**Sexual Offenses**

- **B. Statutory Rape**
- **C. Sexual Assault With An Object**
- **D. Forcible Fondling**

**Sexual battery** is defined in Georgia as: (a) For the purposes of this Code section, the term ‘intimate parts’ means the primary genital area, anus, groin, inner thighs, or buttocks of a male or female and the breasts of a female. (b) A person commits the offense of sexual battery when he or she intentionally makes physical contact with the intimate parts of the body of another person without the consent of that person.” See O.C.G. A. § 16-6-22.1.

**Aggravated sexual battery** is defined in Georgia as: (a) For the purposes of this Code section, the term ‘foreign object’ means any article or instrument other than the sexual organ of a person. (b) A person commits the offense of aggravated sexual battery when he or she intentionally penetrates with a foreign object the sexual organ or anus of another person without the consent of that person.” See O.C.G. A. § 16-6-22.2.

For the purpose of reporting sexual assault in the annual security report, **“Sexual Offenses – Forcible”** is defined as: “Any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent. A. **Forcible Rape**: The carnal knowledge of a person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth). B. **Forcible Sodomy**: Oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity. C. **Sexual Assault With An Object**: The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity. D. **Forcible Fondling**: The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental incapacity.

For the purpose of reporting sexual assault in the annual security report, **“Sexual Offenses – Non-Forcible”** is defined as: “Unlawful, non-forcible sexual intercourse. A. **Incest**: Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. B. **Statutory Rape**: Non-forcible sexual intercourse with a person who is under the statutory age of consent.”

Georgia law does not define “Consent,” but for purposes of Title IX investigations and Student Code of Conduct investigations at Mercer this definition is used.

**Consent**: Consent is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable, clear permission regarding willingness to engage in sexual activity.

- Consent to any one form or condition of sexual activity cannot automatically imply consent to any other forms or conditions of sexual activity.
- Current and/or previous relationships or prior consent cannot imply consent to future sexual acts.
- Consent can be withdrawn at any time.
- In order to give effective consent, one must be of legal age, which is 16 years.
- Someone who is incapacitated cannot give consent.
- Sexual activity with someone known to be – or based on the circumstances, should reasonably have known to be – mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout) constitutes a violation of this policy.
- Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
- This policy also covers a person whose incapacity results from mental disability, sleep, or involuntary physical restraint.
- Coercion, force, or threat of either, invalidates consent (see Force).

**Force**: Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent.

- Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
- There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual.
Domestic Violence:
Georgia law does not define “Domestic Violence,” but Georgia defines “Family Violence” as: “the occurrence of one or more of the following acts between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household:

1. Any felony; or
2. Commission of offenses of battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, or criminal trespass.

The term 'family violence' shall not be deemed to include reasonable discipline administered by a parent to a child in the form of corporal punishment, restraint, or detention.” See O.C.G. A § 19-13-1.

Dating Violence:
Georgia law does not define “Dating Violence,” but the definition of “Family Violence” (above) may cover some dating situations.

For the purpose of reporting dating violence in the annual security report, “Dating Violence” is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and the frequency of interactions between the persons involved in the relationship. See O.C.G. A § 19-13-1.

Stalking:
Georgia law defines “Stalking” as:

1. A person commits the offense of stalking when he or she follows, places under surveillance, or contacts another person at or about a place or places without the consent of the other person for the purpose of harassing and intimidating the other person. For the purpose of this article, the term "place or places" shall include any public or private property occupied by the victim other than the residence of the defendant.

For the purposes of this article, the term "harassing and intimidating" means a knowing and willful course of conduct directed at a specific person which causes emotional distress by placing such person in reasonable fear for such person's safety or the safety of a member of his or her immediate family, by establishing a pattern of harassing and intimidating behavior, and which serves no legitimate purpose. This Code section shall not be construed to require that an overt threat of death or bodily injury has been made.

2. A person commits the offense of stalking when such person, in violation of a bond to keep the peace posted pursuant to Code Section 17-6-610, standing order issued under Code Section 19-1-1, temporary restraining order, temporary protective order, permanent restraining order, permanent protective order, preliminary injunction, or permanent injunction or condition of pretrial release, condition of probation, or condition of parole in effect prohibiting the harassment or intimidation of another person, broadcasts or publishes, including electronic publication, the picture, name, address, or phone number of a person for whose benefit the bond, order, or condition was made and without such person’s consent in such a manner that causes other persons to harass or intimidate such person and the person making the broadcast or publication knew or had reason to believe that such broadcast or publication would cause such person to be harassed or intimidated by others.” See O.C.G. A § 16-5-90.

For the purpose of reporting stalking in the annual security report, “Stalking” is defined as engaging 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 Assault:
Georgia law does not have a single “Sexual Assault” definition, but does define the following crimes that are related to sex:

Rape
Rape is defined in Georgia as: A person commits the offense of rape when he has carnal knowledge of: A female forcibly against her will; or A female who is less than ten years of age. Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ. The fact that the person allegedly raped is the wife of the defendant shall not be a defense to a charge of rape. See O.C.G. A § 16-6-1.

Statutory Rape
Statutory Rape is defined in Georgia as: (a) A person commits the offense of statutory rape when he or she engages in sexual intercourse with any person under the age of 16 years and not his or her spouse, provided that no conviction shall be had for this offense on the unsupported testimony of the victim. See O.C.G. A § 16-6-3.

Sodomy: Aggravated Sodomy
“Aggravated Sodomy” is defined in Georgia as: “(1) A person commits the offense of sodomy when he or she performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another.

(2) A person commits the offense of aggravated sodomy when he or she commits sodomy with force and against the will of the other person or when he or she commits sodomy with a person who is less than ten years of age. The fact that the person allegedly sodomized is the spouse of a defendant shall not be a defense to a charge of aggravated sodomy.” See O.C.G. A § 16-6-2.

“SEXUAL ASSAULT BY PERSONS WITH SUPERVISORY OR DISCIPLINARY AUTHORITY; SEXUAL ASSAULT BY PRACTITIONER OF PSYCHOTHERAPY AGAINST PATIENT” IS DEFINED IN GEORGIA AS:

“(b) A person who has supervisory or disciplinary authority over another individual commits sexual assault when that person:
1. Is a teacher, principal, assistant principal, or other administrator of any school (defined below as pre-kindergarten through 12th grade) and engages in sexual contact with such other individual who the actor knew or should have known is enrolled at the same school, provided, however, that such contact shall not be prohibited when the actor is married to such other individual;
2. Is an employee or agent of any probation or parole office and engages in sexual contact with such other individual who the actor knew or should have known is a probationer or parolee under the supervision of the same probation or parole office;
3. Is an employee or agent of a law enforcement agency and engages in sexual contact with such other individual who the actor knew or should have known is being detained by or is in the custody of any law enforcement agency;
4. Is an employee or agent of a hospital and engages in sexual contact with such other individual who the actor knew or should have known is a patient or is being detained in the same hospital; or
5. Is an employee or agent of a correctional facility, juvenile detention facility, facility providing services to a person with a disability, as such term is defined in Code Section 37-1-1, or a facility providing child welfare and youth services, as such term is defined in Code Section 49-5-3, who engages in sexual contact with such other individual who the actor knew or should have known is in the custody of such facility.”

A person who is an actual or purported practitioner of psychotherapy commits sexual assault when he or she engages in sexual contact with another individual who the actor knew or should have known had been admitted to or is receiving services from such facility or the actor.