

HOW-TO GUIDE MODEL MEMORANDUM OF UNDERSTANDING

The How-To Guide is a step-by-step guide for stakeholders to create an MOU that reflects local needs and capacity. It is intended to provide context, suggested supplemental content, and points of discussion to assist parties as they tailor the Template MOU to their unique circumstances. The How-To Guide is organized in the same structure as the Template MOU.

I. PARTIES

Communities may choose to have representatives from several agencies and organizations as Parties to the MOU depending on local needs, resources, and personnel. Initial suggestions are included in the Template.

At a minimum, Parties should include the institution of higher education, one or more local law enforcement agencies, and partner organizations required under Education Code section 67386(c).¹ Parties are encouraged to include, as appropriate, both on-campus and off-campus resources, including Rape Crisis Centers, as Parties to the MOU.

For purposes of this MOU, we use [Campus] to refer to the college or university’s administration, with the understanding that the institution as a whole is a party to the MOU and should designate the appropriate point(s) of contact for law enforcement collaboration. Depending on the unique circumstances of each campus and on local administrative needs, more than one department within a college or university may need or wish to be represented in this MOU. For example, campuses with sworn police officers might simply designate someone in the police department as the sole point of contact. If a campus contracts with an external security firm, that firm might also be included as a Party along with the campus administration, assuming the campus resolves any legal questions regarding information-sharing between sworn and non-sworn officers or other security personnel. Campuses may also want to include the Title IX officer or other designated individual. Campuses should make these decisions based on local needs to ensure that the appropriate parties necessary to fully implement their agreement are included in this MOU.

Parties may wish to attach a contact list as an addendum to their MOU.

¹ “In order to receive state funds for student financial assistance, the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions shall, to the extent feasible, enter into memoranda of understanding, agreements, or collaborative partnerships with existing on-campus and community-based organizations, including rape crisis centers, to refer students for assistance or make services available to students, including counseling, health, mental health, victim advocacy, and legal assistance, and including resources for the accused.” (Ed. Code, § 67386, subd. (c).)

II. PURPOSE

The Template MOU describes three purposes of this agreement between law enforcement and campuses:

- To meet the statutory requirements established by AB 1433 (Gatto, 2014);
- To promote collaboration between the Parties to enhance the reporting, investigation, and appropriate response to sexual assault and other covered crimes; and
- To comply with other state and federal laws.

Parties may have additional purposes to address as part of an MOU, which might warrant supplemental sections to the Template MOU.

III. STATEMENT OF PRINCIPLES

A joint Statement of Principles is recommended to memorialize the Parties' common goals and spark discussion amongst stakeholders about the outcomes expected from their agreement. Each component of the Statement should be discussed by Parties before signing, and local communities may choose to incorporate some or all of the proposed language into their MOU based on local needs and preferences.

In addition to the language proposed in the Template MOU, we recommend discussing the following additional details for possible inclusion:

A. Improving Communication, Coordination, and Collaboration: The MOU is designed to help parties enhance communication, coordination, and collaboration to respond efficiently and effectively to sexual assault and violence. Parties should use the MOU and accompanying efforts to improve coordination regarding crime reporting, victim engagement and support, investigative processes, and general campus and community safety. Such coordination should include:

- Clear lines of communication and points of contact between each entity to ensure effective coordination and communication in the prevention of—and response to—sexual assault and violence;
- Clarified roles for campus police and their local law enforcement counterparts to ensure the effective investigation and prosecution of criminal behavior and avoid any jurisdictional confusion or miscommunication;
- Use of cross-reporting for each incident of violent crime, sexual misconduct, and hate crime to avoid communication gaps or inconsistent responses;
- Collaboration with victim advocates throughout the reporting and investigative processes, including partnerships as required by Education Code section 67386 (SB 967, De León, 2014); and
- Shared understanding of the needs and means to protect confidential and privileged communications.

B. Championing Campus and Community Safety: Parties should strive to establish a culture of trust and safety across the entire campus community by increasing community participation and securing community support and engagement in the prevention of sexual violence. Such community engagement and support should include:

- Community education about the procedures and protocols in place to address sexual violence, in order to ensure that students know how to report a violation and understand the subsequent steps that will be taken in response to each violation;
- Use of transparency to demystify the reporting and response processes in order to encourage reporting by victims, bystanders, and other community members and reiterate the critical importance reporting plays on the overall health of the campus community; and
- Collaborative disseminations of public safety threat notifications, when required, following instances of sexual assault or violence, in order to achieve consistency in response protocols.

