

Atlanta's John Marshall Law School Policy Against Sexual Misconduct

INTRODUCTION

John Marshall Law School is committed to providing a successful learning and working environment for all members of its community, free from any sexual misconduct or harassment. Sexual Misconduct is unlawful, and clearly inconsistent with the nature of a professional community. The Law School regards such behavior as a violation of the standard of conduct required of all students.

This policy has been developed in accordance with Title IX of the Education Amendments of 1972 to protect students from sex discrimination in educational programs and activities at institutions of higher learning. Sex discrimination is illegal under Title VII of the Civil Rights Act of 1964, Title IX of the Elementary/Secondary Education Act of 1972, and state law. In addition to facing sanctions from the Law School for violation of this policy, a person who engages in sexual misconduct as defined herein may be held personally liable to the victim and subject to sanctions independent of those imposed by the Law School. The Dean of Students shall serve as the contact person for all complaints made by and against John Marshall students under this Policy. All complaints alleging a violation of this policy should be made to the Dean of Students.

Purpose

This policy provides a grievance procedure for students with complaints of sexual misconduct. Sexual misconduct can occur in many forms, including, but not limited to, sexual harassment, domestic violence, intimate partner violence, sexual assault and stalking. This policy applies to all students and all programs affiliated with the Law School, including domestic and international internships and externships and international programs.

Sexual Assault Policy in Georgia

There are five sexual offenses listed in the Criminal Code of Georgia that will be most applicable to students involved in Sexual Misconduct cases. These are Rape, Aggravated Sodomy, Sexual Battery, Aggravated Sexual Battery, and Publication of Name or Identity of Female Raped or Assaulted with Intent to Commit Rape.

However, some students may feel that the legal definitions of sexual offenses in the Georgia Code are not inclusive and/or supportive of their experiences. Therefore, this policy operates independently of the criminal justice system. Should a student wish to pursue a case through the Office of Student Services, there are separate procedures and policies in place.

Where quotation marks are used in this section of the Policy, the language has been taken directly from the Criminal Code of Georgia. You can read the full code online here:

<http://www.lexisnexis.com/hottopics/gacode/>

The State of Georgia's Definitions for Sexual Offenses

16-6-1

Rape

Rape is defined in the Code as a male having "carnal knowledge" of "a female forcibly and against her will." In this instance, carnal knowledge is defined as "penetration of the female sex organ by the male sex organ." The Code recognizes that rape can occur even between spouses so the defendant cannot use the fact that he is married to the person accusing him of rape as a defense.

16-6-2

Aggravated Sodomy

Aggravated sodomy is defined in the Code as when a person performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another. 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. As with a charge of rape, a marital relationship between the defendant and accuser cannot be used as a defense.

16-6-22.1

Sexual Battery

Sexual battery occurs when a person “intentionally makes physical contact with the intimate parts of the body of another person without the consent of that person.” The Code defines “intimate parts” as the “primary genital area, anus, groin, inner thighs, or buttocks of a male or female and the breasts of a female.”

16-6-22.2

Aggravated sexual battery

Aggravated sexual battery occurs when a person “intentionally penetrates with a foreign object the sexual organ or anus of another person without the consent of that person.”

The Code defines “foreign object” as “any article or instrument other than the sexual organ of a person.”

16-6-23

Publication of name or identity of female raped or assaulted with intent to commit rape

Georgia law prohibits the media and members of the public from publishing the identity of any female survivor of rape or attempted rape. The Code specifies that, “it shall be unlawful for any news media or any other person to print and publish, broadcast, televise, or disseminate through any other medium of public dissemination or cause to be printed and published, broadcast, televised, or disseminated in any newspaper, magazine, periodical, or other publication published in this state or through any radio or television broadcast originating in the state the name or identity of any female who may have been raped or upon whom an assault with intent to commit the offense of rape may

have been made.” This section of the Code does not apply to information disclosed in public court documents that are available to the public.

State of Georgia Definitions for Relationship Violent Offenses

What we might consider relationship violence or intimate partner violence is narrowly defined in the Criminal Code of Georgia as “family violence” and requires that a perpetrator and survivor live or have lived together, or have a specific kind of familial relationship. There are, however, other charges that can be brought if the perpetrator and survivor do not live or have not lived together and do not meet the criteria for having a family relationship under the law. This section of this policy includes the legal definition of family violence in Georgia, plus excerpts from other sections of the Code that deal with the forms of interpersonal violence you are most likely to encounter in conduct cases.

O.C.G.A. § 19-13-10

Family Violence

“The term ‘family violence’ means 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.”

O.C.G.A. § 16-5-23

Simple Battery

A person commits simple battery when he or she “intentionally makes physical contact of an insulting or provoking nature” with another person, or “intentionally causes physical harm” to another person.

O.C.G.A. § 16-5-23.1

Battery

A person commits battery when he or she “intentionally causes substantial physical harm or visible bodily harm to another.” The term “visible bodily harm” means harm that someone other than the victim can perceive, and might include but is not limited to “substantially blackened eyes, substantially swollen lips or other facial or body parts, or substantial bruises to body parts.”

