

Southern Adventist University

Sexual Misconduct Policy

1. Introduction

As a Seventh-day Adventist educational institution, Southern Adventist University is committed to promoting a campus environment where sexual misconduct is not tolerated and where victims of sexual misconduct of all kinds are provided support and avenues of correction as appropriate. Many activities prohibited by Southern's Sexual Misconduct Policy are unlawful, and all are antithetical to the mission of the university. Therefore, Southern takes reasonable and appropriate remedial action to prevent sexual misconduct; to eliminate any hostile environment, including retaliation; to prevent its recurrence; and to correct its discriminatory effects on the Complainant and others, if applicable. Students or employees who violate this policy are subject to discipline, which may include dismissal from Southern, termination from employment, and/or criminal prosecution.

This policy applies to all Southern faculty/staff and students during all twelve months of a calendar year and is enforced whether or not the misconduct occurs on this campus. That is, the policy governs the behavior of Southern faculty/staff and students who are involved in long- or short-term mission or evangelistic projects; Adventist Colleges Abroad (ACA); off-campus internships or externships; nursing clinicals; extension campuses, such as Rosario Beach; and any other Southern-sanctioned program. Moreover, Southern faculty/staff and students are expected to conduct themselves in a manner consistent with both Christian decorum and this policy even when not involved in Southern-sponsored activities.

Conduct prohibited by this policy does not generally include teasing, offhand comments, or isolated incidents. Rather, conduct that rises to the level prohibited by this policy is unwelcome gender-based, verbal or physical conduct that is sufficiently severe, persistent, or pervasive to unreasonably interfere with someone's ability to perform job duties or to participate in or benefit from Southern's education program and activities.

Conduct that violates this policy may result from actions that threaten a student or any employee in any Southern-related setting, whether it is conduct between students, between employees, between employees and students, or between employees/students and visitors to our campus. Any Southern student, staff member, faculty member, or third party participating in any Southern program or activity who wishes to report a complaint of sexual misconduct against a Southern student or employee may do so at any time.

Southern's process to address cases of alleged sexual misconduct is designed to:

- Consider the rights of the Complainant, the rights of the Respondent, the safety of the community, and applicable laws and university policies;
- Conduct a timely, thorough, fair, impartial, and equitable investigation and adjudication process with respect for all involved parties;

- Protect the privacy of all parties to the extent practical, while balancing the need to perform an investigation, follow the procedures outlined below, comply with applicable law, and maintain campus safety;
- Hold all students and employees found to have violated Southern policies accountable for their actions and provide appropriate remedies to address the discriminatory effects of sexual misconduct on the Complainant and others.

The parties are provided procedural rights as outlined in this policy. Since the university lacks full judicial authority, such as the power to subpoena or place witnesses under oath, a student's rights cannot be coextensive with or identical to the rights afforded an accused in a civil or criminal legal proceeding. The procedures outlined below are designed, however, to assure basic fairness and to protect students from arbitrary or capricious disciplinary action. All panel members, investigators, and university officials shall conduct their proceedings in the spirit of these principles. If exceptional circumstances dictate variation from these procedures, the variation does not invalidate a decision unless it prevents basic fairness.

In summary, any sexual behavior that creates an intimidating, hostile, or offensive working or school environment is a violation of Christian standards as well as applicable state and federal laws and should be reported to the appropriate supervisor, residence hall dean, or the director of Student Life and Activities (Title IX Designee).

Also included in this document are resources available to individuals who are involved in some way with an incident of sexual misconduct (See Appendices A and B).

2. Notice of Nondiscrimination/Title IX Coordinator

In compliance with Title IX of the U. S. Higher Education Amendments (1972,) Southern does not discriminate on the basis of gender. In addition to gender equity in sports, Title IX prohibits sex-based discrimination in education. It addresses gender-based discrimination and sexual violence (whether student-to-student, student-to-employee, or employee-to-employee).

The associate vice president for Human Resources is this campus's Title IX Coordinator. The Title IX Coordinator is tasked with assuring campus compliance with all Title IX dictates. In regards to sexual misconduct, this office is specifically tasked with the resolution of sexual misconduct grievances.

Student-to-student grievances under Title IX should be presented to the Title IX Designee, the director of Student Life & Activities, who will resolve the grievance or present it to Southern's Student Sexual Misconduct Review Panel (definition below) for resolution.

Although the AVPHR is tasked with the resolution of all sexual misconduct grievances, the following matrix details who oversees a particular type of case:

COMPLAINANT	RESPONDENT	OVERSEES PROCESS
Student	Student	DSLA
Employee	Employee	AVPHR
Student	Employee	AVPHR
Employee	Student	DSLA
3 rd Party	Student	DSLA
3 rd Party	Employee	AVPHR

This policy, in its complete form, is available on both the HR and Student Services website. Southern's Student Handbook and Employee Handbook contain truncated versions of the policy, which refer readers to where on Southern's website they may read the complete policy. Published versions of the policy may be obtained from the offices of Human Resources, Student Services, Campus Safety, and in the residence halls.

3. Sexual Misconduct and Harassment:

Sexual misconduct is a form of sexual harassment and may include unwelcome sexual advances, requests for sexual favors, or other unsolicited verbal or physical conduct of a sexual nature. Any sexual contact without consent by means of force, intimidation, or victim helplessness or incapacity constitutes sexual misconduct and includes violations of civil or criminal assault laws.

Definitions

The definitions below are intended to provide clarity relating to sexual behaviors and do not suggest that one behavior is more severe or violating than the other.

Acquaintance Assault: Acquaintance assault is a sexual assault by someone whom the victim knows. The person may be a boyfriend or girlfriend, ex-boyfriend or ex-girlfriend, classmate, friend, acquaintance, family member, or coworker.

Associate Vice President for Human Resources (AVPHR): The associate vice president for Human Resources is the Title IX coordinator responsible for directing sexual harassment avoidance training, overseeing sexual harassment investigations, and overseeing the procedures pertaining to harassment complaints brought by students, faculty, and staff under Southern's "Harassment," "Sexual Misconduct," and "Retaliation" policies. If extraordinary circumstances dictate that a case must be adjudicated when it is not possible to convene the Sexual Misconduct Review Panel (see below), the AVPHR adjudicates the case and assumes all authority otherwise granted to the Sexual Misconduct Review Panel. Contact information for the AVPHR is found in Appendix A.

Coercion: Coercion is defined (22 U.S. Code § 7102) as threats of serious harm or physical restraint against any person or the use of any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical

restraint against any person. The term can also be used to refer to the abuse or threatened abuse of the legal process.

Complainant: A Complainant is usually an individual filing a complaint of a violation of Southern's policies. In some cases (such as, cases in which a person involved in an incident of alleged sexual misconduct does not wish to participate in the process but the university decides that the alleged misconduct needs to be investigated), Southern may serve as the Complainant. In these cases, the university extends the full rights of the Complainant as defined in this policy to affected parties as deemed appropriate by the DSLA (see definition below).

Consent: Consent means words or actions, freely and actively given by each party, which a reasonable person would interpret as a willingness to participate in agreed-upon sexual conduct.

Consent is not valid when a person is incapable of giving consent because of his or her use or consumption of drugs or alcohol; when intimidation, threats, physical force, or other actions that a reasonable person would consider coercive, are applied; when a physical or mental condition is present such that the person cannot knowingly or voluntarily give consent; or when a person has not achieved the age required for consent, as defined by state law. Silence, non-communication, or a lack of resistance does not necessarily imply consent. Previous relationships or consent do not imply consent to future sexual conduct. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Moreover, consent can be rescinded at any time.

The use of alcohol or drugs does not minimize or excuse a Respondent's responsibility for committing sexual misconduct. A Respondent may not and cannot assume that a Complainant has given consent to any sexual activity when alcohol or drugs have been used by the Complainant. That is, consent is not valid when:

- a. From the standpoint of a reasonable person, the Respondent (see definition below) knew, or reasonably should have known, that the Complainant was incapable of giving consent due to the Complainant's use or consumption of drugs or alcohol or the person's physical or mental condition; or
- b. The person was, in fact, incapable of giving consent due to the person's use of drugs or alcohol, or the person was incapable of providing knowing or voluntary consent due to a physical or mental condition.

Dating Violence: Dating violence means violence committed by a person

- a. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- b. Where the existence of such a relationship shall be determined by a consideration of the following factors:

- The length of the relationship,
- The type of relationship,
- The frequency of interaction between the persons involved in the relationship.

Dating violence, sometimes called "partner abuse" or "intimate partner violence," is a systematic pattern of behaviors where power is used to control partners.

Abusive behavior can be spoken, written, or physical, and includes

- actual, attempted, or threatened violence
- sexual offenses
- a pattern of assaultive and coercive behaviors

Days: Unless otherwise noted, “days” indicate calendar days, regardless of whether the majority of Southern’s administrative offices are open. “Business days” indicate days on which the majority of Southern’s administrative offices are open and generally connotes Monday through Friday.

Director of Student Life and Activities (DSL A): The director of Student Life and Activities is the Title IX Designee responsible for overseeing the investigation and adjudication of sexual misconduct complaints involving students. The DSLA serves as an informational resource for all parties involved in the sexual misconduct complaint, investigation, and review process. Contact information may be found in Appendix A.

Domestic Violence: Tennessee Code Annotated 39-13-111 defines domestic violence as an offence that

- *Is classified as a misdemeanor in this state;*
- *Has as an element of the offense the use or attempted use of physical force or the threatened use of a deadly weapon; and*
- *Is committed by a:*
 - a) Current or former spouse, parent, or guardian of the victim;*
 - b) Person with whom the victim shares a child in common;*
 - c) Person who is cohabiting with or has cohabited with the victim as spouse, parent, or guardian; or*
 - d) Person similarly situated to a spouse, parent, or guardian of the victim.*

Harassment: Harassment, as used in this policy, is defined as unwelcome sexual advances, requests for sexual favor, and other verbal or physical conduct of a sexual nature. Both the Employee Handbook, Section 2020 (<https://www.southern.edu/hr/Documents/Employee%20Handbook%202014-2015%20revised.pdf>) and the Student Handbook have statements that address all forms of harassment. These statements address the expectations the university has of its employees and students and the policies and procedures to follow as it relates to any conduct forbidden under the policies.

