

Title IX Judicial Board Resource Packet

Valpo Policy & Procedures, Indiana & Federal Law

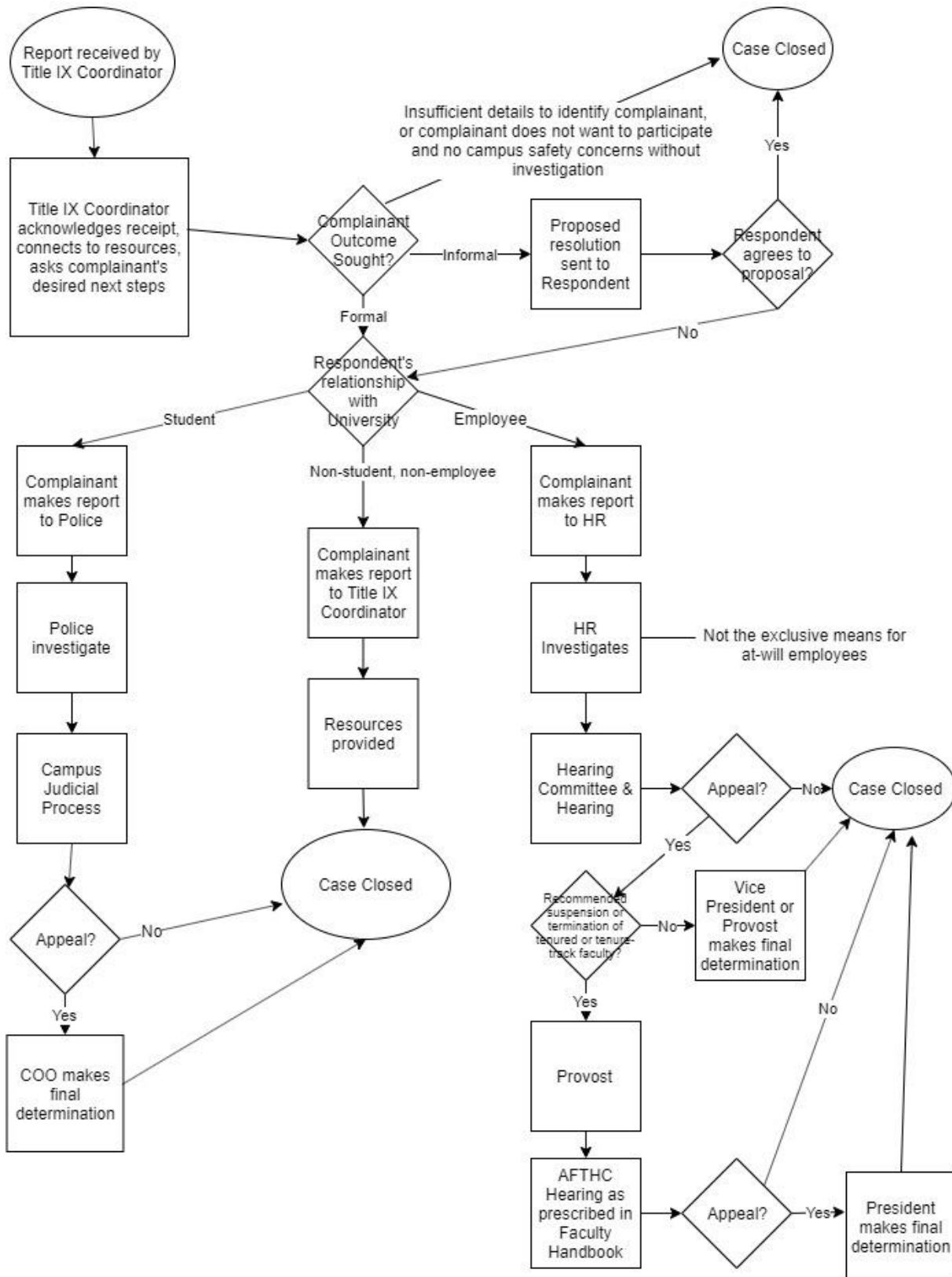
Contents

Links to Valpo Policies	2
Title IX Case Management Flowchart	3
Definitions	4
How to use these definitions:	4
Hierarchy of terms: Many of the following terms are related in the fashion depicted below:	4
Consent:	4
Sexual Harassment:	5
Sexual Violence:	5
Rape:	5
Statutory rape:	6
Sexual Assault:	7
Dating Violence:	8
Domestic Violence:	8
Fondling:	10
Incest:	10
Stalking:	10

