

# **ASBURY THEOLOGICAL SEMINARY**

## **Sexual Misconduct Policy**

### **I. INTRODUCTION AND SCOPE**

As established in its Ethos Statement, members of the Asbury Theological Seminary community commit themselves to the practice of celibacy in singleness and fidelity in Christian marriage, which the Seminary affirms as a sacred union between one man and one woman; commit themselves to helping one another attain the highest standards of sexual morality, and to recognize the devastating personal, social and global effects of sexual sin against God, self and others, but especially society's most vulnerable members; and condemn any form of harassment or abuse.

Consistent with these principles, Asbury Theological Seminary is committed to complying with laws on sexual misconduct, including Title IX, the Jeanne Clery Act (Clery Act) and the Campus Sexual Violence Elimination Act (SaVE Act). The Seminary has adopted policies and procedures to prevent and respond to incidents of sexual misconduct. These rules apply to all members of the Seminary community, including students, faculty and staff, as well as third parties who interact with the Seminary community. The Seminary will respond promptly and effectively to reports of sexual misconduct, and will take appropriate action to prevent, correct and, when appropriate, discipline behavior that violates this policy. The Seminary also will take steps in the event of sexual misconduct to remedy its discriminatory effects on the survivor and others, if appropriate.

The Seminary is committed to creating and maintaining a community where all persons who participate in Seminary programs and activities can work and learn together in an atmosphere free of sexual misconduct. Therefore, the Seminary will not tolerate sexual misconduct as defined in this policy. Such acts are prohibited by Seminary policy, as well as state and federal law. Persons whom the Seminary determines more likely than not have violated this policy are subject to penalties up to and including dismissal or separation from the Seminary, regardless of whether they are also facing criminal or civil charges before a government agency or court of law.

This policy applies to all Seminary students, faculty and staff, as well as third parties who interact with the Seminary community, and all Seminary-sponsored programs, events and activities, regardless of where the alleged sexual misconduct occurs. Gender-based discrimination or harassment that is not covered by this policy should be addressed through the Seminary's other policies on equal opportunity, harassment and discrimination. Nothing about this policy condones sexual relationships or any behavior that is inconsistent with the Seminary's Ethos Statement, regardless of whether the parties' actions are welcome or consensual as defined in this policy, and violations of the Seminary's Ethos Statement are grounds for discipline regardless of whether the conduct violates this policy.

This policy shall not be used to remedy acts which are crimes under the laws of the Commonwealth of Kentucky or the United States.

## II. DEFINING SEXUAL MISCONDUCT<sup>1</sup>

Seminary policy prohibits gender discrimination. Sexual misconduct is a form of gender discrimination. Different forms of sexual misconduct are explained in this policy. The determination of what constitutes sexual misconduct will vary with the facts and circumstances of each case. For acts of gender discrimination that are not covered by one of the forms of sexual misconduct addressed in this policy, please see the Seminary's other policies on discrimination.

**Sexual harassment** can take one of two forms. The first form involves unwelcome verbal, electronic, physical and/or visual conduct based on sex, which both (1) unreasonably interferes with a person's work or educational performance, and (2) creates an environment that both a reasonable person and the specific person being harassed would find intimidating, hostile or offensive. The second form involves either (1) submission to unwelcome advances of a supervisor as an express or implied condition of receiving work or educational benefits, or (2) a tangible work or educational detriment resulting from a person's failure or refusal to submit to sexual demands of a supervisor. Examples of sexual harassment include (but are not limited to):

- Unwelcome sexual flirtation or advances.
- Offering employment, promotions, grades or other benefits in exchange for sexual favors.
- Making or threatening reprisals for refusing sexual advances.
- Unwelcome visual and/or electronic conduct such as leering; making sexual gestures; displaying sexually suggestive objects or pictures, cartoons or posters; and suggestive or obscene letters, notes or invitations.
- Unwelcome verbal or electronic conduct such as derogatory comments; epithets; slurs; sexual innuendo; sexual jokes; graphic verbal commentaries about a person's body; and sexually degrading words used to describe a person.
- Unwelcome physical conduct such as unwarranted, suggestive or offensive touching; and impeding or blocking movement.

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<sup>1</sup> This section addresses definitions relevant to Seminary policy. Section 304 of the Violence Against Women Reauthorization Act (VAWA), known as the SaVE Act provision, requires the Seminary's policy to also note the definitions used by state penal codes (Florida, Kentucky, Oklahoma, and Tennessee) for "domestic violence," "dating violence," "sexual assault," "stalking," and "consent" with respect to sexual offenses. Those definitions are set out in Appendix A. **Please note that the state law definitions in Appendix A are for informational purposes only. For purposes of applying the Seminary's policy, the definitions set out in this Section II ("Defining Sexual Misconduct") will control.**

**Sexual Assault** refers to any sexual act directed against another person, forcibly and/or against the person's will; or not forcibly or against the person's will where the survivor is incapable of giving consent, as well as incest or statutory rape. Examples of sexual assault for purposes of this policy include but are not limited to:

- Intentional touching of another person's intimate parts without that person's consent;
- Other intentional sexual contact with another person without that person's consent;
- Coercing, forcing or attempting to coerce or force a person to touch another person's intimate parts without that person's consent; or
- Rape, which is penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person's consent.

**Domestic Violence** includes felony or misdemeanor crimes of violence committed by:

- A current or former spouse or intimate partner of the survivor;
- A person with whom the survivor shares a child in common;
- A person who is or was residing in the same household as the survivor; or
- Any person against someone who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

**Dating Violence** refers to violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the survivor.

**Stalking** occurs when someone engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

**Sexual exploitation** occurs when someone takes sexual advantage of another person for the benefit of anyone other than that person without that person's consent. Examples of behavior that could rise to the level of sexual exploitation for purposes of this policy include but are not necessarily limited to:

- Prostituting another person;
- Recording images (e.g., video, photographs) or audio of another person's sexual activity, intimate body parts or nakedness without that person's consent;

- Distributing images (e.g., video, photographs) or audio of another person’s sexual activity, intimate body parts or nakedness if the person distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and
- Viewing another person’s sexual activity, intimate body parts or nakedness in a place where that person would have a reasonable expectation of privacy, without that person’s consent, and for the purpose of arousing or gratifying sexual desire.

**Unwelcome conduct** does not have to include intent to harm, be directed at a specific target or involve repeated incidents, and can involve persons of the same or opposite sex. Participation in conduct or the failure to complain does not always mean the conduct was welcome. The fact that a person has welcomed some conduct does not necessarily mean a person welcomed other conduct. Similarly, the fact that a person may have invited, requested or otherwise consented to conduct on one occasion does not necessarily mean the conduct is welcome on a later occasion.

**Consent** as used in this policy is defined as follows:

Consent is **informed**. Consent is an affirmative, knowing, unambiguous, and conscious decision by each participant to engage in mutually agreed-upon sexual activity.

Consent is **voluntary**. It must be given without coercion, force, threats, or intimidation. Consent means positive cooperation in the act or expression of intent to engage in the act pursuant to an exercise of free will. Even though consent does not necessarily need to be verbal, relying purely on non-verbal communication can lead to misunderstandings. So, a spoken agreement is the most clearly indicated form of consent. It may not, in any way, be inferred from silence, passivity, lack of resistance or lack of an active response alone. Assuming that consent was given by the absence of a “no” is wrong.

Consent is **revocable**. Consent to some form of sexual activity does not imply consent to other forms of sexual activity. Consent to sexual activity on one occasion is not consent to engage in sexual activity on another occasion. A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be mutual consent to engage in sexual activity. Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Once consent is withdrawn, the sexual activity must stop immediately.

Consent cannot be given when a person is **incapacitated**. A person cannot consent if s/he is unconscious or coming in and out of consciousness. A person cannot consent if s/he is under the threat of violence, bodily injury or other forms of coercion. A person cannot consent if his/her understanding of the act is affected by a physical or mental impairment. Consent must be given with rational and

reasonable judgment, so if the survivor was physically incapacitated from the consumption of alcohol or drugs, unconsciousness, or any other kind of inability, consent cannot be obtained.

### **III. TITLE IX COORDINATOR**

The Seminary's Title IX Coordinator and Deputy Coordinators play the main role in carrying out the Seminary's commitment to provide a positive learning, teaching and working environment for the entire Seminary community. By providing training on preventing sexual misconduct and retaliation, the Title IX Coordinator and Deputy Coordinators strive to maintain a safe campus and provide a good Seminary experience for all.

The responsibilities and functions of the Title IX Coordinator and Deputy Coordinators are set out in this policy, but in general, the Title IX Coordinator and Deputy Coordinators receive and oversee the Seminary's response to reports and complaints that involve possible gender discrimination, including sexual misconduct, to monitor outcomes, identify and address patterns, and assess effects on the campus climate so the Seminary can address issues that affect the wider Seminary community.

More specifically, the Title IX Coordinator and Deputy Coordinators monitor compliance with the reporting, complaint, investigation and appeals processes outlined in this policy. Upon a finding of prohibited sexual misconduct under this policy, the Title IX Coordinator and Deputy Coordinators determine whether campus-wide remedies are needed in response, including but not limited to revision of policies; increased monitoring, supervision or security; and increased education and prevention efforts. The Title IX Coordinator and Deputy Coordinators also review sanctions issued under this policy to ensure that they, along with any interim measures and long-term measures taken, are reasonably calculated to stop the sexual misconduct and prevent its re-occurrence.

The name, office and contact information for the Seminary's Title IX Coordinator and Deputy Coordinators are identified in Appendix B to this policy.

