

# Prohibited Conduct

## Sexual Misconduct

For purposes of this Policy, conduct that is deemed, by a preponderance of the evidence standard (more likely than not), to meet the definitions of any of the types of sexual misconduct identified in the chart below (whether defined by University Policy, or by state or federal criminal laws), is Prohibited Conduct. In addition, to the extent federal or state criminal laws addressing gender-based conduct that could be deemed Prohibited Conduct are amended, it will be considered a violation of this Policy if an individual engages in such conduct (as proven by a preponderance of the evidence), even if the definitions below have not been updated to reflect the most recent federal or state language.

Sexual misconduct may occur between people of the same or different gender. Sexual misconduct can include both intentional conduct and conduct that results in negative effects, even if those negative effects were unintended. Sexual misconduct can also include retaliation in connection with a Complainant's allegations under this Policy.

## Intimate Partner Violence: Dating Violence

### UAB

Any act of violence or threatened act of violence against a person with whom the individual is or has been involved in a romantic or intimate relationship. This includes threats, assault, property damage, and violence or threat of violence to one's self or to the family members or pets of the romantic or intimate partner when used as a method of coercion, control, punishment, intimidation, or revenge. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

### FED

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

1. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
2. For the purposes of this definition—
  - a. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence 34 C.F.R. § 668.46(a)

## Intimate Partner Violence: Domestic Violence

### UAB

See FED definition.

## FED

1. A felony or misdemeanor crime of violence committed—
  - a. By a current or former spouse or intimate partner of the victim;
  - b. By a person with whom the victim shares a child in common;
  - c. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
  - d. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or
  - e. By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred. 34 C.F.R. § 668.46(a)

## AL

### First Degree Domestic Violence- ALA. CODE § 13A-6-130(a)

A person commits the crime of domestic violence in the first degree if the person commits the crime of assault in the first degree pursuant to Section 13A-6-20 or aggravated stalking pursuant to Section 13A-6-91, and the victim is a current or former spouse, parent, child, any person with whom the defendant has a child in common, a present or former household member, or a person who has or had a dating or engagement relationship with the defendant.

### Second Degree Domestic Violence - ALA. CODE § 13A-6-131(a)

A person commits the crime of domestic violence in the second degree if the person commits the crime of assault in the second degree pursuant to Section 13A-6-21; the crime of intimidating a witness pursuant to Section 13A-10-123; the crime of stalking pursuant to Section 13A-6-90; the crime of burglary in the second or third degree pursuant to Sections 13A-7-6 and 13A-7-7; or the crime of criminal mischief in the first degree pursuant to Section 13A-7-21 and the victim is a current or former spouse, parent, child, any person with whom the defendant has a child in common, a present or former household member, or a person who has or had a dating or engagement relationship with the defendant.

### Third Degree Domestic Violence - ALA. CODE § 13A-6-132(a)

A person commits domestic violence in the third degree if the person commits the crime of assault in the third degree pursuant to Section 13A-6-22; the crime of menacing

pursuant to Section 13A-6-23; the crime of reckless endangerment pursuant to Section 13A-6-24; the crime of criminal coercion pursuant to Section 13A-6-25; the crime of harassment pursuant to subsection (a) of Section 13A-11-8; the crime of criminal surveillance pursuant to Section 13A-11-32; the crime of harassing communications pursuant to subsection (b) of Section 13A-11-8; the crime of criminal trespass in the third degree pursuant to Section 13A-7-4; the crime of criminal mischief in the second or third degree pursuant to Sections 13A-7-22 and 13A-7-23; or the crime of arson in the third degree pursuant to Section 13A-7-43; and the victim is a current or former spouse, parent, child, any person with whom the defendant has a child in common, a present or former household member, or a person who has or had a dating or engagement relationship with the defendant.

## Stalking

### UAB

Course of conduct that may be considered stalking (see FED definition) includes, but is not limited to:

- Following;
- Lying in wait;
- Excess communication, of any type, including any attempts to intentionally and repeatedly make contact with a person over their stated objections for the purposes of harassing or alarming them; or
- Threats to the individual or threats to the individual's family, friends, or property

### FED

Stalking is:

1. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
  - a. Fear for the person's safety or the safety of others; or
  - b. Suffer substantial emotional distress.
2. ii. For the purposes of this definition—
  - a. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
  - b. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
  - c. Substantial emotional distress means significant mental suffering or

anguish that may, but does not necessarily, require medical or other professional treatment or counseling.  
34 C.F.R. § 668.46(a)

## AL

### First Degree Stalking- ALA. CODE § 13A-6-90(a)

A person who intentionally and repeatedly follows or harasses another person and who makes a threat, either expressed or implied, with the intent to place that person in reasonable fear of death or serious bodily harm is guilty of the crime of stalking in the first degree.

