; to honoring the choice of the victim [herein also referred to “complainant” or “survivor”] to preserve anonymity or not after the traumatic experience; and to fairly adjudicate reported incidents of sexual assault, domestic violence, dating violence, and stalking falling under the Policy and Procedures.
The Policy and Procedures do not modify or supersede criminal or civil law regarding sexual assault, domestic violence, dating violence, and stalking. Offenders are subject to the penalties set forth herein as well as any they may face criminally or civilly. The Policy and Procedures do not modify or supersede other University policies and procedures, including those on student misconduct and sexual harassment. The Policy and Procedures will be updated, revised, and supplemented as necessary as the Department of Education issues further regulations, guidance, and clarification.

II. Definitions of Prohibited Conduct and Consent

Consistent with the federal requirement that the definitions of sexual assault, domestic violence, dating violence, and stalking in this policy be drawn from the state in which the institution is located, the following definitions of offenses and consent reflect Florida law.

A. Sexual Assault
Sexual assault, which is called “sexual battery” under Florida law, “means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object”:
(1) by force; or
(2) by threatening
   (a) to use force or violence likely to cause serious personal injury on the victim or to retaliate against the victim or any other person, and
   (b) the victim reasonably believes that the offender has the present ability to execute the threat; or
   (3) when the victim is mentally defective and the offender has reason to believe this or has actual knowledge of this factor; or
   (4) the victim is physically helpless to resist or is physically incapacitated.

B. Domestic Violence
“Domestic violence’ means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.”

C. Dating Violence
“Dating violence’ means violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature.”

D. Stalking
“Stalking” means “willfully, maliciously, and repeatedly follow[ing], harass[ing], or cyberstalk[ing] another person.” “Harass[ing]” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.”

E. Consent to Sexual Activity
“Consent’ means intelligent, knowing, and voluntary consent and does not include coerced submission. Consent shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender.”

III. The Meaning and Limits of Consent

The University views “intelligent, knowing, and voluntary consent” as both a state of mind and an act, i.e., the act of clearly communicating one’s willingness through words or conduct. Consent has many boundaries. It may be withdrawn at any time, including any time during a particular sexual activity, and cannot be inferred from the mere absence of an objection. Consent to particular sexual activities does not represent consent to other sexual activities, and past consent to particular sexual activities does not constitute an ongoing consent to those activities. An expression of agreement to engage in a sexual activity that has been obtained by force
or threat or based on fear does not represent consent. Consent cannot be obtained from someone who is unconscious, a minor, or whose judgment is impaired through alcohol, drugs, or some other condition, nor is impaired judgment an excuse for the failure to obtain consent from another.

IV. Preserving Evidence

Survivors of sexual assault, domestic violence, dating violence, and stalking are encouraged to preserve evidence of these acts, which can take a great variety of forms and must often be preserved, or obtained through the help of medical or law enforcement personnel, immediately after the traumatic event. Evidence of a sexual assault, for example, can disappear if the survivor showers or washes up before it is collected, or changes clothes (If clothes are changed, evidence is best preserved by placing each item in a separate paper, rather than plastic, bag). Evidence of “date rape” drugs like Rohypnol and GHB, which are better detected through urine samples than blood tests, dissipates rapidly over time.

V. Bystander Intervention

Sexual misconduct, assault, domestic violence, dating violence, and stalking can occur in the presence of bystanders or even friends of the parties involved. It can occur over the course of time with the knowledge of others, sometimes many others. Often opportunities present themselves for others to intervene in a fashion that is both safe for them and effective in averting an offense. Just as it is said that friends don’t let friends drive drunk, it could also be said –particularly in the context of “date rape” occurring during or after a party or domestic violence and stalking occurring over the course of time – that friends intervene when friends are committing or about to commit serious offenses of a violent or sexual nature. The University encourages all those who can safely and effectively help prevent sexual misconduct, assault, domestic violence, dating violence, and stalking to intervene, and will take the steps within its powers to protect anyone who does from retaliation.

