

# *Gender-Based Misconduct Policy*

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Members of the Georgia Military College community, guests, and visitors have the right to be free from sexual violence. All campus community members are expected to conduct themselves in a manner that does not infringe upon the rights of others. GMC believes in a zero-tolerance policy for gender-based misconduct. When an allegation of misconduct is brought to an appropriate administrator's attention, and a respondent is found to have violated this policy, severe sanctions will be used to ensure that such actions are never repeated reasonably. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

## **Policy Expectations**

### **Overview of policy expectations concerning physical and sexual misconduct**

The expectations of our college community regarding sexual misconduct can be summarized as follows: For individuals to engage in sexual activity of any type with each other, there must be clear, knowing, and voluntary consent before and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as straightforward as talking about what you want sexually and what you don't. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Silence--without actions demonstrating permission--cannot be assumed to show consent.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy, similar to physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to understand the situation reasonably. Individuals who consent to sex must be able to know what they are doing. Under this policy, "No" always means "No," and "Yes" may not always mean "Yes." Anything but explicit, knowing, and voluntary consent to any sexual activity is equivalent to a "No."

### **Overview of policy expectations concerning consensual relationships**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed differently by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and previously welcome conduct may become unwelcome. Even when both parties have consented to a romantic or sexual involvement at the outset, this past consent may not remove grounds for a later charge of violating applicable sections of the faculty/staff handbooks. The college does not wish to interfere with personal choices regarding personal relationships when these relationships do not impede the goals and policies of the college. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student) are generally discouraged. Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and this will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities or shift the student

out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes students over whom they have direct responsibility. While this policy prohibits no relationships, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

## **Sexual Violence—Risk Reduction Tips**

Risk reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to victim-blame and the recognition that only those who commit sexual violence are responsible for those actions, these suggestions may help you reduce your risk of experiencing a non-consensual sexual act. Below are tips to avoid committing a non-consensual sexual act are also offered:

- a. If you have limits, make them known as early as possible.
- b. Tell a sexual aggressor “NO” clearly and firmly.
- c. Try to remove yourself from the physical presence of a sexual aggressor.
- d. Find someone nearby and ask for help.
- e. Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- f. Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk of being accused of sexual misconduct:

- a. Clearly communicate your intentions to your sexual partner and give them a chance to relate them to you.
- b. Understand and respect personal boundaries.
- c. **DO NOT MAKE ASSUMPTIONS** about consent, about someone’s sexual availability, whether they are attracted to you, how far you can go, or whether they are physically and mentally able to consent. If there are any questions or ambiguity, then you **DO NOT** have consent.
- d. Mixed messages from your partner indicate that you should stop, defuse sexual tension and communicate better. You may be misreading them. They may not have decided how far they want to go with you. You must respect the timeline for sexual behaviors with which they are comfortable.
- e. Don’t take advantage of someone’s drunkenness or drugged state, even if they did it to themselves.
- f. Realize that your potential partner could be intimidated by you or fearful. You may have a power advantage simply because of your gender or size. Don’t abuse that power.
- g. Understand that consent to some form of sexual behavior does not automatically imply approval of any other forms of sexual behavior.
- h. Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

In campus hearings, legal terms like “guilt,” “innocence,” and “burdens of proof” are not applicable, but the college never assumes a student violated college policy. Campus hearings are conducted to consider the totality of all evidence available from all relevant sources.

GMC reserves the right to take whatever measures it deems necessary in response to an allegation of sexual misconduct to protect students’ rights and personal safety. Such efforts include, but are not limited to, modification of living arrangements, interim suspension from campus pending a hearing, and reporting the

matter to the local police. Not all forms of sexual misconduct will be deemed equally serious offenses, and GMC reserves the right to impose different sanctions, ranging from a verbal warning to expulsion, depending on the severity of the offense. GMC will consider the concerns and rights of both the complainant and the person accused of sexual misconduct.

## **Sexual Misconduct Definitions**

**Sexual misconduct offenses include, but are not limited to:**

- a. Sexual Harassment
- b. Non-Consensual Sexual Contact (or attempts to commit same)
- c. Non-Consensual Sexual Intercourse (or attempts to commit same)
- d. Sexual Exploitation

### Sexual Harassment:

Sexual Harassment is unwelcome, gender-based verbal or physical conduct that is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from GMC's educational program and activities and is based on power differentials (*quid pro quo*), the creation of a hostile environment, or retaliation.