O.C.G.A. § 16-5-24

Aggravated Battery

A person commits aggravated battery when “he or she maliciously causes bodily harm to another by depriving him or her of a member of his or her body, by rendering a member of his or her body useless, or by seriously disfiguring his or her body or a member thereof.”

Aggravated battery is classed as a felony in Georgia.

O.C.G.A. § 16-5-20

Simple Assault

A person commits assault when he or she “attempts to commit a violent injury to the person of another” or “commits an act which places another in reasonable apprehension of immediately receiving a violent injury.”

O.C.G.A. § 16-5-21

Aggravated Assault

A person commits aggravated assault when he or she assaults someone with the intent to murder, rape, or rob him or her. In order to be found

guilty of aggravated assault, the person committing the assault must use a deadly weapon or other object, device, or instrument that causes serious bodily injury or is likely to.

Aggravated assault is classed as a felony in Georgia.

O.C.G.A. § 16-5-90

Stalking

A person commits 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.”

In the Code, “contact” is defined as “any communication including without being limited to communication in person, by telephone, by mail, by broadcast, by computer, by computer network, or by any other electronic device.”

“Harassing and intimidating” is defined as “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, and by establishing a pattern of harassing and intimidating behavior, and which serves no legitimate purpose.” The defendant does not have to make a threat of death or bodily injury to be found guilty of stalking.

A person can be convicted of stalking if he or she is found guilty of violating a restraining order, protective order, injunction, or an order to refrain from contact with a certain person as a condition of pretrial release, probation or parole.

A person also commits the offense of stalking when he or she broadcasts or publishes the picture, name, address, or phone number of a person who benefits (i.e.: is supposed to be protected by) such an order or injunction without their consent in a way that causes others to harass or intimidate that person. A person can also be found guilty of stalking if he

or she knew or had reason to believe that publishing another person's personal information would result in harassment or intimidation by others.

O.C.G.A. § 16-5-91

Aggravated Stalking

A person commits aggravated stalking when he or she violates a temporary or permanent restraining or protective order, preliminary or permanent injunction, good behavior bond, or condition of pretrial release, probation, or parole by following, contacting, or placing under surveillance another person for the purpose of harassing or intimidating him or her.

PART TWO: IMPLEMENTATION AND ENFORCEMENT PROCEDURES

If an individual believes he or she has experienced sexual harassment, violence and/or misconduct of any sort, it is particularly important, for the protection of both the complainant and the Law School community, that the incident be reported immediately. If you have an emergency, please call 911. In addition, please contact the AJMLS security office. The AJMLS security office can be reached at 404-380-4240 or by email at security@johnmarshall.edu.

For cases involving non-consensual sexual intercourse, it is particularly important for a complainant to report the incident immediately to the local police. The sooner the assault is reported, the better the chances are for the individual to receive medical attention or other necessary forms of aid. Reporting the incident to the police does not mean the victim must press charges against the assailant, but it does help assure that the individual receives assistance in deciding how to proceed.

Atlanta's John Marshall Law School provides several options for students who believe they have been subjected to sexual misconduct that is prohibited by these guidelines. Any Law School student who has a concern, inquiry, or complaint regarding prohibited misconduct should feel free to seek information and advice concerning the Law

School's policies and guidelines, its formal and informal grievance procedures, and the counseling and other services that the Law School makes available to people who believe they have been subjected to prohibited misconduct or violence.

Retaliation against a person who expresses a complaint in good faith is a violation of state and federal laws and may lead to disciplinary action against offenders. However, anyone who knowingly makes a false or bad faith accusation under this policy will be subject to appropriate sanctions. Complainants and the accused have rights guaranteed by the Federal Constitution, state and federal laws, and by the Law School's policies and procedures. Efforts will be made by the Law School to maintain confidentiality of the matter to the extent possible.

I. PROCEDURES AVAILABLE TO VICTIMS

Every student who is informed about an allegation involving a victim should notify the Dean of Students either directly or through their relevant reporting structure. The victim will be encouraged to seek out immediate medical care, offered counseling support, and provided the opportunity to file an official report with the police and with AJMLS security. If the victim decides to pursue action with the local police, a meeting will be scheduled with the Counselor or the Dean of Students as soon as possible.

A. Investigation and Adjudication

The Dean of Students is primarily responsible for coordinating a response to a complaint of a possible violation of this policy, directly overseeing the investigation and the adjudication of complaints, and coordinating possible remedial actions or other responses designed to reasonably minimize the reoccurrence of the alleged conduct and mitigate the effects of the harassment. The Dean of Students will ensure prompt, fair, and impartial investigations and resolutions of complaints alleging violations of this policy. In most cases, an investigation will be completed within 60 days; however, a longer period may

be needed in some more complex cases. When conducting the investigation, the Law School's primary focus will be on addressing the misconduct and not on other policy violations that may be discovered or disclosed.

The filing of a misconduct complaint under this policy is independent of any criminal investigation or proceeding, and except in cases where it is determined that a conduct proceeding might impede a criminal investigation or otherwise not be in the best interest of the law enforcement agency or the victim, an investigation by the law school will not wait for the conclusion of any criminal proceedings to commence its own investigation and to take needed interim measures.