Impact Statement: An Impact Statement is either written information or an oral statement from either the Complainant or the Respondent, in his or her own words, about how this sexual misconduct has affected him or her.

Inappropriate Sexual Conduct: Inappropriate sexual conduct includes unwelcome sexual conduct that does not constitute sexual assault as defined in this document but is sexually violating in nature. It includes but is not limited to the following:

- Nonconsensual physical contact of a sexual nature. This sort of contact includes intentionally touching the breasts, buttocks, groin, mouth, genitals of a person who has not given consent to this contact, or contact of a sexual nature with any other body parts;
- Sexually exploitative behaviors. Examples include, but are not limited to,
 - Capturing through any means images of sexual activity,
 - Capturing through any means another's nudity without consent,
 - Sharing the above images material with others without all participants' consent.

Exception: This section is not intended to prohibit the use of sexually explicit material that is reasonably related to the academic mission of the university. Specifically, this section is not intended to proscribe or inhibit the use of sexually-explicit materials in or out of the classroom when in the judgment of a reasonable person they are used appropriately to promote genuine discourse, free inquiry, and learning.

Investigator: The investigator is the entity assigned to conduct interviews of the Complainant(s), Respondent(s), and any potential witnesses and to gather any other pertinent information and material that could be important to determining a fair and impartial decision during the adjudication process. This policy uses the singular *Investigator* but the AVPHR may appoint more than one Investigator when appropriate, and those Investigators work together to handle the complaint. SAU's Campus Safety has been appointed the Investigator of all alleged sexual misconduct incidences. The appointed Investigator should have no prior significant history with either the Complainant or the Respondent and may have no significant prior knowledge of the Complaint or the facts surrounding it. When a conflict of interest is apparent, the Investigator may be selected from outside Southern.

Public indecency: TN Code Ann. § 39-13-511 defines public indecency as follows:

1.
 - A. *A person commits the offense of public indecency who, in a public place, as defined in subdivision (a)(2)(B) below, knowingly or intentionally:*
 1. *Engages in sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions or other ultimate sex acts;*
 2. *Appears in a state of nudity; or*
 3. *Fondles the genitals of the person, or another person.*
 - B. *A person does not violate subdivision (a)(1)(A) if the person makes intentional and reasonable attempts to conceal the person from public*

view while performing an excretory function, and the person performs the function in an unincorporated area of the state.

2. *As used in subdivision (a)(1):*
 - A. *“Nudity” or “state of nudity” means the showing of the bare human male or female genitals or pubic area with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of the areola, or the showing of the covered male genitals in a discernibly turgid state. “Nudity” or “state of nudity” does not include a mother in the act of nursing the mother’s baby; and*
 - B.
 - i. *“Public place” means any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. “Public place” includes, but is not limited to, streets, sidewalks, parks, beaches, business and commercial establishments, whether for profit or not-for-profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirement, bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets and meeting facilities utilized by any religious, social, fraternal or similar organizations.*
 - ii. *Premises used solely as a private residence, whether permanent or temporary in nature, are not deemed to be a public place. “Public place” does not include enclosed single sex public restrooms, enclosed single sex functional showers, locker or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctors’ offices, portions of hospitals and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein; nor does it include a person appearing in a state of nudity in a modeling class operated by a proprietary school, licensed by the state of Tennessee, a college, junior college, or university supported entirely or partly by taxation, or a private college or university where such private college or university maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation or an accredited private college. “Public place” does not include a private facility that has been formed as a family-oriented clothing optional facility, properly licensed by the state.*
3. *Public indecency is punishable as follows:*
 - A. *A first or second offense is a Class B misdemeanor punishable only by a fine of five hundred dollars (\$500); and*
 - B. *A third or subsequent offense is a Class A misdemeanor punishable by a fine of one thousand five hundred dollars (\$1,500) or confinement for not more than eleven (11) months and twenty-nine (29) days, or both.*

TN Code Ann. § 39-13-511 addresses indecent exposure as well:

1. *A person commits the offense of indecent exposure who:*
 - A. *In a public place, as defined in § 39-11-106, or on the private premises of another, or so near thereto as to be seen from the private premises:*
 - i. *Intentionally:*
 - a. *Exposes the person's genitals or buttocks to another; or*
 - b. *Engages in sexual contact or sexual penetration as defined in § 39-13-501; and*
 - ii. *Reasonably expects that the acts will be viewed by another and the acts:*
 - a. *Will offend an ordinary viewer; or*
 - b. *Are for the purpose of sexual arousal and gratification of the defendant; or*
 - B.
 - i. *Knowingly invites, entices or fraudulently induces the child of another into the person's residence for the purpose of attaining sexual arousal or gratification by intentionally engaging in the following conduct in the presence of the child:*
 - a. *Exposure of such person's genitals, buttocks or female breasts; or*
 - b. *Masturbation.*
 - ii. *For the provisions of subdivision (b)(1)(B)(i) to apply, the defendant must be eighteen (18) years of age or older and the child victim must be less than thirteen (13) years of age.*
2. *"Indecent exposure," as defined in subdivision (b)(1), is a Class B misdemeanor, unless the defendant is eighteen (18) years of age or older and the victim is under thirteen (13) years of age, in which event, indecent exposure is a Class A misdemeanor. Additionally, "indecent exposure," as defined in subdivision (b)(1), is a Class E felony when the defendant is eighteen (18) years of age or older, the victim is under thirteen (13) years of age, and the defendant has any combination of two (2) or more prior convictions under this section.*

The provisions of this section do not apply to a mother who is breastfeeding her child who is twelve (12) months of age or younger in any location, public or private.

Respondent: A Respondent is an individual alleged to have violated Southern's sexual misconduct policies. See Scope of Oversight and Pending Discipline at the end of this policy for more information.

Retaliation: Retaliation includes, but is not limited to, ostracizing the Complainant, pressuring the person to drop or not support the complaint, providing false or misleading information, or engaging in conduct that may reasonably be perceived to affect adversely the Complainant's educational, living, or work environment. Retaliating directly or indirectly against a person who has in good faith filed, supported, or participated in an investigation of a complaint of sexual

misconduct as defined above is prohibited. In some circumstances, retaliation may be unlawful and may constitute a violation of this policy whether or not the complaint is ultimately found to have merit.

Sanction Statement: A sanction statement is a statement provided by the Complainant or the Respondent, should either party or both choose to compose one, upon receiving the conclusions of the SMRP (see definition below). It outlines what impact the sanctions imposed upon the Respondent will have upon the subject. Sanction statements are used as part of the appeal process should the Respondent or Complainant choose to appeal the decision.

Sexual Assault: The federal government defines sexual assault as “*any type of sexual contact or behavior that occurs without the explicit consent of the recipient. Falling under the definition of sexual assault are sexual activities as forced intercourse, forcible sodomy, child molestation, incest, fondling, and attempted rape*” (<http://www.justice.gov/ovw/sexual-assault>).

Tennessee defines a number of sexual and violent sexual offenses. The following are those definitions and related codes:

39-13-502. Aggravated rape . . . is unlawful sexual penetration of a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

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

39-13-531. Aggravated rape of a child is the] (a) *Aggravated rape of a child is the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if the victim is three (3) years of age or less [or] (b) [the] [a]ggravated rape of a child is a Class A felony and shall be sentenced within Range III, as set forth in title 40, chapter 35.*

39-13-504. Aggravated sexual battery [is] (a) *[a]ggravated sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:*

1. *Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;*
2. *The defendant causes bodily injury to the victim;*

3. *The defendant is aided or abetted by one (1) or more other persons; and*
 - A. *Force or coercion is used to accomplish the act; or*
 - B. *The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or*
4. *The victim is less than thirteen (13) years of age.*
5. *Aggravated sexual battery is a Class B felony.*

39-17-1004. Aggravated sexual exploitation of a minor

- (a)
 1. *It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material, or possess with the intent to promote, sell, distribute, transport, purchase or exchange material that includes a minor engaged in:*
 - A. *Sexual activity; or*
 - B. *Simulated sexual activity that is patently offensive.*
 2. *A person who violates subdivision (a)(1) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials involved in a violation under subdivision (a)(1) is greater than twenty-five (25), the person may be charged in a single count to enhance the class of offense under subdivision (a)(4).*
 3. *In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, sold, distributed, transported, purchased, exchanged or possessed the material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.*
 4. *A violation of this section is a Class C felony; however, if the number of individual images, materials, or combination of images and materials that are promoted, sold, distributed, transported, purchased, exchanged or*

possessed, with intent to promote, sell, distribute, transport, purchase or exchange, is more than twenty-five (25), then the offense shall be a Class B felony.

(b)

1. It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material that is obscene, as defined in § 39-17-901(10), or possess material that is obscene, with the intent to promote, sell, distribute, transport, purchase or exchange the material, which includes a minor engaged in:

A. Sexual activity; or

B. Simulated sexual activity that is patently offensive.

2. A person who violates subdivision (b)(1) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials involved in a violation under subdivision (b)(1) is greater than twenty-five (25), the person may be charged in a single count to enhance the class of offense under subdivision (b)(4).

3. In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, sold, distributed, transported, purchased, exchanged or possessed the material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.

4. A violation of this section is a Class C felony; however, if the number of individual images, materials, or combination of images and materials, that are promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange, is more than twenty-five (25), then the offense shall be a Class B felony.

(c)

In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.

(d)

A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person

located outside this state, where the person promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange material within this state.

39-13-507. Aggravated Spousal Rape

(a)

A person does not commit an offense under this part if the victim is the legal spouse of the perpetrator except as provided in subsection . . . (c).

(c)

1. *“Aggravated spousal rape” is the unlawful sexual penetration of one spouse by the other where the defendant:*
 - A. *Knowingly engaged in conduct that was especially cruel, vile and inhumane to the victim during commission of the offense; and either;*
 - B. *Causes serious bodily injury to the victim; or*
 - C. *Is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.*
2. *Aggravated spousal rape is a Class B felony.*

39-2-608. Assault with intent to commit or attempt to commit rape or sexual battery

1. *Assault with intent to commit or attempt to commit rape is a felony punishable by imprisonment in the penitentiary for not less than two (2) nor more than ten (10) years.*
2. *Assault with intent to commit or attempt to commit sexual battery is a felony punishable by imprisonment in the penitentiary for not more than three (3) years.*

39-13-109. Criminal exposure to HIV

(a)

A person commits the offense of criminal exposure of another to human immunodeficiency virus (HIV) when, knowing that the person is infected with HIV, the person knowingly:

1. *Engages in intimate contact with another; (note: subsections (a)(2), (a)(3), (b)(1-3), (c) and (d) of this statute are not included in the Sex Offender Law)*

(e)

Criminal exposure of another to HIV is a Class C felony.