C. Upholding Civil Rights, Civil Liberties, and Victims/ Rights: Parties should commit to the enforcement of both civil rights and criminal law protections. To realize both goals, Parties should:

- Explicitly recognize the distinctions between criminal law and civil law in the handling of sexual assault and violence that arise under both state and federal statutory frameworks;
- Work collaboratively and in compliance with state and federal law to achieve the best possibilities for prosecution in the criminal context and adjudication in the campus administrative process;
- Share information in a manner that complies with confidentiality and privacy obligations, and ensure that information will be used only for authorized purposes and in ways that protect the privacy, civil liberties, and civil rights of students consistent with state and federal laws;
- Coordinate investigations to preserve evidence and improve prosecution; and
- Ensure institutional adjudications do not interrupt criminal prosecutions and vice-versa.

D. Centering the Victim’s Needs in Responses to Sexual Assault: The MOU promotes trauma-informed responses developed in consultation with victim advocates. This response is intended to increase the likelihood of victim engagement with law enforcement, improve the investigation and reporting experience for victims, and thereby strengthen sexual assault investigations. Parties should:

- Design and implement a first responder plan for all instances of sexual misconduct that preserves evidence and ensures access to the appropriate resources that foster healing and includes victims’ advocates when possible as stated in Penal Code section 679.04.²
- Ensure that each of their relevant stakeholders receives initial and follow-up training on trauma-informed responses to sexual assault victims, which should include educational materials from victim advocates and Rape Crisis experts; and

² Penal Code section 679.04 entitles victims of sexual assault to a victim advocate as described in Evidence Code section 1035.2 (the section of the code that defines a sexual assault counselor).

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- Enforce clear lines of communication between each other, so that victims are able to engage in the reporting and adjudication process in a way that fosters healing. For example, where possible, Parties should conduct comprehensive victim interviews to decrease the need for the victim to recount the sexual assault incident repeatedly.

E. Ensuring Accountability and Auditing: This MOU is designed to promote greater transparency and accountability in the reporting of sexual assault and other violent crimes. Parties should:

- Implement a means to monitor, record, and accurately maintain all reports of Part 1 violent crimes, hate crimes, and campus sexual assaults, their outcomes, and processes while maintaining confidentiality where the law provides; and
- To the extent permissible by law, share reports of sexual assault and violence with the public, the campus community, the local community, and other partners, without disclosing protected information such as the identity of the sexual assault victim.

F. Specialized Training and Knowledge: Adequate training reduces the likelihood that explicit and implicit biases, including stereotypes regarding women and sexual assault reporters, will permeate. For this reason, the Parties should:

- Provide in-depth training on sexual assault and investigations to all personnel who conduct such investigations;
- Provide training to all campus and law enforcement supervising personnel and command-level staff on the review of sexual assault prevention, response, and investigations to detect and address indications of bias; and
- Ensure that any trainings provided to peace officers are POST-certified or provided by a trauma and sexual violence expert.

G. Respecting the Unique Needs of Undocumented Individuals: Parties should strive to promote policies and practices that address the unique needs of undocumented individuals, including implementing culturally and linguistically appropriate campus- and law enforcement services. Nationally, undocumented individuals encounter sexual violence at the same rate as other victims, but are significantly less likely to seek out help after a sexual assault. A few reasons for an undocumented individual's reluctance to seek help include: 1) the threat of deportation or other immigration action; 2) lack of documentation to access medical care; 3) distrust of law enforcement; and more. To ensure undocumented individuals' unique needs are addressed, Parties should:

- Maintain the confidentiality of an individual's immigration status, inclusive of any law enforcement actions, where appropriate;³
- Ensure staff have the requisite knowledge and skills to create safe spaces for undocumented individuals through specialized trainings and skill development;
- Designate an individual liaison, as appropriate, for the undocumented community. These

³ For more information on the legal responsibilities of local law enforcement agencies in dealing with undocumented individuals under state law and federal regulations, please see: Attorney General Kamala D. Harris, California Department of Justice Information Bulletin No. 14-01 (June 25, 2014), available at:

http://oag.ca.gov/sites/all/files/agweb/pdfs/law_enforcement/14-01_le_info_bulletin.pdf

<http://oag.ca.gov/campus-sexual-assault>

designated points of contact should be able to answer questions, provide guidance, and provide assistance on victim services to members of the undocumented campus community;

- Engage in partnerships with local legal aid providers or immigration attorney associations to provide additional resources for undocumented individuals seeking relief, as their legal considerations vary considerably because of their immigration status; and
- Ensure adequate translation and interpreter services that reflect their jurisdiction’s composition of linguistic needs.