B. Investigation of a Complaint and Notice of Charges of Alleged Policy Violation

The Dean of Students will examine or appoint an investigator to examine each complaint received. The investigator will conduct a prompt, thorough, and impartial investigation of the complaint. The investigation may involve interviews of a victim, an alleged offender, or witnesses; collection of documents or other physical/electronic information; and other appropriate steps in conducting an investigation. Individuals who are interviewed during the investigation will be advised that the matter is confidential and that retaliation is prohibited by this Policy. A victim and alleged offender may both provide information and suggestions to an investigator during the investigation, but the investigator has independent authority to conduct an investigation as best determined by the investigator. Neither a victim nor alleged offender, or anyone on behalf of a victim or alleged offender, is permitted to engage in any independent investigative activity that involves contacting individuals associated with the investigation and adjudication.

At the conclusion of the review, the investigator will submit a written Report of Findings to the Dean of Students detailing the information that was collected. The Dean of Students may ask further clarifying questions of the victim, alleged offender, or witnesses to supplement the Report of Findings.

The Dean of Students shall review the Report of Findings and determine whether there is sufficient information to support charging a student with a violation of this Policy. If a determination is made that the available information will not support a violation, then the alleged offender will not be charged. If the Dean of Students determines that there is sufficient information that an alleged offender may have committed a violation of this Policy, then within 7 days after the Report of Findings is completed or supplemented, a written "Notice of Charges of Policy Violation" ("Notice of Charges") will be provided to the alleged offender and the victim with summary information that supports the charge(s).

C. Input from the Victim Regarding Method of Resolution

Early on in the investigation, the Dean of Students will seek to determine how the victim wishes to proceed – whether the victim wishes to pursue a formal resolution, seeks to resolve the allegation informally, or does not wish to pursue resolution of any kind.

1. If the victim wishes to proceed with a formal resolution and the Dean of Students determines there is sufficient information to proceed with a disciplinary process, then a hearing will be conducted as outlined in Section IV of Procedural Rule 12 of the Code of Student Responsibility.
2. If the victim wishes to proceed with an informal resolution, the Dean of Students may elect to initiate an informal resolution process. However, a victim (i)

should never be required to work out a problem or resolve an issue directly with the alleged offender without school involvement; (ii) must be advised of the right to end the informal process at any time and to begin to pursue a formal complaint process; and (iii) should be notified that mediation is not appropriate, even on a voluntary basis, for sexual assault allegations. Additionally, a victim and alleged offender must mutually consent to use of the informal resolution. The Dean of Students may elect not to pursue an informal resolution process if it is deemed not to be in the best interest of the involved parties or in the best interest of the Law School.

3. Even if the victim does not wish to pursue resolution, requests that no action be taken or requests that the identity of the victim remain confidential, the Law School has an obligation to respond to reports of sexual misconduct. The Law School's ability to respond may be limited if a complainant wishes to remain anonymous. Also, no guarantees can be made to a victim regarding confidentiality. A victim's request regarding the confidentiality of reports of sexual misconduct will be considered in determining an appropriate response; however, such a request will be considered in the dual contexts of the Law School's legal obligation to ensure a learning environment free from sexual misconduct and the due process rights of the alleged offender to be informed of the allegations and their source. Some level of disclosure may be necessary to ensure a complete and fair investigation, although the Law School will comply with requests for confidentiality to the extent possible. The victim's request may be weighed against the following factors in considering how to respond: the seriousness of the alleged sexual misconduct, the victim's age, whether there have been other complaints of sexual misconduct against the same alleged offender, and the alleged offender's right to receive information about

the allegations if the information is maintained by the Law School as an “Education Record” under the Family Educational Rights and Privacy Act (FERPA).

D. Authority to Impose Interim Restrictions

During the investigation and until resolution of matter, the Dean of Students may issue interim restrictions, including, but not limited to the following: no-contact or stay away orders between the victim and alleged offender, interim suspension, or exclusion from areas of campus, among other measures. Interim measures should not be construed to suggest that any decision has been made about the merits of the case.

E. Acceptance of Responsibility

Within five days after receipt of the “Notice of Charges,” the alleged offender will have an opportunity to accept or not accept responsibility for the charge(s). If an alleged offender is charged and accepts responsibility for having violated this policy, the Dean of Students will determine the appropriate sanction within five days and send written notification of the sanction imposed and the appeal process to the victim and alleged offender. The sanction determination is appealable to the Dean within seven days of the notice of sanction. The Dean’s determination shall be final and not appealable.

F. Hearing Procedures

If an investigation supports moving forward with a hearing and the alleged offender does not accept responsibility for the alleged conduct, the Dean of Students will refer the matter to the disciplinary hearing panel, so the panel can determine if the alleged offender is responsible for the violations alleged. The Dean will appoint one member of the panel as its Presiding Member. As set forth in section III Organizational Rule 1 of the Code of Student Responsibility,

the Presiding Member will select the date, time, and location of the hearing, and will provide notice to all parties.

