

## **RECOMMENDATIONS FOR CRAFTING A MEMORANDUM OF UNDERSTANDING BETWEEN CRITICAL PARTNERS RESPONDING TO REPORTS OF CAMPUS SEXUAL ASSAULT**

University and college Presidents, faculty and staff, local and campus law enforcement, prosecutors, community and campus victim advocates, rape crisis, and domestic violence centers are all necessary partners in the creation of a comprehensive and effective response to allegations of sexual assault, domestic and dating violence, and stalking on Ohio's campuses. Each of these parties brings important skills and perspectives that should be shared through established protocols included in a Memoranda of Understanding ("MOU"), signed by these partners.

**Purpose:** The purpose of the MOU is to set forth the respective roles of each party and to memorialize their agreement as to each party's responsibilities and shared collaborative efforts in responding to reports of campus sexual assaults. The process of developing an MOU fosters open communication among the parties and helps to build relationships necessary to create a successful strategy to reduce sexual assaults and other crimes of violence. These partnerships are also vital in efforts to change the culture and restore trust and confidence among victims, the accused, families, and the public in how our institutions of higher education and the criminal justice system respond to these crimes. An MOU should address goals, such as how to:

- a) promptly engage services to provide support to victims of sexual assaults, domestic and dating violence, stalking or other crimes of violence and continue those services through final resolution of the matter;
- b) build and maintain good relationships with law enforcement so victims will have confidence to promptly report a sexual assault;
- c) clarify parties' obligations to ensure that investigations of sexual assault and other crimes may be completed in a fair and impartial manner, including protocols to be followed during evidence collection and preservation;
- d) foster a shared understanding of requirements placed on the parties by state and federal laws as related to sexual assaults and other crimes of violence on college campuses;
- e) enhance safety and security both on and off campus and in the community, and change the culture surrounding sexual assaults on campus through education and collaborative prevention activities, including offender accountability; and
- f) encourage regular training on sexual violence among the parties, including trauma informed investigation and response to victims, and means to better prosecute cases within the criminal justice system.

Many campuses have existing memoranda with law enforcement or local rape crisis centers, as well as policies and procedures in place to meet their obligations under both state and federal laws. Ohio's institutions of higher education differ in campus type (residential or commuter), location and resources (rural, city, or county services), and physical size and population. Each of these variables will affect the individual needs of a campus and the surrounding community. Any MOU should be responsive to these unique factors. This may require additional agreements, as deemed appropriate. There may be specific matters to be addressed between the local crime victim advocacy services that differ from matters of concern to law enforcement or a prosecutor. An MOU should be flexible to meet new needs that arise, which may necessitate further discussion and agreement.

When identifying subjects and scenarios to be addressed in an MOU, Ohio's public and private colleges and universities and their local partners in campus safety - law enforcement, prosecutors, and community victim services - are encouraged to include the considerations discussed in this document.

I. Define jurisdictional boundaries and response protocols.

(1) Do you have a map of jurisdictional boundaries consisting of:

- (a) the location of all University-owned property (i.e. on campus),
- (b) University owned or controlled off-campus housing,
- (c) all property owned by University recognized student organizations, and
- (d) public property contiguous to the University campus?

(2) What are the protocols for responding to emergency calls within established jurisdictions by campus security/police, local police, or a sheriff?

**Are You Prepared? Things to consider:**

**Who responds to these reports of criminal activity?**

- **Campus Police receive a report of a sexual assault at an off campus party.**
- **Local Police receive a report of a victim being stalked by her ex-boyfriend. The victim lives on campus, but the perpetrator lives off campus.**
- **A student is raped in a hotel room reserved by the University for a study abroad program.**

II. Victim Response.

(1) What are the means to provide victims of sexual assaults prompt access to comprehensive services and information on resources available both on campus and in the surrounding community? Is there a list of contact information for services, such as: victim advocacy organizations, hospitals capable of conducting Sexual Assault Forensic Examinations ("SAFE"), counseling services, immigration assistance for international students, special victims unit police officers, and the Title IX coordinator on campus? Will victims be informed of the levels of confidentiality and privilege applicable to these resources?