IV. DEFINITIONS

The MOU should include relevant definitions. Below are suggested terms and definitions Parties should consider.

Affirmative Consent: Affirmative, conscious, and voluntary agreement to engage in sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent. (Ed. Code, § 67386, subd. (a)(1).)

Campus Security Authorities (CSAs): A CSA is defined as: (1) an institution’s campus police or campus security department, (2) an individual who has responsibility for campus security, (3) an individual specified in an institution’s statement of campus security policy to receive reports of criminal offenses, or (4) an institution’s official who has significant responsibility for student and campus activities (*e.g.*, student housing, discipline). (34 C.F.R. § 668.46(a); see also Ed. Code, § 67383, subd. (a) (incorporating the federal law definition of CSAs).)

Clergy Member and Pastoral Counselor: For state evidentiary code purposes, a clergy member “means a priest, minister, religious practitioner, or similar functionary of a church or of a religious denomination or religious organization.” Evid. Code, § 1030. Communications made in confidence with a clergy member may be privileged under the “clergy-penitent privilege” described in Evidence Code sections 1032-1034. A person who meets this statutory definition may also meet the definition of a pastoral counselor for purposes of Title IX and Clery Act, which dictate various campus officials’ obligations to report sexual assault to campus authorities. A pastoral counselor is defined as a person who is associated with a religious order or denomination, is recognized by that religious order or denominations as someone who provides confidential counseling, and is functioning within the scope of that recognition. 34 C.F.R. §§ 668.46(a). In this context, a pastor or priest who is functioning as an athletic director or as a student advocate would not be exempt from the reporting obligations under Clery and Title IX. (See U.S. Dept. of Education, Handbook for Campus Safety and Security Reporting (February 2011) pp. 77–78; U.S. Dept. of Education, Questions and Answers on Title IX and Sexual Violence (April 2014) pp. 22–23 n. 26.)

Concurrent Jurisdiction: Statutory jurisdiction for performance of peace officer functions. For example, if campus property is located within a municipality, the city police department has concurrent jurisdiction with the campus police department.

Confidential Resources: Confidential resources are counselors, advocates, and other staff such as ombudspersons, explicitly designated as such by the campus. Confidential resources may not meet the definitions of professional or pastoral counselor, but nonetheless provide assistance to victims of sexual assault and may not be protected by legal privilege. They may work or volunteer in on-campus sexual assault centers, victim advocacy offices, women’s centers, or health centers (including front desk staff and students). Conversations with confidential resources do not trigger a Campus Title IX investigation. (See U.S. Dept. of Education, Questions and Answers on Title IX and Sexual Violence (April 2014) E-3.)

First Responder: The law enforcement agency that will respond to 911 calls and other emergency calls and notify the law enforcement agency with operational responsibility. The First Responder may make the initial report for further investigation when the circumstances do not require the immediate involvement of the law enforcement agency with operational responsibility. When appropriate, the First Responder will be responsible for documenting the agency’s involvement in conducting investigations or enforcing the law.

Hate Crime: A criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:

- (1) Disability;
 - (2) Gender;
 - (3) Nationality;
 - (4) Race or ethnicity;
 - (5) Religion;
 - (6) Sexual orientation;
 - (7) Association with a person or group with one or more of these actual or perceived characteristics.
- (Penal Code, §§ 422.55, 422.6.)

Holder of the Privilege: The holder of the Sexual Assault Counselor or Psychotherapist privilege is:

- (a) The victim/patient when such person has no guardian or conservator;
 - (b) A guardian or conservator of the victim/patient when the victim/patient has a guardian or conservator; or
 - (c) The personal representative of the victim/patient if the victim/patient is dead.
- (Evid. Code §§ 1013, 1035.6.)

The holder of the Clergy-Penitent Privilege can be either the penitent or the clergy member. (Evid. Code, §§ 1033, 1034.)

Only the holder of the privilege can give voluntary, informed, and time-limited consent to the disclosure of privileged communications.

Implicit Bias: An implicit bias is a positive or negative mental attitude towards a person, thing, or group that a person holds at an unconscious level. In contrast, an explicit bias is an attitude that a person is consciously aware of having.