39-3703 Criminal sexual conduct -- first degree

A person is guilty of criminal sexual conduct in the first degree if that person engages in sexual penetration with another person and if any of the following circumstances exists:

1. *The victim is twelve (12) years of age or under.*
2. *The victim is at least thirteen (13) but less than sixteen (16) years of age and either the actor is related to the victim by blood, or affinity to the third degree, or the actor is in a position of custodial or official authority over the victim and used this authority to coerce the victim to submit. The actor under this subsection must be at least three (3) years older than the victim.*
3. *The actor uses a weapon or any article used or fashioned in a manner calculated to lead the victim reasonably to believe it to be a weapon to force or coerce the victim to engage in sexual penetration.*
4. *The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes but is not limited to any of the following circumstances:*
 - A. *When the actor overcomes the victim through the actual application of physical force or physical violence.*
 - B. *When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim reasonably believes that the actor has the present ability to execute these threats.*
 - C. *When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim reasonably believes that the actor has the ability to execute this threat. As used in this subdivision, "to retaliate" includes but is not limited to threats of physical punishment, kidnapping, or extortion.*
 - D. *When the actor, through concealment, or by the element of surprise, is able to overcome the victim. Concealment includes the situation in which the actor pretends to be the victim's spouse and the victim reasonably believes the actor to be the spouse.*
5. *The actor causes personal injury to the victim, and the actor knows or should, as a reasonable person, know that the victim is mentally defective, mentally incapacitated, or physically helpless.*

39-3704. Criminal Sexual conduct- Second degree

- A. *A person is guilty of criminal sexual conduct in the second degree if that person engages in sexual contact with another person, and if any of the following circumstances exists:*
1. *The victim is under thirteen (13) years of age.*
 2. *The victim is at least thirteen (13) but less than sixteen (16) years of age, and either the actor is related by blood or affinity to the third degree to the victim, or the actor is in a position of custodial or official authority over the victim and the actor used this authority to coerce the victim to submit. The actor under this section, must be at least three (3) years older than the victim.*
 3. *The actor uses a weapon or any article used or fashioned in a manner calculated to lead a person reasonably to believe it to be a weapon, to force or coerce the victim to engage in sexual contact.*
 4. *The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact: Force or coercion includes but is not limited to any of the circumstances listed in 39-3703 (A)(4), (a) through (d).*
 5. *The actor causes personal injury to the victim and the actor knows or should, as a reasonable person, know that the victim is mentally defective, mentally incapacitated or physically helpless.*
- B. *Second degree criminal sexual conduct is a felony punishable by imprisonment in the penitentiary for a period not less than two (2) years nor more than fifteen (15) years.*

Provided, however, if the victim of the offense dies or is seriously injured as the result of an assault committed by the defendant either directly before, after or during the offense and the defendant is convicted of a violation of this section only, such defendant shall be ineligible for probation as provided in 40-2901, parole as provided in 40-3612, work release, trusteeship, furlough, or any other program or method whereby the offender's term of imprisonment in the penitentiary may be reduced or enjoys the privilege of supervised or unsupervised release into the community.

39-3705. Criminal sexual conduct- Third degree

- A. *A person is guilty of criminal sexual conduct in the third degree, if that person engages in sexual penetration with another person and if any of the following circumstances exists:*
1. *The victim is at least thirteen (13) years of age and under sixteen (16) years of age, and the actor under this section is at least three (3) years older than the victim.*
 2. *Force or coercion is used to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in 39-3703 (A)(4), (a) through (d).*
 3. *The actor knows or should as a reasonable person, know that the victim is mentally effective, mentally incapacitated, or physically helpless.*
 4. *When the actor engages in sexual penetration on the pretext of performing a medical examination or treatment for the purpose of achieving sexual penetration.*
- B. *Third degree criminal sexual conduct is a felony punishable by imprisonment in the penitentiary for a period not less than two (2) years nor more than ten (10) years.*

Provided, however, if the victim of the offense dies or is seriously injured as the result of an assault committed by the defendant either directly before, after or during the offense and the defendant is convicted of a violation of this section only, such defendant shall be ineligible for probation as provided in 40-2901, parole as provided in 40-3612, work release, trusteeship, furlough, or any other program or method whereby the offender's term of imprisonment in the penitentiary may be reduced into the community.

39-17-1005. Offense of especially aggravated sexual exploitation of a minor

- A. *It is unlawful for a person to knowingly promote, employ, use, assist, transport or permit a minor to participate in the performance of, or in the production of, acts or material that includes the minor engaging in:*
1. *Sexual activity; or*

2. *Simulated sexual activity that is patently offensive.*

- B. *A person violating subsection (a) may be charged in a separate count for each individual performance, image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation.*
- C. *In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, employed, used, assisted, transported or permitted a minor to participate in the performance of or in the production of acts or material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.*
- D. *A violation of this section is a Class B felony. Nothing in this section shall be construed as limiting prosecution for any other sexual offense under this chapter, nor shall a joint conviction under this section and any other related sexual offense, even if arising out of the same conduct, be construed as limiting any applicable punishment, including consecutive sentencing under § 40-35-115, or the enhancement of sentence under § 40-35-114.*
- E. *In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.*
- F. *A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person promoted, employed, assisted, transported or permitted a minor to engage in the performance of, or production of, acts or material within this state.*

39-13-529. Offense of soliciting sexual exploitation of a minor -- Exploitation of a minor by electronic means

- A. *It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet service, including webcam communications, directly or through another, to intentionally command, hire, persuade, induce or cause a minor to engage in sexual activity or*

simulated sexual activity that is patently offensive, as defined in § 39-17-1002, where such sexual activity or simulated sexual activity is observed by that person or by another.

- B. It is unlawful for any person eighteen (18) years of age or older, directly or by means of electronic communication, electronic mail or Internet service, including webcam communications, to intentionally:*

 - 1. Engage in sexual activity, or simulated sexual activity, that is patently offensive, as defined in § 39-17-1002, for the purpose of having the minor view the sexual activity or simulated sexual activity, including circumstances where the minor is in the presence of the person, or where the minor views such activity via electronic communication, including electronic mail, Internet service and webcam communications;*
 - 2. Display to a minor, or expose a minor to, any material containing sexual activity or simulated sexual activity that is patently offensive, as defined in § 39-17-1002, where the purpose of the display can reasonably be construed as being for the sexual arousal or gratification of the minor or the person displaying the material; and*
 - 3. Display to a law enforcement officer posing as a minor, and whom the person making the display reasonably believes to be less than eighteen (18) years of age, any material containing sexual activity or simulated sexual activity that is patently offensive, as defined in § 39-17-1002, where the purpose of the display can reasonably be construed as being for the sexual arousal or gratification of the intended minor or the person displaying the material.*
- C. The statute of limitations for the offenses in this section shall be the applicable statute for the class of the offense, or until the child reaches the age of eighteen (18), whichever is greater.*
- D. A person is subject to prosecution in this state under this statute for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the conduct involved a minor located in this state.*
- E. 1. A violation of subsection (a) is a Class B felony.*

2. *A violation of subsection (b) is a Class E felony; provided, that, if the minor is less than thirteen (13) years of age, the violation is a Class C felony.*

39-15-302. Incest

- A. *A person commits incest who engages in sexual penetration as defined in § 39-13-501, with a person, knowing the person to be, without regard to legitimacy:*
 1. *The person's natural parent, child, grandparent, grandchild, uncle, aunt, nephew, niece, stepparent, stepchild, adoptive parent, adoptive child; or*
 2. *The person's brother or sister of the whole or half-blood or by adoption.*
- B. *Incest is a Class C felony*

39-6-1138. Promotion of performances including sexual conduct by children

- A. *As used in this section:*
 1. *"Child" means any person who has not reached the age of eighteen (18) years;*
 2. *"Knowingly" shall be defined as in § 39-6-1137(b)(2);*
 3. *"Performance" means any play, motion picture, photograph or dance. Performance also includes any other visual representation exhibited before a person or persons;*
 4. *"Promote" shall be defined as in § 39-6-1137(b)(6); and*
 5. *"Sexual conduct" shall be defined as in § 39-6-1137(b)(9).*
- B. *It is a felony punishable upon conviction by imprisonment for not less than three (3) years nor more than twenty-one (21) years and a fine of not more than twenty thousand dollars (\$20,000) for any person to knowingly, promote a performance which includes actual or simulated sexual conduct by a child.*
- C. *It is a felony punishable upon conviction by imprisonment for not less than three (3) years nor more than twenty-one (21) years for*

any parent or legal guardian or custodian of a child to consent knowingly to the participation by the child in a performance which includes sexual conduct.

- D. Under this section, it is an affirmative defense that the defendant in good faith reasonably believed the person appearing in the performance was sixteen (16) years of age or older.*
- E. The provision of this section shall not apply to any public library which is entirely or partially supported by public funds; any recognized and established educational institution and the libraries contained therein; any recognized and established museum; any recognized and established historical society; any licensed practitioner of the healing arts, medical clinic or hospital while engaged in a professional capacity; any governmental agency; any governmental sponsored organization; any other nonprofit association or entity which is engaged in the collection and preservation of historic or religious documents; and any person, employee or agent acting in an official capacity for any such organization.*

39-13-503. Rape

- A. Rape is unlawful sexual penetration of a victim by the defendant or of the defendant by a victim accompanied by any of the following circumstances:*
 - 1. Force or coercion is used to accomplish the act;*
 - 2. The sexual penetration is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the penetration that the victim did not consent;*
 - 3. The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or*
 - 4. The sexual penetration is accomplished by fraud.*
- B. Rape is a Class B felony.*

39-13-522. Rape of a child

A. *Rape of a child is the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if the victim is more than three (3) years of age but less than thirteen (13) years of age.*

B. 1. *Rape of a child is a Class A felony.*

2. *a. Notwithstanding title 40, chapter 35, a person convicted of a first or subsequent violation of this section shall be punished by a minimum period of imprisonment of twenty-five (25) years. The sentence imposed upon any such person may, if appropriate, exceed twenty-five (25) years, but in no case shall it be less than the minimum period of twenty-five (25) years.*

(b) Section 39-13-525(a) shall not apply to a person sentenced under this subdivision (b)(2).

c) Notwithstanding any law to the contrary, the board of probation and parole may require, as a mandatory condition of supervision for any person convicted under this section, that the person be enrolled in a satellite-based monitoring program for the full extent of the person's term of supervision consistent with the requirements of § 40-39-302.