All proceedings will be conducted promptly, fairly and impartially. Such proceedings will be conducted by officials who receive annual training on issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

The Disciplinary Hearing Panel:

The Dean annually shall appoint a Disciplinary Hearing Panel (“Hearing Panel”) consisting of three faculty members and two student members. The Dean shall designate one of the faculty members to serve as Presiding Member. The Presiding Member is entitled to vote. The functions of the Hearing Panel include conducting hearings on alleged violations of this Policy and to perform other functions assigned under the Procedural Rules of the Code of Student Responsibility.

The Dean annually shall appoint a faculty member to serve as Presenting Counsel. The functions of Presenting Counsel include investigating complaints of alleged violations of this policy; preparing specifications of charges; presenting to the Hearing Panel evidence and arguments relevant to charges set forth in a specification of charges; filing briefs and making arguments, as appropriate, in cases before the Appeals Panel; and performing other functions assigned under the Procedural Rules set forth in the Code of Student Responsibility. The Dean may from time to time assign additional persons to assist the Presenting Counsel in handling a heavy caseload.

The Dean annually shall appoint a faculty member to serve as Defense Adviser. The Defense Adviser shall provide information about proceedings under the Code of Student Responsibility. As a matter of discretion in particular cases,

the Defense Adviser may advise a student who has been charged with a violation of this policy. However, the Defense Adviser shall not represent any student in proceedings under the Code of Student Responsibility. Any student charged with or alleging a violation of this Policy may have an advisor of their choice accompany the student to any proceeding involving alleged sexual misconduct or to any related meeting.

The Dean annually shall appoint three faculty members to a Faculty Pool and three students to a Student Pool. A member of the Faculty Pool or Student Pool shall serve *pro tempore* on either the Hearing Panel or the Appeals Panel when selected in accordance with the provisions of Procedural Rule 10(a)-(b) or 18(d) of the Code of the Student Responsibility or when a regular member of either Panel is otherwise unable to serve. When a member of the Faculty Pool or Student Pool is selected to serve *pro tempore* on either Panel, the Dean shall replace that member with a new appointee to the appropriate Pool.

No person shall serve simultaneously in more than one position on the Hearing Panel, on the Appeals Panel, in the Pools, as Presenting Counsel, or as Defense Adviser, and those bodies and offices shall observe strict separation of functions. No one shall communicate *ex parte* about any pending adjudicative matter with any member of the Hearing Panel or Appeals Panel, except that Presenting Counsel, the Defense Adviser, and a respondent (or respondent's representative) may discuss procedural matters with the Presiding Member of the Hearing Panel or of the Appeals Panel, as appropriate.

Hearing Procedures:

1. Complaint - Any member of the Law School community may complain in writing to the Dean of Students of a suspected violation of this Policy.

2. Disposition by Agreement - The Dean of Students may confer with the student charged and make such disposition as they may agree upon.
3. Referral to Presenting Counsel - If the Dean of Students considers that the complaint on its face charges a violation of this Policy, then the Dean of Students shall refer the complaint to the Presenting Counsel if the matter is not disposed of by agreement. Both the student charged (the "respondent") and the Defense Adviser shall be promptly notified of this action and given a copy of the written complaint.
4. Investigation by Presenting Counsel - After a referral under Section 3, Presenting Counsel shall investigate the complaint. Presenting Counsel is not required to interview the respondent but shall consider any timely written submission that the respondent may elect to make. The nature and scope of Presenting Counsel's investigation is within Presenting Counsel's discretion and is not subject to review.
5. Representation of Respondent - After a referral under Section 3, the Defense Adviser shall promptly communicate with the respondent and inform the respondent of the Defense Adviser's functions. Throughout all proceedings under these Rules, the respondent shall have the right to independent representation by a representative of the respondent's choice. The Law School has no obligation to provide representation. (All references herein to the respondent include, where appropriate, the respondent's representative.)
6. Determination by Presenting Counsel - If, on the basis of investigation under Section 4, Presenting Counsel determines:

(a) in consultation with the Dean of Students, that the complaint should be disposed of under P.R. 2, the complaint shall be referred back to the Dean of Students for that purpose;

(b) that there is not probable cause to believe that the respondent violated this policy, the complaint shall be referred back to the Dean of Students with an explanation of Presenting Counsel's determination; or

(c) that there is probable cause to believe that the respondent violated this policy, Presenting Counsel shall prepare a specification of charges.

7. Specification of Charges - A specification of charges shall contain a short and plain statement of the charge or charges. A specification of charges may include more than one charge and more than one respondent where joinder is fair and convenient. (When two or more respondents are joined, all references herein to the respondent include each respondent.)
8. Filing and Service of Specification of Charges - Presenting Counsel shall file the specification of charges with the Presiding Member of the Hearing Panel and shall deliver a copy to the respondent. If hand delivery is not practicable, first-class mail to the address listed by respondent on the official records of the Law School is sufficient.
9. Pre-hearing Conference - Promptly after the filing and service of a specification of charges, and from time to time thereafter as may be appropriate, the Presiding Member of the Hearing Panel shall convene a pre-hearing conference to be conducted as follows:
 - (a) The purposes of a pre-hearing conference include determining the composition of

the Hearing Panel, scheduling the hearing, determining whether the hearing will be open or closed, discussing hearing preparation, and taking whatever further steps may be appropriate to simplify the issues and expedite the hearing.