If any person has a question, complaint or concern they believe is covered by these policies and procedures or some other aspect of Title IX, they should contact the Seminary's head Title IX Coordinator or any one of the other Deputy Coordinators. Reports of sexual misconduct can also be made to "Responsible Employees" as described elsewhere in this policy.

### **IV. REPORTING**

The Seminary strongly encourages persons who have experienced sexual misconduct, or knows of someone who has experienced sexual misconduct, to report the incident to the Seminary per this policy. **In case of an emergency or ongoing threat, a survivor should get to a safe location and call 911.** Calling 911 will put you in touch with local police.

**A. Responsible Employees**

In addition to the Title IX Coordinator and Deputy Coordinators, the Seminary considers certain people to be “Responsible Employees” which means they are Seminary employees who are required to report alleged sexual misconduct to the Title IX Coordinator or Deputy Coordinator. You are encouraged to speak to a Responsible Employee to make reports of sexual misconduct. The following persons are “Responsible Employees” under this policy: the Seminary’s Title IX Coordinator, the Seminary’s Deputy Title IX Coordinators, Members of the President’s Cabinet, the Director of Community Formation, all Resident Assistants who serve in Seminary-owned residence halls and all Resident Hosts who serve in family housing.

Any member of the Seminary community can file a report with the Title IX Coordinator, Deputy Coordinators or Responsible Employees. If a survivor shares an incident of sexual misconduct with a Responsible Employee, he or she needs to know that it is the Responsible Employee’s responsibility to notify the Title IX Coordinator or Deputy Coordinator of the incident immediately.

**B. Reporting Timeframe**

Any person may file a complaint of sexual misconduct at any time. Early reporting is encouraged to preserve evidence and provide the survivor with information regarding rights, options and resources available under this policy and federal/state laws.

The Title IX Coordinator or Deputy Coordinator will provide survivors of sexual misconduct with information about available support services and resources, and also assist survivors in notifying law enforcement, including the local police, if a survivor elects to do so. **Survivors are not required to report to area law enforcement in order to receive assistance from or pursue options within the Seminary.** Reporting sexual misconduct to the police does not commit the survivor to further legal action. However, the earlier an incident is reported, the easier it will be for the police to investigate if the survivor decides to proceed with criminal charges.

**C. Reporting Options**

This section addresses options for reporting sexual misconduct. The Seminary may investigate sexual misconduct even without a formal complaint whenever it knows or has reasonable cause to believe that sexual misconduct in violation of this policy has occurred.

1. Official Report: Persons are strongly encouraged to make an official report of any incident of sexual misconduct to the Title IX Coordinator or appropriate Deputy Coordinator regardless of whether the incident occurred on or off campus. Official reports can be made directly to the Title IX Coordinator or appropriate Deputy Coordinator via a written statement or an appointment. Official reporting initiates a course of immediate action. In cases where a complainant states he or she does not want to pursue a formal complaint, the ability of the Seminary to investigate may be limited. Even if a complainant does not want to pursue an investigation, under some circumstances, the Title IX Coordinator or Deputy Coordinator may

have an obligation to investigate a complaint, such as when there is a risk to the campus community if the accused remains on campus. When determining whether to go forward with an investigation, the Title IX Coordinator or Deputy Coordinator may consider the seriousness of the allegation, the age of the complainant, whether there have been other complaints or reports against the accused, and the rights of the accused to receive information about the complainant and the allegations if a hearing and possible sanctions may result from the investigation.

If a person decides to make a formal report, a detailed (written, typed, emailed, or handwritten) statement of the alleged incident(s) should be submitted to the Title IX Coordinator or Deputy Coordinator. This formal statement should be signed and dated. The statement should be as specific as possible, including dates, times, locations, a description of the alleged misconduct and the name(s) of the accused person(s), and further provide a list of any person(s) who may have information that would be helpful to the investigation and review. The Title IX Coordinator or Deputy Coordinator will promptly investigate all formal reports.

2. Confidential Disclosure: Despite the Seminary's strong interest in having persons report complaints of sexual misconduct, the Seminary realizes that not everyone is prepared to make an official report to the Seminary. You can seek help from certain resources that are not required to tell anyone else your private, personally identifiable information unless there is cause for fear for your safety or the safety of others. If a person desires that details of the incident be kept confidential, they should speak with a counselor, clergy, or other professional provider who can maintain confidentiality. Such professionals generally are not required to report personally identifiable information given in confidence unless given permission. If the person chooses not to pursue a judicial process option (e.g., criminal charges), no further action will be taken unless the professional who receives the concern believes there is an imminent threat to the survivor or others. Persons who disclose incidents of sexual misconduct to their counselors, clergy, or other professional providers who can maintain confidentiality should discuss whether to have that person report the misconduct to the Seminary and request interim measures required by Title IX, or request discretionary support measures from the Seminary without reporting the nature of the conduct.

3. Requests via a Counselor, Advocate or other Provider: A survivor may have his/her counselor, clergy, or other professional provider who can maintain confidentiality request interim measures from the Seminary on the survivor's behalf. The request may trigger the Seminary's obligation to investigate. To the extent a counselor, clergy, or other professional provider who can maintain confidentiality makes a disclosure but, consistent with the survivor's wishes, asks the Seminary not to investigate or otherwise notify the accused of the report, the Title IX Coordinator or Deputy Coordinator will consider whether he/she can honor the request while still providing a safe and nondiscriminatory environment for all students, faculty and staff, and to take interim measures to protect the survivor as needed.

#### **D. Confidentiality**

Reports and personal information will be kept as confidential as possible to the extent the law allows and to the extent confidentiality is consistent with the Seminary's need to protect the safety of the Seminary community. Requests for confidentiality will be evaluated by the Title IX Coordinator or Deputy Coordinator assigned to the report. Complete confidentiality cannot be promised as the Seminary will need to thoroughly investigate the case, and may need to share some information with relevant administrators of the Seminary in order to further protect and prevent incidents. Reports to law enforcement may be shared with the Seminary's Title IX Coordinator or Deputy Coordinator. The Seminary may be required by law to publish non-identifying information in campus crime statistics.

All school employees (with the exception of those bound by privilege such as medical professionals, counselors and chaplains) must share information that they learn of regarding a report of sexual misconduct with the Title IX Coordinator or Deputy Coordinator so they can investigate the matter and determine whether steps are needed to ensure the safety of the Seminary community.

It is the survivor's choice as to whether he/she participates in an investigation; however, the Seminary may proceed with an investigation without the survivor's participation.

#### **E. Drug and Alcohol Amnesty**

The Seminary offers immunity (amnesty) to students who may have violated the Seminary's policies concerning the use of drugs and/or alcohol at the time of the incident when he or she became a survivor of, or witnessed, sexual misconduct. Therefore, no alcohol or drug charges are applied to a student who reports that he or she was under the influence of alcohol and/or drugs at the time of a sexual misconduct incident.

The purpose of this section is to encourage reporting. Survivors or bystanders (witnesses) should not let his or her use of alcohol or drugs deter them from reporting an incident. When conducting the investigation, the Seminary's primary focus will be addressing the sexual misconduct violation and not alcohol/drug use violations that may be discovered or disclosed. However, the Seminary may provide referrals to counseling and may require educational options on drugs and alcohol, rather than disciplinary sanctions, in such cases.

#### **V. BYSTANDER INTERVENTION**

The Seminary strongly encourages bystanders to "step up" on behalf of another person's wellbeing and safety. The reporting options listed in this policy are available for bystanders as well. There are also safe and positive options for bystanders who intervene during an incident in order to prevent harm when there was a risk or act of violence. These options include:

**Be aware** of what is going on around you. Trust your instincts. Assume personal responsibility and say or do something – don't assume that someone else will help.



**Assess the situation.** You have to decide what the safest way is for you and others involved to help. Gauge whether the situation requires calling authorities. When deciding to intervene, your personal safety should be the #1 priority. When in doubt, call for help. Other possible people to reach out to for assistance in helping are faculty, staff, supervisors, counselors, etc.

**Decide** whether to use direct or indirect action to resolve the problem. For example:

- Direct Actions: Point out someone's behavior in a manner that will help de-escalate the situation, talk to a friend to ensure he/she is okay, call the police.
- Indirect Action: Make up an excuse to help someone get away from a potential offender, and call the local authorities.

**Intervene** – with reinforcements. If you gauge it is safe to intervene, you're likely to have a greater influence on the parties involved when you work together with someone or several people. Your safety is increased when you stay with a group of friends that you know well.

- Remember to intervene in a compassionate, non-threatening manner.
- Be aware of available resources for assisting persons on campus and in the community.
- Encourage them to seek assistance and offer them resources for assistance.

**Remember, 911 is often the best way to intervene if there is a question of safety for anyone.**

## **VI. WRITTEN NOTICE OF RIGHTS AND OPTIONS**

Any person who reports an incident of sexual misconduct, regardless of whether the incident occurred on or off campus, shall receive a written explanation of their rights and options as provided for under this policy. These rights and options include the right(s) of a survivor to:

- Go to court, and to file a domestic abuse complaint requesting an order restraining your attacker from abusing you, and/or an order directing your attacker to leave your household, building, school, the Seminary or your workplace.
- Seek a criminal complaint for threats, assault and battery, or other related offenses.
- Seek medical treatment (the police will arrange transportation for you to the nearest hospital or otherwise assist you in obtaining medical treatment if you wish).
- Request the police remain at the scene until your safety is otherwise ensured.
- Request that a police officer assist you by arranging transportation or by taking you to a safe place, such as a shelter or a family or friend's residence.