39-13-505. Sexual battery

A. *Sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:*

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

- B. *As used in this section, "coercion" means the threat of kidnapping, extortion, force or violence to be performed immediately or in the future.*
- C. *Sexual battery is a Class E felony.*

39-13-527. Sexual battery by an authority figure

- A. *Sexual battery by an authority figure is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by the following circumstances:*
 - 1. *The victim was, at the time of the offense, thirteen (13) years of age or older but less than eighteen (18) years of age; or*
 - 2. *The victim was, at the time of the offense, mentally defective, mentally incapacitated or physically helpless, regardless of age; and,*
 - 3. *(a) The defendant was at the time of the offense in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional or occupational status and used the position of trust or power to accomplish the sexual contact; or*
(b) The defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the sexual contact.
- B. *Sexual battery by an authority figure is a Class C felony.*

39-17-1003. Offense of sexual exploitation of a minor

- A. *It is unlawful for any person to knowingly possess material that includes a minor engaged in:*
 - 1. *Sexual activity; or*
 - 2. *Simulated sexual activity that is patently offensive.*
- B. *A person possessing material that violates subsection (a) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or*

other pictorial representation. Where the number of materials possessed is greater than fifty (50), the person may be charged in a single count to enhance the class of offense under subsection d).

- C. In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly possessed the material, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.*
- D. A violation of this section is a Class D felony; however, if the number of individual images, materials, or combination of images and materials that are possessed is more than fifty (50), then the offense shall be a Class C felony. If the number of individual images, materials, or combination of images and materials, exceeds one hundred (100), the offense shall be a Class B felony.*
- E. In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.*

39-12-102. Solicitation

- A. Whoever, by means of oral, written or electronic communication, directly or through another, intentionally commands, requests or hires another to commit a criminal offense, or attempts to command, request or hire another to commit a criminal offense, with the intent that the criminal offense be committed, is guilty of the offense of solicitation.*
- B. It is no defense that the solicitation was unsuccessful and the offense solicited was not committed. It is no defense that the person solicited could not be guilty of the offense solicited, due to insanity, minority, or other lack of criminal responsibility or incapacity. It is no defense that the person solicited was unaware of the criminal nature of the conduct solicited. It is no defense that the person solicited is unable to commit the offense solicited because of the lack of capacity, status, or characteristic needed to commit the offense solicited, so long as the person soliciting or the person solicited believes that either or both have such capacity, status, or characteristic.*

39-13-528. Offense of solicitation of a minor

- A. *It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet services, directly or through another, to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that, if completed, would constitute a violation by the soliciting adult of one (1) or more of the following offenses:*
1. *Rape of a child, pursuant to § 39-13-522;*
 2. *Aggravated rape, pursuant to § 39-13-502;*
 3. *Rape, pursuant to § 39-13-503;*
 4. *Aggravated sexual battery, pursuant to § 39-13-504*
 5. *Sexual battery by an authority figure, pursuant to § 39-13-527;*
 6. *Sexual battery, pursuant to § 39-13-505;*
 7. *Statutory rape, pursuant to § 39-13-506;*
 8. *Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005; or*
 9. *Sexual activity involving a minor, pursuant to § 39-13-529.*
- B. *It is no defense that the solicitation was unsuccessful, that the conduct solicited was not engaged in, or that the law enforcement officer could not engage in the solicited offense. It is no defense that the minor solicited was unaware of the criminal nature of the conduct solicited.*
- C. *A violation of this section shall constitute an offense one (1) classification lower than the most serious crime solicited, unless the offense solicited was a Class E felony, in which case the offense shall be a Class A misdemeanor.*

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

39-13-507. Spousal Rape

- A. *A person does not commit an offense under this part if the victim is the legal spouse of the perpetrator except as provided in subsections (b) and (c).*
- B. *(1) "Spousal rape" means the unlawful sexual penetration of one spouse by the other where:*
- a. The defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon;*
 - b. The defendant causes serious bodily injury to the victim; or*
 - c. The spouses are living apart and one (1) of them has filed for separate maintenance or divorce.*
- (2) a. "Spousal rape", as defined in subdivision (b)(1)(A) or (B), is a Class C felony.*
- b. "Spousal rape", as defined in subdivision (b)(1)(C) shall be punished pursuant to 39-13-502 or 39-13-503.*

39-13-507. Spousal Sexual Battery

- A. *A person does not commit an offense under this part if the victim is the legal spouse of the perpetrator except as provided in subsections (b) and (c).*
- D. *(1) "Spousal sexual battery" means the unlawful sexual contact by one (1) spouse of another where:*
- (a) The defendant is armed with a weapon or any article used or fashioned in manner to lead the victim to reasonably believe it to be a weapon;*

(b) The defendant causes serious bodily injury to the victim; or

(c) The spouses are living apart and one (1) of them has filed for separate maintenance or divorce.

(2)

(a) "Spousal sexual battery," as defined in subdivision (d)(1)(A) or (B), is a class D felony.

(b) "Spousal sexual battery," as defined in subdivision (d)(1)(C) shall be punished pursuant to 39-13-504 or 39-13-505.

39-13-506. Statutory rape

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

B. *Statutory rape is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when:*
(1) The victim is at least thirteen (13) but less than fifteen (15) years of age and the defendant is at least four (4) years but less than ten (10) years older than the victim; or

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

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

D. *(1) Mitigated statutory rape is a Class E felony.*

(2) Statutory rape is a Class E felony.

(3) Aggravated statutory rape is a Class D felony.

39-13-532. Statutory rape by an authority figure

- A. *Statutory rape by an authority figure is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when:*
- (1) The victim is at least thirteen (13) but less than eighteen (18) years of age;*
- (2) The defendant is at least four (4) years older than the victim; and*
- (3) The defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional, or occupational status and used the position of trust or power to accomplish the sexual penetration; or*
- (4) The defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the sexual penetration. (b) Statutory rape by an authority figure is a Class C felony and no person who is found guilty of or pleads guilty to the offense shall be eligible for probation pursuant to § 40-35-303 or judicial diversion pursuant to § 40-35-313.*

39-13-309. Trafficking for sexual servitude

- A. *A person commits the offense of trafficking a person for sexual servitude when that person knowingly subjects or maintains another in sexual servitude or knowingly recruits, entices, harbors, transports, provides or obtains by any means another person for the purpose of sexual servitude.*
- B. *Trafficking for sexual servitude is a Class B felony.*

39-6-1137. Use of Minors for Obscene Purposes

- A. *It shall be a felony, punishable by imprisonment for not less than three (3) years nor more than twenty-one (21) years and a fine of not more than ten thousand dollars (\$10,000), for any person:*
- (1) To knowingly promote, employ, use or permit a minor to engage in or assist others to engage in:*

(a) Posing or modeling alone or with others in any performance of sexual conduct for purposes of preparing a film, photograph, negative, slide or motion picture or other matter which is obscene;

(b) Sexual conduct by the minor alone or with other persons or animals; or

(c) Promoting any matter which depicts any minor posing alone or with others in any sexual performance which is obscene.

(2) Who, with knowledge that a person is a minor, or who, while in possession of such facts that he or she shall reasonably know that such person is a minor, hires, employs, solicits, entices, or uses a minor to do or assist in doing any of the acts described in subdivision (1) of this subsection.

B. As used in this section:

(1) "Community" as used herein means the State of Tennessee;

(2) "Knowingly" as used above means having actual or constructive knowledge of the subject matter. A person shall be deemed to have constructive knowledge of the contents if he has knowledge of facts which would put a reasonable and prudent man on notice as to the suspect nature of the material;

(3) "Matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture film, or other pictorial representation, or any statue, figure, device, theatrical production or live performance, or any recording, transcription, or mechanical, chemical or electrical reproduction, or any other article, equipment, machine or material that is obscene as defined by 39-6-1101—39.6.117;

(4) "Minor" means any person who has not reached the age of eighteen (18) years;

(5) "Person" as used in this section shall include the singular and the plural and shall mean and include any individual, firm, partnership, copartnership, association, corporation, or other organization or other legal entity, or any agent or servant thereof;

(6) "Promote" shall mean to produce, direct, manufacture, issue, sell, lend, mail, publish, exhibit or advertise;

(7) "Prurient interest" means a shameful or morbid interest in sex;

(8) "Obscene" means:

(a) That the average person applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest;

(b) That the work depicts or describes, in a patently offensive way, sexual conduct; and

(c) That the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(9) "Sexual conduct" as used in this section shall include but not be limited to sexual intercourse; sodomy; sexual bestiality; masturbation; sado-masochistic abuse; excretion; or the exhibition of the male or female genitals

Sexual Misconduct: Sexual misconduct is a general term that incorporates a range of behaviors including sexual assault, sexual harassment, intimate partner violence, stalking, voyeurism, and any other conduct of a sexual nature that is nonconsensual, or has the purpose or effect of threatening, intimidating, or coercing a person.

Much sexual misconduct includes nonconsensual sexual contact, but this is not a necessary component. For example, threatening speech that is sufficiently severe or pervasive to constitute sexual harassment can constitute sexual misconduct. Making photographs, video, or other visual or auditory recordings of a sexual nature of another person without consent constitutes sexual misconduct, even if the activity documented was consensual. Similarly, sharing such recordings or other sexually harassing electronic communications without consent is a form of sexual misconduct. Both men and women are protected from sexual misconduct, and sexual misconduct is prohibited regardless of the sex of the harasser.

Sexual Misconduct Review Panel (SMRP): The Sexual Misconduct Review Panel is the committee convened at the conclusion of an investigation to review the final report, determine a finding, and if required, determine a sanction. See "Sexual Misconduct Investigation" below for a description of the composition of this panel.