- (b) A pre-hearing conference shall be conducted in person, by telephone conference call, or by any other convenient medium of communication as determined by the Presiding Member.
- (c) If the respondent admits the truth of the specification of charges, the hearing may be confined to determining the recommendation of discipline.
- (d) The Presiding Member shall endeavor to facilitate agreement as to all matters that may arise at a pre-hearing conference but in the absence of agreement, the Presiding Member shall make all necessary orders to promote a just, speedy, and inexpensive determination of the proceedings. Substantive challenges to the legality of the proceedings or the sufficiency of the specification of charges shall be postponed to the hearing on the merits unless the Presiding Member determines that a different procedure would be appropriate.
- (e) The respondent, respondent's representative, and the Presenting Counsel shall be notified and shall be entitled to participate in any pre-hearing

conference. The Defense Adviser may attend if requested by the respondent.

10. Composition of the Hearing Panel. The charges set forth in a specification of charges shall be heard and determined by the Hearing Panel, the composition of which shall be adjusted as appropriate in each case as follows:

- (a) Upon the timely filing of an affidavit swearing to specific facts establishing that a member of the Hearing Panel, because of personal bias or prejudice, cannot fairly sit, that member shall be excused. In cases of dispute, the Presiding Member shall determine the sufficiency of any such affidavit. In the event that an affidavit challenges the Presiding Member, one of the two remaining faculty members of the Hearing Panel shall be selected by lot to serve as Presiding Member *pro tempore* for the purpose of determining the sufficiency of the affidavit and for the purpose of continuing to act as Presiding Member in the event that the regular Presiding Member is excused. Any member excused for cause shall be replaced by a member *pro tempore* drawn by lot from the Pool corresponding to the excused member's affiliation.
- (b) The respondent may peremptorily excuse up to two members of the Hearing Panel, but not including the Presiding Member. Any peremptorily excused member shall be replaced by a member *pro tempore* drawn by lot by the Presiding Member

from the Pool corresponding to the excused member's affiliation.

- (c) The respondent is not entitled to *voir dire* the Hearing Panel.
- (d) All references to the Presiding Member or the Hearing Panel include, as appropriate, persons serving in a particular case *pro tempore* because of the application of this rule.

11. Hearing Preparation. There is no formal discovery. Presenting Counsel and the respondent shall disclose to one another the evidence upon which the charges or the defense are based to the extent necessary to avoid unfair surprise.

12. Hearing. The hearing shall be conducted as follows:

- (a) The hearing shall be closed unless the respondent timely requested an open hearing and in writing consented to the disclosure of the respondent's education records to the extent required for such a hearing.
- (b) All members of the Hearing Panel shall be present at all times unless the respondent and Presenting Counsel by stipulation agree that a member may be absent. The hearing may be recessed from time to time.
- (c) The Presiding Member shall conduct the hearing and shall rule on all procedural and evidentiary questions. The Presiding Member shall refer all substantive

questions to the Hearing Panel, whose rulings shall be determined by majority vote.

- (d) The stages of the hearing and of the examination of witnesses shall follow the sequence generally observed in Georgia non-jury trial practice.
- (e) Except for rules of testimonial privilege recognized in Georgia, formal rules of evidence do not apply, and all relevant evidence is admissible except evidence whose probative value is outweighed by the danger of unfair prejudice, confusion of issues, or waste of time.

For purposes of this paragraph:

1. Communications between a student (or a student's representative) and the Defense Adviser and communications between the respondent and the respondent's representative are privileged to the same extent as communications between a client and a lawyer; and
 2. The immunity of newsmen from citation for contempt is not a testimonial privilege.
- (f) All witnesses shall testify under oath or affirmation.
 - (g) The respondent is entitled to cross-examine witnesses, to call witnesses, and otherwise to introduce evidence.

- (h) The respondent has no privilege not to testify and shall testify if called upon to do so.
- (i) Members of the Hearing Panel may ask questions of witnesses.
- (j) Unless otherwise stipulated, an audio or video tape recording of the proceedings shall be made, but no transcript will be prepared unless specifically ordered by either the Presiding Member or the Appeals Panel. Respondent or the alleged victim may arrange for copies of the recording or for the attendance of a stenographic reporter at their own expense. In the absence of a stenographic reporter or other person authorized to administer oaths, the Presiding Member shall swear or affirm all witnesses and mark and preserve all exhibits.

13. Deliberation and Determination - Immediately after the hearing, the Hearing Panel shall deliberate privately and decide whether each charge in the specification of charges has been sustained by the evidence. The Hearing Panel may return a verdict as to any charge only upon the concurrence of three or more members. In order to find a charge sustained by the evidence, the presumption of innocence must be overcome by strong proof of guilt. Proof beyond a reasonable doubt is not required, but a bare preponderance of the evidence is not enough. Except as otherwise provided by this Code, deliberations of the Hearing Panel are confidential.

14. Statement of Decision - The Hearing Panel shall prepare and adopt a statement of decision, which shall summarize the charges and state the Hearing

Panel's decision as to each charge and may briefly state the evidentiary basis for each decision. Detailed findings of fact are not required. Copies of the statement of decision shall be served on the respondent and Presenting Counsel.

