

BEST PRACTICE FOR DEALING WITH SEXUAL OFFENCES AGAINST STUDENTS

This document sets out the steps that should be followed when it is alleged that a sexual offence has been perpetrated against a Rhodes University student and this comes to the attention of a member of the University.

A DEFINITIONS

Disciplinary Board for Sexual Offences means a panel of three people appointed by the Vice-Chancellor – a Proctor, a member of the academic staff in the Faculty of Law (including the Rhodes University Law Clinic), and a member of the Senate Disciplinary Committee – to hear matters involving sexual offences.

Proctor means a suitably qualified person appointed by the Vice-Chancellor, for such a period as the Vice-Chancellor may from time to time determine, to preside at a disciplinary hearing or a review.

Prosecutor means a suitably qualified person, appointed by the Vice-Chancellor for such a period as the Vice-Chancellor may from time to time determine, to investigate and assess contraventions of this Code and represent the University before a Proctor or a Disciplinary Review Committee.

Sexual Offence: as is prohibited in the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, and specifically includes rape, compelled rape and sexual assault as set out in the Act.

Suspension in the context of a sanction means a temporary or permanent postponement of the implementation of the sanction subject to a condition. Suspension in the context of the Vice-Chancellor's powers means in terms of Rule 5.1 (a) that a student may be ordered not to attend classes and/or participate in any other University activities pending a final decision in a disciplinary matter.

Supporting Officer: a person appointed to assist the complainant through the provision of advice and information. He or she must keep all information pertaining to the case strictly confidential, and does not participate in any way during the taking of statements or during the hearing. Support officers are volunteers who have specific interest and training in providing support to complainants. A list of support officers is available from the office of the Dean of Students.

B FIRST REPORT TO ANY MEMBER OF THE UNIVERSITY

1. The complainant is encouraged to report the sexual offence as soon as possible, to any of the following contacts¹:

Counselling Centre (open all day)	046 603 7070
After hours (term time only):	082 803 0177
Dean of Students Office:	046 603 8181
After hours:	082 430 5707
Health Care Centre: Office hours:	046 603 8523
After hours:	082 801 1409
Hall or House Wardens	Contact relevant warden

2. Any member of the University staff who receives a report of a sexual offence from a student complainant must inform the Office of the Dean of Students as soon as possible,

¹ These Support Services are available during academic term time.

and should withhold the name of the complainant if the complainant wishes to remain anonymous.

3. The staff member who receives the report is under no obligation to inform anyone other than the Office of the Dean of Students of the sexual offence. Information pertaining to the complainant, the accused and the sexual offence must be kept strictly confidential.
4. When receiving a report of a sexual offence, the staff member should provide as much immediate help to the complainant as possible under the circumstances, including calling emergency medical services if deemed necessary. If this is not possible, she or he must notify the Office of the Dean of Students or the Counselling Centre immediately and request them to provide the required assistance. This may include providing transport to a medical facility if the complainant wishes to seek outside medical assistance.
5. The Office of the Dean of Students should offer the complainant the option of selecting a Supporting Officer (SO) from the list of names of persons at the University who have been trained to act as SOs. The Dean of Students Office must set up a meeting between the complainant and the SO as soon as possible.

B.1 RESPONSIBILITIES OF THE SUPPORTING OFFICER AT FIRST REPORT

1. The SO should take basic notes recording date, time, place, names and contact details of witnesses and any other relevant information, as well as any decisions taken with regard to the incident. This will enable the SO to act as the first reporter and give accurate evidence should the matter result in a disciplinary hearing.
2. At the time of first contact with the complainant, be it in person or via the phone or email, the SO should ensure that the complainant has received medical attention.
3. If the complainant has not yet received medical attention, they should be informed of what this might entail, and if they wish to receive medical assistance, the necessary transport to an appropriate medical facility must be arranged promptly.
4. If the complainant wishes to receive crisis counselling, the SO should contact the Psychological Crisis Line immediately.
5. Unless it is inappropriate under the circumstances of the case, the SO should at the first time of contact inform the complainant –
 - a. of the right to lay a criminal charge at the South African Police Service; and
 - b. that they are not required to pursue a public prosecution or disciplinary proceedings (in the event where the alleged perpetrator is a student) solely on the basis that they reported the incident.
6. If the complainant is unwilling or incapable of meeting or communicating with the SO, information about medical treatment, crisis counselling, protective measures can be given to an interested person acting on behalf of the complainant.