Medical Evidentiary Examination: To "perform a medical evidentiary examination" means to evaluate, collect, preserve, and document evidence, interpret findings, and document examination results.

(Penal Code, § 13823.93, subd. (a)(2).)

Operational Responsibility: A term referring to the law enforcement agency with responsibility for preventing crime; preserving peace and order; enforcing laws and ordinances; receiving citizens' arrests; evaluating persons who may be subject to Welfare and Institutions Code section 5150; investigating and collecting evidence; investigating reportable traffic accidents; reporting and accounting criminal offenses; and providing such other police services as the statutes and standard operating procedures of the respective departments may require.

Part 1 Violent Crime: : As defined by the Federal Bureau of Investigation's Uniform Crime Reporting Program, offenses including "criminal homicide, forcible rape, aggravated assault, [and] robbery."

(U.S. Dept. of Justice, Federal Bureau of Investigation, Uniform Crime Reporting Handbook (2004) pp. 150, 152.)

Pastoral Counselor: See definition of Clergy Member.

Privilege: A victim of a sexual assault has a privilege to refuse to disclose a confidential communication between the victim and a Sexual Assault Counselor, Psychotherapist, or Clergy Member. For communications with a Sexual Assault Counselor, Psychotherapist or Clergy Member, the privilege may be claimed by any of the following:

- (a) The holder of the privilege;
- (b) A person who is authorized to claim the privilege by the holder of the privilege; or
- (c) The person who was the Sexual Assault Counselor or Psychotherapist at the time of the confidential communication.

(Evid. Code, §§ 1014, 1035.8, 1036.)

A privilege applies to prevent disclosure of confidential information not only in state judicial proceedings, but in "all proceedings of any nature in which testimony can be compelled by law." (Evid. Code, § 910 & Comment.) This includes "any action, hearing, investigation, inquest, or inquiry" conducted by administrative agencies, hearing officers, arbitrators, legislative bodies, or "any other person authorized by law." (*Id.* at § 901.)

Psychotherapist and Professional Counselor: For state evidentiary code purposes, a psychotherapist generally means a licensed psychologist, psychiatrist, clinical social worker, professional clinical counselor, psychiatric-mental health nurse, family or marriage therapist, or a credentialed school psychologist. (Evid. Code, § 1010, subsd. (a)–(e), (n) (providing specific definitions).) It also may include a trainee, psychological assistant or intern, associate clinical

social worker, family therapist intern, or clinical counselor intern or trainee, provided that he or she is supervised by certain licensed practitioners. (Evid. Code, § 1010, subds. (f), (g), (o), (p).) Communications made in confidence with a Psychotherapist may be privileged under Evidence Code section 1014. A person who meets this statutory definition may also meet the definition of a Professional Counselor for purposes of Title IX and Clery Act, which dictate various campus officials' obligations to report sexual assault to campus authorities. A Professional Counselor is defined as a person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of his or her license or certification. (34 C.F.R. § 668.46(a).) This definition applies even to Professional Counselors who are not employees of the institution, but are under contract to provide counseling at the institution. This also includes an individual who is not yet licensed or certified as a counselor, but is acting in that role under the supervision of an individual who is licensed or certified. An example is a Ph.D. counselor-trainee acting under the supervision of a licensed or certified counselor.

(See Title IX and Clery Act; see also U.S. Dept. of Education, Handbook for Campus Safety and Security Reporting (February 2011) pp. 77–78; U.S. Dept. of Education, Questions and Answers on Title IX and Sexual Violence (April 2014) pp. 22–23 n. 26, <https://www.notalone.gov/assets/ferpa-clerychart.pdf>.)

Rape Crisis Counseling Center (RCC): A center commonly known as a rape crisis center that provides, among other services: crisis intervention; follow-up and in-person counseling services; accompaniment and advocacy services; and information and referrals to victims and the general public. (See generally Penal Code, § 13837.)

Responsible Employee: Any employee who (1) has authority to redress sexual violence, (2) has been given the duty to report sexual violence or other covered misconduct, or (3) a student could reasonably believe has this authority or duty. (U.S. Dept. of Education, Office for Civil Rights, Revised Sexual Harassment Guidance (January 2001) p. 13.) Reportable incidents of sexual violence known by a Responsible Employee must be disclosed to [Campus's] Title IX Coordinator with all relevant information, including personally identifiable information about the victim, the accused, or other witnesses. (See U.S. Dept. of Education, Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence (April 2014) D-3.)