15. Determination of Discipline. If the statement of decision finds any of the charges to be sustained by the evidence, the Hearing Panel shall then take steps to determine appropriate discipline as follows:
 - (a) The Presiding Member shall first confer with the respondent and Presenting Counsel to determine what further proceedings are required. Either party is entitled upon request to a hearing for the purpose of presenting evidence and making arguments as to appropriate discipline. The hearing shall set procedures to the extent practicable.
 - (b) At least three members of the Hearing Panel must concur in the determination of discipline, which shall be set forth in writing. Expulsion shall not be imposed unless at least four members of the Hearing Panel concur in the determination.
 - (c) When adopting its determination of discipline, the Hearing Panel may, upon the concurrence of three or more members, amend the statement of decision.

16. Final Judgment. The statement of decision together with the determination of discipline (if any) shall constitute the final judgment of the Hearing Panel. The Presiding Member of the Hearing Panel shall deliver the final judgment of the Hearing Panel to the Dean of Students and shall cause copies to be delivered promptly to the respondent, Presenting Counsel, the Presiding Member of the Appeals Panel,

and all full-time members of the Faculty of the rank of Assistant Professor or above. Except for typographic errors, the Hearing Panel has no jurisdiction to change a final judgment unless authorized by the Appeals Panel.

G. Appeals

The Dean annually shall appoint a Disciplinary Appeals Panel (“Appeals Panel”) consisting of four faculty members and one student member. The Dean shall designate one of the faculty members to serve as Presiding Member. The Presiding Member is entitled to vote. The functions of the Appeals Panel are to hear and determine appeals from judgments of the Hearing Panel and to perform other functions assigned under the Procedural Rules.

1. Appeal From Final Judgment - The final judgment becomes conclusive on the tenth day (excluding Sundays and holidays observed by the Law School) after it is delivered to the Dean of Students and served upon the respondent unless an interested person within the ten-day period files with the Presiding Member of the Appeals Panel a written notice of appeal specifying the issues as to which review is sought. For good cause shown, the Presiding Member of the Appeals Panel may extend the time for filing a notice of appeal. Interested persons include the respondent, Presenting Counsel, and all full-time members of the Faculty of the rank of Assistant Professor or above. The Presenting Counsel may not seek review of the sufficiency of the evidence to support a decision that a charge was not sustained by the evidence. A member of the Faculty who is not otherwise interested may seek review only of the discipline imposed.
2. Procedure on Appeal - If a timely notice of appeal is filed, the Appeals Panel shall proceed as follows:

- (a) The Presiding Member of the Appeals Panel, in consultation with other members of the Appeals Panel and other interested persons, shall establish a briefing schedule and shall notify all interested persons of the schedule and of the issues as to which review has been sought.
- (b) The Presiding Member of the Hearing Panel shall promptly deliver to the Appeals Panel the complete record of its proceedings, which shall be made available to all interested persons. The record shall include the specification of charges, the recording or transcript of the hearing, exhibits received in evidence or otherwise made a part of the record at the hearing, the statement of decision and determination of discipline.
- (c) Interested persons who wish to participate in the appeal shall so inform the Presiding Member of the Appeals Panel so that copies of all briefs may be made available to all participants.
- (d) The Presiding Member of the Appeals Panel may (and, if requested by either the respondent or Presenting Counsel, shall) schedule a hearing for oral argument after the conclusion of the briefing schedule. The Presiding Member may make such other and further orders as may be necessary for a just, speedy, and inexpensive review of the final judgment of the Hearing Panel. P.R. 10(a), adapted as may be necessary for application to the Appeals Panel, shall be employed for the purposes of excusing for cause any member of the Appeals Panel and replacing any member of the Appeals Panel who is

excused for cause or who is otherwise unable to serve.

3. Decision by Appeals Panel - The Appeals Panel shall review the final judgment of the Hearing Panel on the basis of the record and shall not receive additional evidence. The Appeals Panel shall affirm, reverse, modify, or remand to the Hearing Panel for further proceedings according to the dictates of the case and subject to the following requirements:
 - (a) The Hearing Panel's factual determinations are conclusive if supported by substantial evidence.
 - (b) Harmless procedural errors shall not be grounds for reversal.
 - (c) The determination of discipline shall be modified only if the Appeals Panel finds that a different discipline would be clearly preferable in the light of all the facts and circumstances and in view of the purposes of the Code of Student Responsibility and the Campus Save Act.
 - (d) The Presiding Member of the Appeals Panel shall deliver the decision of the Appeals Panel to the Dean of Students and shall cause copies to be delivered promptly to the respondent, Presenting Counsel, and all full-time members of the Faculty of the rank of Lecturer or above.
 - (e) If the decision of the Appeals Panel directs that the proceedings be remanded to the Hearing Panel, the Hearing Panel shall promptly comply with the Appeals Panel's decision. Otherwise, the decision of the Appeals Panel shall be the final determination of the proceedings by the Law School.