C COMMUNICATIONS

1. At all times, strict confidentiality should be maintained to protect the identities of all parties involved
2. The complainant must be informed that a generic media statement (see 4) may be made about the incident. Should the complainant not object simple information regarding the alleged incident may be publicised, i.e. “During the 2nd term 3 rapes were reported to university authorities”.
3. A quarterly report of sexual offenses should be submitted to the Communications Office (CO) by the Office of the Dean of Students.

D HEALTH CARE

D.1 GENERAL

1. When a sexual offence report is received, and the complainant has not received medical attention, the SO or responding reporter must ensure that the complainant is transported to the hospital or to the Rhodes Health Care Centre as soon as possible.
2. If a student wishes to lay a criminal charge, the student must be taken to Settler's Hospital to be examined by a district surgeon. If a student does not want to lay a criminal charge the Health Care Centre can assist with the provision of PEP, prophylaxis for STIs, emergency contraception and the treatment of injuries. Basic notes documenting injuries will also be taken by Health Care Centre staff at this point.
3. All complainants are entitled to be interviewed by an appropriate health worker in a private room. If the complainant wishes, she or he can be accompanied by a trusted friend, relative or nurse to support her or him during the interview.
4. Medical services offered to the complainant should include, but not be limited to:
 - a. PEP for HIV;
 - b. prophylaxis for other sexually transmitted infections;
 - c. emergency contraception;
 - d. treatment of injuries; and
 - e. a forensic examination.
5. Any complainant presenting to the Health Care Centre must be counselled by the examining health care worker about the potential risks of HIV transmission after rape, in accordance with the National Antiretroviral Treatment Guidelines.
6. If the complainant presents within 72 hours of being raped, the health care worker must offer the complainant PEP to prevent potential HIV transmission. PEP must be started as soon as possible, but at the latest within 72 hours after exposure.
7. If the complainant decides to take PEP, she or he should be given comprehensive adherence counselling and should be encouraged to return to the clinic for a follow-up appointment.

D.2 CONSENT

1. Before the medical examination, the health care worker must provide the complainant with sufficient information and disclose any risk pertaining to the medical examination and procedures.
2. The health care worker must obtain the informed consent of the complainant to conduct the medical examination.
3. Evidence may only be collected and released to the SAPS with the informed consent of the complainant.
4. If the complainant declines the medical examination, the collection of evidence or its release to the SAPS, this choice should be respected and no undue pressure should be exerted upon them.

D.3 MEDICAL EXAMINATION

1. If the University-contracted doctor is conducting the medical examination, they should make notes about the complainant's physical condition. This will enable them to give accurate evidence should the matter result in a disciplinary hearing.
2. All relevant medical tests should be conducted and pathology testing charges will be paid for by the Dean of Students Office.

D.4 POLICE REPORTING

1. The health care worker must establish whether the complainant has reported the matter to the police.
2. If the complainant declines to report the sexual assault to the police, this choice should be respected and no undue pressure should be exerted.
3. If the complainant chooses to report the case to the police, the student must be referred to Settler's Hospital where the Health Care Worker will contact the SAPS and request a police officer to come to the hospital. Get Home Safe or Campus Protection can provide transport to the hospital.
4. If the complainant chooses not to seek prosecution, mediation may be offered.

E TAKING STATEMENTS

E.1 INITIATING THE TAKING OF THE STATEMENT WHERE THE ALLEGED PERPETRATOR IS NOT A STUDENT

1. In the event where a student has been the victim of a sexual offence and the matter has been reported to the authorities, the DoS office may take the initiative to obtain a statement from the student for the purposes of record-keeping.
2. In such an instance the statement of the complainant will be taken by a Support Officer who has to explain the purpose of the statement to the student.
3. The Support Officer has to record the version of the complainant as told to him/her in the first person and give an opportunity to the complainant to review the statement before signing and dating it. There is no need for the complainant to reveal the name of the alleged perpetrator if it is known to him/her.
4. Without exercising any pressure on the student, the Support Officer is to explain the option of criminal charges against the alleged perpetrator to the complainant.
5. The complainant in such a matter is entitled to the health care and counselling support from the University as set out in this best practice document.

