Comparison of Federal Laws Pertaining to *VAWA 2013* and *Missouri Statutes* *as of August 28, 2014*

Comparison of Missouri and Federal Sexual Assault Definitions

Section 304 of VAWA stipulates that an Institution of Higher Education must provide the local statutory definition of consent for its jurisdiction in its Sexual Assault, Domestic Violence, Dating Violence, and Stalking Policy. Sexual Assault is considered a sexual offense or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation's Crime Reporting program. After completion of the negotiated federal rule making these definitions will be codified in *34 CFR 668 Appendix A (See 34 CFR 668 Subpart D for more info).* The Final Rule is scheduled to be promulgated under rulemaking on November 1, 2014 and shall become effective July 2015.

Definitions of sexual assault, domestic violence, dating violence, and stalking can be found in section 304 of Public Law 113-4 "*The Violence Against Women Act 2013*" (VAWA). However, institutions must also abide by the state statues that reflect the federal definitions.

The Missouri legislature updated the laws regarding Sexual Assaults and Orders of Protection with *HB215*. HB215 was an emergency clause signed by the Missouri Governor on July 02, 2013, which became effective on that date. Missouri sexual offenses statutes *can be found in RSMo. 566 (see Sexual Offense and VAWA Crimes Tables* and *566.010 Definitions of Sexual Offenses* for more info*).* "*" indicates laws updated in the August 2013 Missouri legislative session.

"Consent" *RSMo. 556.061(5)**

Consent or lack of consent may be expressed or implied.
Assent does not constitute consent if:

a) It is given by a person who lacks the mental capacity to authorize the conduct charged to constitute the offense and such mental incapacity is manifest or known to the actor; or
b) It is given by a person who by reason of youth, mental disease or defect, intoxication, a drug-induced state, or any other reason 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; or
c) It is induced by force, duress or deception;

- ✓ ***"No"*** means ***"No"***
- ✓ ***"No"*** can be expressed or implied ***(it does not have to be spoken)***
- ✓ ***"Yes"*** means ***"No"*** if conditions ***a, b, or c*** listed above exist

****Note on consent and age (reason of youth) in regards to sexual activity in Missouri***

- Sexual intercourse with someone under the **age of 14** is Statutory Rape 1st Degree (RSMo. 566.032)
- Sexual intercourse with someone under the **age of 17** is Statutory Rape 2nd Degree, if you are **21 or older** (RSMo. 566.034)

- Sexual contact with someone between the **ages of 14 -16** is Child molestation 2nd degree, (RSMo. 566.068) (***based on current statutes, consult your legal counsel for more info***)

"Incapacitated" *RSMo. 556.061(13)** means that physical or mental condition, temporary or permanent, in which a person is unconscious, unable to appraise the nature of such person's conduct, or unable to communicate unwillingness to an act;

Sex Offenses (FBI UCR) **–** Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

A. ***Rape (FBI UCR)*** **–** The 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 (*Definition effective 01/01/13 from FBI UCR*).
Also see "Frequently Asked Questions about the Change in the UCR Definition of Rape May 20, 2013"

Corresponding Missouri Statutes
Rape ***(No longer forcible rape in Mo Statute)***
*566.030 Rape in the first degree, penalties—suspended sentences not granted, when.**
*566.031 Rape in the second degree, penalties.** *(Included former Sexual Assault Definition 566.40)* **(Count statutory rape as rape if it is without consent)**

Sodomy **-** Oral or anal sexual intercourse with another person, 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 or physical incapacity.

Corresponding Missouri Statutes
*566.060 Sodomy 1st Degree, penalties--suspended sentence not granted, when.**
*566.061 Sodomy 2nd Degree (Formerly Deviate Sexual Assault 566.70), penalties--suspended sentence not granted, when.**
566.062 Statutory Sodomy 1st Degree
566.064 Statutory Sodomy 2nd Degree

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, 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 or physical incapacity (Please note that a finger or hand is also considered an object).