Links to Valpo Policies

- Student or Student Employee respondent:
 - [Nondiscrimination, Harassment, and Sexual Misconduct Policy](#)
 - [Student Guide to University Life](#), page 105-111
- Employee respondent
 - [Nondiscrimination, Harassment, and Sexual Misconduct Policy](#)
 - [Staff Employee Handbook](#)
 - Prohibited Consensual Relationships, 2.6.3
 - Disciplinary Action 2.6.9
- Faculty respondent
 - [Nondiscrimination, Harassment, and Sexual Misconduct Policy](#)
 - [Faculty Handbook](#)
 - Prohibited Consensual Relationships between faculty and students, Appendix P
 - Termination of Tenure and Tenure-Track Faculty, 2.3.10

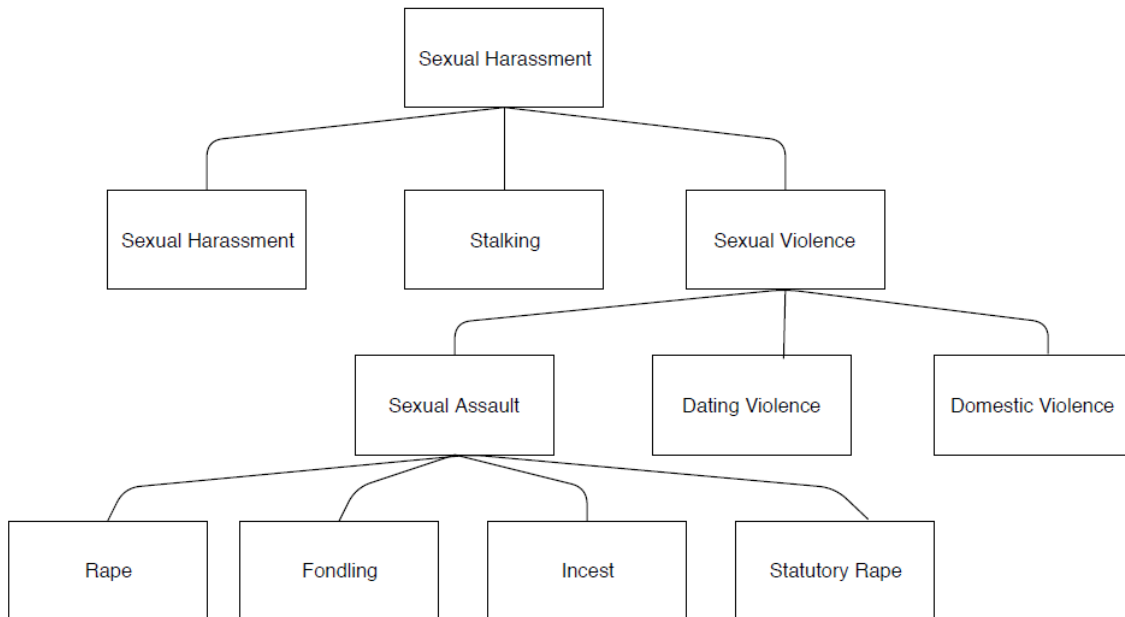
Title IX Case Management



Definitions

How to use these definitions: When you are deciding whether a violation of Valpo's Nondiscrimination policy has occurred, you will first need to understand how the offenses are defined. If the facts of the case before you fit a definition of the terms below, and do not also fit any exceptions, then you should make a finding of RESPONSIBLE. If the facts of the case before you do NOT fit any of the definitions of the terms below, OR fit an exception, then you should make a finding of NOT RESPONSIBLE.

Hierarchy of terms: Many of the following terms are related in the fashion depicted below:



Consent: The Indiana Criminal Code does not define consent in reference to sexual activity. Valpo defines consent as “informed, freely given, and mutually understood. Consent requires an affirmative act or statement by each participant. Consent is not passive.

There is no consent if:

- Coercion, intimidation, threats, and/or physical force are used.
- a person is mentally or physically incapacitated or impaired by alcohol or drugs such that the person cannot understand the fact, nature, or extent of the sexual situation.
- a person is asleep or unconscious.

Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent can be withdrawn. A person who initially consents to sexual activity is deemed not to have consented to any sexual activity that occurs after he or she withdraws consent. Finally, consent to previous sexual activity does not imply consent to future sexual activity.”¹

¹ Valparaiso University Nondiscrimination, Harassment, and Sexual Misconduct Policy, available at <https://www.valpo.edu/titleix/>

Sexual Harassment: generally involves unwanted sexual attention. Any person may be subject to sexual harassment, and one can be sexually harassed by a member of the same gender. Sexual harassment is generally defined as unwelcome advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:

- (1) submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of instruction, employment, or participation in other University activities;
- (2) submission to or rejection of such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions affecting an individual; or
- (3) such conduct has the purpose or effect of interfering with an individual's performance or creating an intimidating, hostile, or offensive environment.
- (4) Direct or implied threats that submission to sexual advances will be a condition of advancement or promotion in any endeavor, including but not limited to employment, work status, promotion, or academic grades;
- (5) Direct propositions of a sexual nature;
- (6) Unnecessary touching, hugging, or brushing against another person's body;
- (7) Sexually explicit statements, questions, or jokes;
- (8) Remarks of a sexual nature about a person's clothing or body, sexual activity, sexual orientation, gender identity, failure to conform to stereotypical notions of masculinity or femininity, or previous sexual experience;
- (9) Conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others, or suffer substantial emotional distress ("stalking");
- (10) Intimate partner violence such as domestic or dating violence; or
- (11) Physical assault or violence.

Sexual Violence: Sexual violence includes sexual assault, rape, sexual battery, sexual abuse, and sexual coercion. Some examples of sexual violence include:

- (1) Rape or sexual assault: sexual intercourse of any type with a person that has not consented to the intercourse.
- (2) Sexual touching of any type with a person that has not consented to the touching.
- (3) Sexual touching or intercourse of any type committed by force, threat, or intimidation.
- (4) Sexual touching or intercourse of any type committed by force or coercion to effect the touching or intercourse.
- (5) Sexual touching or sexual intercourse of any type with a person who is asleep or unconscious because of drug or alcohol use.
- (6) Exceeding the scope of consent by engaging in a different form of sexual activity than a person has consented to.
- (7) Knowingly transmitting a sexually transmitted disease such as HIV to another person through sexual activity.
- (8) Secretly videotaping sexual activity.
- (9) Participating in any activity that will likely result in any type of sexual touching or intercourse with a person by force, without the person's consent, or when the person is asleep or unconscious because of drug or alcohol use.

Rape: Rape or sexual assault: sexual intercourse of any type with a person that has not consented to the intercourse. According to the Clery Act, rape is penetration, no matter how slight, of the vagina or anus

with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.² Under Indiana law, it is further defined as follows:

Indiana Code 35-42-4-1 Rape (effective July 1, 2014)

Sec. 1. (a) Except as provided in subsection (b), a person who knowingly or intentionally has sexual intercourse with another person or knowingly or intentionally causes another person to perform or submit to other sexual conduct (as defined in IC 35-31.5-2-221.5) when:

- (1) the other person is compelled by force or imminent threat of force;
- (2) the other person is unaware that the sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) is occurring; or
- (3) the other person is so mentally disabled or deficient that consent to sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) cannot be given; commits rape, a Level 3 felony.

(b) An offense described in subsection (a) is a Level 1 felony if:

- (1) it is committed by using or threatening the use of deadly force;
- (2) it is committed while armed with a deadly weapon;
- (3) it results in serious bodily injury to a person other than a defendant; or
- (4) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

Statutory rape: is sexual intercourse with a person who is under the statutory age of consent.³ In the state of Indiana, the age of consent is 16.⁴ Statutory rape or sexual misconduct with a minor are subject to the following criminal penalties:

IC 35-42-4-9 Sexual Misconduct with a Minor

Sec. 9. (a) A person at least eighteen (18) years of age who knowingly or intentionally performs or submits to sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with a child less than sixteen (16) years of age, commits sexual misconduct with a minor, a Level 5 felony. However, the offense is:

- (1) a Level 4 felony if it is committed by a person at least twenty-one (21) years of age; and
- (2) a Level 1 felony if it is committed by using or threatening the use of deadly force, if it is committed while armed with a deadly weapon, if it results in serious bodily injury, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

² U.S. Department of Justice (2013). Summary Reporting System (SRS) User Manual, 31. Available at <https://ucr.fbi.gov/nibrs/summary-reporting-system-srs-user-manual>.

³ U.S. Department of Education (2016), Clery Handbook at 3-7, available at <https://www2.ed.gov/admins/lead/safety/handbook.pdf>.

⁴ IC 35-42-4-9 Sexual Misconduct with a minor.