- Obtain a copy of the police incident report at no cost from the police department.

## **VII. PROCEDURES SURVIVORS SHOULD FOLLOW**

If an incident of sexual misconduct occurs, it is important to preserve evidence so that successful criminal prosecution remains an option.

The survivor of a sexual assault should not wash, shower or bathe, douche, brush teeth, comb hair, or change clothes prior to a medical exam or treatment. If a survivor has removed the clothing he or she was wearing during the assault prior to seeking medical treatment, that clothing should be placed in a brown paper, not plastic, bag and brought to the hospital when treatment is sought. If the survivor is still wearing the clothes that he or she was wearing during an assault, he or she should bring a change of clothes with him or her to the hospital so that the clothes containing possible evidence can be preserved and examined for evidence of the crime.

Evidence of violence, such as bruising or other visible injuries following an incident of sexual assault, should be documented by taking photographs. Evidence of stalking, including any communications such as written notes, email, voice mail, or other electronic communications sent by the stalker, should be saved and not altered in any way.

## **VIII. INTERIM MEASURES AND ACCOMMODATIONS**

The Title IX Coordinator and Deputy Coordinators have the right to take necessary measures to protect a person's rights and personal safety. Therefore, interim measures will be available to protect persons from any kind of retaliation or threatening situations during and after the investigation process. These measures include but are not limited to changes in class schedules, living or working arrangements; safety escorts; parking arrangements; dining arrangements; and resources for professional counseling. Regardless of whether a person reports an incident of sexual misconduct to law enforcement or pursues any formal action, if they report such an incident to the Seminary, the Seminary is committed to providing them as safe of a learning or working environment as possible.

The Title IX Coordinator or Deputy Coordinator determines which measures are appropriate for survivors on a case-by-case basis. Upon receiving a report of sexual misconduct, the Title IX Coordinator or Deputy Coordinator will ask the survivor or his/her counselor, provider or advocate what interim measures, if any, are sought. If the survivor or his/her counselor, provider or advocate identifies an interim measure that is not already provided by the Seminary, the Title IX Coordinator or Deputy Coordinator will consider whether the request can be granted. In those instances where interim measures affect both a survivor and the accused, the Title IX Coordinator or Deputy Coordinator will minimize the burden on the survivor wherever appropriate.

When a survivor's counselor, provider or advocate asks for any of the above-listed interim measures without disclosing that sexual misconduct is the basis for the request, the Title

IX Coordinator or Deputy Coordinator will consider the request consistent with its general policy of allowing counselors, providers and advocates to seek such measures for survivors of trauma without requiring that the nature of trauma be disclosed.

The Seminary is also committed to ensuring that orders of protection issued by courts are upheld on all Seminary-owned, used and controlled property, as well as properties immediately adjacent to the Seminary. Therefore, if any member of the Seminary community obtains an order of protection or restraining order, he or she should promptly inform the Title IX Coordinator or Deputy Coordinator and provide him/her with a copy of that order so the Seminary can enforce it. The Seminary is also committed to protecting survivors from further harm, and if the Title IX Coordinator or Deputy Coordinator determines that an person's presence on campus poses a danger to one or more members of the Seminary community, he/she can issue an institutional "No Contact" or "No Trespass" order barring that person from Seminary property.

## **IX. INVESTIGATION AND HEARING PROCESS**

The Seminary's Title IX Coordinator or Deputy Coordinator will investigate alleged violations of this policy regardless of whether the conduct is alleged to have occurred on-campus or off-campus. Each report must be evaluated on a case-by-case basis, taking into account the relevant circumstances of each case. The investigation process may include interviews, reviewing student and/or employee files, and gathering and examining other relevant evidence. The investigation process will be balanced and fair and give both the accused and the complainant the chance to discuss their involvement in the reported incident.

If the investigation concludes that evidence exists to suggest that a violation of this policy more likely than not occurred, the Title IX Coordinator or Deputy Coordinator will refer the case for a hearing before the Student Services Committee, which for purposes of this policy consists of the Kentucky Director of Student Services, the Director of Community Formation and three faculty members appointed to serve on the Student Services Committee.<sup>2</sup>

Each party will have the following hearing rights:

- The right to notice of the specific allegations at issue, including notice of anticipated witnesses and evidence to be addressed at hearing.
- The right to access information and evidence directly related to them within a reasonable time before hearing.
- The right to attend the hearing. The Seminary may proceed with a hearing even if a party declines to exercise his or her right to attend.
- The right to have an advisor of their choice present at the hearing and to speak on his/her own behalf. Advisors may not directly participate in the hearing. Invoking the right not to speak will not be considered an admission of responsibility.

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<sup>2</sup> In the event of a conflict of interest, the committee member who has the conflict will recuse himself/herself from the committee.

- The right to introduce evidence and question witnesses at the hearing, provided, however, that the complainant and the accused will not be allowed to directly question each other.

Hearings will be closed to the public. Following a hearing, the Student Services Committee will deliberate and determine whether, given the evidence and testimony presented, it is more likely than not that a violation of this policy occurred. Possible hearing outcomes include, but are not limited to, changes to class schedules, changes to living arrangements, suspension or expulsion from the Seminary, and reporting the incident to the local police. The measure taken will depend upon the individual circumstances.

The Title IX Coordinator or Deputy Coordinator will inform both parties in writing of the outcome the investigation and/or hearing within seven (7) business days of the investigation and/or hearing's conclusion. Notice of the outcome will include key findings and any penalties or protective measures directly related to the party.

As a general rule, the Seminary will complete the investigation and hearing process within sixty (60) calendar days from receipt of a complaint. However, the Seminary may extend that time frame under special circumstances such as complex cases requiring extensive investigation and breaks between academic periods making relevant parties or officials unavailable. The Seminary will work to keep extensions to a minimum and will keep the parties informed of the status of their case.

Survivors always have the option to file a criminal report in addition to or in lieu of a report under this policy. In no case should a survivor be dissuaded from reporting sexual misconduct to law enforcement. Regardless whether a survivor elects to file a criminal report, the Seminary will conduct a separate investigation of its own. If the accused is not affiliated with the Seminary, an investigation will still be conducted. The Title IX Coordinator or Deputy Coordinator may issue a No Contact or No Trespass order to an accused unless and until the accused is found not responsible. If the accused is a student or faculty from a visiting institution, the Seminary reserves the right to contact that institution for further investigation.

Throughout the process, arrangements will be made to prevent the parties from having direct contact or communication with each other.

The Title IX Coordinator will keep a record of the hearing and investigation process for each case.

## **X. APPEAL PROCESS**

Once a decision has been made and both parties have been notified of the outcome, either party may appeal that outcome to the Provost. Appeals must be received by the Provost no later than five (5) business days after the date the underlying decision is issued. Appeals received after the deadline will not be processed. Appeals should be marked “confidential” and submitted by email or mail to the following:

Office of the Provost  
Asbury Theological Seminary  
204 N. Lexington Ave.  
Wilmore, KY 40390  
[doug.matthews@asburyseminary.edu](mailto:doug.matthews@asburyseminary.edu)

Both parties will be notified in writing by the Provost that an appeal was received. The burden of proof lies with the appellant.

The Provost will assess and decide the appeal based on the investigation and hearing record from the previous levels within twenty-one (21) calendar days of receiving the appeal, unless circumstances require more time, in which case the Provost will advise the parties of the need for more time. Grounds for appeal are limited to the following:

- The Seminary made a procedural error, which could have significantly affected the outcome.
- Previously unavailable and relevant evidence was found that could impact the final result.
- The penalties imposed or other protective measures taken are too severe based on the evidence of record.

The Provost will notify the parties of the outcome of the appeal. Appeal decisions are final. The Title IX Coordinator will keep a record of the appeal process.

## **XI. NO RETALIATION OR DETERRENCE FOR FILING REPORTS**

The Seminary strictly prohibits retaliation for making a report under this policy or participating in an investigation or hearing under this policy. Examples of retaliation include, but are not limited to, a face to face threat, a digital message and/or physical intimidation. Retaliation can be by someone other than the accused. Any person who feels they have been retaliated against as a result of a report under this policy should contact the Title IX Coordinator or a Deputy Coordinator immediately.

## **XII. RESOURCES**

### **A. On-Campus Resources**

The Director of Community Formation and the Dean of Chapel can provide spiritual support and other resources for survivors of sexual misconduct. The Campus-Specific Directors for Student Services in Kentucky and Florida can provide information about area counselors for survivors of sexual misconduct. A formal report is not required to access these resources.