VI. Reporting Procedures and Options

Historically, some survivors of sexual assault, domestic violence, dating violence, and stalking experienced shame over their own victimization or anticipated unsympathetic treatment at the hands of authorities, and, as such, chose not to report an offense. Fortunately, times have changed, and law enforcement has developed sensitive, enlightened protocols for responding to survivors of violence and sexual offenses and for preserving evidence. Reporting an offense is the first step toward coping with trauma and deterring future offenses.

A. Reporting to University and Law Enforcement

The University strongly encourages survivors of sexual assault, domestic violence, dating violence, and stalking to immediately seek all necessary medical attention and to report offenses to law enforcement authorities and designated University personnel. A complainant needn’t, beyond providing the facts, have to classify which of the four offenses covered in the Policy and Procedures has occurred. Campus security is available day and night at 305-625-6000 and in the gate house at the 37th Avenue entrance to the University to take reports of offenses and to summon local law enforcement officers who will take an initial police report. A report can also be made to the Student Health Center counselor in the Student Union (305-628-6695) or any University administrator, faculty member, interscholastic team coach, or resident advisor (RA), who will be trained in taking reports and will immediately submit the report to the University Provost. The University Provost will refer incidents in which a student is alleged to have perpetrated the offense to the Associate Dean of Students, incidents in which a non-student member of the University community is alleged to have perpetrated the offense to the Director of Administration, and will report incidents in which a non-St. Thomas community member or an unknown individual is alleged to have perpetrated the offense to the head of Public Safety Services. A student or employee who reports an incident of sexual assault, domestic violence, dating violence, and stalking will be provided with a written explanation of the student or employee’s rights and options under the Policy and Procedures.
A complainant may seek sanctions against an accused through the process set forth in the Policy and Procedures, whereby the accused is subject to institutional sanctions, through a criminal prosecution, or both. A complainant may also choose not to notify campus or law enforcement authorities. A complainant needn’t decide at the time of a report which of these options she or he will select. The University will, if a complainant would like, provide support as she or he weighs her or his preferred course of action, and the University will honor the autonomy of the complainant in this regard to the extent permitted by law and consistent with the safety of the St. Thomas community.

When a report is made, the University will simultaneously gather information and assess the risk of harm to the complainant and to the St. Thomas community, and, without delay, take measures designed to protect her or his safety. Law enforcement authorities, after consulting with the complainant, will determine how they will proceed.

B. Anonymous Reporting

A survivor may report an offense anonymously or may identify her or himself and authorize the University representative taking the report to include the survivor’s name on the report. The University may well be limited in the action it can take based on an anonymous report.

C. Reporting by Witnesses and Knowledgeable Individuals

The University encourages all witnesses or others with knowledge of offenses to convey the information to law enforcement authorities and designated University personnel. Like complainants, witnesses and parties with knowledge may disclose their names or submit information anonymously.

D. Site of Offense

The Policy and Procedures apply to members of the St. Thomas community while on campus, in campus dormitories, in non-campus buildings or on non-campus property owned or controlled by the University and used for educational purposes, or on public property, like a sidewalk or street, immediately adjacent to and accessible from the campus.

E. Confidentiality, Privacy, and the Release of Information

Privacy and confidentiality have different meanings. Confidentiality refers to the legal protection, absent a speaker’s permission, against the disclosure of certain information she or he has shared with particular campus or outside professionals, like doctors, therapists, and clergy. Privacy, on the other hand, refers to the protection accorded individuals against the disclosure of information they have provided to parties outside of those who need it in responding to, investigating, and hearing cases under the Policy and Procedures. The University will protect a survivor’s confidentiality and privacy to the extent permitted by law and consistent with safety, including not placing information that would identify the survivor in publicly-available records.

F. Threats or Retaliation Against Complainants or Others Providing Information

Anyone who threatens, retaliates, or attempts to retaliate against a person who has submitted a report under the Policy and Procedures, provided information with regard to a report, or is contemplating the submission of a report or information with regard to a report will be subject to disciplinary action within the University, and may be subject to civil or criminal proceedings. Any retaliation or threats or attempts to retaliate should be reported immediately to any of the individuals designated in the Policy and Procedures with whom reports can be filed. The University will act immediately to protect the safety of those at risk.
G. False Reporting

Anyone who files a report of, or later provides information about, sexual assault, domestic violence, dating violence, or stalking that she or he knew to be untrue may be subject to disciplinary action within the University and may also have violated criminal and civil laws against defamation. The good-faith submission of a report or information that turns out to be untrue is entirely distinct from knowingly submitting a false report or false information.