Corresponding Missouri Statutes
566.060 Sodomy 1st Degree, penalties--suspended sentence not granted, when.*
566.061 Sodomy 2nd Degree (Formerly Deviate Sexual Assault 566.70), penalties--suspended sentence not granted, when.*
566.062 Statutory Sodomy 1st Degree
566.064 Statutory Sodomy 2nd Degree

***34 CFR 668 Appendix A* was updated during the 2013 rulemaking process to correspond with the 2013 UCR expanded definition of Rape (which includes the crimes of sodomy and sexual assault with an object).**

B. ***Fondling (FBI UCR)* -** 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 or physical incapacity

Corresponding Missouri Statutes
Sexual Abuse
566.100 Sexual abuse in the first degree, penalties.*
566.101 Sexual abuse, second degree, penalties.* *Formerly 566.90 Sexual Misconduct 1st Degree*
566.068 Child Molestation 2nd degree*

C. ***Incest (FBI UCR)* -** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Corresponding Missouri Statutes
568.020 Incest

D. ***Statutory Rape (FBI NIBRS)* –** Non-forcible sexual intercourse with a person who is under the statutory age of consent (See page 40 of **"**The National Incident-Based Reporting System Edition of the Uniform Crime Reporting Program 2013 Handbook (NIBRS)".

Corresponding Missouri Statutes (Counted only if crime is non-forcible)
566.032 Statutory Rape 1st Degree (twenty-one years of age or older, that has sexual intercourse with another person who is less than seventeen years of age.)
566.034 Statutory Rape 2nd Degree
(Sexual Intercourse with a person who is under the age of 14 in Missouri)

Federal Law Violence Against Women Act (VAWA) Crime Categories Additions

Definitions used in section the Violence Against Women Act of 1994 (42 U.S.C. 13925(a))
After completion of the negotiated federal rule making these definitions will be codified in 34 CFR 668.48(a).

***Domestic Violence*:**

1. A felony or misdemeanor crime of violence committed--
   (i) By a current or former spouse or intimate partner of the victim;
   (ii) By a person with whom the victim shares a child in common;
   (iii) By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
   (iv) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or

(v) By 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 in which the crime of violence occurred.

***Dating Violence*:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

1. 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.
2. For the purpose of this definition-
   (i) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
   (ii) Dating violence does not include acts covered under the definition of domestic violence.

***Stalking*:**

1. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to –
   (i) Fear for the person's safety or the safety of others; or
   (ii) Suffer substantial emotional distress.
2. For the purpose of this definition –
   (i) *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.
   (ii) *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
   (iii) *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.

Applicable Missouri Laws (Revised Statutes of Missouri (RSMo.)

DEFINTINONS APPLICABLE IN STATUTES CONCERNING ORDERS OF PROTECTION *RSMo. 455*

"Domestic Violence*" (*455.010(5) RSMo.*) is ***abuse*** or ***stalking*** committed by a ***family or household member***.

"Family" or "Household Member" (*455.010(7) RSMo.*)
"spouses, former spouses, any person related by blood or marriage, persons who are presently residing together or have resided together in the past, ***any person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim***, and anyone who has a child in common regardless of whether they have been married or have resided together at any time;"

"Abuse" (*455.010(1) RSMo.*) includes but is not limited to the occurrence of any of the following acts, attempts or threats against a person who may be protected pursuant to this chapter, except abuse shall not include abuse inflicted on a child by accidental means by an adult household member or discipline of a child, including spanking, in a reasonable manner:

a. ***"Assault"***, purposely or knowingly placing or attempting to place another in fear of physical harm;
b. ***"Battery"***, purposely or knowingly causing physical harm to another with or without a deadly weapon;
c. ***"Coercion"***, compelling another by force or threat of force to engage in conduct from which the latter has a right to abstain or to abstain from conduct in which the person has a right to engage;
d. ***"Harassment"***, engaging in a purposeful or knowing course of conduct involving more than one incident that alarms or causes distress to an adult or child and serves no legitimate purpose. The course of conduct must be such as would cause a reasonable adult or child to suffer substantial emotional distress and must actually cause substantial emotional distress to the petitioner or child.
    i. Such conduct might include, but is not limited to:
    ii. Following another about in a public place or places;
    iii. Peering in the window or lingering outside the residence of another; but does not include constitutionally protected activity;
e. ***"Sexual assault"***, causing or attempting to cause another to engage involuntarily in any sexual act by force, threat of force, or duress;
f. ***"Unlawful imprisonment"***, holding, confining, detaining or abducting another person against that person's will;

"Stalking" (*455.010(13) RSMo.*) is when any person purposely and repeatedly engages in an unwanted course of conduct that causes alarm to another person when it is reasonable in that person's situation to have been alarmed by the conduct. As used in this subdivision:

a. "Alarm" means to cause fear of danger of physical harm;
b. "Course of conduct" means a pattern of conduct composed of repeated acts over a period of time, however short, that serves no legitimate purpose. Such conduct may include, but is not limited to, following the other person or unwanted communication or unwanted contact; and
c. "Repeated" means two or more incidents evidencing a continuity of purpose.