Sexual Assault:

See, e.g., Ed. Code, § 67380 *et seq.*; see also Penal Code, §§ 243.4 (sexual battery), 261 (rape).)

Sexual Assault Counselor: A Sexual Assault Counselor is a certified counselor who is authorized under the California Evidence Code to assert the privilege against disclosing any confidential communications between a victim and the counselor. Section 1035 of the Evidence Code defines a Sexual Assault Counselor as a person engaged in any office, hospital, institution, or center commonly known as a rape crisis center, whose primary purpose is to give advice or assistance to sexual assault victims, who has completed training by a rape crisis counseling center (as defined in Penal Code section 13837), and who meets either of the following: (1) is a

psychotherapist, has a master’s degree in counseling, or one year of counseling experience with six months of rape crisis experience; or (2) has 40 hours of training and is supervised by a qualified counselor. (Evid. Code, § 1035.2.) It also includes a person employed to counsel or assist sexual assault victims by a public or nonprofit agency that provides assistance to victims and witnesses of crimes (as specified by Penal Code section 13835.2), and who: (1) is a psychotherapist, has a master’s degree in counseling or a related field, or has one year of counseling experience, at least six months of which is in rape assault counseling; or (2) has the minimum training for sexual assault counseling set for victim-witness services organizations, and is supervised by a qualified counselor. (Evid. Code, § 1035.2, subd. (b).)

Sexual Assault Forensic Examination (SAFE Examination): A SAFE exam is an exam, commonly referred to as a rape kit, conducted at a qualified health facility to collect forensic evidence from a sexual assault victim that can be used to identify the perpetrator of that crime as well as other crimes to the extent the perpetrator is a repeat offender. (See, e.g., Penal Code, §§ 13823.5, 13823.7.) California protocol for SAFE exams is available at:

http://www.calema.ca.gov/PublicSafetyandVictimServices/Documents/Forms%202013/Medical%20Forms/2-923-2-950_Protocol.pdf.

Additional information about SAFE exams and victims’ rights are available at:

<http://www.calema.ca.gov/PublicSafetyandVictimServices/Pages/Medical-Forms.aspx>.

Trauma-Informed: Trauma-informed services are not specifically designed to treat symptoms or syndromes related to sexual violence, but they are informed about and sensitive to trauma-related issues present in survivors. A trauma-informed organization—whether a hospital, community mental health agency, rape crisis center, or dual/multi-service advocacy agency—is one which all components have been reconsidered and evaluated in light of a basic understanding of the role violence and exposure to trauma plays in the lives of survivors. (Harris & Falot, 2001.) A trauma-informed approach also integrates an understanding of a survivor’s history and the entire context of his or her experience. The attributes of the community to which the survivor belongs also can influence how a survivor is affected by trauma. The individual, the event, and the environmental factors can shape a survivor’s reaction to trauma and the healing process. In practice, trauma-informed services involve striving to be culturally competent and to understand survivors within their familial, social, and community contexts and life experiences. (Proffitt, 2010, p. 3; See National Sexual Violence Resource Center, *Building Cultures of Care: A Guide for Sexual Assault Services Programs* (2013), <http://www.nsvrc.org/publications/nsvrc-publications-guides/building-cultures-care-guide-sexual-assault-services-programs>.) Additional information about trauma-informed practices is available from the National Substance Abuse and Mental Health Services Administration (SAMHSA) at: <http://www.samhsa.gov/nctic/trauma-interventions>.

Undocumented Individual: An undocumented individual is a foreign-national who (1) entered the United States unlawfully, without the proper authorization and documents; or (2) entered the United States legally as a nonimmigrant but has since violated the terms of his or her status and remained in the United States without authorization.

Victim: As used in the MOU, someone who is observed to or who states that a Part 1 violent crime, hate crime, or sexual assault has been committed against him or her. Parties may elect to also or instead use the term Survivor.

Victim Advocate: A Sexual Assault Counselor, as defined in section 1035.2 of the Evidence Code, or a victim advocate working in a center established under Article 2 (commencing with section 13835) of Chapter 4 of Title 6 of Part 4. (Penal Code, § 679.04, subd. (a).)

Victim Support Person: Under California law, a victim of sexual assault has the right to have a support person of the victim's choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys. However, the support person may be excluded from an interview by law enforcement or the district attorney if the law enforcement authority or the district attorney determines that the presence of that individual would be detrimental to the purpose of the interview. (Penal Code, § 679.04, subd. (a).)

