

A close-up photograph of a hand holding a pen over a document. The document contains legal text, including the words "written contract" and "company, or p". The background is a dark blue gradient with a white L-shaped graphic element framing the text.

Evaluating Policy Violations

IN THIS CHAPTER



UNDERSTANDING
ELEMENTS OF
OFFENSES



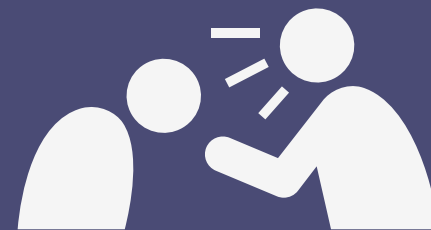
QUID PRO QUO
SEXUAL
HARASSMENT



DAVIS STANDARD
FOR SEXUAL
HARASSMENT



SEXUAL ASSAULT



DATING AND
DOMESTIC VIOLENCE



STALKING

Understanding Elements of Offenses



What do we mean by elements?

- In the criminal justice system, criminal offenses are structured in the following way:
 - Conduct (*actus reus*)
 - Individual's mental state at the time of the conduct (*mens rea*)
 - Causation between the conduct and the effect

Let's look at an example...

Sec. 28.08. GRAFFITI. (Texas Penal Code) Mental state

(a) A person commits an offense if, without the effective consent of the owner, the person intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner with:

- (1) paint;
- (2) an indelible marker; or
- (3) an etching or engraving device.

(b) Except as provided by Subsection (d), an offense under this section

is: (1) a Class C misdemeanor if the amount of pecuniary

loss is less than \$100 ← Causation between conduct and effect

Conduct or act

What do we mean by elements?

- In the administrative Title IX grievance process, we are talking about institutional policy violations
 - Sexual harassment, sexual assault, dating/domestic violence, stalking
- They differ in many ways
 - No mens rea (intentionally, knowingly, recklessly, etc.)
 - No prescribed punitive measures
 - Derived from definitions in the Title IX Regulations as well as the FBI Uniform Crime Reporting (UCR) Program
 - May not be the same definitions used for criminal adjudication

Conduct A

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Conduct B

+

Conduct C

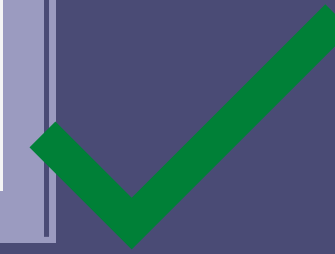
OR

Conduct D

=

Violation of Policy 123

Conduct A



+

Conduct B



+

Conduct C

OR

Conduct D

OR

Conduct E



Violation of Policy 123

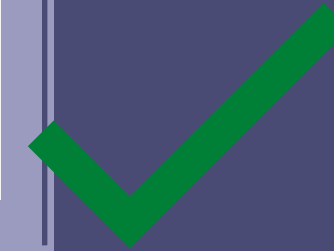


Conduct A



+

Conduct B



+

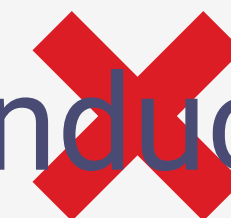
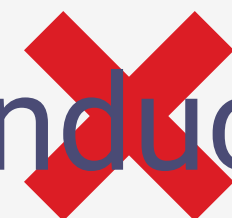
Conduct C