### **B. Online Resources**

If a person feels the need to pursue further help and counseling, there are institutions and charity groups that are specialized and specifically trained to aid survivors of different violent crimes. A formal report is not required to access these resources. These are some nationwide websites that provide help:

National Domestic Violence Hotline

<http://www.thehotline.org/>

Stalking Resource Center

<http://www.victimsofcrime.org/our-programs/stalking-resource-center>

National Sexual Assault Hotline

<http://www.rainn.org/get-help/national-sexual-assault-online-hotline>

Girls Health Website

<http://www.girlshealth.gov/safety/saferrelationships/daterape.html>

Clery Center for Security on Campus

<http://clerycenter.org/help-victims>

### **C. Off-Campus Resources**

In addition to the resources listed above, the following off-campus resources are available:

- Emergency Services (911).
- Bluegrass Rape Crisis Center (859-236-4445; after hours, 1-800-HOPE)
- National Sexual Assault Hotline (800-656-4673)

### **XIII. TRAINING AND EDUCATION**

All students, faculty and staff must annually complete Seminary-sponsored training on sexual misconduct issues within the dates and times arranged by the Title IX Coordinator. Failure to do so may result in corrective action. Annual training will, at minimum, cover the following:

- Seminary policies and procedures for reporting and addressing sexual misconduct;
- Reminders that the Seminary prohibits the offenses of domestic violence, dating violence, sexual assault, sexual exploitation and stalking;
- The definitions for domestic violence, dating violence, sexual assault, sexual exploitation and stalking;
- The definition of consent and “welcome” conduct;
- Training on safe and positive options for bystander intervention that may be carried out by a person to prevent harm or intervene when there is a risk of sexual misconduct against a person other than such person;
- Information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks;
- Possible sanctions or protective measures that such institution may impose following a final determination of an institutional disciplinary procedure regarding sexual misconduct;
- Procedures survivors should follow if sexual misconduct has occurred;
- Procedures for institutional disciplinary action in cases of alleged sexual misconduct;
- Written notification of students and employees about existing counseling, health, mental health, survivor advocacy, legal assistance, and other services available for survivors both on-campus and in the community; and
- Written notification of survivors about options for, and available assistance in, changing academic, living, transportation, and working situations, if so requested by the survivor and if such accommodations are reasonably available, regardless of whether the survivor chooses to report the crime to campus police or local law enforcement.

In addition, the Seminary provides informational resources such as crime bulletins and alerts and bulletin board campaigns.

*Approved by the Board of Trustees of Asbury Theological Seminary on November 10, 2015.*

## **APPENDIX A: STATE LAW DEFINITIONS**

*These state law definitions are for informational purposes only. For purposes of Seminary policy, Asbury Theological Seminary will follow its own definitions, which are set out in Section II (“Defining Sexual Misconduct”) of the Seminary’s Sexual Misconduct Policy.*

### **FLORIDA**

#### **Domestic Violence**

##### **FSA 741.28 Domestic violence; definitions**

As used in ss. 741.28-[741.31](#):

(2) “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.

(3) “Family or household member” means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

#### **Dating Violence**

##### **FSA 784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption**

(1) As used in this section, the term:

(d) “Dating violence” means violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors:

1. A dating relationship must have existed within the past 6 months;
2. The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and



3. The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

The term does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context.

### **Sexual Assault**

#### **FSA 784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption**

(1) As used in this section, the term:

(c) “Sexual violence” means any one incident of:

1. Sexual battery, as defined in chapter 794;
2. A lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age;
3. Luring or enticing a child, as described in chapter 787;
4. Sexual performance by a child, as described in chapter 827; or
5. Any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

#### **FSA 794.011 Sexual battery**

(1) As used in this chapter:

(h) “Sexual battery” 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; however, sexual battery does not include an act done for a bona fide medical purpose.

#### **FSA 800.03 Exposure of sexual organs**

[“Lewd or lascivious act” includes exposing or exhibiting] one's sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose. A mother's breastfeeding of her baby does not under any circumstance violate this section.

**FSA 800.04 Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age**

(1) Definitions.--As used in this section:

(a) "Sexual activity" means the 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; however, sexual activity does not include an act done for a bona fide medical purpose.

(b) "Consent" means intelligent, knowing, and voluntary consent, and does not include submission by coercion.

(c) "Coercion" means the use of exploitation, bribes, threats of force, or intimidation to gain cooperation or compliance.

(d) "Victim" means a person upon whom an offense described in this section was committed or attempted or a person who has reported a violation of this section to a law enforcement officer.

(2) Prohibited defenses.--Neither the victim's lack of chastity nor the victim's consent is a defense to the crimes proscribed by this section.

(3) Ignorance or belief of victim's age.--The perpetrator's ignorance of the victim's age, the victim's misrepresentation of his or her age, or the perpetrator's bona fide belief of the victim's age cannot be raised as a defense in a prosecution under this section.

(4) Lewd or lascivious battery.—

(a) A person commits lewd or lascivious battery by:

1. Engaging in sexual activity with a person 12 years of age or older but less than 16 years of age; or

2. Encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.

(b) Except as provided in paragraph (c), an offender who commits lewd or lascivious battery commits a felony of the second degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).

(c) A person commits a felony of the first degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#) if the person is an offender 18 years of age or older who commits lewd or lascivious battery and was previously convicted of a violation of:

1. [Section 787.01\(2\)](#) or [s. 787.02\(2\)](#) when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under chapter 794 or a lewd act under this section or [s. 847.0135\(5\)](#);
2. [Section 787.01\(3\)\(a\)](#) 2. or 3.;
3. [Section 787.02\(3\)\(a\)](#) 2. or 3.;
4. Chapter 794, excluding [s. 794.011\(10\)](#);
5. [Section 825.1025](#);
6. [Section 847.0135\(5\)](#); or
7. This section.

(5) Lewd or lascivious molestation.—

- (a) A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.
- (b) An offender 18 years of age or older who commits lewd or lascivious molestation against a victim less than 12 years of age commits a life felony, punishable as provided in [s. 775.082\(3\)\(a\)](#) 4.
- (c)
  1. An offender less than 18 years of age who commits lewd or lascivious molestation against a victim less than 12 years of age; or
  2. An offender 18 years of age or older who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a felony of the second degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).
- (d) An offender less than 18 years of age who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a felony of the third degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).
- (e) A person commits a felony of the first degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#) if the person is 18 years of age or older and commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age and the person was previously convicted of a violation of:

1. [Section 787.01\(2\)](#) or [s. 787.02\(2\)](#) when the violation involved a victim who was a minor and, in the course of committing the violation, the defendant committed against the minor a sexual battery under chapter 794 or a lewd act under this section or [s. 847.0135\(5\)](#);
2. [Section 787.01\(3\)\(a\)](#) 2. or 3.;
3. [Section 787.02\(3\)\(a\)](#) 2. or 3.;
4. Chapter 794, excluding [s. 794.011\(10\)](#);
5. [Section 825.1025](#);
6. [Section 847.0135\(5\)](#); or
7. This section.

(6) Lewd or lascivious conduct.—

(a) A person who:

1. Intentionally touches a person under 16 years of age in a lewd or lascivious manner; or
2. Solicits a person under 16 years of age to commit a lewd or lascivious act commits lewd or lascivious conduct.

(b) An offender 18 years of age or older who commits lewd or lascivious conduct commits a felony of the second degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).

(c) An offender less than 18 years of age who commits lewd or lascivious conduct commits a felony of the third degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).

(7) Lewd or lascivious exhibition.—

(a) A person who:

1. Intentionally masturbates;
2. Intentionally exposes the genitals in a lewd or lascivious manner; or
3. Intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in

the presence of a victim who is less than 16 years of age, commits lewd or lascivious exhibition.

(b) An offender 18 years of age or older who commits a lewd or lascivious exhibition commits a felony of the second degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).

(c) An offender less than 18 years of age who commits a lewd or lascivious exhibition commits a felony of the third degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).

(8) Exception.--A mother's breastfeeding of her baby does not under any circumstance constitute a violation of this section.

### **FSA 800.09 Lewd or lascivious exhibition in the presence of an employee**

(1) As used in this section, the term:

(a) "Employee" means any person employed by or performing contractual services for a public or private entity operating a facility or any person employed by or performing contractual services for the corporation operating the prison industry enhancement programs or the correctional work programs under part II of chapter 946. The term also includes any person who is a parole examiner with the Florida Commission on Offender Review.

(b) "Facility" means a state correctional institution as defined in [s. 944.02](#) or a private correctional facility as defined in [s. 944.710](#).

(2)(a) A person who is detained in a facility may not:

1. Intentionally masturbate;

2. Intentionally expose the genitals in a lewd or lascivious manner; or

3. Intentionally commit any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity, in the presence of a person he or she knows or reasonably should know is an employee.

(b) A person who violates paragraph (a) commits lewd or lascivious exhibition in the presence of an employee, a felony of the third degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).

### **FSA 787.025 Luring or enticing a child**

(1) As used in this section, the term:

(a) “Structure” means a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof.

(b) “Dwelling” means a building or conveyance of any kind, either temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging together therein at night, together with the curtilage thereof.

(c) “Conveyance” means any motor vehicle, ship, vessel, railroad car, trailer, aircraft, or sleeping car.

(d) “Convicted” means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

(2)(a) A person 18 years of age or older who intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose commits a misdemeanor of the first degree, punishable as provided in [s. 775.082](#) or [s. 775.083](#).

(b) A person 18 years of age or older who, having been previously convicted of a violation of paragraph (a), intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose commits a felony of the third degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).

(c) A person 18 years of age or older who, having been previously convicted of a violation of [chapter 794](#), [s. 800.04](#), or [s. 847.0135\(5\)](#), or a violation of a similar law of another jurisdiction, intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose commits a felony of the third degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).

(3) It is an affirmative defense to a prosecution under this section that:

(a) The person reasonably believed that his or her action was necessary to prevent the child from being seriously injured.

(b) The person lured or enticed, or attempted to lure or entice, the child under the age of 12 into a structure, dwelling, or conveyance for a lawful purpose.

(c) The person's actions were reasonable under the circumstances and the defendant did not have any intent to harm the health, safety, or welfare of the child.

### **FSA 827.071 Sexual performance by a child; penalties**

(1) As used in this section, the following definitions shall apply:

(a) “Deviate sexual intercourse” means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

(b) “Intentionally view” means to deliberately, purposefully, and voluntarily view. Proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation over any period of time.

(c) “Performance” means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

(d) “Promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do the same.