E.2 INITIATING THE TAKING OF THE STATEMENT WHERE THE ALLEGED PERPETRATOR IS A STUDENT

1. If the complainant wishes to bring a formal complaint against an alleged student perpetrator, the Support Officer should notify the Prosecutors immediately, in order to arrange a suitable time for the taking of the statement.
2. Should a complainant choose not to prosecute, mediation may be offered at this point and should be arranged via the Student Harassment Officer.
3. The Support Officer should explain to the complainant –
 - a. that the statement should only be made after her or his medical and forensic examination, where such examination is necessary; and
 - b. that they may lay a criminal charge and have the matter investigated by the South African Police Service. Alternately the matter can be reported to the University prosecutors for investigation.
 - c. the difference between the Rhodes University disciplinary proceedings and criminal charges.
 - d. the different roles of the different role players in the Rhodes University system in relation to complaints of such a nature.
4. The Prosecutors should take the statement of the complainant as soon as is feasible and this should take place in a private room or facility.
5. Preferably only the complainant, his/her Support Officer and the Prosecutors must be present during the taking of the statement. Only the complainant may answer questions

while the statement is being taken. Should information be required from the SO a separate interview should be conducted.

6. If the complainant wishes to have an additional support person present during the taking of the statement, they may have such a person present.

E.3 BEFORE TAKING THE STATEMENT

1. The Prosecutors should explain to the complainant that –
 - a. the statement will contain the case that may be presented in formal proceedings;
 - b. the taking of a statement does not necessarily mean that there will be formal proceedings against an alleged student perpetrator. The final decision in that regard rests with the Prosecutors who will review the case after concluding their investigation.
 - c. during the taking of the statement certain intimate questions will have to be asked, and that these questions are necessary to get a comprehensive picture of the offence; and
 - d. she or he may add to the statement at any stage before the formal proceedings;
2. The Prosecutors should encourage the complainant to provide as much detail about the incident as possible and the statement should be as comprehensive as possible under the circumstances.
3. The Prosecutors should reassure the complainant that all reasonable efforts will be made to keep the information of the case confidential.
4. The complainant must be asked to provide the following information:
 - a. full name;
 - b. age and date of birth;
 - c. student number;
 - d. Grahamstown address;
 - e. contact numbers;
 - f. Email address;
 - g. the date and time of the offence; and
 - h. the relationship between the complainant and the alleged perpetrator.
5. The complainant should be asked to describe the events leading up to the incident and the details of the incident in her or his own words.
6. The statement prepared by the Prosecutors should –
 - a. record the information provided by the complainant in the first person;
 - b. paragraph the statement and number the paragraphs; and
 - c. note the date of the statement taking.
7. After taking the statement, the Prosecutor should –
 - a. read the statement to the complainant;
 - b. allow the complainant to make corrections and additions;
 - c. ask the complainant to sign and affix a date to the statement; and
 - d. make a copy and file the statement.

F WITNESSES

1. The Prosecutors should ask the complainant whether –
 - a. she or he told anyone about the offence and if so, when the complainant did so and to whom; and
 - b. there are any other witnesses who could make a statement regarding –
 - i. the incident;
 - ii. the events leading up to the incident;

- iii. the first report of the incident; and/or
 - iv. any relevant events after the incident.
2. If the complainant names witnesses and their contact details are available, these witnesses would normally be interviewed by the Prosecutors as soon as possible.
 3. Statements from witnesses (both those suggested by the complainant and others whose evidence may be relevant) should be obtained by the Prosecutors at a time and place convenient for both Prosecutors and witnesses. Statements should be taken in a private room or facility.
 4. Statements from witnesses must be as comprehensive as possible.
 5. Witnesses should be allowed to recount the events in their own words. The Prosecutors should record the words of the witnesses in the first person, read the statements back to the witnesses and allow them to make changes before signing and dating their statements.

G PROTECTIVE MEASURES

In the event that the accused is a Rhodes student, the Support Officer should inform the complainant of the availability of protective measures where and when appropriate, ideally at their first meeting with the complainant. The scope and effect of each of these measures should be explained to the complainant. Protective measures include but are not limited to:

- a. leave of absence: issued by the Dean of Students in consultation with Counselling Centre.
- b. no-contact orders: issued by the Vice Chancellor in consultation with a University Prosecutor;
- c. suspension orders: issued by the Vice Chancellor in terms of the Disciplinary Code;