Victims of Crime Fund: This refers to the state Victim-Witness Assistance Fund created by Penal Code section 13835.7. The fund is held in the state treasury and dispensed by “the Office of Emergency Services exclusively for the purposes specified in [sections 13835 to 13835.10 of the Penal Code], and for the support of the centers specified in section 13837.” (Penal Code, § 13835.7.)

Victim-Witness Assistance Program: Any public or private nonprofit agency that provides assistance to victims and witnesses of crimes and meets the requirements set out by Penal Code section 13835.2. This includes: (1) providing comprehensive services to victims and witnesses of all types of crime; (2) recognition by the county board of supervisors as the major provider of comprehensive services to victims and witnesses in the county; (3) selection by the board of supervisors as the agency to receive funds pursuant to this article; (4) assistance to victims of crime in the preparation, verification, and presentation of their claims to the California Victim Compensation and Government Claims Board; and (5) cooperation with the California Victim Compensation and Government Claims Board in verifying the data required for these claims. (Penal Code, § 13835.2, subd. (a).)

V. JURISDICTION FOR LAW ENFORCEMENT SERVICES

A. Maps

We recommend including a copy of each map as Appendices to the MOU.

B. Operational Responsibility & First Responders

Under California law, the jurisdictional boundaries and operational responsibilities of campuses and law enforcement are designated by geographic and jurisdictional maps.⁴ Campus law enforcement jurisdiction is shared with local law enforcement agencies. The county sheriff's department has concurrent jurisdiction on all campuses and upon all properties owned or controlled by the campus located within the county. If the campus or property is located within a municipality, the city police department has concurrent jurisdiction. Parties should review the suggested language in the Template MOU carefully and tailor it to their unique circumstances.

For example, some campuses have a Department of Campus Security (non-peace officers) or contract with non-law enforcement agencies. Campus Safety Officers who are non-sworn, non-peace officers, can arrest for any misdemeanor or felony committed within their presence, but must use California Penal Code section 837—arrest by a private person—to accomplish the arrest. Campuses that do not have sworn peace officers may need to adapt the Template MOU with local law enforcement partners to further define their respective responsibilities relating to crimes committed on the campus.

C. Collaboration

For campuses that employ non-sworn or non-peace officers, or contract with non-law enforcement agencies, this section may need to account for scenarios in which non-sworn or non-law enforcement personnel are first responders to a scene. Note that only sworn law enforcement officers have authority to secure evidence to maintain chain of custody, and to authorize a forensic sexual assault examination. However, non-law enforcement personnel can assist in preserving evidence in many circumstances (*e.g.*, keeping people away from a location before law enforcement arrives, etc.). Parties should discuss any additional protocols that may be warranted in order to promote effective preservation of evidence and investigation of an incident.

D. Disputes Over Responsibility

Parties should describe how they will resolve any disputes over responsibility for investigating or responding to a case.

VI. REPORTING OBLIGATIONS

Accurate, timely reporting between Parties is important to coordinate resources in responding to sexual assault and other crimes, to minimize or prevent further victimization, to trigger appropriate institutional investigative action, and to adequately inform the campus community of serious immediate or serious ongoing threats to health and safety. Parties should ensure all

⁴ (See, e.g., Ed. Code, §§ 89560, 92600.)

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necessary policies and procedures regarding when a report of sexual violence can or must be shared between Campus Security Authorities and local law enforcement officials are in place and consistent with requirements under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. 1092(f) (“Clery Act”), Title IX of the U.S. Education Amendments of 1972, 20 U.S.C. § 1681 (“Title IX”), the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g (“FERPA”), and relevant state law.

Parties may wish to attach addenda to their MOU with contact information for any additional relevant personnel, including the Clery Act Official, Title IX Officer, Campus Security Authorities, etc.

A. [Campus] Reports to [Agency]

Describe all incident reports the campus will make to other Parties, including describing the content and timeliness expected for these reports. Under AB 1433, a campus’s policies and procedures must provide for reporting to both Campus Security Authorities and local law enforcement.⁵

B. [Agency] Reports to [Campus]

Describe all incident reports other Parties will make to the campus or others who are party to the MOU, including describing the content and timeliness expected for these reports. Additional categories or content may be necessary to the extent you wish to describe expected reports to/from the DA’s office, to/from rape crisis centers, etc.