MISSOURI STATUTE ON CRIMES THAT COVER DOMESTIC VIOLENCE, DATING VIOLENCE AND STALKING

Domestic Assault *(RSMo. 565) (Similar to Domestic Violence in Federal but Domestic Violence includes Dating Violence in defintion) (See Missouri Bar Handbook on Domestic violence)*

565.072 Domestic assault, first degree--penalty

A person commits the crime of domestic assault in the first degree if he or she attempts to kill or knowingly causes or attempts to cause serious physical injury to a ***family or household member***, including any child who is a member of the family or household, as defined in section 455.010.

Domestic assault in the first degree is a class B felony unless in the course thereof the actor inflicts serious physical injury on the victim or has previously pleaded guilty to or been found guilty of committing this crime, in which case it is a class A felony.

565.073 Domestic assault, second degree--penalty

A person commits the crime of domestic assault in the second degree if the act involves a family or household member, including any child who is a member of the family or household, as defined in section 455.010, and he or she:

1. Attempts to cause or knowingly causes physical injury to such family or household member by any means, including but not limited to, by use of a deadly weapon or dangerous instrument, or by choking or strangulation; or
2. Recklessly causes serious physical injury to such family or household member; or
3. Recklessly causes physical injury to such family or household member by means of any deadly weapon.

Domestic assault in the 2nd Degree is a class C felony

565.074 Domestic assault, third degree--penalty

A person commits the crime of domestic assault in the third degree if the act involves a family or household member, including any child who is a member of the family or household, as defined in section 455.010 and:

1. The person attempts to cause or recklessly causes physical injury to such family or household member; or
2. With criminal negligence the person causes physical injury to such family or household member by means of a deadly weapon or dangerous instrument; or
3. The person purposely places such family or household member in apprehension of immediate physical injury by any means; or
4. The person recklessly engages in conduct which creates a grave risk of death or serious physical injury to such family or household member; or
5. The person knowingly causes physical contact with such family or household member knowing the other person will regard the contact as offensive; or
6. The person knowingly attempts to cause or causes the isolation of such family or household member by unreasonably and substantially restricting or limiting such family or household member's access to other persons, telecommunication devices or transportation for the purpose of isolation.

Domestic assault in the third degree is a class A misdemeanor unless a person who has pleaded guilty to or been found guilty of the crime of domestic assault in the third degree more than two times against any family or household member as defined in section 455.010, or of any offense committed in violation of any county or municipal ordinance in any state, any state law, any federal law, or any military law which, if committed in this state, would be a violation of this section, is guilty of a class D felony for the third or any subsequent commission of the crime of domestic assault. The offenses described in this subsection may be against the same family or household member or against different family or household members.

Dating Violence

Dating violence is considered domestic violence under current Missouri law in the definition for domestic assault based on the definition of "Family" or "Household Member" in 455.010(7.) RSMo.

"spouses, former spouses, any person related by blood or marriage, persons who are presently residing together or have resided together in the past, any person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, and anyone who has a child in common regardless of whether they have been married or have resided together at any time;"

565.090. Harassment (**Harassment is considered the precursory crime to stalking)**

565.090. 1. A person commits the crime of harassment if he or she:

1) Knowingly communicates a threat to commit any felony to another person and in so doing frightens, intimidates, or causes emotional distress to such other person; or
2) When communicating with another person, knowingly uses coarse language offensive to one of average sensibility and thereby puts such person in reasonable apprehension of offensive physical contact or harm; or
3) Knowingly frightens, intimidates, or causes emotional distress to another person by anonymously making a telephone call or any electronic communication; or
4) Knowingly communicates with another person who is, or who purports to be, seventeen years of age or younger and in so doing and without good cause recklessly frightens, intimidates, or causes emotional distress to such other person; or
5) Knowingly makes repeated unwanted communication to another person; or
6) Without good cause engages in any other act with the purpose to frighten, intimidate, or cause emotional distress to another person, cause such person to be frightened, intimidated, or emotionally distressed, and such person's response to the act is one of a person of average sensibilities considering the age of such person.

Harassment is a class A misdemeanor unless it is committed by a person twenty-one years of age or older against a person seventeen years of age or younger; or the person has previously pleaded guilty to or been found guilty of a violation of this section, or of any offense committed in violation of any county or municipal ordinance in any state, any state law, any federal law, or any military law which, if committed in this state, would be chargeable or indictable as a violation of any offense listed in this subsection. In such cases, harassment shall be a class D felony.