(e) “Sadomasochistic abuse” means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

(f) “Sexual battery” 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; however, “sexual battery” does not include an act done for a bona fide medical purpose.

(g) “Sexual bestiality” means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.

(h) “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute “sexual conduct.”

(i) “Sexual performance” means any performance or part thereof which includes sexual conduct by a child of less than 18 years of age.

(j) “Simulated” means the explicit depiction of conduct set forth in paragraph (h) which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

(2) A person is guilty of the use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child less than 18 years of age to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child,

consents to the participation by such child in a sexual performance. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).

(3) A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child less than 18 years of age. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).

(4) It is unlawful for any person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).

(5)(a) It is unlawful for any person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The possession, control, or intentional viewing of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a separate offense. If such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation includes sexual conduct by more than one child, then each such child in each such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation that is knowingly possessed, controlled, or intentionally viewed is a separate offense. A person who violates this subsection commits a felony of the third degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).

(b) This subsection does not apply to material possessed, controlled, or intentionally viewed as part of a law enforcement investigation.

(6) Prosecution of any person for an offense under this section shall not prohibit prosecution of that person in this state for a violation of any law of this state, including a law providing for greater penalties than prescribed in this section or any other crime punishing the sexual performance or the sexual exploitation of children.

## **Stalking**

### **FSA 784.048 Stalking; definitions; penalties**

(1) As used in this section, the term:

(a) “Harass” 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.



(b) “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose. The term does not include constitutionally protected activity such as picketing or other organized protests.

(c) “Credible threat” means a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. It is not necessary to prove that the person making the threat had the intent to actually carry out the threat. The present incarceration of the person making the threat is not a bar to prosecution under this section.

(d) “Cyberstalk” means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

(2) A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking, a misdemeanor of the first degree, punishable as provided in [s. 775.082](#) or [s. 775.083](#).

(3) A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).

(4) A person who, after an injunction for protection against repeat violence, sexual violence, or dating violence pursuant to [s. 784.046](#), or an injunction for protection against domestic violence pursuant to [s. 741.30](#), or after any other court-imposed prohibition of conduct toward the subject person or that person's property, knowingly, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).

(5) A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks a child under 16 years of age commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).

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(7) A person who, after having been sentenced for a violation of [s. 794.011](#), [s. 800.04](#), or [s. 847.0135\(5\)](#) and prohibited from contacting the victim of the offense under [s. 921.244](#), willfully, maliciously, and repeatedly follows, harasses, or cyberstalks the victim commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).

## **Consent**

### **FSA 794.011 Sexual battery**

“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.

### **FSA 794.05 Unlawful sexual activity with certain minors**

A person 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age commits a felony of the second degree...[however,] the provisions of this section do not apply to a person 16 or 17 years of age who has had the disabilities of nonage removed under [FSA] chapter 743.

## **KENTUCKY**

### **Domestic Violence**

#### **KRS 403.720 Definitions for KRS 403.715 to 403.785 (effective January 1, 2016)**

(1) “Domestic violence and abuse” means physical injury, serious physical injury, stalking, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple;

(2) “Family member” means a spouse, including a former spouse, a grandparent, a grandchild, a parent, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim;

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(5) “Member of an unmarried couple” means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together;

### **Dating Violence**

#### **KRS 456.010 Definitions for chapter (effective January 1, 2016)**

(1) “Dating relationship” means a relationship between individuals who have or have had a relationship of a romantic or intimate nature. It does not include a casual acquaintanceship or ordinary fraternization in a business or social context. The following factors may be considered

in addition to any other relevant factors in determining whether the relationship is or was of a romantic or intimate nature:

- (a) Declarations of romantic interest;
- (b) The relationship was characterized by the expectation of affection;
- (c) Attendance at social outings together as a couple;
- (d) The frequency and type of interaction between the persons, including whether the persons have been involved together over time and on a continuous basis during the course of the relationship;
- (e) The length and recency of the relationship; and
- (f) Other indications of a substantial connection that would lead a reasonable person to understand that a dating relationship existed;

(2) “Dating violence and abuse” means physical injury, serious physical injury, stalking, sexual assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault occurring between persons who are or have been in a dating relationship;

### **Sexual Assault**

#### **KRS 456.010 Definitions for chapter (effective January 1, 2016)**

(6) “Sexual assault” refers to conduct prohibited as any degree of rape, sodomy, or sexual abuse under KRS Chapter 510 or incest under [KRS 530.020](#);

#### **KRS 510.040 Rape in the first degree**

(1) A person is guilty of rape in the first degree when:

- (a) He engages in sexual intercourse with another person by forcible compulsion; or
- (b) He engages in sexual intercourse with another person who is incapable of consent because he:
  - 1. Is physically helpless; or
  - 2. Is less than twelve (12) years old.

(2) Rape in the first degree is a Class B felony unless the victim is under twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.

### **KRS 510.050 Rape in the second degree**

(1) A person is guilty of rape in the second degree when:

- (a) Being eighteen (18) years old or more, he engages in sexual intercourse with another person less than fourteen (14) years old; or
- (b) He engages in sexual intercourse with another person who is mentally incapacitated.

(2) Rape in the second degree is a Class C felony.

### **KRS 510.060 Rape in the third degree**

(1) A person is guilty of rape in the third degree when:

- (a) He or she engages in sexual intercourse with another person who is incapable of consent because he or she is an individual with an intellectual disability;
- (b) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than sixteen (16) years old;
- (c) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in [KRS 600.020](#);
- (d) Being a person in a position of authority or position of special trust, as defined in [KRS 532.045](#), he or she engages in sexual intercourse with a minor under eighteen (18) years old with whom he or she comes into contact as a result of that position; or
- (e) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in [KRS 520.010](#), or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual intercourse.

(2) Rape in the third degree is a Class D felony.

### **KRS 510.070 Sodomy**

(1) A person is guilty of sodomy in the first degree when:

- (a) He engages in deviate sexual intercourse with another person by forcible compulsion; or

(b) He engages in deviate sexual intercourse with another person who is incapable of consent because he:

1. Is physically helpless; or
2. Is less than twelve (12) years old.

(2) Sodomy in the first degree is a Class B felony unless the victim is under twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.

### **KRS 510.110 Sexual abuse in the first degree**

(1) A person is guilty of sexual abuse in the first degree when:

(a) He or she subjects another person to sexual contact by forcible compulsion; or

(b) He or she subjects another person to sexual contact who is incapable of consent because he or she:

1. Is physically helpless;
2. Is less than twelve (12) years old; or
3. Is mentally incapacitated; or

(c) Being twenty-one (21) years old or more, he or she:

1. Subjects another person who is less than sixteen (16) years old to sexual contact;
2. Engages in masturbation in the presence of another person who is less than sixteen (16) years old and knows or has reason to know the other person is present; or
3. Engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate; or

(d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she, regardless of his or her age, subjects a minor who is less than eighteen (18) years old, with whom he or she comes into contact as a result of that position, to sexual contact or engages in masturbation in the presence of the minor and knows or has reason to know the minor is present or engages in masturbation while using

the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate.

**KRS 510.120 Sexual abuse in the second degree**

(1) A person is guilty of sexual abuse in the second degree when:

(a) He or she subjects another person to sexual contact who is incapable of consent because he or she is an individual with an intellectual disability;

(b) He or she is at least eighteen (18) years old but less than twenty-one (21) years old and subjects another person who is less than sixteen (16) years old to sexual contact; or

(c) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who is at least eighteen (18) years old and who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual contact.

(2) In any prosecution under subsection (1)(b) of this section, it is a defense that:

(a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and

(b) The other person was at least fourteen (14) years old; and

(c) The actor was less than five (5) years older than the other person.

**KRS 510.130 Sexual abuse in the third degree**

(1) A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent.

(2) In any prosecution under this section, it is a defense that:

(a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and

(b) The other person was at least fourteen (14) years old; and

(c) The actor was less than eighteen (18) years old.

**KRS 530.020 Incest**

(1) A person is guilty of incest when he or she has sexual intercourse or deviate sexual intercourse, as defined in [KRS 510.010](#), with a person whom he or she knows to be an ancestor, descendant, uncle, aunt, brother, or sister. The relationships referred to herein include blood relationships of either the whole or half blood without regard to legitimacy, relationship of parent and child by adoption, relationship of stepparent and stepchild, and relationship of step-grandparent and step-grandchild.

(2) (a) Incest is a Class C felony if the act is committed by consenting adults.

(b) Incest is a Class B felony if committed:

1. By forcible compulsion as defined in [KRS 510.010\(2\)](#); or

2. On a victim who is:

a. Less than eighteen (18) years of age; or

b. Incapable of consent because he or she is physically helpless or mentally incapacitated.

(c) Incest is a Class A felony if:

1. Committed on a victim less than twelve (12) years of age; or

2. The victim receives serious physical injury.

## **Stalking**

### **KRS 456.010 Definitions for chapter (effective January 1, 2016)**

(7) “Stalking” refers to conduct prohibited as stalking under [KRS 508.140](#) or [508.150](#);

### **KRS 508.130 Definitions for KRS 508.130 to 508.150**

As used in KRS 508.130 to 508.150, unless the context requires otherwise:

(1) (a) To “stalk” means to engage in an intentional course of conduct:

1. Directed at a specific person or persons;

2. Which seriously alarms, annoys, intimidates, or harasses the person or persons;  
and

3. Which serves no legitimate purpose.

(b) The course of conduct shall be that which would cause a reasonable person to suffer substantial mental distress.