H INVESTIGATION OF SEXUAL OFFENCES

1. The Prosecutors of the University, one male and one female, must investigate every report of a sexual offence fully. In the event that both Prosecutors are the same gender, they will request assistance from someone suitably qualified who is of the other gender.
2. For each investigation, the Prosecutors must –
 - a. open an investigation file;
 - b. explain (in confirmation of the earlier explanation given to the complainant by the Support Officer) the role of the Prosecutors in the investigative process
 - c. collect all relevant information and gather evidence by, for instance –
 - i. ascertaining the availability of witnesses, particularly ‘first report witnesses’;
 - ii. contacting potential witnesses;
 - iii. taking statements from potential witnesses.
3. The Prosecutors may not discontinue an investigation only because they believe that –
 - a. there was provocation or consent;
 - b. the delay between the incident and the reporting of the assault will affect the outcome of the case;
 - c. the complaint is a ‘false report’ or that the reasons for reporting the sexual offence are questionable;
 - d. the complainant’s use of drugs or alcohol will affect the outcome of the case;
 - e. there is no corroborating evidence;
 - f. the level of resistance offered by the complainant or the use of force by the alleged perpetrator does not justify investigating the sexual offence;
 - g. the absence of injury or the extent of injury to the complainant is not ‘severe’ enough to continue with the investigation;

- h. that the complainant had a previous sexual or personal history with the alleged perpetrator;
 - i. the results of the forensic/medico-legal examination are not conclusive or consistent with the sexual offence;
 - j. the initial statement and any other statement appear inconsistent;
 - k. there is a possibility of ‘alternative resolutions’ (i.e. complainant-alleged perpetrator mediation); and/or
 - l. the complainant’s psychological status will affect the outcome of the case.
4. Upon conclusion of the investigation, if the Prosecutors wish to, they may place the record of their investigations before a Fairness Forum to assist in taking the decision as to whether to prosecute an alleged student perpetrator. In taking this decision the Prosecutors and Fairness Forum must use the applicable legal standard, namely whether there is a *prima facie* case against the alleged perpetrator. In the event of a dispute, the majority view will prevail.
 5. In coming to a decision as to whether to prosecute or not, the Prosecution team
 - a. will not be required to provide details of their reasoning
 - b. must take into consideration the wishes of the complainant;
 - c. must notify the complainant and the Support Officer of their decision
 - d. must notify the Dean of Students and the office of the Vice-Chancellor of their decision.
 6. All records of the investigation must be stored securely by the Prosecutors at all times.

I PRESENTING SEXUAL OFFENCE CASES BEFORE A DISCIPLINARY BOARD

1. Every complainant has the right to –
 - a. be treated with respect for her or his dignity and privacy;
 - b. be treated fairly and in a sensitive manner;
 - c. be provided with information on the investigation and prosecution of the case;
 - d. ask for explanations for decisions that are made under the University policies; and
 - e. attend the formal disciplinary proceedings.
2. In reflection of these rights the prosecutors must –
 - a. treat complainants with fairness and respect for their dignity, privacy and freedom and security of their person;
 - b. treat complainants in a sensitive manner that takes cognisance of cross-cultural, linguistic, religious, socio-economic and gender issues;
 - c. listen to and receive information provided by complainants;
3. In reflection of these rights the SO must
 - a. provide relevant information to complainants;
 - b. instil a sense of security in complainants;
 - c. promote complainants’ participation in formal disciplinary proceedings; and
 - d. try to reduce secondary trauma caused by the disciplinary proceedings.
4. The prosecutors must also ensure that the alleged perpetrator’s rights are protected and respected. The special considerations required for complainants do not diminish these rights but rather enhance the overall goal of ensuring fair process.
5. Throughout the entire process the prosecutors must ensure that any contribution that the complainant makes to the investigation or presentation of the case and any concern of the complainant is heard and considered.