OR

Conduct D

OR

Conduct E



=

Violates Policy 123

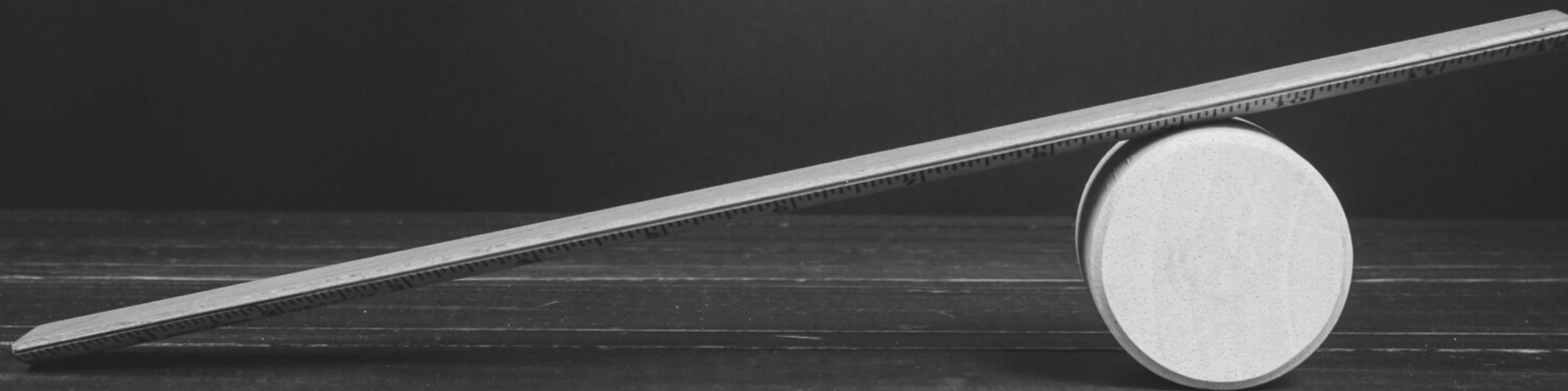
Title IX Coordinator Gatekeeping

- A level of gatekeeping has already taken place upon receipt of the Formal Complaint
- The Title IX Coordinator is the individual responsible for identifying the potential implicated policy violation
- The Decision-Maker's role is to determine whether the Respondent is responsible for the policy violation(s) using the institution's standard of proof

Review the Elements

- Determine what facts (elements) are in dispute
- Study the evidence that is relevant to each disputed fact (element). In other words, what would prove or disprove the fact (element)?
- If the investigation report contains conclusions regarding disputed issues or credibility, determine if the evidence clearly supports those conclusions. The Decision-Maker is ultimately responsible for coming to these conclusions.

Quid Pro Quo Sexual Harassment



What is quid pro quo sexual harassment?

"An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct."

§ 106.30 Definitions

Employee of the recipient

+

conditioning the provision of an aid,
benefit, or service of the recipient

+

on an individual's participation in
unwelcome sexual conduct.

Davis Standard for Sexual Harassment



What is the Davis Standard for sexual harassment?

"Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity."

§ 106.30 Definitions

Unwelcome conduct on the basis of sex

+

determined by a reasonable person

+

to be so severe,

+

pervasive,

+

and objectively
offensive

+

that it effectively denies a person equal
access to the recipient's education
program or activity.

Who is a reasonable person?

- Title IX Coordinators are specifically required to serve impartially
- Consider whether the incident was severe from the perspective of a reasonable person in the Complainant's position
- Step into the Complainant's shoes
- A Complainant is not required to "prove severity." Rather the school must consider if the incident meets the standard
- A clearly unreasonable response in light of the known circumstances violates Title IX
- Evaluate each Complainant's formal complaint carefully, thoughtfully, and reasonably

Factors to Consider

Age

Sex

Disability
Status

Position of
Authority/
Power
Imbalance

Relationship
Dynamics

Conduct

Duration and
Frequency

Effect or
Hardship
Created

Sexual Assault



What is the definition of sexual assault?

Sex Offenses - Forcible

"Any sexual act directed against another person, forcibly and/or against that persons will; or not forcibly or against the persons will where the victim is incapable of giving consent."

20 U.S.C. 1092(f)(6)(A)(v)

What is the definition of sexual assault?

Forcible offenses include:

Forcible Rape

The carnal knowledge of a person, forcibly and/or against that persons will; or not forcibly or against that persons will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth).

Forcible Sodomy

Oral or anal sexual intercourse with another person, forcibly and/or against that persons will; or not forcibly against that persons will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

20 U.S.C. 1092(f)(6)(A)(v)

What is the definition of sexual assault?

Forcible offenses include:

Sexual Assault with an Object

The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that persons will; or not forcibly against the persons will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Forcible Fondling

The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that persons will; or not forcibly or against that persons will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary mental incapacity.

20 U.S.C. 1092(f)(6)(A)(v)

What is the definition of sexual assault?

Sex Offenses - Non-forcible

"Unlawful, non-forcible sexual intercourse"

20 U.S.C. 1092(f)(6)(A)(v)

What is the definition of sexual assault?