(2) “Course of conduct” means a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose. One (1) or more of these acts may include the use of any equipment, instrument, machine, or other device by which communication or information is transmitted, including computers, the Internet or other electronic network, cameras or other recording devices, telephones or other personal communications devices, scanners or other copying devices, and any device that enables the use of a transmitting device. Constitutionally protected activity is not included within the meaning of “course of conduct.” If the defendant claims that he was engaged in constitutionally protected activity, the court shall determine the validity of that claim as a matter of law and, if found valid, shall exclude that activity from evidence.

(3) “Protective order” means:

(a) An emergency protective order or domestic violence order issued under KRS 403.715 to 403.785;

(b) A foreign protective order, as defined in KRS 403.7521(1);

(c) An order issued under KRS 431.064;

(d) A restraining order issued in accordance with KRS 508.155; and

(e) Any condition of a bond, conditional release, probation, parole, or pretrial diversion order designed to protect the victim from the offender.

### **KRS 508.140 Stalking in the first degree**

(1) A person is guilty of stalking in the first degree,

(a) When he intentionally:

1. Stalks another person; and

2. Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:

a. Sexual contact as defined in KRS 510.010;

b. Serious physical injury; or

c. Death; and



- (b)
  - 1. A protective order has been issued by the court to protect the same victim or victims and the defendant has been served with the summons or order or has been given actual notice; or
  - 2. A criminal complaint is currently pending with a court, law enforcement agency, or prosecutor by the same victim or victims and the defendant has been served with a summons or warrant or has been given actual notice; or
  - 3. The defendant has been convicted of or pled guilty within the previous five (5) years to a felony or to a Class A misdemeanor against the same victim or victims; or
  - 4. The act or acts were committed while the defendant had a deadly weapon on or about his person.

**KRS 508.150 Stalking in the second degree**

(1) A person is guilty of stalking in the second degree when he intentionally:

- (a) Stalks another person; and
- (b) Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:
  - 1. Sexual contact as defined in KRS 510.010;
  - 2. Physical injury; or
  - 3. Death.

**Consent**

**KRS 510.020 Lack of consent**

(1) Whether or not specifically stated, it is an element of every offense defined in this chapter that the sexual act was committed without consent of the victim.

(2) Lack of consent results from:

- (a) Forcible compulsion;
- (b) Incapacity to consent; or

(c) If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.

(3) A person is deemed incapable of consent when he or she is:

(a) Less than sixteen (16) years old;

(b) An individual with an intellectual disability or an individual that suffers from a mental illness;

(c) Mentally incapacitated;

(d) Physically helpless; or

(e) Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency.

(4) The provisions of subsection (3)(e) of this section shall not apply to persons who are lawfully married to each other and no court order is in effect prohibiting contact between the parties.

## **OKLAHOMA**

### **Domestic Violence**

#### **22 Okl.St. Ann. § 60.1 Definitions**

1. "Domestic abuse" means any act of physical harm, or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor child thirteen (13) years of age or older against another adult, emancipated minor or minor child who are family or household members or who are or were in a dating relationship;
3. "Harassment" means a knowing and willful course or pattern of conduct by a family or household member or an individual who is or has been involved in a dating relationship with the person, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial distress to the person. "Harassment" shall include, but not be limited to, harassing or obscene telephone calls in violation of Section 1172 of Title 21 of the Oklahoma Statutes and fear of death or bodily injury.
4. "Family or household members" means:
  - a. spouses,

- b. ex-spouses,
- c. present spouses of ex-spouses,
- d. parents, including grandparents, stepparents, adoptive parents and foster parents,
- e. children, including grandchildren, stepchildren, adopted children and foster children,
- f. persons otherwise related by blood or marriage,
- g. persons living in the same household or who formerly lived in the same household, and
- h. persons who are the biological parents of the same child, regardless of their marital status, or whether they have lived together at any time. This shall include the elderly and handicapped;

**21 Okl.St. Ann § 644. Assault—Assault and battery—Domestic abuse**

- A. Assault shall be punishable by imprisonment in a county jail not exceeding thirty (30) days, or by a fine of not more than Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.
- B. Assault and battery shall be punishable by imprisonment in a county jail not exceeding ninety (90) days, or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.
- C. Any person who commits any assault and battery against a current or former spouse, a present spouse of a former spouse, a former spouse of a present spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is or was in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant shall be guilty of domestic abuse. Upon conviction, the defendant shall be punished by imprisonment in the county jail for not more than one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. Upon conviction for a second or subsequent offense, the person shall be punished by imprisonment in the custody of the Department of Corrections for not more than four (4) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. The provisions of Section 51.1 of this title shall apply to any second or subsequent offense.
- D.
  - 1. Any person who, with intent to do bodily harm and without justifiable or excusable cause, commits any assault, battery, or assault and battery upon a current or former

spouse, a present spouse of a former spouse, a parent, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom the defendant has a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant with any sharp or dangerous weapon, upon conviction, is guilty of domestic assault or domestic assault and battery with a dangerous weapon which shall be a felony and punishable by imprisonment in the custody of the Department of Corrections not exceeding ten (10) years, or by imprisonment in a county jail not exceeding one (1) year. The provisions of Section 51.1 of this title shall apply to any second or subsequent conviction for a violation of this paragraph.

2. Any person who, without such cause, shoots a current or former spouse, a present spouse of a former spouse, a parent, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom the defendant has a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant, by means of any deadly weapon that is likely to produce death shall, upon conviction, be guilty of domestic assault and battery with a deadly weapon which shall be a felony punishable by imprisonment in the custody of the Department of Corrections not exceeding life. The provisions of Section 51.1 of this title shall apply to any second or subsequent conviction for a violation of this paragraph.

## **21 Okl.St. Ann. § 644.1. Domestic abuse with a prior pattern of physical abuse**

- A. Any person who commits domestic abuse, as defined by subsection C of Section 644 of this title, and has a prior pattern of physical abuse shall be guilty of a felony, upon conviction, punishable by imprisonment in the custody of the Department of Corrections for a term of not more than ten (10) years or by a fine not exceeding Five Thousand Dollars (\$5,000.00) or by both such fine and imprisonment.
- B. For purposes of this section, “prior pattern of physical abuse” means two or more separate incidences, including the current incident, occurring on different days and each incident relates to an act constituting assault and battery or domestic abuse committed by the defendant against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, a person living in the same household as the defendant, a current intimate partner or former intimate partner, or any combination of such persons, where proof of each incident prior to the present incident is established by the sworn testimony of a third party who was a witness to the alleged physical abuse or by other admissible direct evidence that is independent of the testimony of the victim.

## **Dating Violence**

### **22 Okl.St. Ann. § 60.1 Definitions**

5. “Dating relationship” means a courtship or engagement relationship. For purposes of this act, a casual acquaintance or ordinary fraternization between persons in a business or social context shall not constitute a dating relationship.

*Note - Dating violence is included within the definition of domestic abuse, above.*

## **Sexual Assault**

### **21 Okl.St. Ann § 112 Sexual Assault**

The term “sexual assault” is any type of sexual contact or behavior that occurs without explicit consent of the recipient including, but not limited to, forced sexual intercourse, forcible sodomy, child molestation, child sexual abuse, incest, fondling and all attempts to complete any of the aforementioned acts.

### **21 Okl.St. Ann. § 1111 Rape Defined**

- A. Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances:
  1. Where the victim is under sixteen (16) years of age;
  2. Where the victim is incapable through mental illness or any other unsoundness of mind, whether temporary or permanent, of giving legal consent;
  3. Where force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person;
  4. Where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit;
  5. Where the victim is at the time unconscious of the nature of the act and this fact is known to the accused;
  6. Where the victim submits to sexual intercourse under the belief that the person committing the act is a spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused or by the accused in collusion with the spouse with intent to induce that belief. In all cases of collusion between the accused and the spouse to accomplish such act, both the spouse and the accused, upon conviction, shall be deemed guilty of rape;

7. Where the victim is under the legal custody or supervision of a state agency, a federal agency, a county, a municipality or a political subdivision and engages in sexual intercourse with a state, federal, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, a county, a municipality or a political subdivision that exercises authority over the victim, or the subcontractor or employee of a subcontractor of the contractor of the state or federal government, a county, a municipality or a political subdivision that exercises authority over the victim;
  8. Where the victim is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system; or
  9. Where the victim is nineteen (19) years of age or younger and is in the legal custody of a state agency, federal agency or tribal court and engages in sexual intercourse with a foster parent or foster parent applicant.
- B. Rape is an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person.

#### **21 Okl.St. Ann. § 1111.1. Rape by instrumentation**

- A. Rape by instrumentation is an act within or without the bonds of matrimony in which any inanimate object or any part of the human body, not amounting to sexual intercourse is used in the carnal knowledge of another person without his or her consent and penetration of the anus or vagina occurs to that person.
- B. Provided, further, that at least one of the circumstances specified in Section 1111 of this title has been met; further, where the victim is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in conduct prohibited by this section of law with a person who is eighteen (18) years of age or older and is an employee of the same school system, or where the victim is under the legal custody or supervision of a state or federal agency, county, municipal or a political subdivision and engages in conduct prohibited by this section of law with a federal, state, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, a county, a municipality or a political subdivision that exercises authority over the victim, consent shall not be an element of the crime.
- C. Provided, further, that at least one of the circumstances specified in Section 1111 of this title has been met; further, where the victim is nineteen (19) years of age or younger and in the

legal custody of a state agency, federal agency or tribal court and engages in conduct prohibited by this section of law with a foster parent or foster parent applicant.

- D. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this section shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.