C. Clery Warnings

This section facilitates compliance with the Clery Act which requires campuses to issue timely warnings for Clery crimes on- and off-campus that pose a serious threat to students and employees and emergency notifications for a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees on campus.

Parties should explore ways in which they can optimize Clery and other notifications according to students’ preferred methods of receiving information, including the use of mobile-compatible technology, text messaging, and other methods similar to those used for AMBER Alerts.

VII. CONFIDENTIALITY & PRIVILEGE REQUIREMENTS

This section describes how Parties can set clear expectations regarding requests for confidentiality and the limitations on those requests depending on who is communicating with the victim. It also suggests information Parties should share with each other and with victims

⁵ (See Ed. Code, §§ 67380, subd. (a)(6)(A), 67383, subd. (d)(2); see also Attorney General’s campus sexual assault bulletin, p. 3, for additional information: http://oag.ca.gov/sites/all/files/agweb/pdfs/law_enforcement/info-bulletin-dle-2015-01.pdf.)

regarding levels of confidentiality and privilege available under state and federal law and campus policies.

A. Communications Between Parties

This section describes how Parties can navigate the confidentiality and privilege protections that accompany certain sources of victim assistance, so that victims can receive accurate information about the implications of their decisions and parties can understand what kind of information they should or should not expect from certain personnel.

B. Privileged & Confidential Resources for Victims

California law identifies who can assert the privilege (as defined in Section IV) of confidential communication between a sexual assault victim and a Sexual Assault Counselor, Clergy Member, or Psychotherapist. These privileged resources can assert legal privilege on behalf of the victim. This privilege covers all confidential communications with the counselors and psychotherapists, and those who work or volunteer in their offices when the communications are reasonably necessary for the accomplishment of the purpose for which the counselor was consulted. Under Title IX, and for administrative purposes only, a campus may designate non-professional or non-pastoral counselors as “Confidential Resources” to address incidents of sexual violence, such as staff or volunteers at a women’s center. Confidential Resources may be required to disclose information about reportable incidents of sexual violence, but they cannot disclose personally identifiable information about the victim without the victim’s voluntary and informed consent and may disclose only general information about a reportable incident.⁶ In a criminal proceeding, Confidential Resources may be required to disclose such information unless they qualify as a privileged resource. Victims should be informed about the limitations of confidential communications.

If the campus does not employ privileged resources, Parties should include qualified CBOs and/or RCCs as parties to this MOU so that privileged resources are provided. Campuses that do offer privileged resources are also encouraged to include in this MOU or otherwise partner with qualified CBOs and/or RCCs to provide multiple options for victims to access privileged resources if they choose.

Parties should consider the following specific notifications to victims as additional components of the MOU:

- Provide the victim with a list of points of contact on- and off-campus where the victim can obtain:
 - Privileged services of Sexual Assault Counselors and Professional and/or Pastoral counselors;

⁶ While non-professional counselors may have responsibilities that would qualify them as “Responsible Employees” for Title IX purposes, if the IHE designates them as “Confidential Resources,” they need report only general, non-personally identifiable information to the Title IX Coordinator. (U.S. Dept. of Education, Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence (April 2014) E-3.)

- Campus-designated Confidential Resources; and
- Resources and assistance from Responsible Employees (making clear that communication with these employees would trigger certain reporting requirements).
- Inform the victim that
 - The Confidential Resource will need to report only general, non-personally identifiable information to the Title IX Officer; and
 - In a criminal proceeding, the Confidential Resource may be required to disclose the content of communications with the victim unless that resource is a qualified Sexual Assault Counselor or Professional or Pastoral Counselor.

Parties will identify the specific circumstances when shared communications are not privileged or confidential. For example, mandatory reporting to law enforcement is required where a health care provider suspects a physical injury may have resulted from sexual assault or a firearm or reasonable suspicion of child abuse.

VIII. COMMUNICATION AND COORDINATION

The purpose of the information-sharing described in this section is to ensure the delivery of appropriate services, to facilitate full and fair investigations, to prevent acts of retaliation against the victim or witnesses, and to assess special threats posed by offenders within the respective jurisdictions as part of an overall effort to prevent the occurrence of similar crimes. Parties should seek to improve processes and protocols in a collaborative atmosphere that seeks to improve systems without assigning blame for conduct.

A. General

Describe planned meetings, frequency and timeliness of reporting. We recommend meeting at least once per quarter, but parties should adjust frequency based on local needs.