Stalking: According to TN Code 39-17-315,

(a)

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

(b)

1. *A person commits an offense who intentionally engages in stalking.*
2. *Stalking is a Class A misdemeanor.*
3. *Stalking is a Class E felony if the defendant, at the time of the offense, was required to or was registered with the Tennessee bureau of investigation as a sexual offender, violent sexual offender or violent juvenile sexual offender, as defined in § 40-39-202.*

Threat: Threat in an assault instance is defined as placing an unwilling participant in fear that he/she or any other individual will suffer imminent physical, emotional, or social injury if engaging in a sexual act does not occur.

Unconsented contact: According to TN Code 39-17-315 *unconsented contact means any contact with another person that is initiated or continued without that person's consent, or in disregard of that person's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:*

- A. *Following or appearing within the sight of that person;*
- B. *Approaching or confronting that person in a public place or on private property;*
- C. *Appearing at that person's workplace or residence;*
- D. *Entering onto or remaining on property owned, leased, or occupied by that person;*
- E. *Contacting that person by telephone;*
- F. *Sending mail or electronic communications to that person; or*
- G. *Placing an object on, or delivering an object to, property owned, leased, or occupied by that person.*

Vice President for Student Services (VPSS): Student sexual misconduct falls under the VPSS's purview as it is this office that oversees all alleged student violations of Southern's code of

conduct. More specifically, the VPSS's role in sexual misconduct adjudication is to listen to appeals of any sanctions the SMRP may or may not have issued to a Respondent. This process is described in more detail below.

Voyeurism: The act of spying or eavesdropping on another person for sexual gratification, including photographing or videotaping that person, is a form of sexual misconduct and is punishable by up to six months in jail.

4. Confidentiality

The law recognizes and protects the confidentiality of communications between a person seeking care and a medical or mental health professional or religious advisor. The medical, mental health, and religious professionals at Southern respect and protect confidential communications from students, faculty, and staff to the extent they are legally able to do so. These professionals may have a responsibility to report, however, when they perceive an immediate and/or serious threat to any person or property. In addition, medical and mental health professionals are required by law to report any allegation of sexual assault of a person under the age of 18.

General inquiries to university officials about policies or procedures other than those identified above may remain private. In all cases, Southern endeavors to protect the privacy of individuals to the extent it can do so consistent with its obligations to uphold relevant policies and to protect the safety of the community. However, the university has an obligation to investigate complaints of sexual misconduct and/or harassment and to take reasonable steps to prevent sexual misconduct or ongoing harassment (see below). Therefore, strict confidentiality may not be guaranteed.

If a Complainant insists that his or her name or other identifiable information not be revealed, Southern evaluates the request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students, staff, and faculty. Thus, Southern may weigh the request for confidentiality against the following factors: the seriousness of the alleged conduct, the presence of other sexual misconduct or sexual harassment complaints about the same individual, and the extent of any threat to the university community.

Southern is also part of a larger community and context. If there is an independent investigation or lawsuit related to a sexual misconduct, harassment, or retaliation matter, Southern officials, those involved in the investigation, or others may be required by law to provide documents, investigation reports and related materials, and findings and sanctions issued under this policy.

Before a complainant discloses information he or she wants to keep confidential, the university is obligated to inform the complainant of its duty to report sexual misconduct to the Title IX Coordinator or other designated administrator.

Students who are not sure they want the incident reported should meet with a confidential resource, such as a licensed or pastoral counselor, or other professional who has a duty to keep those communications confidential.

If a complainant discloses information but requests confidentiality or asks that no action be taken, the university is obligated to inform him or her that the request will be honored to the extent that confidentiality does not limit the institution's ability to respond to the incident. That is, if an investigation and response is necessary to ensure a safe campus environment for all students, including the complainant, maintaining the victim's confidentiality may not be possible.

In those situations where a response is required, information is shared on a need-to-know basis and victims' names are not included in crime statistics or other publicly-available documents unless required by law.

5. Procedures for Addressing Sexual Misconduct

- A. **In General:** The body of this document thus far applies to all students, faculty and staff of Southern. Because Southern's process for hearing and adjudicating complaints of student sexual misconduct is different from those involving staff and faculty, the following procedural information is divided into separate sections addressing the procedural processes for alleged cases of student sexual misconduct and of employee sexual misconduct.

All Southern students, faculty, and staff have the right to pursue sexual misconduct complaints beyond the university and are encouraged to use local, state, or federal enforcement agencies, including Southern's Campus Safety, regardless of whether they choose to file a complaint on campus. See contact information in Appendix A.

Southern does not wait for the conclusion of a criminal investigation or proceeding to begin its own investigation and resolve complaints under this policy. The university does, however, comply with valid requests by law enforcement for cooperation in a criminal investigation. As such, the university may need to delay an investigation temporarily while law enforcement is in the process of gathering evidence. Once law enforcement has compiled its evidence, the university promptly resumes and completes its investigation. The university may also take interim measures to ensure the safety and well-being of the Complainant and the school community while law enforcement gathers evidence.

- B. **Complaints:** All Southern students who have reasonable cause to believe that they themselves are the victims of sexual misconduct or who believe that they have been subjected to retaliation for having brought or supported a complaint of sexual misconduct against a student are encouraged to bring that information to the immediate attention of the Title IX Designee for students. Third-party complaints, that is, complaints by parties who are not directly affected by the sexual misconduct, may bring a complaint on behalf of alleged victims of sexual misconduct. A complaint may be

brought verbally or in writing and ultimately needs to be recorded in written form by the Complainant or member of staff involved with the investigation.

All students may file a complaint of sexual misconduct against a faculty or staff member by following the same procedures outlined below.

All faculty and staff who learn of an incident or conduct that appears to be prohibited by this policy must report this information to Southern's associate vice president for Human Resources (see Appendix A for contact information), unless their status as confidential resources precludes this disclosure. Confidential resources include the staff of the counseling services, the Chaplain and Assistant Chaplain in Campus Ministries, and other medical, counseling, support, or religious personnel and volunteers who are required by law to maintain confidentiality.

C. Procedures for Students

Rights of Complainants

Individuals whose complaints of sexual misconduct are being investigated by the university can anticipate that:

- They will be treated with sensitivity, dignity, and respect in an unbiased manner by all involved administrators, Investigators, and adjudicators.
- They will be informed in writing that their complaint of sexual misconduct is being investigated and of any other suspected related policy violations being explored through this investigation.
- They will be advised of Southern's Sexual Misconduct Policy and procedures.
- They will be afforded similar rights and opportunities as the Respondent throughout the investigation and adjudication process.
- As the investigation proceeds, they will be given the opportunity to present verbal and written documentation to the Investigator, as well as provide information on witnesses of the incident(s).
- The investigation will be a fact-finding inquiry that may be handled through personal interviews, telephone interviews, written documentation, or in whatever method the Investigator believes is most appropriate.
- They will be given reasonable status updates throughout the investigation and adjudication process.
- They may access Southern and/or external resources for medical and counseling services at any time. Students who use Southern's counseling services are not expected to bear the cost.
- They may choose to pursue a formal complaint with external law enforcement authorities or other federal or state agencies at any time. Southern will assist the student in making contact with the authorities if the student chooses to do so. Notifying the authorities is at the student's discretion and can occur whether

or not the student chooses to continue a complaint of a violation of this policy with Southern.

- They may invite one Southern student, faculty, staff member, friend, or relative to accompany them as an advisor to meetings with Investigators or Sexual Misconduct Review Panel.
- They may submit one letter of character reference for consideration by the Sexual Misconduct Review Panel.
- In the event of a finding of guilt, they may submit an Impact Statement.
- They will be informed in writing, concurrently with the Respondent, of the finding issued by the Sexual Misconduct Review Panel, as well as the outcome of an appeal, to the extent permitted by law.
- They will have the right to appeal the outcome based on the grounds designated in this policy, provided they have participated in the investigation process.
- They may retain legal counsel at any time, and legal counsel may play the role of advisor as noted above; however, legal counsel is not permitted to participate in Southern's investigation and adjudication process. Attorneys who wish to communicate about a case may contact the university's legal counsel directly.

Rights of the Respondents

Individuals responding to complaints of sexual misconduct can anticipate that:

- They will be treated with sensitivity, dignity, and respect and in an unbiased manner by all involved administrators, Investigators, and adjudicators.
- They will be informed in writing that their complaint of sexual misconduct is being investigated and of any other suspected related policy violations being explored through this investigation.
- They will be advised of Southern's Sexual Misconduct Policy and procedures.
- They will be afforded similar rights and opportunities as the Complainant throughout the investigation and adjudication process.
- As the investigation proceeds, they will be given the opportunity to present verbal and written documentation to the Investigator, as well as provide information on witnesses of the incident(s).
- The investigation will be a fact-finding inquiry that may be handled through personal interviews, telephone interviews, written documentation, or in whatever method the Investigator believes is most appropriate.
- They will be given reasonable status updates throughout the investigation and adjudication process.
- They may access Southern and/or external resources for medical and counseling services at any time. Students who use Southern's counseling services are not expected to bear the cost.
- They may choose to pursue a formal complaint with external law enforcement authorities or other federal or state agencies at any time. Southern will assist the student in making contact with the authorities if the student chooses to do

so. Notifying the authorities is at the student's discretion and can occur whether or not the student chooses to continue a complaint of a violation of this policy with Southern.

- They may invite one Southern student, faculty, staff member, friend, or relative to accompany them as an advisor to meetings with Investigators or Sexual Misconduct Review Panel.
- They may submit one letter of character reference for consideration by the Sexual Misconduct Review Panel.
- In the event of a finding of guilt, they may submit an Impact Statement.
- They will be informed in writing, concurrently with the Complainant, of the finding issued by the Sexual Misconduct Review Panel, as well as the outcome of an appeal, to the extent permitted by law.
- They will have the right to appeal the outcome based on the grounds designated in this policy, provided they have participated in the investigation process.
- They may retain legal counsel at any time, and legal counsel may play the role of advisor as noted above; however, legal counsel is not permitted to participate in Southern's investigation and adjudication process. Attorneys who wish to communicate about a case may contact the university's legal counsel directly.