H. What To Do If You Have Been Assaulted

Exercising your rights under this policy is one option you have available if you have been sexually assaulted. It is also recommended that you do the following:

- Find a safe environment — anywhere away from the attacker.
- Get medical attention - Even though there may be no physical injuries, it is important to get a checkup because there may be internal injuries that are not visible. It is also important to get tested for sexually transmitted infections (STI's) and pregnancy.
- Write down all the details you can recall about the attack and the attacker.
- Preserve the evidence – After trauma, the first thing you might want to do is shower and erase the physical traces of the assault. Unfortunately, physical evidence is important for criminal justice. It is recommended that you do not bathe, shower, douche, change clothes, brush your teeth, chew gum, eat or drink anything. If you are considering reporting, ask the hospital to conduct a rape kit exam. Rape kits must be collected within 72 hours of the assault. This will help to preserve the evidence if you choose to report the incident, now or later. If you do ask for a rape kit, they are required by law to investigate the assault. If you do choose to change clothes, store them in a paper bag as plastic can break down the DNA evidence. If you suspect you may have been drugged, ask that a urine sample be collected. The sample will need to be analyzed by a forensic lab.
- Know that what happened was not your fault and that now you should do what is best for you. Recognize that healing from rape takes time. Give yourself the time you need.
- Know that it is never too late to call. Even if the attack happened years ago, the National Sexual Assault Hotline can still help. Many victims do not realize they need help until months or years later.
- Report the attack to police by calling 911. A counselor on the National Sexual Assault Hotline at 1.800.656.HOPE can help you understand the process.

- If you know that you will never report, still consider calling the National Sexual Assault Hotline, operated by RAINN, for free, confidential counseling, 24 hours a day: 1.800.656.HOPE.

I. Reporting Options

While the Law School encourages students to report violations of this policy, students are not required to report the violation through campus/local police or the Office of Student Services to receive support services. Assistance is available to help students determine the best reporting option.

To file a confidential report, contact any of the following offices:

- The Office of the Dean of Students
1422 West Peachtree Street, 2nd Floor
Atlanta, GA 30309
Office: 404-872-3593 ext. 112
sharrison@johnmarshall.edu
- The Women's Resource Center
24-Hour Hotline: (404) 688-9436
Community Office: (404) 370-7670
Email: info@wrcdv.org
Website: www.wrcdv.org
- The Counseling Center, Inc.
3166 Cherokee St., Suite 202
Kennesaw, GA 30144
Phone: 770-427-8511
Email: ddpkx1@att.net
Website:
www.thecounselingcenterhomeofpatriciastamps.com

J. Filing a Complaint with a Government Agency

Any victim who believes that he or she has been subjected to sexual misconduct may file a formal complaint with either or

both of the government agencies set forth below. Using this Policy does not prohibit any victim from filing a complaint with these agencies:

1. United States Equal Employment Opportunity Commission (EEOC)
JFK Federal Building Room 475
Government Center
Boston, MA 02203
1 800 669 4000

2. Office for Civil Rights (Regional Office)
U.S. Department of Health and Human Services
Sam Nunn Atlanta Federal Center, Suite 16T70
61 Forsyth Street, Atlanta, GA 30303-8909
(800) 368-1019

K. Support Services and Options for Students

A variety of support services are available on campus and in the community for victims of sexual misconduct. In addition to the local police department, some services offered to victims in the local community include:

- Atlanta Volunteer Lawyers Foundation:
Suite 1750 North Tower
235 Peachtree Street, N.E.
Atlanta, GA 30303
Main: (404) 521-0790

Direct Contact: Elizabeth Whipple, Esq., Director of Domestic Violence Project's Safe Families Office
lwhipple@avlf.org Direct: (404) 612-4316

- Care and Counseling Center of Georgia – (404) 636-1457
- Atlanta Counseling Center – (770) 396-0232
- Partnership Against Domestic Violence Crisis Line – (404) 873-1766
- International Women's House – (770) 413-5557

- Women’s Resource Center to End Domestic Violence – (404) 688-9436
- Grady Rape Crisis Center – (404) 616-4861
- DeKalb Rape Crisis Center - (404) 377-1428
- The Center for Disease Control and Prevention (CDC) has a Rape Prevention and Education Program (RPE) and violence education tools that are fully accessible via the CDC website.
[http://www.cdc.gov/violenceprevention/intimatepartneviolence/teen dating violence.html](http://www.cdc.gov/violenceprevention/intimatepartneviolence/teen%20dating%20violence.html)
- National Criminal Justice Reference Service
<http://www.ncjrs.gov/teendatingviolence/>
- The Victimsofcrime.org website contains informational webinars on stalking.
<http://www.victimsofcrime.org/our-programs/stalking-resource-center>
- DOJ’s Office on Violence Against Women
<http://www.ovw.usdoj.gov/publications.html>

L. Self-Help Advice on Establishing/Defending Cases Involving a Temporary Protective Order

We recommend that all persons hire an attorney or seek legal counsel through one of the local agencies that provide legal assistance. If you cannot hire an attorney consider going to court to review proceedings well in advance of your hearing date.

There are two ways to get a 6-12 month Temporary Protective Order (TPO) in Georgia.