565.225 Crime of stalking--definitions--penalties.

A person commits the crime of stalking if he or she purposely, through his or her "course of conduct", harasses or follows with the intent of harassing another person.

***"Course of conduct"**, a pattern of conduct composed of two or more acts, which may include communication by any means, over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of course of conduct. Such constitutionally protected activity includes picketing or other organized protests;*

The crime of stalking shall be a class A misdemeanor unless the person has previously pleaded guilty to or been found guilty of a violation of this section, or of any offense committed in violation of any county or municipal ordinance in any state, any state law, any federal law, or any military law which, if committed in this state, would be chargeable or indictable as a violation of any offense listed in this section, in which case stalking shall be a class D felony.

Aggravated Stalking

A person commits the crime of aggravated stalking if he or she purposely, through his or her course of conduct, harasses or follows with the intent of harassing another person, and:

1. Makes a credible threat; or
2. At least one of the acts constituting the course of conduct is in violation of an order of protection and the person has received actual notice of such order; or
3. At least one of the actions constituting the course of conduct is in violation of a condition of probation, parole, pretrial release, or release on bond pending appeal; or
4. At any time during the course of conduct, the other person is seventeen years of age or younger and the person harassing the other person is twenty-one years of age or older; or
5. He or she has previously pleaded guilty to or been found guilty of domestic assault, violation of an order of protection, or any other crime where the other person was the victim.

The crime of aggravated stalking shall be a class D felony unless the person has previously pleaded guilty to or been found guilty of a violation of this section, or of any offense committed in violation of any county or municipal ordinance in any state, any state law, any federal law, or any military law which, if committed in this state, would be chargeable or indictable as a violation of any offense listed in this section, aggravated stalking shall be a class C felony.

Other Crimes Related to Stalking

565.252. Invasion of privacy, first degree, penalty

A person commits the crime of invasion of privacy in the first degree if such person:

1. Knowingly photographs or films another person, without the person's knowledge and consent, while the person being photographed or filmed is in a state of full or partial nudity and is in a place where one would have a reasonable expectation of privacy, and the person subsequently distributes the photograph or film to another or transmits the image contained in the photograph or film in a manner that allows access to that image via a computer; or

2. Knowingly disseminates or permits the dissemination by any means, to another person, of a videotape, photograph, or film obtained in violation of subdivision (1) of this subsection or in violation of section 565.253.

Invasion of privacy in the first degree is a class D felony.

565.253. Crime of invasion of privacy, second degree, penalties
A person commits the crime of invasion of privacy in the second degree if:

1. Such person knowingly views, photographs or films another person, without that person's knowledge and consent, while the person being viewed, photographed or filmed is in a state of full or partial nudity and is in a place where one would have a reasonable expectation of privacy; or
2. Such person knowingly uses a concealed camcorder or photographic camera of any type to secretly videotape, photograph, or record by electronic means another person under or through the clothing worn by that other person for the purpose of viewing the body of or the undergarments worn by that other person without that person's consent.

Invasion of privacy in the second degree pursuant to subdivision (1) of subsection 1 of this section is a class A misdemeanor; unless more than one person is viewed, photographed or filmed in full or partial nudity in violation of sections 565.250 to 565.257 during the same course of conduct, in which case invasion of privacy is a class D felony; and unless committed by a person who has previously pled guilty to or been found guilty of invasion of privacy, in which case invasion of privacy is a class D felony. Invasion of privacy in the second degree pursuant to subdivision (2) of subsection 1 of this section is a class A misdemeanor; unless more than one person is secretly videotaped, photographed or recorded in violation of sections 565.250 to 565.257 during the same course of conduct, in which case invasion of privacy is a class D felony; and unless committed by a person who has previously pled guilty to or been found guilty of invasion of privacy, in which case invasion of privacy is a class C felony. Prior pleas or findings of guilt shall be pled and proven in the same manner required by the provisions of section 558.021.

Penalties and Fines

Felony Class	Penalties (Years of imprisonment 558.011 RSMo.)	Fines (560.011 RSMo.)
A	10 – 30, or life	-
B	5 - 15	-
C	Up to 7	Up to $5,000
D	Up to 4	Up to $5,000
Misdemeanor Class	Penalties (Term of imprisonment 558.011 RSMo.)	Fines (560.016 RSMo.)
A	1 year	$1,000
B	6 month	$500
C	15 days	$300
Infraction	-	$200

(See Missouri Sexual Offenses & VAWA Crimes Tables for more info.)