Complaint Receipt and Review

When the disciplinary process is used to resolve a complaint of sexual violence, both the accused and complainant are treated equally regarding:

- presenting witnesses and other evidence
- having an advisor or others present during the hearing or any meetings
- receiving written notification of the outcome, any sanction imposed, and how to appeal the decision

Hearing officials must receive annual training on:

- sexual misconduct issues
- impartial hearings that protect the rights of both parties

Consistent with Title IX standards, decisions in conduct proceedings are based on the "preponderance of evidence" standard, which requires evidence showing that it is more likely than not that the accused is responsible.

The range of sanctions for sexual misconduct includes a warning, probation, suspension, or expulsion, but other remedies may be necessary to address the effects of sexual misconduct on the complainant and the campus community.

A complaint of sexual misconduct or retaliation brought against a student should be submitted to the DSLA. Upon receiving the complaint, or at any point during the

investigation and review process, the DSLA and AVPHR may consult to determine if a complaint of sexual misconduct also contains allegations that, if proven, could constitute other forms of sexual harassment. Consultation between the DSLA and the AVPHR may include a review of available information, including but not limited to, Campus Safety reports and/or statements provided by the Respondent or other relevant witnesses.

In cases in which the DSLA, or the DSLA in consultation with the AVPHR, believes that the allegations, if proven, would not constitute sexual misconduct or harassment, the Complainant is advised of other judicial and support options, and no further sexual misconduct or harassment investigation is pursued. If a Complainant subsequently provides new information, this decision may be reevaluated.

In cases in which there is a basis to believe that sexual misconduct, but not other forms of sexual harassment, may have occurred, the procedures outlined below are followed. In cases in which there is a basis to believe that sexual misconduct and other forms of sexual harassment may have occurred, the DSLA and the AVPHR conduct an investigation as outlined below.

Reasonable accommodations are provided for persons with disabilities who need assistance filing or pursuing a complaint of sexual misconduct or retaliation, upon request.

Sexual Misconduct Investigation

Investigation Overview

1. The DSLA informs the Respondent in writing that a complaint of sexual misconduct has been filed against him or her and is being investigated.
2. Should a Respondent who has been notified of an investigation fail to cooperate with the Investigator, the investigation may proceed, a finding may be reached, and a sanction may be imposed based on the information available.
3. A no-contact order is normally issued to restrict contact and communication between the Complainant and Respondent for the duration of the investigation. In addition, other preventative measures, such as room changes or class changes, or in particularly serious cases, temporary removal of a student from campus, may be taken.
4. If prior to or during the investigation the university becomes aware that additional university policies may have been violated, the Respondent is notified in writing, and these too are investigated and resolved through this process. While not condoning infractions of any kind, the university considers reporting incidents of sexual misconduct to be of paramount importance. Therefore, to encourage reporting, the university may,

where appropriate, offer leniency with respect to other policy violations. The nature and scope of the leniency depends on the particular circumstances involved.

5. The university may choose to discontinue an investigation as long as discontinuation keeps the university in compliance with Title IX directives. The Complainant may request that an investigation be discontinued, but when compelling evidence suggests significant individual or community safety will be compromised by discontinuation, the university will choose to continue the investigation without the cooperation of the Complainant.

Investigation

1. The DSLA appoints an Investigator. The investigation is conducted as promptly and equitably as possible without compromising thoroughness. The Investigator is expected to a) conduct the investigation in a thorough, impartial, and expeditious manner; b) make all findings in a fair and objective manner; and c) submit a written investigation report to the DSLA in a timely manner. In his or her role as information gatherer, the Investigator is authorized to contact any and all individuals that will allow for a thorough report to be submitted; however, the university also recognizes the legally protected rights of this university's counselors and clergy to withhold certain information as a result of the confidential discussions with students.

2. The Respondent and the Complainant may each elect to have as an advisor a Southern student, faculty, staff member, relative, friend, or lawyer present with them at all phases of the investigation process. This individual may not play any other role in the investigative process (e.g., may not also be a witness or serve as legal counsel), and may only speak or otherwise represent the Complainant or Respondent at the discretion of the DSLA, Investigator, or the SMRP.

3. The Complainant and Respondent is asked to identify all relevant evidence they would like the Investigator to review, as well as witnesses they would like the Investigator to interview. Both students may provide, if they wish, a list of questions they would like the Investigator to ask of particular witnesses or of each other. The Investigator is not required to consider the evidence submitted or Interview any particular witness, even if identified by one of the parties, nor to ask questions provided by either party. However, in determining whether to interview witnesses or review evidence, the Investigator considers such factors as equity, fairness, thoroughness, and impartial treatment of both parties.

4. All participants in the investigation are expected to cooperate fully by providing complete, accurate, and truthful information. They are expected to sign statements, or other documents, memorializing the information they provided, and may be asked to keep the substance of the interview confidential. Failure to cooperate fully with the Investigator may subject the witness to disciplinary actions.

5. Formal, legal rules of evidence do not apply in university disciplinary proceedings. The DSLA makes rulings on evidentiary or procedural questions related to the investigation and adjudication process.
6. At the conclusion of the investigation, the Investigator shares all relevant materials with the Complainant and the Respondent. Both have an opportunity to respond to this information in writing within seven days.
7. The deadline for the receipt of the Complainant's and Respondent's written responses is also the deadline for receipt by the Investigator of the character reference letters for each party. Guidelines for character references are provided by the DSLA.
8. If at any stage following the submission of these responses new relevant evidence is gathered, it is shared with the Complainant and Respondent, who has an opportunity to submit a written response within a time frame determined by the DSLA.
9. When the final responses, if any, from the Complainant and Respondent have been received, the DSLA shares each student's response with the other student.
10. The Investigator submits a final report to the DSLA. The final report includes all investigation materials, the Complainant and Respondent responses, both students' character references, and the Investigator's conclusions regarding potential violations of the university's sexual misconduct policy and any other policies. (The conclusions are based on the standard of preponderance of evidence, i.e., whether it is more likely than not that the policy was violated. The Investigator's rationale for his or her conclusions is also part of his or her report).
11. Upon receipt of the Investigator's final report, the DSLA reviews the report and determines whether the findings are sufficient for convening the SMRP.

Sexual Misconduct Review Panel (SMRP)

1. As defined by the Employee Handbook, the Sexual Misconduct Review Panel is a University-Senate-appointed, eight-person board chosen from the full-time faculty and staff of the university. It reports to the vice president of Student Services. Members of this panel serve staggered, non-renewable two-year terms (eligible for another term after a one-year hiatus). The Senate is required to appoint four males and four females. It makes every effort to mirror the diversity of Southern's campus in the makeup of this panel. Excluded from consideration in serving on this panel are members of the Chaplain's Office and the Residence Hall staff because of their roles as potential counselors and/or advocates. The vice president of Student Services chooses both the chair and chair-elect of the panel from the eight members appointed by University Senate. Members of this panel receive training in the

adjudication process, using Title IX and sexual assault training resources approved by Tennessee Independent Colleges and University Association (TICUA).

2. Upon receipt of the report, if the DSLA deems it appropriate to convene the Sexual Misconduct Review Panel, three of the possible eight members adjudicate a case. The University makes a reasonable effort to ensure that at least one of the three members is of the opposite gender of the other two and that it represents the diversity of the membership. The administrative assistant for Student Services serves solely as recording secretary.
3. The Panel is provided with the Investigator's complete report and both the Complainant's and Respondent's Impact Statements. The panel is not bound by the investigation report; rather, the report is advisory to the panel. The panel may accept or reject the Investigator's conclusions in whole or in part and may request additional information before making a final determination. This additional information is provided to the Panel only after the DSLA, in consultation with the AVPHR, determines the relevancy of the requested information to the current case. The panel may consult with other persons but, again, only after consulting the DSLA.
4. The Complainant and Respondent may choose to meet individually with the Panel prior to the Panel's finding. Both the Complainant and the Respondent are not obligated to meet with the Panel, however. Guidelines for this meeting are provided by the DSLA.

Findings and Sanctions

1. The Panel issues a finding regarding whether Southern's policy has been violated, using the same standard the Investigator uses, the preponderance of evidence. The panel does not need to be unanimous in its determination that a policy has been violated in order to determine sanctions; in other words, a simple two-to-one vote is sufficient in determining violation.
2. If the Panel determines that no Southern policies have been violated, the Panel chairperson informs in writing the DSLA, who then notifies in writing the Complainant and Respondent of the findings. This notification of the two parties occurs concurrently.

No record of the complaint or the outcome is placed in the permanent file of the Respondent. The Investigator's report and the Panel's conclusions are maintained in a separate, general investigation file for the following reasons:

- a) as proof that university action was taken in the case;
- b) as potential, relevant material (see SMRP 3 above for more on relevancy) in any subsequent, substantiated sexual misconduct;

c) or, in the present case, should retaliation occur against the Complainant.

Complainants may appeal this outcome (See Appeals below). Non-disciplinary outcomes, such as extending and modifying No Contact Orders, may be imposed regardless of the finding.

3. If the Panel determines that the Respondent has violated the university's Sexual Misconduct Policy, it then determines a sanction. Prior conduct and judicial history may be taken into account in determining sanctions. The panel may consider only those sanctions listed in this policy. However, the Panel may extend or modify any no-contact orders that have been in place since prior and during the adjudication process.

In determining the appropriate sanction(s), the Panel considers a number of factors, including:

- the nature of the conduct at issue, including whether it involved violence;
 - the impact of the conduct on the Complainant;
 - the impact or implications of the conduct on the Southern community;
 - any relevant conduct violations by the Respondent, both at Southern or elsewhere, as well as any criminal convictions;
 - the Respondent's level of accepted responsibility for the conduct;
 - the maintenance of a safe and respectful environment conducive to learning;
 - any other mitigating, aggravating, or compelling circumstances to reach a just and appropriate resolution in each case.
4. When the Panel has determined the sanctions, if any, the Panel chairperson informs in writing the DSLA, who then notifies in writing the Complainant and Respondent of the findings.
 5. If the Complainant or the Respondent is not satisfied with the determinations of the adjudication process, either or both of the parties may appeal the results (Appeal process described below).
 6. Upon resolution of the investigation, adjudication, and appeal, a final report that includes, but is not limited to, observations on credibility, factual findings, and remedial actions, is compiled and then filed in the Office of the DSLA in a location that is separate from other student records.

If the Sexual Misconduct Review Panel determines that the Respondent must be sanctioned, sanctions may include:

1. Warning – the Panel determines that the misconduct is not substantial enough to warrant separating the Respondent from the campus. It then issues in writing a

cease and desist mandate with the warning that subsequent acts of sexual misconduct will likely result in sterner consequences.