(b) A person at least eighteen (18) years of age who knowingly or intentionally performs or submits to any fondling or touching with a child less than sixteen (16) years of age with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits sexual misconduct with a minor, a Level 6 felony. However, the offense is:

- (1) a Level 5 felony if it is committed by a person at least twenty-one (21) years of age; and
- (2) a Level 2 felony if it is committed by using or threatening the use of deadly force, while armed with a deadly weapon, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) It is a defense that the accused person reasonably believed that the child was at least sixteen (16) years of age at the time of the conduct. However, this subsection does not apply to an offense described in subsection (a)(2) or (b)(2).

(d) It is a defense that the child is or has ever been married. However, this subsection does not apply to an offense described in subsection (a)(2) or (b)(2).

(e) It is a defense to a prosecution under this section if all the following apply:

- (1) The person is not more than four (4) years older than the victim.
- (2) The relationship between the person and the victim was a dating relationship or an ongoing personal relationship. The term "ongoing personal relationship" does not include a family relationship.
- (3) The crime:
 - (A) was not committed by a person who is at least twenty-one (21) years of age;
 - (B) was not committed by using or threatening the use of deadly force;
 - (C) was not committed while armed with a deadly weapon;
 - (D) did not result in serious bodily injury;
 - (E) was not facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; and
 - (F) was not committed by a person having a position of authority or substantial influence over the victim.

(4) The person has not committed another sex offense (as defined in IC 11-8-8-5.2) (including a delinquent act that would be a sex offense if committed by an adult) against any other person.

(5) The person is not promoting prostitution (as defined in IC 35-45-4-4) with respect to the victim even though the person has not been charged with or convicted of the offense.

Sexual Assault: Sexual intercourse of any type with a person that has not consented to the intercourse. An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program.⁵ In the state of Indiana, sexual assault is captured in its Sexual Battery laws.

IC 35-42-4-8 Sexual battery (effective July 1, 2014)

⁵ Violence Against Women Act of 1994, 34 C.F.R. 668.46(a).

Sec. 8. (a) A person who, with intent to arouse or satisfy the person's own sexual desires or the sexual desires of another person:

(1) touches another person when that person is:

(A) compelled to submit to the touching by force or the imminent threat of force; or

(B) so mentally disabled or deficient that consent to the touching cannot be given; or

(2) touches another person's genitals, pubic area, buttocks, or female breast when that person is unaware that the touching is occurring; commits sexual battery, a Level 6 felony.

(b) An offense described in subsection (a) is a Level 4 felony if:

(1) it is committed by using or threatening the use of deadly force;

(2) it is committed while armed with a deadly weapon; or

(3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

Dating Violence: A violent act committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

According to the Clery Act, Dating Violence is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include act covered under the definition of domestic violence.⁶

Dating violence is not specifically defined within the Indiana Code. However, dating violence may be defined as:

Violence committed by any person who:

(a) is or has been in a relationship of a romantic or intimate nature; and

(b) where the existence of such a relationship will be determined based on a consideration of the following factors:

i. length of the relationship

ii. type of relationship

iii. the frequency of interactions between the persons involved in the relationship.

Domestic Violence: A violent act committed by a:

(1) current or former spouse or intimate partner of the victim;

(2) person with whom the victim shares a child in common;

⁶ U.S. Department of Education (2016), Clery Handbook at 3-36, available at <https://www2.ed.gov/admins/lead/safety/handbook.pdf>.

- (3) person cohabitating with, or has cohabited with, the victim as a spouse or intimate partner;
- (4) person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the violence occurred; or
- (5) 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 in which the violence occurred

IC 5-26.5-1-3 Domestic violence (effective July 1, 2014)

Sec. 3. "Domestic violence" includes conduct that is an element of an offense under IC 35-42 or a threat to commit an act described in IC 35-42 by a person against a person who:

- (1) is or was a spouse of;
- (2) is or was living as if a spouse of;
- (3) has a child in common with;
- (4) is a minor subject to the control of; or
- (5) is an incapacitated individual under the guardianship or otherwise subject to the control of; the other person regardless of whether the act or threat has been reported to a law enforcement agency or results in a criminal prosecution.

IC 35-42-2-1.3 Domestic battery (effective July 1, 2014)

Sec. 1.3. (a) A person who knowingly or intentionally touches an individual who:

- (1) is or was a spouse of the other person;
- (2) is or was living as if a spouse of the other person as provided in subsection (c); or
- (3) has a child in common with the other person; in a rude, insolent, or angry manner that results in bodily injury to the person described in subdivision (1), (2), or
- (4) commits domestic battery, a Class A misdemeanor.