**Are you prepared? Things to consider:**

**Victim response and advocacy should be immediate upon report of a sexual crime for many reasons: to maintain victim's integrity and willingness to continue participating in the criminal justice process, to preserve evidence, to encourage reporting of crimes, to assist victim in recovery, etc. Do you have victims' advocacy services readily available to respond to a report of a crime?**

- (2) What are the means to ensure that victims are provided information about their rights and all available reporting options, which include contacting the local police and/or reporting through the University investigation process? Is there a pamphlet or guide that provides a clear understanding of rights and options that can be given to a victim?

**Are you Prepared? Things to consider:**

**Has the victim been informed of institutional or judicial measures that may be available such as no contact, restraining and protective orders? Does the victim understand the process for obtaining these measures?**

**Is the victim aware of institutional assistance or interim measures that may be available through campus resources, on campus health and counseling resources, alternative transportation and housing options, alternative class scheduling, or tutoring options?**

- (3) Are trauma informed techniques utilized when interviewing and interacting with victims, including, for example:
- (a) reducing the number of interviews with the victim;
  - (b) sharing interview transcripts to prevent duplicative interviews;
  - (c) conducting interviews with victims in “soft” rooms, rather than in a law enforcement type interrogation room;
  - (d) permitting a support person or a victim’s advocate to be present during interview; and
  - (e) conducting any follow up interviews during the course of an investigation consistent with the criteria enumerated above?
- (4) What are the means to encourage a victim to seek medical attention? Will the victim be assisted in locating and getting to medical care? What is the process to preserve evidence collected during a SAFE?
- (5) What is the process to ensure that institutional personnel, victim advocates, and investigators are trained on how to respond to a sexual assault report, including how to assist sexual assault victims and ensure a coordinated response?

**Are you Prepared? Things to consider:**

**Have the individuals with roles in investigating and adjudicating sexual assault reports been trained to ensure that reports are handled consistently – in accordance with established processes and protocols? Consistency fosters fair resolution of issues, helps in criminal prosecution, maintains predictable disciplinary proceeding results, and ensures victims and accused are treated fairly.**

- (6) What are the options available to protect victim confidentiality and for confidential reporting of an assault—meaning without disclosing personally identifiable information— under applicable state and federal laws and regulations. Is the victim informed that he or she may consent to sharing personal information?

**Are you Prepared? Things to consider:**

**Has the victim been informed of confidential resources that may be available on and off campus, including counselors, advocates, health care providers or other professionals and how to contact those resources?**

III. Sharing of Information and Collaboration.

- (1) Is there agreement among the parties to share information, trends, data, and analysis relating to sexual assaults on and off campus? How will this be done?
- (2) Are there regular meetings to discuss demographics, location, time, method of assault(s), names of involved parties and witnesses (to the extent this information is not confidential), physical and factual evidence, compiled data on patterns of assaults, and conclusions drawn from investigations?
- (3) Is there agreement to protect the disclosure of information under the Family Educational Rights and Privacy Act (“FERPA”) or other applicable laws, while also engaging in communication in order to maximize services provided to victims, ensure that investigations are fair, and discipline/sanctions or prosecutions are handled in a consistent and appropriate manner under applicable rules, law and processes? What provisions exist for sharing information so as not to compromise a criminal investigation?
- (4) Is there agreement to include protocols to address applicable laws, for example:
- (a) O.R.C. § 2921.22 requires that anyone with knowledge that a felony has been committed must report that information to law enforcement personnel, unless there is a privilege under law for non-disclosure [see O.R.C. § 2921.22(G)].
  - (b) The Violence Against Women Act requires that an institution of higher education respond to all reports of sexual assault, dating violence, domestic violence, and stalking, consistent with Title IX. The law also requires that each report of sexual assault, dating violence, domestic violence, and stalking is included in the institution’s annual security report (ASR).
  - (c) The Clery Act requires parties to share all legally-permissible information relating to crimes that may pose a serious or ongoing threat to the campus and community so the institution may determine if it is necessary to issue a timely warning or emergency notification.