Examples include an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual-based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; gender-based bullying.

*Quid pro quo* sexual harassment exists when there are unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature—submission to or rejection of such conduct results in adverse educational or employment action.

Retaliatory harassment is any adverse employment or educational action taken against a person because the person participated in a complaint or investigation of discrimination or sexual misconduct.

### Non-Consensual Sexual Contact:

Non-Consensual Sexual Contact is any intentional sexual touching, however slight, with any object by a man or a woman upon a man or woman without consent and by force.

Sexual Contact includes any bodily contact with the breasts, buttock, groin, genitals, mouth, or another bodily orifice of another individual, touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts or any other bodily contact in a sexual manner.

### Non-Consensual Sexual Intercourse

Non-Consensual Sexual Intercourse is any sexual penetration or intercourse, however slight, with any object, by a person upon another person without consent or force.

Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

## Sexual Exploitation

Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another and cases in which the conduct does not fall within the definitions of sexual harassment, non-consensual sexual intercourse, or non-consensual sexual contact.

Examples of sexual exploitation include, but are not limited to:

- Sexual voyeurism (such as watching a person undressing, using the bathroom, or engaging in sexual acts without the consent of the person observed)
- Taking pictures or video or audio recording another in a sexual act or any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent)
- Prostitution
- Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or another sexually transmitted disease (STD) and without informing the other person of the infection and further includes administering alcohol or drugs (such as "date rape" drugs) to another person without their knowledge or consent.

## **Other Applicable Definitions**

Consent is knowing, voluntary, and explicit permission by word or action to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction differently, each party must ensure that the other consents before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct.

People cannot consent if they cannot understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including alcohol or other drugs. An individual who engages in sexual activity when the individual knows or should know that the other person is physically or mentally incapacitated has violated this policy.

It is not an excuse that the individual respondent of sexual misconduct was intoxicated and, therefore, did not realize the incapacity of the other.

Incapacitation is a state where someone cannot make rational, reasonable decisions because they cannot give knowing consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint, or from the taking of incapacitating drugs.

Consent to sexual contact (such as kissing or fondling) cannot be presumed to consent to other sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced. Silence or the absence of resistance alone is not consent. People can withdraw consent at any time during sexual activity by expressing in words or actions that they no longer want the act to continue. If that happens, the other person must stop immediately.

In the State of Georgia, a minor (meaning a person under the age of 16 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 16 is a crime and a violation of this policy, even if the minor wanted to engage in the act.

George code §4-11-32 stipulates that “Consent” means assent in fact, whether express or implied ...which is not:

- (a) Induced by force, threat, false pretenses, or fraud;
- (b) Given by a person the actor knows or should have known, is not legally authorized to act for the owner;
- (c) Given by a person who because of youth, mental disease or defect, or intoxication is known or should have been known, by the actor to be unable to make reasonable decisions; or
- (d) Given solely to detect the commission of an offense. This definition applies to criminal prosecutions in Georgia but may differ from those used on campus to address policy violations.

Force is using physical violence or imposing on someone physically to gain sexual access. Force also includes intimidation (implied threats) and coercion that overcome resistance or produce consent. The use of force is not “worse” than the subjective experience of violation of someone who has sex without consent. However, the use of physical force also constitutes a stand-alone non-sexual offense. Those who use physical force (restrict, battery, etc.) will face not just the sexual misconduct charge but also charges under the Code of Conduct for other assaultive behavior.

NOTE: There is no requirement that a person resists the sexual advance or request, but resistance is a clear demonstration of non-consent. The absence of resistance does not demonstrate the presence of force. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not by definition forced.

Coercion: Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Incapacitation: Sexual activity with someone one should know to be -- or based on the circumstances should reasonably have known to be -- mentally or physically incapacitated (by alcohol or other drug use, unconsciousness, or blackout) constitutes a violation of this policy.

Incapacitation is a state where someone cannot make rational, reasonable decisions because they cannot give knowing consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or taking rape drugs. Possession, use, and distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc., is prohibited, and administering one of these drugs to another student violates this policy. More information on these drugs can be found at <https://www.womenshealth.gov/a-z-topics/date-rape-drugs>. The use of alcohol or other drugs will never function as a defense for any behavior that violates this policy.