Non-forcible offenses include:

Incest

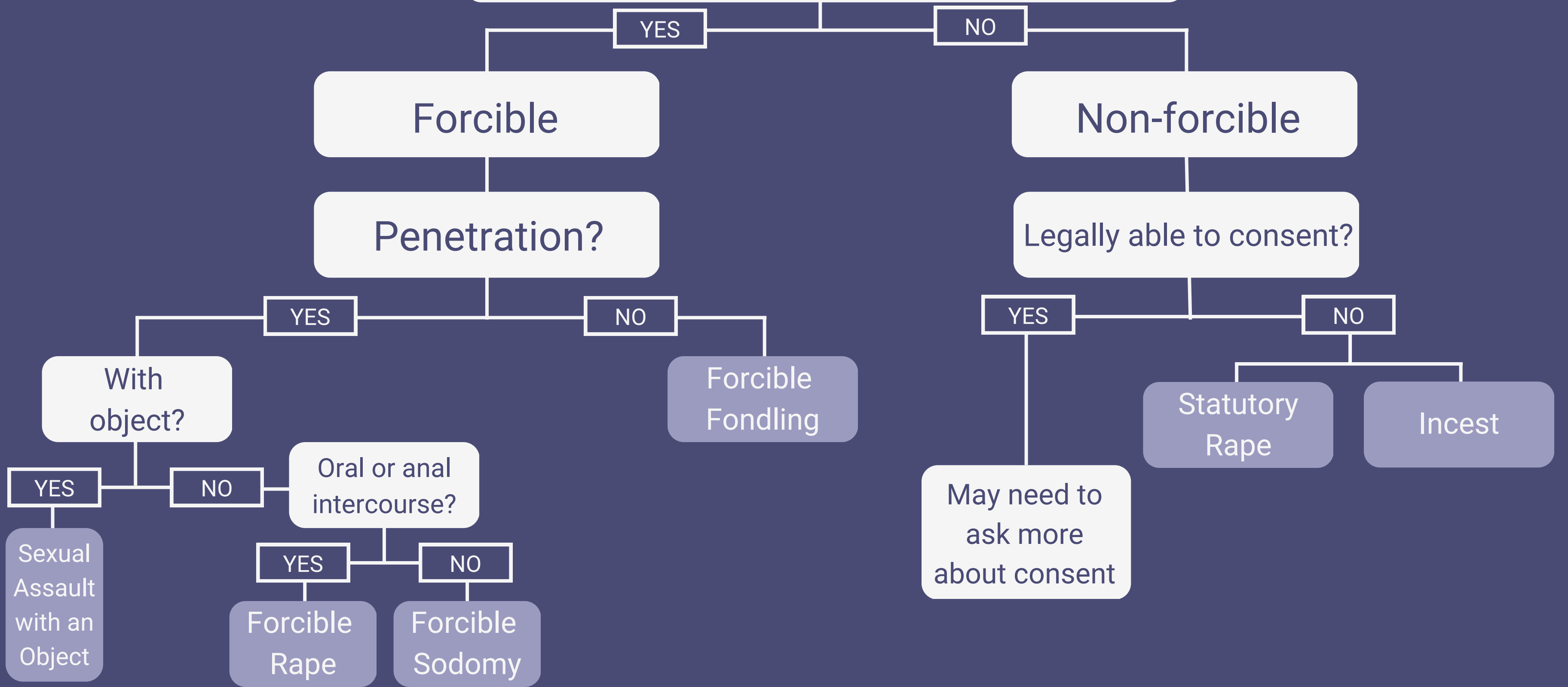
Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape

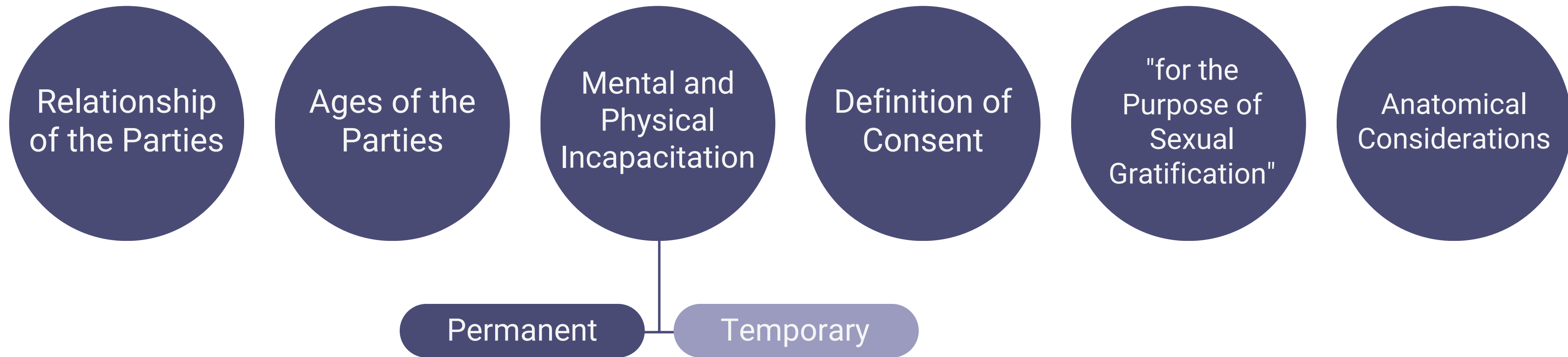
Non-forcible sexual intercourse with a person who is under the statutory age of consent.

20 U.S.C. 1092(f)(6)(A)(v)

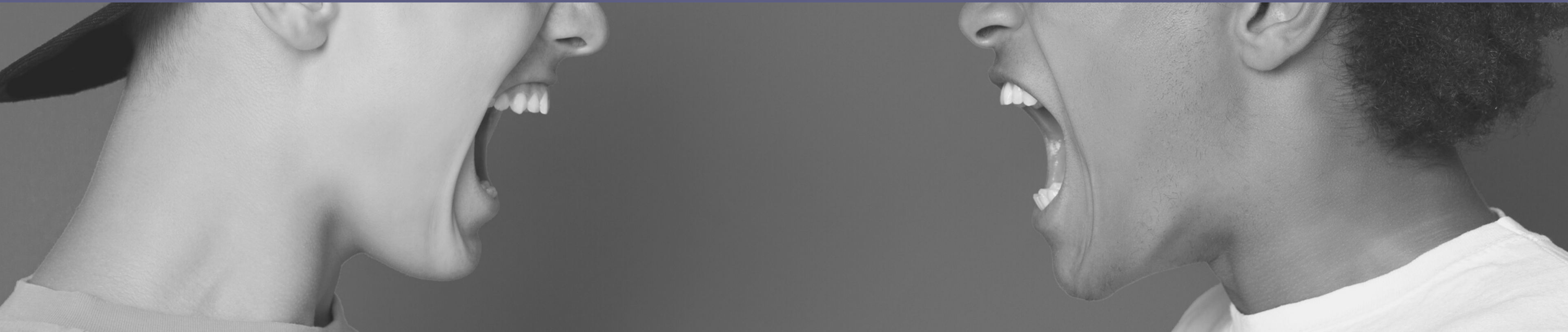
Use of force/Against the person's will



Factors to Consider



Dating and Domestic Violence



What is the definition of dating violence?

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 based on a consideration of the following factors:
 - i. The length of the relationship.
 - ii. The type of relationship.
 - iii. The frequency of interaction between the persons involved in the relationship.

34 U.S.C. 12291(a)(10)

What is the definition of domestic violence?

Felony or misdemeanor crimes of violence committed by:

- a current or former spouse or intimate partner of the victim,
- a person with whom the victim shares a child in common,
- a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or
- any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

34 U.S.C. 12291(a)(8)

Factors to Consider

Relationship
of the Parties

Cohabitation

Conduct
Constituting
Abuse by
Law

Stalking



What is the definition of stalking?

"Engaging in a course of conduct directed at a specific person that would cause a reasonable person to--
(A) fear for his or her safety or the safety of others; or
(B) suffer substantial emotional distress."

34 U.S.C. 12291(a)(30)

Engaging in a course of conduct directed
at a specific person

+

that would cause a reasonable person

Box A

+

Box B

to fear for his or her safety

OR

to fear for his or her safety

OR

suffer substantial emotional
distress

Factors to Consider

Number of Incidents

Threat of Harm or Perceived Threat of Harm

Effect of Conduct on Complainant