### Second Degree Stalking - ALA. CODE § 13A-6-90.1(a)

A person who, acting with an improper purpose, intentionally and repeatedly follows, harasses, telephones, or initiates communication, verbally, electronically, or otherwise, with another person, any member of the other person's immediate family, or any third party with whom the other person is acquainted, and causes material harm to the mental or emotional health of the other person, or causes such person to reasonably fear that his or her employment, business, or career is threatened, and the perpetrator was previously informed to cease that conduct is guilty of the crime of stalking in the second degree.

## Sexual Assault Offenses-Sexual Assault & Sexual Exploitation, Fondling, Incest, Rape & Statutory Rape

### Sexual Assault/Sexual Contact/Sexual Exploitation

#### UAB

**Sexual Assault** means any sexual act directed against another person, forcibly or against that person's will; or, if not forcibly, where the victim is incapable of giving consent. Sexual assault also includes, but is not limited to, non-consensual sexual intercourse or sexual contact, incest rape, including statutory rape, and sexual exploitation.

**Non-consensual sexual intercourse** means any sexual intercourse whether anal, oral, or vaginal (or an attempt to commit the same) however slight, with any object, by a person upon another person, and, without that person's consent or by physical force. Intercourse is vaginal penetration by a penis, object, tongue, or finger; anal penetration by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or

genital to mouth contact).

**Non-consensual sexual contact** means any intentional sexual touching (or an attempt to commit the same), however slight, with any object, by person upon another person, and, without consent or by physical force. Sexual touching is any intentional contact with the breasts, buttocks, groin, or genitals; or touching another with any of these body parts; or making another touch you or themselves with or on any of these body parts; or any intentional bodily contact in a sexual manner not involving these body parts.

**Sexual exploitation** taking non-consensual or abusive sexual advantage of another for one's own advantage or benefit or to benefit a person other than the one being exploited. Examples of sexual exploitation include, but are not limited to:

- Exposing one's genitals in non-consensual circumstances or inducing someone to expose their genitals;
- Exceeding the boundaries of explicit consent, such as allowing friends to hide in a closet to be witness to one's consensual sexual activity;
- Engaging in voyeurism (Peeping Tom) or facilitating the voyeurism of others;
- Non-consensual video or audio recording of sexual activity;
- Prostituting another student; and/or
- Knowingly transmitting a sexually transmitted disease/ infection or HIV to another individual.

## FED

Sexual Assault is an offense that meets the definition of rape, fondling, incest, or statutory rape (see FED definitions below)  
34 C.F.R. § 668.46(a)

## AL

Alabama law includes definitions of the following in its sexual offenses category: rape, sodomy, sexual misconduct, sexual torture, sexual abuse, indecent exposure, enticing a child to enter vehicle, house, etc. for immoral purposes, sexual abuse of a child less than 12 years old. Refer to AL definitions below for those.

### First Degree Sexual Abuse – ALA. CODE § 13A-6-66

1. A person commits the crime of sexual abuse in the first degree if:
  - a. He subjects another person to sexual contact by forcible compulsion; or

- b. He subjects another person to sexual contact who is incapable of consent by reason of being physically helpless or mentally incapacitated.

### Second Degree Sexual Abuse - ALA. CODE § 13A-6-67

1. A person commits the crime of sexual abuse in the second degree if:
  - a. He subjects another person to sexual contact who is incapable of consent by reason of some factor other than being less than 16 years old; or
  - b. He, being 19 years old or older, subjects another person to sexual contact who is less than 16 years old, but more than 12 years old.

### First Degree Sodomy – ALA. CODE § 13A-6-63

1. A person commits the crime of sodomy in the first degree if:
  - a. He engages in deviate sexual intercourse with another person by forcible compulsion; or
  - b. He engages in deviate sexual intercourse with a person who is incapable of consent by reason of being physically helpless or mentally incapacitated; or
  - c. He, being 16 years old or older, engages in deviate sexual intercourse with a person who is less than 12 years old.

