



## **Wellesley College Student Sexual Misconduct Policy State Law Definitions**

The following are excerpts compiled from the Massachusetts General Laws that describe how certain behavior relevant to the Wellesley College Sexual Misconduct Policy is defined in Massachusetts.

### **Sexual Harassment**

*(compiled from M.G.L. Ch. 151B)*

“Sexual harassment” means sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature when:

- Submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or enrollment or is used as a basis for employment or educational decisions, placement services or evaluation of academic achievement; or
- Such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual’s work or educational performance by creating an intimidating, hostile, humiliating or sexually offensive work or educational environment.

### **Sexual Assault (Rape, Indecent Assault & Battery)**

*(compiled from M.G.L. Ch. 265, § 13 & 22)*

Sexual assault is defined under Massachusetts law as rape or indecent assault and battery.

Rape is defined as occurring when a person has “sexual intercourse or unnatural sexual intercourse with a person, and compels such person to submit by force and against his will, or compels such person to submit by threat of bodily injury and if either such sexual intercourse or unnatural sexual intercourse results in or is committed with acts resulting in serious bodily injury, or is committed by a joint enterprise...”

Indecent assault and battery occurs when one person touches another person in an “indecent” way. Examples of indecent assault and battery include touching a person’s buttocks, breasts, or genitals without consent. The Commonwealth must prove that the defendant touched the alleged victim without justification or excuse; and that the touching was “indecent;” and that the alleged victim did not consent.

An indecent act is one that is fundamentally offensive to contemporary standards of decency.

## **Stalking**

*(compiled from M.G.L. Ch. 265, § 43)*

The act of “willfully and maliciously engaging in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress and makes a threat with the intent to place the person in imminent fear of death or bodily injury.” Stalking includes, but is not limited to, acts or threats conducted by mail or by use of a telephonic or electronic communication device. Communications include, but are not limited to, electronic mail, internet communications, instant messages or facsimile communications.

## **Domestic and Dating Violence**

*(compiled from M.G.L. Ch. 209A)*

“Abuse” is defined as “the occurrence of one or more of the following acts between family or household members:

- attempting to cause or causing physical harm;
- placing another in fear of imminent serious physical harm;
- causing another to engage involuntarily in sexual relations by force, threat, or duress.”

Family or household members are defined as “persons who:

- are or were married to one another;
- are or were residing together in the same household;
- are or were related by blood or marriage;
- having a child in common regardless of whether they have ever married or lived together; or
- are or have been in a substantive relationship, which shall be adjudged in consideration of the following factors: (1) the length of time of the relationship; (2) the type of relationship; (3) the frequency of interaction between the parties; and (4) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.”

## **Consent**

*(not defined by M.G.L. in this context)*

In Massachusetts, it is illegal to have sex under any circumstances with someone who is incapable of giving consent due to incapacity or impairment; incapacity or impairment may be caused by intoxication or drugs, or because a victim is underage, mentally impaired, unconscious, or asleep. For purposes of this policy, consent is an explicitly communicated, reversible, mutual agreement to which all parties are capable of making a decision.

Massachusetts has several laws that define the age of consent and the additional penalties that attach if a person is under the age of 16 or 14, *e.g.*, statutory rape laws, indecent and assault and battery on a person under the age of 14.

**Retaliation**

*(referenced by M.G.L. in various contexts, e.g., Chap. 151B.)*

Retaliation is frequently addressed by the U.S. Department of Education's Office for Civil Rights (OCR). OCR's legal standard for addressing retaliation claims is as follows:

A claim for retaliation must establish several elements. First, the facts must indicate that the complaining party engaged in a protected activity, *i.e.*, exercised a right or took some action that is protected under the laws OCR enforces, including Title IX. Second, the institution must be on notice of the protected activity. Third, the institution must take an adverse action against the complaining party. And fourth, there must be a causal connection between the protected activity and the adverse action. If any of these four elements cannot be established, then a claim of retaliation cannot be substantiated. If, on the other hand, all four elements are established, then OCR next analyzes whether there is a legitimate non-discriminatory reason for the retaliatory action in question. If no legitimate non-discriminatory reason is put forward, or if the reason is found to be a mere pretext for retaliation, then OCR may find that there was retaliation.