The sexual orientation and gender identity of individuals engaging in sexual activity are irrelevant to allegations under this policy. For reference to the pertinent state statutes on sex offenses, please see O.C.G.A. Title 16, Chapter 6.

## **Sexual Misconduct Sanctions**

- a. Any student found responsible for violating the policy on Non-Consensual or Forced Sexual Contact (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident and any previous campus conduct code violations.

- b. Any student found responsible for violating the policy on Non-Consensual or Forced Sexual Intercourse will likely face a recommended sanction of suspension or expulsion.
- c. Any student found responsible for violating the policy on sexual exploitation or sexual harassment will likely receive a recommended sanction ranging from a warning to expulsion, depending on the severity of the incident and any previous campus conduct code violations.
- d. The conducting body reserves the right to broaden or lessen any range of recommended sanctions in the case of aggravating severe or mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

Other misconduct offenses violating the Student Code of Conduct will also fall under Title IX when the conduct is gender-based.

## **Procedures**

If a sex offense occurs, the victim should promptly preserve all evidence as may be necessary to the proof of a criminal assault or other sex offense. A report should be made by the victim directly to the local law enforcement agency.

## **Counseling/Medical Services**

Personal and academic problem assistance is available in the Department of Academic Support Services. Call 478-387-4902 for an appointment. Should you be a victim of sexual assault, call local law enforcement and go to the Emergency Room for treatment. If a medical examination is required to preserve the evidence of rape or sexual assault, an examination would be necessary immediately after the crime and before any change in the victim's body by washing or eliminating fluids. The medical examination is the responsibility of the victim. There are no facilities for medical examination on the campus of Georgia Military College, and it would be necessary for such an examination to be arranged off-campus, with the victim's cooperation.

## **Disciplinary Actions**

Procedures for disciplinary action in alleged sexual offenses shall include a hearing before the Disciplinary Committee. At other GMC Campuses, disciplinary measures for an alleged sexual violation shall consist of a hearing before the Campus Director.

Notice of a hearing on an accusation of sexual assault or other sexual offense will be sent by mail to the address given by the student at the time of admission for the term in which the allegation is made, a minimum of five days before the hearing date. A brief description of the nature of the charges will be contained in the notice.

At the hearing of an accusation of sexual assault:

- The accuser and the accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding.
- Both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding.
- The recommendations resulting from the disciplinary proceeding will be forwarded to the President of Georgia Military College for his decision.

## **GMC Campus Sexual Assault Victim's Bill of Rights**

The right to have any sexual assaults against them treated with seriousness; the right, as victims, to be treated with dignity; and the right for campus organizations that assist such victims to be recognized.

The right to have sexual assaults committed against them investigated and adjudicated by duly constituted criminal and civil authorities of the governmental entity where the crimes occurred; and the right to the full and prompt cooperation and assistance of campus personnel in notifying the proper authorities. The preceding shall be in addition to any campus disciplinary proceedings.

The rights to be free from any pressure from campus personnel such as:

- To not report crimes committed against them to civil and criminal authorities or campus law enforcement and disciplinary officials; or,
- To report crimes as lesser offenses than the victims perceive them.
- The right to be free from any suggestion that campus sexual assault victims not report, or under-report, crimes because:
  - Victims are somehow “responsible” for the commission of crimes against them;
  - Victims were contributory, negligent, or assumed the risk of being assaulted; or,
  - By reporting crimes, they would incur unwanted personal publicity

The same right to legal assistance or ability to have others present in any campus disciplinary proceeding that the institution permits to the accused; and the right to be notified of the outcome of such proceeding.

The right to full and prompt cooperation from campus personnel in obtaining, securing, and maintaining evidence (including a medical examination) as may be necessary to the proof of criminal sexual assault in subsequent legal proceedings. The right to be made aware of and assisted in exercising any options, as provided by State and Federal laws or regulations, about mandatory testing of sexual assault suspects for infectious diseases and about notification to victims of the results of such testing.

The right to counseling from any mental health services previously established by the institution, other victim-service entities, or victims themselves.