### Second Degree Sodomy – ALA. CODE § 13A-6-64

1. A person commits the crime of sodomy in the second degree if:
  - a. He, being 16 years old or older, engages in deviate sexual intercourse with another person less than 16 and more than 12 years old.
  - b. He engages in deviate sexual intercourse with a person who is incapable of consent by reason of being mentally defective.

### Sexual Torture – ALA. CODE § 13A-6-65.1

1. A person commits the crime of sexual torture:
  - a. By penetrating the vagina or anus or mouth of another person with an inanimate object by forcible compulsion with the intent to sexually torture or to sexually abuse.
  - b. By penetrating the vagina or anus or mouth of a person who is incapable of consent by reason of physical helplessness or mental incapacity with an inanimate object, with the intent to sexually torture or to sexually abuse.
  - c. By penetrating the vagina or anus or mouth of a person who is less than 12 years old with an inanimate object, by a person who is 16 years old or older with the intent to sexually torture or to sexually abuse.

### Indecent Exposure - ALA. CODE § 13A-6-68

1. A person commits the crime of indecent exposure if, with intent to arouse or gratify sexual desire of himself or of any person other than his spouse, he exposes his genitals under circumstances in which he knows his conduct is

likely to cause affront or alarm in any public place or on the private premises of another or so near thereto as to be seen from such private premises.

**Enticing Child to Enter Vehicle, House, Etc. for Immoral**

**Purposes** – ALA. CODE § 13A-6-69

1. It shall be unlawful for any person with lascivious intent to entice, allure, persuade, or invite, or attempt to entice, allure, persuade, or invite, any child under 16 years of age to enter any vehicle, room, house, office, or other place for the purpose of proposing to such child the performance of an act of sexual intercourse or an act which constitutes the offense of sodomy or for the purpose of proposing the fondling or feeling of the sexual or genital parts of such child or the breast of such child, or for the purpose of committing an aggravated assault on such child, or for the purpose of proposing that such child fondle or feel the sexual or genital parts of such person.

**Sexual Abuse of a Child Less than 12 Years Old** – ALA. CODE § 13A-6-69.1

1. A person commits the crime of sexual abuse of a child less than 12 years old if he or she, being 16 years old or older, subjects another person who is less than 12 years old to sexual contact.

**School Employee Having Sexual Contact With a Student Under the Age of 19**

**Years** - ALA. CODE § 13A-6-82

1. A person commits the crime of a school employee having sexual contact with a student under the age of 19 years if he or she is a school employee and engaging in sexual contact with a student, regardless of whether the student is male or female. Consent is not a defense to a charge under this section.
2. As used in this section, sexual contact means any touching of the sexual or other intimate parts of a student, done for the purpose of gratifying the sexual desire of either party. The term includes soliciting or harassing a student to perform a sex act.

**Fondling**

**UAB**

See FED definition

**FED**

The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity. 34 C.F.R. § 668.46 Appendix A

**AL**

n/a

**Incest**

**UAB**

See AL & FED definitions

**FED**

Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. 34 C.F.R. § 668.46 Appendix A

**AL**

1. A person commits incest if he marries or engages in sexual intercourse with a person he knows to be, either legitimately or illegitimately:
  - a. His ancestor or descendant by blood or adoption; or
  - b. His brother or sister of the whole or half-blood or by adoption; or
  - c. His stepchild or stepparent, while the marriage creating the relationship exists; or
  - d. His aunt, uncle, nephew or niece of the whole or half-blood.
2. A person shall not be convicted of incest or of an attempt to commit incest upon the uncorroborated testimony of the person with whom the offense is alleged to have been committed. Ala. Code § 13A-13-3

**Rape**

**UAB**

See FED and AL definitions below.

**FED**

The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. 34 C.F.R. § 668.46 Appendix A

**AL**

**First Degree Rape** – ALA. CODE § 13A-6-61

1. A person commits the crime of rape in the first degree if:
  - a. He or she engages in sexual intercourse with a member of the opposite sex by forcible compulsion; or
  - b. He or she engages in sexual intercourse with a member of the opposite sex who is incapable of consent by reason of being physically helpless or mentally incapacitated; or
  - c. He or she, being 16 years or older, engages in sexual intercourse with a member of the opposite sex who is less than 12 years old.