1. **Consent:** Both parties agree that a TPO be issued and agree to the conditions of the TPO. We do not recommend that parties involved in a violent relationship attempt to mediate the case between them. Consent is appropriate only if the parties are represented by counsel.
2. **Hearing:** For a judge to issue a TPO the petitioner has to prove two things:

- a. The respondent committed an act of violence in the past, such as battery, assault, unlawful restraint, criminal trespass, stalking, criminal damage to property, or a felony; and
- b. The respondent is reasonably likely to commit an act of violence in the future.

The respondent will likely try to prove that these events did not occur or that it is unlikely that an act of violence will occur again. Or in the alternative, if the respondent filed a counterclaim, which the events alleged in the counterclaim occurred. A counterclaim has the same burden of proof as the original petition.

If the petitioner and respondent are unable to consent to the TPO and the petitioner chooses to have a hearing then the following information will help each party establish his/her case for a TPO at the hearing.

Petitioner has the burden to prove to the court, by a preponderance of the evidence, that it should grant the TPO. In other words, it is up to the petitioner to convince the judge that the respondent acted violently towards the petitioner, caused the petitioner to reasonably fear for her/his safety, and that the respondent may reasonably be expected to act violently again.

Alternatively, the respondent may try to prove that the petitioner was violent, or the cause of the violence.

The victim or petitioner goes first. During the victim's testimony, the victim should provide the following:

the victim's name, the batterer's name, and their relationship.

The relationship between the victim and the batterer must be one of the following to establish **domestic** violence:

1. Past or present spouses.
2. Parents of the same child.
3. Parent and child.
4. Step-parent and step-child.
5. Foster parent and foster child.
6. Persons living or formerly living in the same house.

If you are trying to get protection in a sexual violence case, from a boyfriend you do not live with for example, you do not need to be in one of the six relationships listed above.

If jurisdiction is an issue, state the batterer's address including the county. Start by describing the most recent threat or act of violence. You should also provide the following information:

1. The date and time of the incident.
2. A list of witnesses (people present during the misconduct). The victim cannot testify to what other people saw or heard but witness can be asked to testify. You should subpoena your witnesses to court. Subpoenas are available in the clerk's office.
3. Statements made by the victim and the respondent.
4. A description of all physical contact.
5. A description of all bruises, injuries, or property damage caused by the physical contact.
6. Pictures that are relevant along with the date and time that they were taken.

7. An explanation of how you got any pictures that are included.
8. The name of the person who took any pictures you included and a statement on the accuracy of the photos.
9. Relevant medical records. If you went to the hospital, medical records have to be certified in order to show them to the judge. Contact the hospital you visited to obtain a certified copy of your medical records.
10. A description of two other threats or acts of violence that happened close in time to the most recent act or threat of violence described above.
11. The same information listed above for each incident of misconduct.
12. A summary of the facts connected with the factors and history of violence that you listed on your petition.
13. A statement explaining to the judge why you think you need a TPO.

Police officer's testimony: If the police were called and you want the officer to testify to what he/she saw then you have to give the officer a witness subpoena signed by the clerk at the courthouse. Other helpful information on acquiring information from a police officer is listed below.

1. Make sure the officer receives the witness subpoena at least 24 hours before the hearing.

2. Also, give the officer a subpoena for the production of documents if you want him to bring the pictures he took to the hearing. To give the pictures to the judge, the officer has to provide the same information about the pictures that the victim would have to provide if she/he were trying to show the pictures to the judge.
3. Ask the officer to describe what the officer saw and heard. The police report may be considered inadmissible hearsay.
4. Determine whether the officer reached a determination that a violent act had occurred.
5. Find out who the officer determined to be the primary aggressor.

Witness testimony should include the following:

1. Name and relationship to the parties.
2. Date she/he witnessed violence, injuries, or property damage
3. Description of what she/he witnessed.

Tips - Questioning Witnesses on the Stand:

1. Witnesses can only testify to matters of which they have personal knowledge. For example, Witness X cannot testify that Jane Doe told witness X that Jane Doe saw the respondent push the petitioner. However, Jane Doe can testify to what she saw.
2. You cannot ask your own witness leading questions. Leading questions are questions that strongly suggest an answer or are likely to supply a false memory. For example, instead of asking the

witness “Did you see John Doe hit Jane Doe on March 10, 2003,” ask the witness “What did you see on March 10, 2003?”

Financial Affidavit:

1. Petitioner and respondent should complete the Domestic Relations Financial Affidavit, which can be obtained from the Clerk of Superior Court.
2. Have the financial affidavit notarized. The attendant at the information desk when you first come into the courthouse can notarize the affidavit. You will need picture identification.
3. Provide information that is accurate. Do NOT guess!
4. Bring check stubs, receipts, and any documentation you have to verify the financial information you provided if you are questioned.
5. Bring the original affidavit and two copies. The petitioner should give the original to the judge, one copy to the respondent, and keep one his/her records.

Parties and/or their lawyers should go to <http://www.georgiacourts.org/csc> to find the proper electronic worksheet. Parents, lawyers, mediators, and other professionals should use *The Practitioner's Electronic Worksheet.*; Anyone can use *The Downloadable Electronic Worksheet.*; Alternatively, go to <https://www.services.georgia.gov/dhr/cspp/do/public/SupportCalc> to find your proper electronic worksheet.1

- Information taken from padv.org