2. Probation – the Panel determines that the misconduct is not substantial enough to warrant separating the Respondent from the campus but feels the action warrants more than a warning.
1. Suspension – the Panel determines that the Respondent must leave campus for a short period (usually 3-5 days) or for a complete semester or academic year. In the latter case he or she is dropped as a registered student. A Respondent who has received a sanction of indefinite suspension must submit a request for re-admission to the vice president for Student Services.
2. Withdrawal – if the Panel chooses this option at the end of a semester or summer session, it has the option of also recommending the student be allowed to complete course work for that semester or session if the student’s conduct has been acceptable during the period of investigation and adjudication.
3. Immediate Withdrawal –the Panel determines that a student move away from the university community; unwillingness to do so may result in formal dismissal.
4. Expulsion – the Panel determines that immediate separation between the student and the university community and that the student be banned from university properties. The student is not eligible for re-admission.

All Respondents who have received a sanction of suspension or withdrawal must be evaluated by a professional counselor (the counselor must be approved by the university’s Counseling Services) to determine the Respondent’s potential threat to the campus. The counselor’s assessment will be used to determine re-admission if the Respondent chooses to reapply to Southern upon the conclusion of the stipulated length of separation from the university community.

All sanctions include the stipulations that the Respondent is to have no contact with the Complainant. If the Panel has not recommended that the Respondent be expelled, a Respondent’s failure to abide by this stipulation may result in his or her expulsion.

Respondents who have received a sanction of withdrawal or expulsion are also banned from all properties owned by the university, including Fleming Plaza, the church grounds, all ball fields, the Biology and Bauxite Mountain Trails, and the Student Park.

Time Frames for the Investigation and Finding by the Sexual Misconduct Review Panel

All sexual misconduct investigations are conducted as promptly and equitably as possible without compromising thoroughness and rights of both the Complainant and

the Respondent. Absent extenuating circumstances, the university's investigation of a sexual misconduct complaint ordinarily is completed within 60 days from the time a formal complaint is made. This time period may be shorter or longer depending on the circumstances, including, but not limited to, the complexity of the case and the availability of witnesses. If the Complainant or Respondent would like to request an extension of this time frame, a request for extension with a description of the reasons for the request should be directed to the DSLA. The DSLA makes a decision on the appropriateness and extent of any extension (after notice to the other party), and informs the Complainant, the Respondent, and any other individual who needs to know of that decision. The DSLA may also decide to extend this general 45-day time frame because of other extenuating circumstances. The DSLA informs the Complainant, the Respondent and any other individual who needs to know of any such decision. Absent extenuating circumstances, the Sexual Misconduct Review Panel issues a finding regarding whether Southern policy has been violated within 15 days after receipt of the Investigator's complete report. The 15-day period may be extended if the Panel determines that further information or investigation is needed.

Appeals

The Complainant and Respondent each have the right to appeal the decision, and or sanctions of the Sexual Misconduct Review Panel. The purpose of an appeal is to review the adjudication process.

Grounds

Appeals are accepted on the basis of one or more of the following:

- discovery of significant new factual material not available to the SMRP that could have affected the original outcome; however, information that was deliberately omitted by the appealing party does not support an appeal;
- procedural error when the error prevented fairness;
- abuse of discretion in the issuance of a sanction, meaning that the SMRP imposed a sanction significantly disproportionate to the offense.

The right of appeal is available only to a Respondent or Complainant who participated in the investigative process. An appeal must be made in writing to the vice president for Student Services (VPSS) or designee within five business days of receipt of written notification of the findings of the SMRP. The appeal must include the grounds for appeal and an outline of supporting evidence.

Procedures

The VPSS invites an informational response to the appeal from both appealing and non-appealing parties, who must respond within five business days of the

invitation. The VPSS may request assistance from the original Investigator, a new Investigator, or any other relevant individual, as necessary.

The VPSS may deny the appeal, or if any of the appeal grounds have been met, may:

- return the case to the original SMRP for reconsideration; or
- convene a new SMRP to review the case, which ordinarily occurs when the original outcome was deemed to be based upon an abuse of discretion.

It is the responsibility of the VPSS to determine which aspects of the case merit a new review, and the parameters of the review, and to direct the DSLA accordingly. Absent extenuating circumstances, the VPSS notifies the Complainant and Respondent of the determination concurrently in writing within 30 days, and notifies the DSLA in writing of instructions for any further action.

Except in cases in which the sanction is expulsion, all decisions by the VPSS are final. In cases of expulsion, the Respondent may submit a final appeal to the president of Southern within five business days of written notification of the appeal outcome. The Complainant may submit a response to the Respondent's final appeal within five business days thereafter. The president may reduce the sanction, if warranted, after the consultation with the VPSS and a representative of the SMRP. Absent extenuating circumstances, the president concurrently informs the parties of the final decision in writing within 30 days of receiving the appeal and Complainant's response.

D. Procedures for Faculty and Staff

The following information is taken from the Employee Handbook, section 2020, whose focus is harassment of employees and students and deals with all forms of harassment, including harassment based on race, color, religion, sex, national origin, age, or disability. Therefore, some wording has been changed to fit the more narrow scope of this policy.

1. Individual Responsibilities:

- a. All employees are expected to refrain from all forms of harassment at all times.
- b. While the university encourages individuals who believe they are being harassed to firmly and promptly notify the offender that his or her behavior is unwelcome and should be stopped immediately, the university also recognizes that power and status disparities between an alleged harasser and an employee or student may make such confrontation ineffective, futile, or impossible. In the event that direct,

informal communication between individuals is ineffective, futile, or impossible, then the individual who believes that he or she has been the victim of harassment should report the conduct to:

- (1) The employee's supervisor; or
- (2) The department director; or
- (3) Human Resources director.

Incidents of suspected harassment should be reported as soon as possible, preferably within 48 hours, so that a prompt investigation can be undertaken by the university. If the complaint involves a direct supervisor, the employee should go directly to the department manager or Human Resources director. The initial report should be followed by a written statement describing the incident and identifying potential witnesses. Employees who are aware of incidents of potential workplace harassment toward others are to report such incidents to their department director or Human Resources director.

2. Supervisor Responsibilities:

Supervisors who observe harassing conduct should advise the offending individual to stop immediately, explaining what the conduct is and how it is offensive. They should document the occurrence and notify the Human Resources director. If a supervisor is uncertain as to whether observed conduct is prohibited harassment, the supervisor should contact the Human Resources director for assistance in deciding whether to take action.

Supervisors who receive from an employee or student a report of what appears to be sexual harassment should promptly notify the Human Resources director and request that the employee or student document the complaint in writing.

3. The Human Resources director will thoroughly and objectively investigate all reported allegations of harassment. In determining whether the alleged conduct occurred and, if it did, whether it constitutes harassment in violation of this policy, the university will examine the totality of the circumstances. A determination regarding the violation of this policy will be made from the facts of a particular situation, on a case-by-case basis. The Human Resources director may enlist the assistance of outside resources in conducting the investigation and in making the determination.
4. Upon a determination by the Human Resources director that the reported conduct occurred and that it constituted harassment in violation of this policy,

the university will take appropriate corrective action(s) against the offending employee such as:

- a. Written warning;
 - b. Referral to counseling;
 - c. Probation, with a warning of suspension or termination for continuing or recurring offenses;
 - d. Suspension with or without pay; and/or
 - e. Termination.
5. The university will keep all information obtained in connection with a report or investigation of alleged harassment confidential; however, the Human Resources director may disclose information to those individuals inside and outside the university whom they reasonably believe have a need to know the information in connection with the investigation, correction, or prevention of harassment in the workplace.
 6. While the university urges individuals to report harassment, unfounded allegations can irreparably harm an employee's reputation and limit his/her ability to fulfill job responsibilities. Employees or students who bring malicious, spiteful, or false allegations of harassment will be subject to disciplinary action.

Grievance Procedure

The following grievance procedure is taken from the Employee Handbook, section 4040. It is available to salaried staff members who believe that their treatment at Southern Adventist University has not been in accordance with the written policies of the University or its representatives. This procedure is also one of the methods by which concerns of harassment on account of race, color, sex, age, ethnicity or disability or sexual misconduct may be presented to the university.

Membership of the Grievance Committee

The membership of the grievance committee shall consist of the following members whose terms shall last two years. Committee members may serve a maximum of two consecutive terms. Members shall be elected on a staggered terms basis to provide some continuity of understanding and approach.

1. Chair, elected by the University Senate from faculty or salaried staff to 5-year renewable terms

2. Three faculty members, elected by the University Senate
 3. One alternate faculty member, elected by the University Senate
 4. Three staff members, elected by the University Senate.
 5. One alternate staff member, elected by the University Senate
- The Human Resources director of the university shall be, ex officio, the non-voting secretary of the Grievance Committee.

The Grievance Committee shall be empowered to replace such members as may excuse themselves from involvement in a particular grievance due to any conflict of interest, up to a maximum of two from each category (faculty, salaried staff). In selecting replacement members, the committee shall avoid choosing individuals with any known reason for bias regarding the case at hand. In no case shall the committee function with fewer than five members, specifically including the chair. In the event that the chair shall not be able to serve due to conflict of interest, he/she will be replaced for the purposes of the particular case in hand by an individual appointed by the Executive Committee of the University Senate.

Upon appointment or election, each committee member must sign a confidentiality statement. The signing of such a statement shall be understood to preclude discussion of the case outside of committee meetings, except as individual members of the committee may be directed to conduct necessary investigations. As a precaution, all personal notes taken during the meetings are to be left in the custody of the secretary of the committee between meetings.

At the end of the grievance process, all pertinent materials, including the written grievance, written responses to the Grievance, Committee members' personal notes, and records of committee procedures and actions shall be kept in the grievant's personnel file in the Office of Human Resources for no less than three years after the conclusion of the grievance process or for the duration of employment. The file containing these materials shall be sealed, and shall have the name of the grievant and of the individual who chaired the committee through the process on the outside.

Jurisdiction

The Grievance Committee shall have jurisdiction over matters including, but not limited to age, race, gender discrimination, color, national origin, handicap/disability, harassment, sexual misconduct, termination of employment, and non-renewal of employment agreement. In no case shall a grievance petition be entertained by the committee, until appropriate lesser forms of redress have been thoroughly explored, as follows:

1. The grievant may discuss directly with the respondent the allegations of the grievance and work with the respondent to resolve any concerns.