**Second Degree Rape**– ALA. CODE § 13A-6-62

1. A person commits the crime of rape in the second degree if:
  - a. Being 16 years old or older, he or she engages in sexual intercourse with a member of the opposite sex less than 16 and more than 12 years old; provided,

however, the actor is at least two years older than the member of the opposite sex.

- b. He or she engages in sexual intercourse with a member of the opposite sex who is incapable of consent by reason of being mentally defective.

## Statutory Rape

### UAB

See FED and AL definitions

### FED

Sexual intercourse with a person who is under the statutory age of consent.

34 C.F.R. § 668.46 Appendix A

### AL

In Alabama, it is illegal for an adult (someone 18 or older) to have sex with a minor (someone younger than 16), even if the sex is consensual. See AL definition of consent.

## Harassment & Sexual Harassment

### UAB

**Sexual Harassment** is any unwelcome sexual advance, request for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, non-verbal, graphic, physical, or otherwise, when the conditions outlined in (1) and/or (2), below, are present.

**Gender-Based Harassment** includes harassment based on gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when the conditions outlined in (1) and/or (2), below, are present.

1. Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any University programs and/or activities or is used as the basis for University decisions affecting the individual (often referred to as "quid pro quo" harassment); or
2. Such conduct creates a hostile environment. A "hostile environment" exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the University's education or employment programs and/or activities. Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective. In evaluating whether a hostile environment exists, the University will consider the totality of known circumstances, including, but not limited to:

- The frequency, nature and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect of the conduct on the Complainant's mental or emotional state;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether the conduct unreasonably interfered with the Complainant's educational or work performance and/or University programs or activities; and
- Whether the conduct implicates concerns related to academic freedom or protected speech.

A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident, if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. A single incident of Sexual Assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

See: [UAB's Equal Opportunity and Discriminatory Harassment Policy](#), [UAB's Guide for Victims of Sexual Assault](#), and [UAB's Sexual Harassment Guide](#).

### FED

N/A

### AL

N/A

## Retaliation

Retaliation includes threats, intimidation, reprisals, and/or adverse employment or education actions against a person based on their report of Prohibited Conduct or participation in the investigation, report, remedial, or disciplinary process provided for in this Policy.

## Other Important Concepts and Relevant Definitions

**Consent:** Clear, voluntary permission, which cannot be inferred by the absence of verbal or physical resistance. A lack of consent results from forcible compulsion or incapacity to consent.

Forcible compulsion is a physical force or a threat, whether expressed or implied, that places a person in fear of immediate serious physical injury or economic harm to him/herself or a third party.

A person is deemed incapable of providing consent if, at the time of the act, the person:

- is under the age of 16;
- suffers from a mental impairment, whether temporary or permanent, which renders them incapable of appraising the nature of his or her conduct (e.g., age,

disability, or temporary impairment due to drug or alcohol consumption); or

- is physically helpless (e.g., unconscious), asleep, or in a state of shock.

Consent can be withdrawn by either party at any point. Consent must be voluntarily given and may not be valid if a person is being subjected to actions or behaviors that elicit emotional or psychological pressure, intimidation, or fear. Consent to engage in one sexual activity, or past agreement to engage in a particular sexual activity, cannot be presumed to constitute consent to engage in a different sexual activity or to engage again in a sexual activity. For purposes of this Policy, the issue is whether the Respondent knew, or should have known, that the activity in question was not consensual. Engaging in sexual activity with a person who you know to be incapacitated, or reasonably should know to be incapacitated, violates this Policy.

**Incapacitation:** The inability, temporarily or permanently, to give consent because the individual is mentally or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring. With incapacitation, an individual lacks the ability to make informed, rational judgments and cannot consent to sexual activity. Incapacitation may also result from the use of alcohol and/or drugs. The impact of alcohol and other drugs varies from person to person; however, warning signs that a person may be approaching incapacitation or may already be incapacitated include, but not limited to, slurred speech or word confusion, vomiting, stumbling, bloodshot, glassy or unfocused eyes, being disoriented, confusion as to time, place, etc., loss of consciousness, odor of alcohol, combativeness, or emotional volatility.

Evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects an individual's:

- Decision-making ability;
- Awareness of consequences;
- Ability to make informed judgments; or
- Capacity to appreciate the nature and the quality of the act.

Evaluating incapacitation also requires an assessment of whether a Respondent was aware or should have been aware of the Complainant's incapacitation based on objectively and reasonably apparent indications of impairment when viewed from the perspective of a sober, reasonable person in the Respondent's position.

With regard to alcohol, there are multiple levels of effect, along a continuum:

- The lowest level is impairment, which occurs with the ingestion of any alcohol. A synonym for impairment is "under the influence."
- The next level of intoxication, also called drunkenness, is similar to the state's drunk driving limit.
- Incapacity is a higher level of alcohol consumption.
- The highest level is overdose, or alcohol blood poisoning, which may lead to coma or death.

**Student:** Any person who is admitted, or enrolled at the University of Alabama at Birmingham, and is pursuing undergraduate, graduate, or professional studies, including full-time and part-time status, as well as any person attending classes on campus, online or off campus.

- Any person who is not officially enrolled for a particular term, but has a continuing relationship with the University.
- Any person who is admitted and participating in orientation is considered a "student."
- Any person who has completed an academic term and can be reasonably expected to enroll the following term.
- Any person who attended the University during a previous academic term and who committed an alleged violation of the Code during the time of enrollment.

The term "student organization" or "organization" means any group of students that has complied with the University's requirements for registration as a student organization.

**Complainant:** an individual who is reported to be or alleges that they were the victim of an offense that violates this Policy.

**Respondent:** an individual who has been accused of an offense under this Policy or is reported to have violated this Policy.

**Confidential Employee:** (1) Any University employee who is a licensed medical, clinical or mental health professional (e.g. physicians, nurses, physician's assistants, psychologists, psychiatrists, professional counselors and social workers, and those performing services under their supervision), when acting in that professional role in the provision of services to a patient who is a University student ("health care provider"), and (2) any University employee providing administrative, operational and/or related support for such health care providers in the performance of such services. These resources do not report any information about an incident to the Title IX Coordinator without a victim's permission. Off-campus counselors and health care providers will also generally maintain confidentiality and not share information with the University unless the victim requests disclosure and signs a consent or waiver form. However, these resources may have reporting obligations under state or federal law. For instance, healthcare providers and certain other individuals are required to notify law enforcement when a victim seeks treatment for injuries related to a violent crime, including sexual assault. Similarly, all University employees are required to notify law enforcement when they receive a report of sexual abuse of a minor.

**Responsible Employee:** A University employee who has the authority to address sexual misconduct, who has the duty to report incidents of sexual misconduct, or who as a member of the University the Complainant could reasonably believe such individual has such authority or duty.

In addition, the following who, in the course of employment, receive a report of Prohibited Conduct from any other person affiliated with the University shall notify the Title IX Coordinator or designee:

- UAB Police
- UAB Human Resources and Human Resources Partners
- Managers and Supervisors, including Deans, Department Chairs, and Directors
- Faculty
- Resident Advisers

**Preponderance of the Evidence:** This standard of evidence means that an investigation or hearing panel must determine whether a complaint of sex discrimination is “more likely than not” to have occurred. This standard applies for all complaints of sex discrimination, including sexual harassment and violence. This is different than the standard used in criminal complaints, which is considered the highest standard of evidence, “beyond a reasonable doubt.”

**Title IX Coordinator:** University representative charged with ensuring the University’s overall compliance with Title IX and related University Policy.

**Deputy Title IX Coordinators:** individuals located in Student Advocacy Rights and Conduct (Emily Feinstein), Athletics (Derita Ratcliffe), Human Resources (Robert Barnes), and the Office of Diversity, Equity and Inclusion (Dr. Paulette Patterson Dilworth), who are trained to assist students and employees in their departments with complaints or concerns about sexual misconduct, and direct them to the resources they need. They report all complaints and concerns to the Title IX Coordinator, and work closely with the Title IX Coordinator in promptly responding to a person’s concerns. The Deputy Coordinators can help with interim measures that a complainant may need during the investigation of a complaint. The Deputy Title IX Coordinators may serve as a designee for the Title IX Coordinator in any case where there is a conflict of interest that would prohibit the Title IX Coordinator from providing fair and impartial oversight.

**Title IX Investigator:** University official(s) charged with investigating a Title IX complaint.