- (d) To comply with the Clery Act, Colleges and Universities may request that local law enforcement compile all off campus, Clery-reportable crimes in a manner that can be shared with the institution in advance of the annual Clery reporting deadline.

**Are You Prepared? Things to consider:**

City police officer responds to call involving an act of sexual violence at an off-campus location. Officer learns that either the victim or the accused is a student at the local college. This needs to be reported immediately to the institution so it can comply with various applicable federal regulations, including Title IX for disciplinary investigation purposes, the Clery Act for timely warnings analysis, and VAWA for education/prevention programming and awareness campaigns. Immediate reporting also allows the University of College to determine if a H.B. 1219 hearing (Ohio Revised Code Sections 3345.21-26) is necessary, to consider suspension of a student arrested for a crime of violence near campus.

What is the manner, mechanism, or technology for sharing information? Are there any costs associated? Will these be shared among the parties?

- (5) Will Parties need workspace within respective headquarters, suitable for report-writing, interviews, and any other operational purposes in furtherance of the MOU been addressed?
- (6) Have the parties agreed to regularly meet to review operations, the MOU, and any other agreements made in furtherance of the MOU's purpose?
- (7) Is there agreement on a standard protocol for investigations and preservation of all evidence related to sexual assaults or other crimes of sexual violence on campus? Such a protocol may address:
  - (a) local police policies for use of body cameras or any other video or audio recording device during the response to, and investigation of, a sexual assault and the storage of any footage or recorded statements;

**Are you Prepared? Things to consider:**

Police officer responds to a call that a student has been raped in a campus stairwell. When the officer arrives and comes into contact with the victim can the officer mute his body camera, block the lens, or turn off the camera? What if the victim requests that the officer mute, block, or turn off the camera?

- (b) sharing of information, statements, photos, records, evidence, or other materials obtained during investigations;
- (c) prompt, fair and impartial investigations through final resolution for both victims and the accused.

**Are you Prepared? Things to consider**

**Has the accused been given a clear description of the investigative and possible disciplinary procedures? Has the accused been given access to resources and afforded rights as provided under applicable laws and established processes?**

- (d) collection, custody, control, and preservation of records and evidence;

**Are You Prepared? Things to consider:**

**Victim is transported to hospital for treatment and examination. Once the exam is performed, who will collect and preserve evidence? Does the hospital employ a SANE?**

**Will the evidence be made available upon request among the parties?**

- (e) nature and extent of confidentiality available to victims, the accused, and/or witnesses under law and the manner in which confidentiality will be maintained;

**Are you Prepared? Things to consider:**

**Your Police Department receives a report of dating violence. The Police Officer goes to the victim's apartment. The Officer knows that the boyfriend is no longer at the apartment. What should the officer do to protect the privacy of the victim's identity and her home? What if the boyfriend is still in the apartment?**

- (f) anonymous reports, including the limitations associated with investigation of an anonymous report; and
- (g) role and responsibility of a party's personnel or offices in response to a report of sexual assault from, time of report through resolution– perhaps through formation of Sexual Assault Response Teams (“SART”) or Advisory Boards.

**Are you Prepared? Things to consider:**

**How long does a party retain records or other evidence relating to sexual assault, stalking, or dating/domestic violence? Does this match an applicable criminal statute of limitations?**

**Who is a member of your SART: victim advocates, officers/investigators trained in handling sensitive crimes, a sexual assault nurse examiner (“SANE”)? Does your team provide support services from report through prosecution, transport of victims for medical treatment, to court or for other services?**

- (8) What are the method, manner, and timing for engaging the local prosecutors in a sexual assault investigation and the process for prosecutorial assistance?