2. If the action suggested in paragraph 1 is unsuccessful, ill-advised, or otherwise inappropriate, the grievant is encouraged to first discuss his/her concerns with the supervisor or department chair or school dean who is responsible for taking appropriate action. If the grievance directly involves the supervisor, the grievant may go to the vice president having jurisdiction, at which point, if possible, the matter may be concluded by mutual consent. If a grievance directly involves an individual at the level of vice president, the grievant should bring the matter to the attention of the president.
3. If there is no mutually satisfactory resolution at an earlier stage, or if the grievant does not wish to bring the matter directly to the chair, dean, or supervisor, the grievant may contact the chair of the university Grievance Committee to seek resolution, as in paragraph 4 below.

If the matter is informally resolved at any point after the Grievance Committee has become involved, the grievant shall send written notice to the Grievance Committee that no further university action is needed or desired. In such event, the chair of the Grievance Committee shall place records pertaining to the grievance and its informal resolution in the Office of Human Resources, to be kept unsealed for a minimum of three years.

4. If the grievance is not resolved by any of the means described above, the grievant shall file a written grievance with the Grievance Committee after termination of the informal process. Should the chair be temporarily unavailable, the grievance shall be presented to the Human Resources director of the university. The written grievance should include a clear description of the problem, a description of efforts at reconciliation already undertaken, supporting evidence and documentation, and a statement of the remedy, or remedies, sought by the grievant.

The Grievance Committee chair shall, within 5 working days of receiving the written grievance, schedule a meeting of the Grievance Committee. The Grievance Committee shall meet within 20 days from the time the grievance was delivered to the chair. At the first session of the Grievance Committee, the committee shall make an initial determination concerning the following:

Whether a prima facie grievance, in fact, exists.

- a. Whether all lesser avenues of remedy have been appropriately explored.
- b. Whether additional written documentation or information is needed.
- c. Whether any persons not on the committee will be requested to attend future meetings.

If the Grievance Committee determines that a prima facie grievance does not exist, it shall notify the president, in writing, of that determination. The written letter shall also specify the reasons that the committee reached that determination. The president will notify the grievant of that decision.

If the committee's determination favors the president, he shall be free to implement his original intent and he shall so notify the grievant in writing within 5 working days of receiving the committee's report. If the committee's determination favors the grievant, the president shall meet in a timely manner with the entire Grievance Committee in an effort to reach consensus regarding the situation. If consensus can be reached, the president shall abide by it. If consensus cannot be reached, the president shall thereafter be free to proceed according to his/her best judgment within 5 working days of the consensus-seeking meeting, the president shall present to the grievant, in writing, the vote of the committee and his/her own final determination. This act shall mark the conclusion of the grievance procedure, at which point all university avenues of appeal shall be deemed to have been exhausted.

6. Communication with Honesty and Integrity

Southern prohibits making a false report or providing false or misleading information in any investigation of alleged violations of Southern's sexual misconduct policy. Because false statements may result in the compromise of a Complainant's or Respondent's rights, failure to provide truthful statements could result in the sanctioning of the guilty parties. Sanctions may range from short-term suspension to expulsion.

7. Education and Training

Education programs and training are conducted throughout the academic year to promote the awareness of rape, acquaintance rape, and domestic violence, dating violence, sexual assault, and stalking. The following list enumerates the various settings of these programs:

- **Students**
 - New Student Orientation
 - Special programming – Residence Hall Worships, Convocation, awareness weeks with activities
 - RAD classes
 - Upper Division – SAAP (Sexual Abuse Awareness and Prevention) class
- **Employees**
 - New Employee Orientation

- Special programming – Colloquium, Town Hall Meeting, etc.

8. Policy Access

An online link to this Sexual Misconduct Policy is available at both Southern's Human Resources and Student Services webpages. Printed copies of this policy are also available upon request in the office of the vice president for Student Services and at the residence halls.

12. Policy Review

This policy goes through an annual review. Reviews often occur during the academic year. Therefore, the website referenced above should be consulted for any updates or amendments. The amended policy, as published through the university's website, shall supersede wholly any prior versions of the policy.

Appendix A: Administrative Contacts

Vice President for Student Services

Dennis Negrón
Office of Student Services
Ulmer Students Center
Southern Adventist University
423.236.2813
negron@southern.edu

Title IX Coordinator

Associate Vice President for Human Resources
Brenda Flores-Lopez
Human Resource office
Southern Adventist University
2nd Floor Wright Hall
P.O. Box 370
Collegedale, TN 37315
423.236.2276
bfloreslopez@southern.edu

Student Services/Title IX Coordinator's Designee

Kari Shultz
Director of Student Life and Activities
Ulmer Student Center
Southern Adventist University
423.236.2484
kshultz@southern.edu

Appendix B: Other On-campus Resources

Campus Safety

423.236.2100

Campus Safety encourages any student, faculty, or staff member who has been sexually assaulted to report this incident to its office. From a safety and investigatory standpoint, the sooner a sexual assault is reported, the better. Even so, the University strongly encourages reporting at any time victims are ready to do so. Campus Safety can help them attend to their immediate needs, including transportation to the Partnership for Families, Children and Adults (students only), or a hospital emergency room. A request for assistance does not obligate victims to make a report to Campus Safety.

If Complainants report a sexual assault to Campus Safety, after the Complainants' immediate needs have been attended to, they are interviewed by a member of the Campus Safety staff and asked to share their accounts of what took place. This conversation may take place in the offices of the Campus Services Building on Industrial Drive or at another space on campus the Complainants find more comfortable. Complainants may indicate a gender preference of the officer who interviews them. Complainants are asked to write down their report, but the officer may ask them additional questions to make sure all of the important details are recorded. The officer takes notes, and once these notes are typed up, victims are asked to review them for accuracy.

Also, upon receiving a report of sexual assault, Campus Safety alerts the campus and community that a sexual assault has occurred. The warning is general and will not specify names or other identifying information. Reports of sexual assault made to Campus Safety are also reported to the Title IX Coordinator, the Title IX Designee, and the vice president for Students Services. Complainants are also encouraged to report any sexual assault to the Collegedale Police Department; however, reporting a sexual assault to Campus Safety does not commit Complainants to pursuing this avenue.

Housing Deans

Talge Hall/Southern Village/Non-traditional Student Housing Men

Dwight Magers, Dean of Men

423.236.2992

Thatcher Hall/Southern Village/Non-traditional Student Housing Women

Lisa Hall, Dean of Women

423-236-2900

Counseling Services

Liane de Souza, Counseling Services Coordinator

423.236.2782

University Health Service

Candace Wing, Director
423.236-2713

Chaplain's Office

Brennon Kirstein, Chaplain
423.236.2786

Appendix C: Federal/State/Local Agencies

Collegedale Police Department

423.468.1866

Office for Civil Rights

U.S. Department of Education

61 Forsyth St. SW, Suite 19T40

Atlanta, GA 30303

Telephone: 404.974.9450

Fax: 404.974.9459

Tennessee Department of Health

615-253-2551

Appendix D: Other Resources

Alternative Academic and Living Situations

The University changes a Complainant's academic and/or living situation(s) if changes are requested and are reasonably available. See dean in charge of Housing or Records office for assistance.

Partnership for Families, Children, and Adults

423.755.2700

The Partnership's Rape Crisis Center provides assistance to victims of sexual assault or rape. The Partnership staff provides confidential quality care to victims of sexual assault crimes. The caring and devoted nurses and advocates help victims by attending to physical, emotional, and educational needs of victims of sexual assault.

Nurses can provide forensic examination and other medical screenings to determine if further treatment is recommended. Evidence collected is stored and protected for prosecution. Victims are not required to report to law enforcement prior to receiving services. Nurses can offer medications to help prevent sexually transmitted diseases (infections).

Having evidence collected does not commit victims to filing a complaint with Southern or charges with the police. It allows victims to preserve evidence while they take time to decide if they want to file a report and/or press charges. If they bathe, change clothes, or otherwise alter their physical condition before having evidence collected, then they may be washing away valuable evidence. A lengthy delay in reporting may make evidence more difficult to collect. All services are confidential and at no cost to the victims.

Erlanger Hospital

423.778.7000

975 East 3rd Street

Chattanooga, TN 37403

If the hospital is closed, or if victims prefer to seek treatment off campus, they may receive care at Erlanger's Emergency Room. Campus Safety can provide transportation, and it is not necessary to share information with them about the nature of their emergency. Erlanger's staff offers medical treatment and can collect physical evidence. There may be a Sexual Assault Nurse Examiner available, but this is not guaranteed. Victims may want to call in advance to request that a SANE (Sexual Assault Nurse Examiner) be made available, if possible, before they come in.

RAINN (Rape, Abuse and Incest National Network): 1-800-656-HOPE, for men as well as women. This comprehensive national resource includes a telephone and on-line hotline, and may be particularly helpful for male survivors of sexual assault.

Tennessee Statewide Emergency Number
855-CRISIS-1 or 800-704-2651
Volunteer Behavioral Health Care System
413 Spring Street
Chattanooga, TN 37405

Appendix E: Title IX Coordinator

Inquiries concerning the application of Title IX may be referred to Southern's Title IX Coordinator or to the United States Department of Education Office for Civil Rights (contact information is listed in Appendix A). The full text of Southern's Nondiscrimination Statement is available at the Student Services and Human Resources pages of Southern's website. Printed copies are also available from the offices of Student Services and Human Resources.

Reasonable accommodations are provided for persons with disabilities who need assistance in reviewing the Sexual Misconduct policies.

The Director of Student Life and Activities serves as the University's Title IX Designee for the purposes of coordinating the University's efforts to comply with and carry out its responsibilities under Title IX.

The Sexual Misconduct Review Panel serves as the Title IX coordinator's designee for the purposes of determining sanctions, in a case of sexual misconduct.

The University's associate vice president for Human Resources serves as the Title IX coordinator for the purposes of coordinating sexual harassment training and education, conducting and/or supervising sexual harassment investigations, and adjudicating sexual harassment complaints on behalf of the University. The Title IX Coordinator may, as necessary, appoint other designees to assure that this policy is carried out.