VII. Disciplinary Proceedings and Sanctions

A. Interim Measures
1. Court-Issued Restraining Order
   Under Florida law, survivors and individuals in fear of sexual assault, domestic violence, dating violence, or stalking may file a sworn petition with the local Clerk of Courts Office seeking a restraining order against the perpetrator or threatening party.

2. University Accommodations
   Pending the outcome of any disciplinary proceeding arising out a report of sexual assault, domestic violence, dating violence, or stalking, the University will provide written notice to the survivor – and protect the safety and well-being of the survivor and of all members of the St. Thomas community – through appropriate interim measures, including, but not limited to: a no-contact order issued by the University, campus escorts, the suspension of a parties deemed to be a threat to safety, and changes to academic, living, transportation, and working situations, if so requested by the survivor and reasonably available, regardless of whether the survivor chooses to report the crime to campus security or local law enforcement.

B. Disciplinary Hearings and Appeal
Cases involving allegations of sexual assault, domestic violence, dating violence, and stalking on the part of students are adjudicated within the University's “Judicial Hearing Process,” described in detail in the St. Thomas University Student Handbook provided to every student, and cases involving such allegations on the part of faculty, staff, administrators, and other non-student members of the University community can be adjudicated within the University's “Student Grievance Policy,” which is also reprinted in the Student Handbook, and the University's “Procedures for Reporting and Handling Student Complaints of Discrimination, Harassment, Sexual Harassment, and Retaliation.”

The Judicial Hearing Process involves a prompt, fair, and impartial investigation, adjudication, and resolution of charges conducted by officials who receive annual training on the issues related to sexual assault, domestic violence, dating violence, and stalking, and how to conduct an investigation and hearing process that protects the safety of survivors and promotes accountability. Specifically, the parties are entitled to simultaneously receive written notice of the charges; to have the same opportunities to have others present during the proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice; to be simultaneously informed, in writing, of the outcome of the proceeding, including the opportunity to appeal the results, of any change to the results that occurs prior to the time that the results become final, and of when the results become final. The “preponderance of the evidence” standard of review is utilized in the Judicial Hearing process. Institutional sanctions range from warnings and residence relocation, up to suspension and expulsion.

VIII. Resources to Help Survivors Cope

A. Campus Counseling
The University strongly encourages survivors to consult with, at no cost, the Student Health Center's full-time counselor, who is trained in assisting survivors of sexual misconduct, assault, domestic violence, dating violence, and stalking, and who can refer them to other helpful programs and
resources within the local community. The counselor is located in the Student Health Center in the Student Union building and can be reached at 305-628-6695.

B. Off Campus Resources
Community programs assisting survivors of sexual assault, domestic violence, dating violence, and stalking include:

- The Roxcy Bolton Rape Treatment Center is located at 1611 NW 12th Avenue in Miami. Its phone number is 305-585-5185 and its website is at www.jhsmiami.org. The Center, which has a 24-hour hotline and whose services are free, provides crisis intervention; information and referrals to medical, counseling, and legal resources; prevention education; and individual and group therapy.

- Jessie Trice Community Health Center is located at 4692 NW 183rd Street in Miami Gardens. Its phone number is 474-6855 and its website is at http://www.jtchc.org/. The Center provides counseling and health care services.

- Women in Distress of Broward County, which can be contacted at 954-761-1133 or at http://www.womenindistress.org/, is a full-service domestic violence center serving Broward County with a 24-hour hotline and emergency shelter, as well as counseling and support for survivors and their children.

- Project Style is located at 169 E. Flagler Street, suite 1300, in Miami. Its phone number is 305-458-2356 and its website is at http://www.stylemiami.org/. Project Style provides, among other resources, HIV testing and free counseling.

IX. Prevention and Awareness Programs
Beginning with orientation for incoming students and with Human Resource’s training of incoming employees, the University provides written notice to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for survivors, both on campus and in the community, including programs, presentations, and literature on how to reduce the risk of sexual assault, domestic violence, dating violence, and stalking, and how to report such incidents.