

APPENDIX E

PENNSYLVANIA STATE LAW DEFINITIONS

Pennsylvania State law defines specific crimes, including sexual assault, as set forth below. **These definitions are provided as a reference. The Pennsylvania Crimes Code applies to criminal complaints whereas the definitions set forth in Section II.A. apply to Villanova's Sexual Misconduct Policy.**

§ 3124.1. Sexual assault.

Except as provided in section 3121 (relating to rape) or 3123 (relating to involuntary deviate sexual intercourse), a person commits a felony of the second degree when that person engages in sexual intercourse or deviate sexual intercourse with a complainant without the complainant's consent.

§ 3121. Rape.

- (a) Offense defined.--A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant:
- (1) By forcible compulsion.
 - (2) By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution.
 - (3) Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring.
 - (4) Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.
 - (5) Who suffers from a mental disability which renders the complainant incapable of consent.
- (b) **Rape of a child.**--A person commits the offense of rape of a child, a felony of the first degree, when the person engages in sexual intercourse with a complainant who is less than 13 years of age.
- (c) **Rape of a child with serious bodily injury.**--A person commits the offense of rape of a child resulting in serious bodily injury, a felony of the first degree, when the person violates this section and the complainant is under 13 years of age and suffers serious bodily injury in the course of the offense.

§ 3122.1. Statutory sexual assault.

- (a) Felony of the second degree.--Except as provided in section 3121 (relating to rape), a person commits a felony of the second degree when that person engages in sexual intercourse with a complainant to whom the person is not married who is under the age of 16 years and that person is either:
- (1) four years older but less than eight years older than the complainant; or
 - (2) eight years older but less than 11 years older than the complainant.
- (b) Felony of the first degree.--A person commits a felony of the first degree when that person engages in sexual intercourse with a complainant under the age of 16 years and that person is 11 or more years older

than the complainant and the complainant and the person are not married to each other.

§ 3123. Involuntary deviate sexual intercourse.

- (a) Offense defined.--A person commits a felony of the first degree when the person engages in deviate sexual intercourse with a complainant:
- (1) by forcible compulsion;
 - (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
 - (3) who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring;
 - (4) where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
 - (5) who suffers from a mental disability which renders him or her incapable of consent; or
 - (6) (Deleted by amendment).
 - (7) who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and person are not married to each other.
- (b) Involuntary deviate sexual intercourse with a child.--A person commits involuntary deviate sexual intercourse with a child, a felony of the first degree, when the person engages in deviate sexual intercourse with a complainant who is less than 13 years of age.
- (c) Involuntary deviate sexual intercourse with a child with serious bodily injury.--A person commits an offense under this section with a child resulting in serious bodily injury, a felony of the first degree, when the person violates this section and the complainant is less than 13 years of age and the complainant suffers serious bodily injury in the course of the offense.

§ 3125. Aggravated indecent assault.

- (a) Offenses defined.--Except as provided in sections 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse) and 3124.1 (relating to sexual assault), a person who engages in penetration, however slight, of the genitals or anus of a complainant with a part of the person's body for any purpose other than good faith medical, hygienic or law enforcement procedures commits aggravated indecent assault if:
- (1) the person does so without the complainant's consent;
 - (2) the person does so by forcible compulsion;
 - (3) the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
 - (4) the complainant is unconscious or the person knows that the complainant is unaware that the penetration is occurring;
 - (5) the person has substantially impaired the complainant's power to appraise or control his or her

conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;

- (6) the complainant suffers from a mental disability which renders him or her incapable of consent;
- (7) the complainant is less than 13 years of age; or
- (8) the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

- (b) Aggravated indecent assault of a child.--A person commits aggravated indecent assault of a child when the person violates subsection (a)(1), (2), (3), (4), (5) or (6) and the complainant is less than 13 years of age.

§ 3126. Indecent assault.

- (a) Offense defined.--A person is guilty of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and:

- (1) the person does so without the complainant's consent;
- (2) the person does so by forcible compulsion;
- (3) the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- (4) the complainant is unconscious or the person knows that the complainant is unaware that the indecent contact is occurring;
- (5) the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
- (6) the complainant suffers from a mental disability which renders the complainant incapable of consent;
- (7) the complainant is less than 13 years of age; or
- (8) the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

§ 4302. Incest.

- (a) General rule.--Except as provided under subsection (b), a person is guilty of incest, a felony of the second degree, if that person knowingly marries or cohabits or has sexual intercourse with an ancestor or descendant, a brother or sister of the whole or half blood or an uncle, aunt, nephew or niece of the whole blood.