### **21 Okl.St. Ann. § 1114. Rape in first degree--Second degree**

A. Rape or rape by instrumentation in the first degree shall include:

1. Rape committed by a person over eighteen (18) years of age upon a person under fourteen (14) years of age;
2. Rape committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime;
3. Rape accomplished where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit;
4. Rape accomplished where the victim is at the time unconscious of the nature of the act and this fact is known to the accused;
5. Rape accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the person committing the crime; or
6. Rape by instrumentation regardless of the age of the victim or the age of the person committing the crime.

B. In all other cases, rape is rape in the second degree.

### **21 Okl.St. Ann. § 888 Forcible sodomy**

A. Any person who forces another person to engage in the detestable and abominable crime against nature, pursuant to Section 886 of this title, upon conviction, is guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a period of not more than twenty (20) years. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this subsection shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment. Any person convicted of a second violation of this section, where the victim

of the second offense is a person under sixteen (16) years of age, shall not be eligible for probation, suspended or deferred sentence. Any person convicted of a third or subsequent violation of this section, where the victim of the third or subsequent offense is a person under sixteen (16) years of age, shall be punished by imprisonment in the custody of the Department of Corrections for a term of life or life without parole, in the discretion of the jury, or in case the jury fails or refuses to fix punishment then the same shall be pronounced by the court. Any person convicted of a violation of this subsection after having been twice convicted of a violation of subsection A of Section 1114 of this title, a violation of Section 1123 of this title or sexual abuse of a child pursuant to Section 843.5 of this title, or of any attempt to commit any of these offenses or any combination of the offenses, shall be punished by imprisonment in the custody of the Department of Corrections for a term of life or life without parole.

B. The crime of forcible sodomy shall include:

1. Sodomy committed by a person over eighteen (18) years of age upon a person under sixteen (16) years of age;
2. Sodomy committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime;
3. Sodomy accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the victim or the person committing the crime;
4. Sodomy committed by a state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the state, a county, a municipality or political subdivision of this state upon a person who is under the legal custody, supervision or authority of a state agency, a county, a municipality or a political subdivision of this state, or the subcontractor or employee of a subcontractor of the contractor of the state or federal government, a county, a municipality or a political subdivision of this state;
5. Sodomy committed upon a person who is at least sixteen (16) years of age but less than twenty (20) years of age and is a student of any public or private secondary school, junior high or high school, or public vocational school, with a person who is eighteen (18) years of age or older and is employed by the same school system;
6. Sodomy committed upon a person who is at the time unconscious of the nature of the act, and this fact should be known to the accused; or
7. Sodomy committed upon a person where the person is intoxicated by a narcotic or anesthetic agent administered by or with the privity of the accused as a means of forcing the person to submit.



**21 Okl.St. Ann. § 1123—Lewd or indecent proposals or acts as to child under 16 or person believed to be under 16--Sexual battery**

- B. No person shall commit sexual battery on any other person. “Sexual battery” shall mean the intentional touching, mauling or feeling of the body or private parts of any person sixteen (16) years of age or older, in a lewd and lascivious manner:
1. Without the consent of that person;
  2. When committed by a state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the state, a county, a municipality or political subdivision of this state upon a person who is under the legal custody, supervision or authority of a state agency, a county, a municipality or a political subdivision of this state, or the subcontractor or employee of a subcontractor of the contractor of the state or federal government, a county, a municipality or a political subdivision of this state;
  3. When committed upon a person who is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or in the legal custody or supervision of any public or private elementary or secondary school, or technology center school, by a person who is eighteen (18) years of age or older and is an employee of the same school system that the victim attends; or
  4. When committed upon a person who is nineteen (19) years of age or younger and is in the legal custody of a state agency, federal agency or a tribal court, by a foster parent or foster parent applicant.

As used in this subsection, “employee of the same school system” means a teacher, principal or other duly appointed person employed by a school system or an employee of a firm contracting with a school system who exercises authority over the victim.

**Stalking**

**22 Okl.St. Ann. § 60.1 Definitions**

2. “Stalking” means the willful, malicious, and repeated following or harassment of a person by an adult, emancipated minor, or minor thirteen (13) years of age or older, in a manner that would cause a reasonable person to feel frightened, intimidated, threatened, harassed, or molested and actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed or molested. Stalking also means a course of conduct composed of a series of two or more separate acts over a period of time, however short, evidencing a continuity of purpose or unconsented contact with a person that is initiated or continued without the consent of the individual or in disregard of the expressed desire of the individual that the contact be avoided or discontinued. Unconsented contact or course of conduct includes, but is not limited to:
- a. following or appearing within the sight of that individual,

- b. approaching or confronting that individual in a public place or on private property,
- c. appearing at the workplace or residence of that individual,
- d. entering onto or remaining on property owned, leased, or occupied by that individual,
- e. contacting that individual by telephone,
- f. sending mail or electronic communications to that individual, or
- g. placing an object on, or delivering an object to, property owned, leased or occupied by that individual.

**21 Okl.St. Ann. § 1173 Stalking—Penalties**

- A. Any person who willfully, maliciously, and repeatedly follows or harasses another person in a manner that:
  - 1. Would cause a reasonable person or a member of the immediate family of that person as defined in subsection F of this section to feel frightened, intimidated, threatened, harassed, or molested; and
  - 2. Actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed, or molested,

shall, upon conviction, be guilty of the crime of stalking, which is a misdemeanor punishable by imprisonment in a county jail for not more than one (1) year, or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

**21 Okl.St. Ann § 1172 Obscene, threatening or harassing telecommunication or other electronic communications—Penalty**

- A. It shall be unlawful for a person who, by means of a telecommunication or other electronic communication device, willfully either:
  - 1. Makes any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, or indecent;
  - 2. Makes a telecommunication or other electronic communication with intent to terrify, intimidate or harass, or threaten to inflict injury or physical harm to any person or property of that person;
  - 3. Makes a telecommunication or other electronic communication, whether or not conversation ensues, with intent to put the party called in fear of physical harm or death;
  - 4. Makes a telecommunication or other electronic communication, whether or not conversation ensues, without disclosing the identity of the person making the call or

communication and with intent to annoy, abuse, threaten, or harass any person at the called number;

5. Knowingly permits any telecommunication or other electronic communication under the control of the person to be used for any purpose prohibited by this section; and
  6. In conspiracy or concerted action with other persons, makes repeated calls or electronic communications or simultaneous calls or electronic communications solely to harass any person at the called number(s).
- B. As used in this section, “telecommunication” and “electronic communication” mean any type of telephonic, electronic or radio communications, or transmission of signs, signals, data, writings, images and sounds or intelligence of any nature by telephone, including cellular telephones, wire, cable, radio, electromagnetic, photoelectronic or photo-optical system or the creation, display, management, storage, processing, transmission or distribution of images, text, voice, video or data by wire, cable or wireless means, including the Internet. The term includes:
1. A communication initiated by electronic mail, instant message, network call, or facsimile machine; and
  2. A communication made to a pager.
- C. Use of a telephone or other electronic communications facility under this section shall include all use made of such a facility between the points of origin and reception. Any offense under this section is a continuing offense and shall be deemed to have been committed at either the place of origin or the place of reception.

## **Consent**

### **21 Okl.St. Ann. § 113 Consent**

The term “consent” means the affirmative, unambiguous and voluntary agreement to engage in a specific sexual activity during a sexual encounter which can be revoked at any time. Consent cannot be:

1. Given by an individual who:
  - a. is asleep or is mentally or physically incapacitated either through the effect of drugs or alcohol or for any other reason, or
  - b. is under duress, threat, coercion or force; or
2. Inferred under circumstances in which consent is not clear including, but not limited to:
  - a. the absence of an individual saying “no” or “stop”, or

- b. the existence of a prior or current relationship or sexual activity.

## **TENNESSEE**

*Tennessee statute does not explicitly define “dating violence”; however, other crimes may apply to actions associated with this term.*

### **Domestic Violence**

#### **TCA 39-13-111 Domestic assault**

(a) As used in this section, “domestic abuse victim” means any person who falls within the following categories:

- (1) Adults or minors who are current or former spouses;
- (2) Adults or minors who live together or who have lived together;
- (3) Adults or minors who are dating or who have dated or who have or had a sexual relationship, but does not include fraternization between two (2) individuals in a business or social context;
- (4) Adults or minors related by blood or adoption;
- (5) Adults or minors who are related or were formerly related by marriage; or
- (6) Adult or minor children of a person in a relationship that is described in subdivisions (a)(1)-(5).

(b) A person commits domestic assault who commits an assault as defined in [§ 39-13-101](#) against a domestic abuse victim.

#### **TCA 39-13-101 Assault**

(a) A person commits assault who:

- (1) Intentionally, knowingly or recklessly causes bodily injury to another;
- (2) Intentionally or knowingly causes another to reasonably fear imminent bodily injury;  
or
- (3) Intentionally or knowingly causes physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative.

## **Sexual Assault**

### **TCA 39-13-505 Sexual battery**

(a) Sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

- (1) Force or coercion is used to accomplish the act;
- (2) The sexual contact is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the contact that the victim did not consent;
- (3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or
- (4) The sexual contact is accomplished by fraud.

(b) As used in this section, “coercion” means the threat of kidnapping, extortion, force or violence to be performed immediately or in the future.

### **TCA 39-13-504 Aggravated sexual battery**

(a) Aggravated sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

- (1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;
- (2) The defendant causes bodily injury to the victim;
- (3) The defendant is aided or abetted by one (1) or more other persons; and
  - (A) Force or coercion is used to accomplish the act; or
  - (B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or
- (4) The victim is less than thirteen (13) years of age.

