Bill to Pass Recommendations on the Dean’s Alternate Misconduct Review Process & Procedures
UGS-A2013-5

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Submitted for Consideration: January 2013 (Winter Break)
Action Requested: 2/3 Approval

Whereas: Article V, Section 1, Subsection A states that any change related to the University judicial process, which requires the approval or may be vetoed by the Undergraduate Senate, constitutes a proposed judicial change
Whereas: Article V, Section 1, Subsection C states, “Upon receipt of a notice of a draft or proposed judicial change, the US shall form a Judicial Review Committee (JRC)…[which consists] of all US members interested in reviewing the judicial changes”
Whereas: Article V, Section 1, Subsection C states that the JRC shall determine its own procedures, and is encouraged to work with the relevant judicial body to develop mutually acceptable revisions of the judicial changes
Whereas: Article V, Section 1, Subsection C states, “The JRC shall report back to the US in a timely manner with its recommendations for the judicial changes, along with the reasons for the recommendations.”
Whereas: Article V, Section 2, Subsection A states that the US shall consider the JRC’s recommendations in the form of a bill that lists each judicial change as a separate item.
Whereas: Article V, Section 2, Subsection C states, “Each proposed judicial change must be approved by a 2/3 vote, or else it shall be considered vetoed.”
Whereas: During the month of December 2012, a joint committee of members from both the Undergraduate Senate’s JRC and the Graduate Student Council’s JRC met to deliberate the proposed renewal of the Alternative Review Process (henceforth referred to as the ARP, viewable in present form here). The committee met four times, and considered several possible revisions to the existing document before settling on a set of proposed changes, outlined in this document.
Whereas: If voted upon affirmatively by both ASSU legislative bodies, the proposal will be sent to the Board of Judicial Affairs.

THEREFORE BE IT ENACTED BY THE LEGISLATIVE BODIES OF THE ASSOCIATION
THAT: Standard of Proof Caveat
We acknowledge the stipulation of the “preponderance of evidence” standard of proof. However, in light of the inherent political impermanence of the Dear Colleague letter, it is our expectation that an immediate review of the ARP will be undertaken should the federal government’s interpretation of Title IX regarding the standard of proof change in any way. We would prefer this to be written into the document if possible.

THAT: Review Panel Size & Finding Responsibility
We urge the Board of Judicial Affairs to adapt the existing framework for review panels. Cases through the ARP should be reviewed by three students and two faculty or staff, with at least four out of five panelists agreeing on a finding of the responsibility for the Responding Student to be found responsible.

THAT: Panel Advisor
We suggest the appointment of a panel advisor, a member of the Office of Community Standards who shall serve as an outlet for procedural & standards questions from the panel. Consequently, the Investigator should only be an outlet for questions specific to each individual case and the relevant evidence collected.

THAT: Appealing Decision to Charge Clarification
The ARP guidelines are somewhat ambiguous in describing the process of appealing a decision of whether or not to pursue charges in the form of an ARP case. We recommend the inclusion of the voting procedure, number of panelists required to agree to an appeal, and the standard of proof used.

THAT: Relevance of Sexual History
We disagree with the inclusion of Part VIII.A.2.a on account of past consent not implying consent, but agree with the inclusion of Part VII.A.2.b, which permits the inclusion of sexual history only if it provides direct compelling evidence on a finding, as determined by the investigator. Unless compelling rationale is provided for its inclusion, we recommend that sexual history only be deemed relevant under the conditions specified in Part VII.A.2.b.

Part 2: Procedural Recommendations & Other Expectations

THAT: Checks for Bias in Panelists
We recommend that the Board of Judicial Affairs attempt, if possible, to more clearly define the process of checking for bias in potential panelists, either prior to panelist selection or during the process itself.
**THAT: Suggested Counsel**
The current procedure for suggesting potential ARP-trained counselors to either party involved in the process is giving both a list of potential counselors who are generally aware of the process and familiar with the Office of Community Standards. We recommend assigning one counselor as a primary point of contact for either party in addition to the list.

**THAT: Filtering Questions**
We recommend a clarified description of the filtering process during questioning as described in IV.F and V.F in which all questions put forth by either the Responding Student or the Impacted Party are asked by the panel unless deemed to be irrelevant to the and to cause either undue emotional upheaval or unnecessary delay.

**THAT: Confronting Witnesses**
We feel that in-person cross-examination of witnesses would be inappropriate though the current “phone-in” system may not provide a sufficiently dynamic interaction in some instances. This point is not a specific suggestion, since no particular consensus was reached among the committee, but we recommend a review of this process in addressing the right to confront third parties and whether or not this may be done directly by either the responding student or impacted party.