**Are you Prepared? Things to consider:**

**Your campus has a STEM academy with junior and high school students regularly in attendance. A 16 year old student claims that he was sexually assaulted by a college freshman. What is your protocol for dealing with crimes involving minors?**

**Does your victim advocate, investigator, SANE, or forensic nurse who provides assistance to the victim through the process also provide assistance to the Prosecutor and/or during disciplinary proceedings? These individuals could serve as a factual and/or expert witness, especially on the behavior of trauma victims, and/or how drugs or alcohol impact memory, the ability to form consent and make decisions, and their effect on other physical and cognitive abilities?**

IV. Prevention

- (1) Do the parties acknowledge the importance of working together to create a culture that does not tolerate sexual assaults, dating and domestic violence, or stalking?

**Are you Prepared? Things to consider:**

**Do you have local awareness campaigns and prevention programming for incoming students? On an ongoing basis for returning students? For faculty and staff?**

**Do you know the level of trust students have in your process for addressing sexual assaults? Have you conducted a climate survey?**

- (2) Is there agreement to cooperate in the development and implementation of an outreach plan to raise awareness and build trusting relationships between institutions, law enforcement and community victim services? Outreach efforts may include discussions on safety and crime prevention with students, parents, and staff during orientations and other community events, or distribution of information through websites or social media.

**Are you Prepared? Things to consider:**

**What avenues exist to encourage victim participation in the reporting process in order to obtain the assistance of law enforcement?**

**Do law enforcement and the prosecutor participate in campus prevention programming, discussing sexual assaults and other crimes? Does your institution have open communication and regular interaction with these partners?**

**Does your institution offer safety escort programs, text-a-tip hotlines, or emergency notification systems that are shared with local law enforcement?**

- (3) Do the parties collaborate on educational programming? Does this programming use evidence-based strategies to prevent sexual assault? Such strategies may include:
  - (a) bystander intervention education programs;
  - (b) programming that addresses the roles that drug and alcohol abuse—and cultural messages about alcohol and drug abuse—play in instances of sexual violence, focusing on changing campus culture to improve both reporting and reduction of instances of sexual violence;
  - (c) sexual violence education programs on what constitutes sexual assault, dating violence, or intimate partner abuse; and
  - (d) programs on awareness of perpetrator tactics, especially within the Greek community and athletic organizations, and on understanding consent.

**V. Training**

- (1) Are training opportunities to be conducted on a regular basis [quarterly, semi-annually, yearly]?
- (2) Is training conducted by subject matter experts on topics relevant to addressing reports/crimes of sexual assault, dating/domestic violence, and stalking? Such as:

- (a) trauma-informed investigative techniques when communicating with a victim of a sexual assault or other sensitive crime;
  - (b) available crime victim services and advocacy resources, how to access and utilize those resources, and appropriate contact information;
  - (c) fair and unbiased investigation protocols for interviewing the accused, witnesses, or other parties and protocols for the secure collection and preservation of evidence;
  - (d) presentations by local prosecutors on investigation and prosecution of sexual offenses through the criminal justice system;
  - (e) presentations on the responsibilities, policies, and procedures of Universities and Colleges under the Clery Act, Title IX, FERPA, SaVE Act, and HIPPA, with regard to acts of sexual assaults and other crimes of violence within their jurisdictions;
  - (f) Ohio laws applicable to sexual offenses, confidentiality, and the impact of a criminal investigation and prosecution of sexual assault on university administrative actions; and
  - (g) the role and utilization of crime victim advocates and forensic nurses as fact and expert witnesses in either a Title IX mandated proceeding or in a criminal prosecution.
- (3) Has consideration been given to cross-departmental training and, as appropriate, including University students and personnel involved in the reporting, investigation, disciplinary process (hearing officers, hearing panels, or other administrative officials), and other individuals who may have a role or responsibility in the handling of a sexual assault in training opportunities?
- (4) Do the parties agree to collect data and conduct regular evaluations of these trainings? Will the parties use these evaluations to improve the effectiveness of trainings and to modify content, as needed?

VI. Other Considerations

- (1) Inclusion of terms regarding the effective period, renewal and termination of the MOU.
- (2) Inclusion of an evaluation mechanism to review the effectiveness of programs and other actions taken as a result of the MOU.
- (3) Address in detail all terms relating to indemnification or other possible financial obligations, such as for outreach and training costs, under the MOU.