- (b) Incest of a minor.--A person is guilty of incest of a minor, a felony of the second degree, if that person knowingly marries, cohabits with or has sexual intercourse with a complainant who is an ancestor or descendant, a brother or sister of the whole or half blood or an uncle, aunt, nephew or niece of the whole blood and:

- (1) is under the age of 13 years; or
- (2) is 13 to 18 years of age and the person is four or more years older than the complainant.

- (c) Relationships.--The relationships referred to in this section include blood relationships without regard to legitimacy, and relationship of parent and child by adoption.

§ 2709.1. Stalking.

- (a) Offense defined.--A person commits the crime of stalking when the person either:
- (1) engages in a course of conduct or repeatedly commits acts toward another person, including following the person without proper authority, under circumstances which demonstrate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person; or
 - (2) engages in a course of conduct or repeatedly communicates to another person under circumstances which demonstrate or communicate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person.
- (b) Venue.—
- (1) An offense committed under this section may be deemed to have been committed at either the place at which the communication or communications were made or at the place where the communication or communications were received.
 - (2) Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.
- (c) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Communicates." To convey a message without intent of legitimate communication or address by oral, nonverbal, written or electronic means, including telephone, electronic mail, Internet, facsimile, telex, wireless communication or similar transmission.

"Course of conduct." A pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct. The term includes lewd, lascivious, threatening or obscene words, language, drawings, caricatures or actions, either in person or anonymously. Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

"Emotional distress." A temporary or permanent state of mental anguish.

"Family or household member." Spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood.

DOMESTIC VIOLENCE AND DATING VIOLENCE

The Pennsylvania Crimes Code does not define "Dating Violence" or "Domestic Violence," but does provide the following "General Rule" regarding probable cause for arrest in domestic violence cases. This "probable cause" standard is different from the standard set forth in this policy, which requires a preponderance of the evidence.

The Pennsylvania Crimes Code states:

§ 2711. Probable cause arrests in domestic violence cases.

- (a) General rule.--A police officer shall have the same right of arrest without a warrant as in a felony whenever he has probable cause to believe the defendant has violated section 2504 (relating to involuntary manslaughter), 2701 (relating to simple assault), 2702(a)(3), (4) and (5) (relating to aggravated assault), 2705 (relating to recklessly endangering another person), 2706 (relating to terroristic threats) or 2709.1 (relating to stalking) against a family or household member although the offense did not take place in the presence of the police officer. A police officer may not arrest a person pursuant to this section without first observing recent physical injury to the victim or other corroborative evidence. For the purposes of this subsection, the term "family or household member" has the meaning given that term in 23 Pa.C.S. § 6102 (relating to definitions).

SEXUAL VIOLENCE

42 Pa.C.S. §62A03

Conduct constituting a crime under any of the following provisions between persons who are not family or household members:

18 Pa. C.S. Ch. 31 (relating to sexual offenses), except 18 Pa. C.S. §§ 3129 (relating to sexual intercourse with animal) and 3130 (relating to sexual intercourse with animal) and 3130 (relating to conduct relating to sex offenders).

18 Pa. C.S. § 4304 (relating to endangering welfare of children) if the offense involved sexual contact with the victim.

18 Pa. C.S. § 6301 (a) (1) (ii) (relating to corruption of minors).

18 Pa. C.S. § 6312 (b) (relating to sexual abuse of children).

18 Pa. C.S. § 6318 (relating to unlawful contact with minor).

18 Pa. C.S. § 6320 (relating to sexual exploitation of children).

CONSENT

"Consent" is not specifically defined as related to sexual activity. However, it is defined in the Crimes Code as follows:

§ 311. Consent.

- (a) General rule.--The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.
- (b) Consent to bodily injury.--When conduct is charged to constitute an offense because it causes or threatens bodily injury, consent to such conduct or to the infliction of such injury is a defense if:
- (1) the conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or
 - (2) the consent establishes a justification for the conduct under Chapter 5 of this title (relating to general principles of justification).
- (c) Ineffective consent.--Unless otherwise provided by this title or by the law defining the offense, assent does not constitute consent if:

- (1) it is given by a person who is legally incapacitated to authorize the conduct charged to constitute the offense;
- (2) it is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense;
- (3) it is given by a person whose improvident consent is sought to be prevented by the law defining the offense; or
- (4) it is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.