I.1 The Hearing

- 1 Should a decision in favour of a formal disciplinary hearing against an alleged student perpetrator be taken, the hearing will be conducted in terms of the Student Disciplinary Code of Rhodes University.
- 2 The hearing will be before a disciplinary board provided for in the SDC. The composition and powers of the board are set out in the Code.
- 3 The Prosecutors must prepare thoroughly before the disciplinary proceedings and must have comprehensive consultation with the complainant and other relevant witnesses. At these meetings the Prosecutors must –
 - a. inform the complainant of –
 - i. the complainant’s rights and how to exercise them;
 - ii. the complainant’s role in the disciplinary proceedings and the implications of being a witness (e.g. cross-examination);
 - iii. the prosecutors’ role in the disciplinary proceedings; and
 - iv. the nature of the proceedings (e.g. burden and standard of proof);
 - b. where necessary, clarify questions in relation to the statement; and
 - c. where necessary, obtain supplementary statements.
- 4 When interviewing or speaking to the complainant, the prosecutor must –
 - a. minimise trauma;
 - b. ensure that the interview takes place in an environment –
 - i. that safeguards the complainant’s privacy; and
 - ii. where the complainant will not come into contact with the alleged perpetrator; and
 - iii. If the complainant is in the same room as the alleged perpetrator that maximum distance possible is maintained.
 - c. record information as comprehensively as possible in writing and keep all information relating to the case in a docket marked ‘confidential’ in a secure place.
- 5 The Prosecutors must ensure that the sexual offence has been fully investigated before the disciplinary proceedings begin, in order to avoid unnecessary delays.
- 6 The Prosecutors should determine whether any expert evidence will be required, which may include medical evidence and psychological evidence, specifically in the context of gender-based violence and rape trauma syndrome.
- 7 The Prosecutors must ensure that a date for the disciplinary hearing is set at the earliest opportunity.
- 8 The Prosecutors must notify the complainant and the Support Officer, and the alleged perpetrator as provided for in the Student Disciplinary Code and through his/her legal representative (if any) of the dates of the initial as well as the follow-up disciplinary hearings as soon as these dates become known. This is to ensure that the complainant and the alleged perpetrator are given sufficient time to prepare themselves for the proceedings.
- 9 The Prosecutors must ensure that the complainant and other witnesses waiting to be called to testify wait in a separate room, where there is no possibility of being confronted by, or having contact with, the alleged perpetrator.
- 10 Given that sexual offence complainants often experience the proceedings as highly traumatic, the Prosecutor should always request that –
 - a. the disciplinary proceedings be heard behind closed doors or in the presence of specific individuals only;
 - b. the venue to the hearing be set up such that maximum distance between the complainant and the alleged perpetrator is maintained;

- c. no information relating to the proceedings or any part thereof held behind closed doors shall be published in any manner; and
 - d. a friend, family member or other support person, who is not a witness to the sexual offence, be allowed to be present during the disciplinary proceedings.
- 11 The prosecutor must seek to ensure that proceedings are expedited because delays in finalising the case are often detrimental to the complainant. If delays occur, the prosecutor must consult with the complainant regarding the date to which the case is postponed and explain the reason for the postponement.
- 12 In consultation with the complainant and the Support Officer, the Prosecutors must consider the question of discontinuing with or applying for a postponement of the proceedings if the proceedings –
- a. are too traumatic for the complainant’s meaningful participation; and/or
 - b. pose a real risk of psychological or other harm to the complainant.
- 13 The Prosecutor must, in a manner assisting the complainant to understand the reason for the decision, inform the complainant of –
- a. the outcome of the disciplinary proceedings; and
 - b. the implications of the decision.
- 14 At all stages of questioning, the principal restriction is that a witness can only be asked about matters that are relevant to the alleged offence. The prosecutor should therefore object to any questions posed by the defence that are not relevant to the case, including but not limited to questions –
- a. that attack the complainant’s credibility; questions about credibility are only permissible if they relate to the complainant’s credibility *on the matter to which she or he testifies*. They are not permitted if they relate to the witness’s credibility on matters that are remote to the proceedings or if they are intended to make a negative imputation against the complainant’s character;
 - b. pertaining to the complainant’s previous sexual history or sexual reputation. Evidence and questions pertaining to the complainant’s previous sexual history are not permissible if –
 - i. the relevance of such questions is outweighed by the potential prejudice to the complainant’s personal dignity and privacy; and/or
 - ii. the objective of introducing such evidence or asking such questions is to support an inference that simply because of the complainant’s previous sexual history, the complainant would more likely have consented in the relevant case or would be less believable;
 - c. regarding the delay in reporting;
 - d. pertaining to the complainant’s ‘provocative’ dress or behaviour;
 - e. that are intended to injure, insult or annoy the complainant or are needlessly offensive in form;
 - f. that are intended to confuse the complainant; and/or
 - g. that are indecent, scandalous, irrelevant or aggressive.
- 15 The prosecutor may lead evidence which may include –
- a. previous consistent statements by the complainant (e.g. first report witness), particularly where this is relevant to the emotional state of the complainant;
 - b. medico-legal evidence; and
 - c. evidence on the impact of the sexual offence.
- 16 The prosecutor should consider expert testimony to be adduced (e.g. on the effects of rape and trauma).
- 17 Where necessary, the prosecutor should point out to the presiding officer that:

- a. the Disciplinary Board may not treat the evidence of the complainant with caution on account of the nature of the offence; and
 - b. the board may not draw any inference only from –
 - i. the absence of a previous consistent statement; or
 - ii. the length of any delay between the alleged commission of the offence and the reporting thereof.
- 18 If the alleged perpetrator is self-represented, the prosecutor may request that the alleged perpetrator direct the questions for cross-examination through the presiding officer.

Acknowledgement: this protocol is loosely based on the Sexual Assault Protocols of the University of Cape Town, with their permission.