### **TCA 39-13-527 Authority figure; sexual battery; penalty**

(a) Sexual battery by an authority figure is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by the following circumstances:

(1) The victim was, at the time of the offense, thirteen (13) years of age or older but less than eighteen (18) years of age; or

(2) The victim was, at the time of the offense, mentally defective, mentally incapacitated or physically helpless, regardless of age; and,

(3)(A) The defendant was at the time of the offense in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional or occupational status and used the position of trust or power to accomplish the sexual contact; or

(B) The defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the sexual contact.

## **Stalking**

### **TCA 39-17-315 Stalking**

(a) As used in this section, unless the context otherwise requires:

(1) “Course of conduct” means a pattern of conduct composed of a series of two (2) or more separate noncontinuous acts evidencing a continuity of purpose;

(2) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling;

(3) “Harassment” means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable person to suffer emotional distress, and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose;

(4) “Stalking” means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested;

(5) “Unconsented contact” means any contact with another person that is initiated or continued without that person's consent, or in disregard of that person's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:

(A) Following or appearing within the sight of that person;

(B) Approaching or confronting that person in a public place or on private property;

(C) Appearing at that person's workplace or residence;

(D) Entering onto or remaining on property owned, leased, or occupied by that person;

(E) Contacting that person by telephone;

(F) Sending mail or electronic communications to that person; or

(G) Placing an object on, or delivering an object to, property owned, leased, or occupied by that person; and

(6) "Victim" means an individual who is the target of a willful course of conduct involving repeated or continuing harassment.

(b)(1) A person commits an offense who intentionally engages in stalking.

(2) Stalking is a Class A misdemeanor.

(3) Stalking is a Class E felony if the defendant, at the time of the offense, was required to or was registered with the Tennessee bureau of investigation as a sexual offender, violent sexual offender or violent juvenile sexual offender, as defined in [§ 40-39-202](#).

(c)(1) A person commits aggravated stalking who commits the offense of stalking as prohibited by subsection (b), and:

(A) In the course and furtherance of stalking, displays a deadly weapon;

(B) The victim of the offense was less than eighteen (18) years of age at any time during the person's course of conduct, and the person is five (5) or more years older than the victim;

(C) Has previously been convicted of stalking within seven (7) years of the instant offense;

(D) Makes a credible threat to the victim, the victim's child, sibling, spouse, parent or dependents with the intent to place any such person in reasonable fear of death or bodily injury; or

(E) At the time of the offense, was prohibited from making contact with the victim under a restraining order or injunction for protection, an order of protection, or any other court-imposed prohibition of conduct toward the victim or the victim's property, and the person knowingly violates the injunction, order or court-imposed prohibition.

(2) Aggravated stalking is a Class E felony.

(d)(1) A person commits especially aggravated stalking who:

(A) Commits the offense of stalking or aggravated stalking, and has previously been convicted of stalking or aggravated stalking involving the same victim of the instant offense; or

(B) Commits the offense of aggravated stalking, and intentionally or recklessly causes serious bodily injury to the victim of the offense or to the victim's child, sibling, spouse, parent or dependent.

(2) Especially aggravated stalking is a Class C felony.

(e) Notwithstanding any other law, if the court grants probation to a person convicted of stalking, aggravated stalking or especially aggravated stalking, the court may keep the person on probation for a period not to exceed the maximum punishment for the appropriate classification of offense. Regardless of whether a term of probation is ordered, the court may, in addition to any other punishment otherwise authorized by law, order the defendant to do the following:

(1) Refrain from stalking any individual during the term of probation;

(2) Refrain from having any contact with the victim of the offense or the victim's child, sibling, spouse, parent or dependent;

(3) Be evaluated to determine the need for psychiatric, psychological, or social counseling, and, if determined appropriate by the court, to receive psychiatric, psychological or social counseling at the defendant's own expense;

(4) If, as the result of such treatment or otherwise, the defendant is required to take medication, order that the defendant submit to drug testing or some other method by which the court can monitor whether the defendant is taking the required medication; and

(5) Submit to the use of an electronic tracking device, with the cost of the device and monitoring the defendant's whereabouts, to be paid by the defendant.

(f) In a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the conduct or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, is prima facie evidence that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(g)(1) If a person is convicted of aggravated or especially aggravated stalking, or another felony offense arising out of a charge based on this section, the court may order an independent professional mental health assessment of the defendant's need for mental health treatment. The



court may waive the assessment, if an adequate assessment was conducted prior to the conviction.

(2) If the assessment indicates that the defendant is in need of and amenable to mental health treatment, the court may include in the sentence a requirement that the offender undergo treatment, and that the drug intake of the defendant be monitored in the manner best suited to the particular situation. Monitoring may include periodic determinations as to whether the defendant is ingesting any illegal controlled substances or controlled substance analogues, as well as determinations as to whether the defendant is complying with any required or recommended course of treatment that includes the taking of medications.

(3) The court shall order the offender to pay the costs of assessment under this subsection (g), unless the offender is indigent under [§ 40-14-202](#).

(h) Any person who reasonably believes they are a victim of an offense under this section, regardless of whether the alleged perpetrator has been arrested, charged or convicted of a stalking-related offense, shall be entitled to seek and obtain an order of protection in the same manner, and under the same circumstances, as is provided for victims of domestic abuse by title 36, chapter 3, part 6.

(i) When a person is charged and arrested for the offense of stalking, aggravated stalking or especially aggravated stalking, the arresting law enforcement officer shall inform the victim that the person arrested may be eligible to post bail for the offense and to be released until the date of trial for the offense.

(j) If a law enforcement officer or district attorney general believes that the life of a possible victim of stalking is in immediate danger, unless and until sufficient evidence can be processed linking a particular person to the offense, the district attorney general may petition the judge of a court of record having criminal jurisdiction in that district to enter an order expediting the processing of any evidence in a particular stalking case. If, after hearing the petition, the court is of the opinion that the life of the victim may be in immediate danger if the alleged perpetrator is not apprehended, the court may enter such an order, directed to the Tennessee bureau of investigation, or any other agency or laboratory that may be in the process of analyzing evidence for that particular investigation.

(k)(1) For purposes of determining if a course of conduct amounting to stalking is a single offense or multiple offenses, the occurrence of any of the following events breaks the continuous course of conduct, with respect to the same victim, that constitutes the offense:

(A) The defendant is arrested and charged with stalking, aggravated stalking or especially aggravated stalking;

(B) The defendant is found by a court of competent jurisdiction to have violated an order of protection issued to prohibit the defendant from engaging in the conduct of stalking; or

(C) The defendant is convicted of the offense of stalking, aggravated stalking or especially aggravated stalking.

(2) If a continuing course of conduct amounting to stalking engaged in by a defendant against the same victim is broken by any of the events set out in subdivision (k)(1), any such conduct that occurs after that event commences a new and separate offense.

## **Consent**

### **TCA 39-13-501 Definitions**

“Coercion” means threat of kidnapping, extortion, force or violence to be performed immediately or in the future or the use of parental, custodial, or official authority over a child less than fifteen (15) years of age;

### **TCA 39-13-506 Mitigated statutory rape; statutory rape; aggravated statutory rape; penalties**

(a) Mitigated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is at least four (4) but not more than five (5) years older than the victim.

(b) Statutory rape is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when:

(1) The victim is at least thirteen (13) but less than fifteen (15) years of age and the defendant is at least four (4) years but less than ten (10) years older than the victim; or

(2) The victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is more than five (5) but less than ten (10) years older than the victim.

(c) Aggravated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least thirteen (13) but less than eighteen (18) years of age and the defendant is at least ten (10) years older than the victim.

### **TCA 39-13-528 Solicitation of person under 18 years of age**

(a) It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet services, directly or through another, to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor, and whom the person making the

solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that, if completed, would constitute a violation by the soliciting adult of one (1) or more of the following offenses:

- (1) Rape of a child, pursuant to [§ 39-13-522](#);
- (2) Aggravated rape, pursuant to [§ 39-13-502](#);
- (3) Rape, pursuant to [§ 39-13-503](#);
- (4) Aggravated sexual battery, pursuant to [§ 39-13-504](#);
- (5) Sexual battery by an authority figure, pursuant to [§ 39-13-527](#);
- (6) Sexual battery, pursuant to [§ 39-13-505](#);
- (7) Statutory rape, pursuant to [§ 39-13-506](#);
- (8) Especially aggravated sexual exploitation of a minor, pursuant to [§ 39-17-1005](#);
- (9) Sexual activity involving a minor, pursuant to [§ 39-13-529](#);
- (10) Trafficking for commercial sex acts, pursuant to [§ 39-13-309](#);
- (11) Patronizing prostitution, pursuant to [§ 39-13-514](#);
- (12) Promoting prostitution, pursuant to [§ 39-13-515](#); or
- (13) Aggravated sexual exploitation of a minor, pursuant to [§ 39-17-1004](#).

(b) It is no defense that the solicitation was unsuccessful, that the conduct solicited was not engaged in, or that the law enforcement officer could not engage in the solicited offense. It is no defense that the minor solicited was unaware of the criminal nature of the conduct solicited.

(c) A violation of this section shall constitute an offense one (1) classification lower than the most serious crime solicited, unless the offense solicited was a Class E felony, in which case the offense shall be a Class A misdemeanor.

(d) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person solicited the conduct of a minor located in this state, or solicited a law enforcement officer posing as a minor located within this state.

## **APPENDIX B: TITLE IX COORDINATOR AND DEPUTY COORDINATORS**

### **Title IX Coordinator for the Seminary:**

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