(b) However, the offense under subsection (a) is a Level 6 felony if the person who committed the offense:

- (1) has a previous, unrelated conviction:
 - (A) under this section (or IC 35-42-2-1(a)(2)(E) before that provision was removed by P.L.188-1999, SECTION 5); or
 - (B) in any other jurisdiction, including a military court, in which the elements of the crime for which the conviction was entered are substantially similar to the elements described in this section; or
- (2) committed the offense in the physical presence of a child less than sixteen (16) years of age, knowing that the child was present and might be able to see or hear the offense.

(c) In considering whether a person is or was living as a spouse of another individual for purposes of subsection (a)(2), the court shall review:

- (1) the duration of the relationship;
- (2) the frequency of contact;
- (3) the financial interdependence;
- (4) whether the two (2) individuals are raising children together;
- (5) whether the two (2) individuals have engaged in tasks directed toward maintaining a common household; and
- (6) other factors the court considers relevant.

Fondling: According to the Clery Act, fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.⁷

Incest: According to the Clery Act, incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.⁸

In the State of Indiana, 35-46-1-3 applies.

Sec. 3. (a) A person eighteen (18) years of age or older who engages in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with another person, when the person knows that the other person is related to the person biologically as a parent, child, grandparent, grandchild, sibling, aunt, uncle, niece, or nephew, commits incest, a Level 5 felony. However, the offense is a Level 4 felony if the other person is less than sixteen (16) years of age.

(b) It is a defense that the accused person's otherwise incestuous relation with the other person was based on their marriage, if the marriage was valid where it was entered into.

Stalking: According to the Clery Act, stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.⁹

In the state of Indiana, the following laws apply:

IC 35-45-10-1 "Stalk" defined

Sec. 1. As used in this chapter, "stalk" means a knowing or an intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened. The term does not include statutorily or constitutionally protected activity.

IC 35-45-10-5 Criminal stalking (effective July 1, 2014)

Sec. 5. (a) A person who stalks another person commits stalking, a Level 6 felony.

⁷ U.S. Department of Education (2016), Clery Handbook at 3-6, available at <https://www2.ed.gov/admins/lead/safety/handbook.pdf>.

⁸ U.S. Department of Education (2016), Clery Handbook at 3-6, available at <https://www2.ed.gov/admins/lead/safety/handbook.pdf>.

⁹ U.S. Department of Education (2016), Clery Handbook at 3-37:38, available at <https://www2.ed.gov/admins/lead/safety/handbook.pdf>.

(b) The offense is a Level 5 felony if at least one (1) of the following applies:

(1) A person:

(A) stalks a victim; and

(B) makes an explicit or an implicit threat with the intent to place the victim in reasonable fear of:

(i) sexual battery (as defined in IC 35-42-4-8);

(ii) serious bodily injury; or

(iii) death.

(2) A protective order to prevent domestic or family violence, a no contact order, or other judicial order under any of the following statutes has been issued by the court to protect the same victim or victims from the person and the person has been given actual notice of the order:

(A) IC 31-15 and IC 34-26-5 or IC 31-1-11.5 before its repeal (dissolution of marriage and legal separation).

(B) IC 31-34, IC 31-37, or IC 31-6-4 before its repeal (delinquent children and children in need of services).

(C) IC 31-32 or IC 31-6-7 before its repeal (procedure in juvenile court).

(D) IC 34-26-5 or IC 34-26-2 and IC 34-4-5.1 before their repeal (protective order to prevent abuse).

(E) IC 34-26-6 (workplace violence restraining orders).

(3) The person's stalking of another person violates an order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion if the person has been given actual notice of the order.

(4) The person's stalking of another person violates a no contact order issued as a condition of probation if the person has been given actual notice of the order.

(5) The person's stalking of another person violates a protective order issued under IC 31-14-16-1 and IC 34-26-5 in a paternity action if the person has been given actual notice of the order.

(6) The person's stalking of another person violates an order issued in another state that is substantially similar to an order described in subdivisions (2) through (5) if the person has been given actual notice of the order.

(7) The person's stalking of another person violates an order that is substantially similar to an order described in subdivisions (2) through (5) and is issued by an Indian:

(A) tribe;

(B) band;

(C) pueblo;

(D) nation; or

(E) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians if the person has been given actual notice of the order.

(8) A criminal complaint of stalking that concerns an act by the person against the same victim or victims is pending in a court and the person has been given actual notice of the complaint.

(c) The offense is a Level 4 felony if:

- (1) the act or acts were committed while the person was armed with a deadly weapon; or
- (2) the person has an unrelated conviction for an offense under this section against the same victim or victims.