B. Victim Response and Evidence Collection/Preservation

Depending on local circumstances and needs, Parties may wish to include additional detail or addenda to this section regarding the division of responsibility for victim services in the immediate aftermath of a sexual assault, including transportation to a health center that can conduct an examination and referral to other needed services. In addition, campuses with non-sworn or non-peace officers may need to adapt the Template MOU to ensure proper collection of evidence and maintenance of chain of custody.

1. *SAFE Exams and Evidence Collection/Preservation*

This section describes potential agreements among Parties to arrange for victims to get rape kits and to take measures to ensure rape kits are created, stored, tested, and processed for use in the criminal justice system.

2. *Victim Communication and Interviews*

In addition to the basic components included in the Template MOU on victim and witness interviews, Parties should consider additional commitments described below:

- Inform the victim that under California law, he or she is entitled to a SAFE, at no cost to the victim, irrespective of whether the victim engages with law enforcement or participates in the investigation;
- Encourage the victim to provide whatever time-sensitive, case-related information the victim is able to provide;
- Advise the victim of how the investigation and charging process will proceed generally and inform the victim of his or her options with respect to participation in that process;
- Inform the victim that under California law, Penal Code section 679.04, a sexual assault victim is entitled to have an advocate and support person during contact with law enforcement, the prosecutor and defense attorney and any representatives of the same;
- Not coerce the victim into making any immediate decisions with respect to future participation in any investigative process;
- Not require a victim who decides not to engage with law enforcement or participate in the investigation or prosecution to sign a waiver form, as this decision can be documented in police reports and case files;
- Inform a victim who decides not to participate that his or her case can be reopened at his or her request, and give the victim appropriate information about the timing and process for doing so. A victim will be recontacted within 48 hours if he or she has initially stated he or she does not want to make a report to law enforcement;
- Provide the victim with information about confidentiality and privilege as described in Section VII of this How-To Guide above;
- Discuss the services provided by RCCs or other qualified third parties on sexual assault, including contact information, location, and distinct services that they can provide, and offer to refer the victim to a local RCC or other qualified community resource; and
- Provide the victim with a written document at the time of the report that contains the victim's rights under the California Constitution, article 1, section b, otherwise known as "Marsy's Law." This document will include information on available services (including contact information such as specific contacts, addresses, phone numbers and websites), options for pursuing an investigation or prosecution, and the extent to which and with whom information (including personally identifiable information) provided by the victim will be shared. Copies of this document will be provided to the victim at the time of report and maintained in the case file.

Parties should commit that the campus will provide certain information to students, including:

- Ensuring victims know of the right to report the sexual assault to law enforcement
- Assisting victims who wish to report to do so promptly, in order to facilitate preservation of evidence and an effective response by trained criminal investigators.
- Providing victims with information about how to file Title IX complaints, criminal complaints, and/or initiate a campus disciplinary proceeding.

C. Victim Services

Parties may wish to use this section to coordinate referrals for support services for sexual assault victims, including the Victim-Witness Assistance Program and the Victims of Crime Fund.

D. Sexual Assault Response Team (SART)

In the context of this MOU, the term “SART” refers to an interdisciplinary team responsible for reviewing and assessing the community’s response to sexual assault in general, but not for discussing individual cases. If a similar interdisciplinary team is used to review specific cases, the campus should, to the extent possible, include the Title IX coordinator and law enforcement to be involved in such reviews. In cases where a victim seeks confidentiality and does not wish to have the campus investigate the sexual assault, the campus may consider whether the team should be reformatted to accommodate the request of the victim.

E. Coordination During Investigation

Parties should use this section to describe any bilateral or multilateral information-sharing during the course of an active campus or law enforcement investigation.

IX. SEXUAL ASSAULT PREVENTION AND TRAINING

This section offers suggested training arrangements between Parties to the MOU. Parties may tailor this section to account for the frequency of trainings, types of personnel to be included, any cost-sharing arrangements, types of curricula to be used, etc. Parties may wish to consult with a sexual assault community expert, and may wish to adapt or add to this section to include additional cross-agency training opportunities, including multi-disciplinary trainings with the California District Attorneys Association (CDAA), the California Coalition Against Sexual Assault (CalCASA), and the California Medical Training Center, among others.

A. Training Offered by [Agency], [Campus], and [Qualified CBOs/RCCs]

Parties should list any training law enforcement, campuses, or other Parties agree to provide to their fellow Parties, and the data that will be collected to determine its effectiveness.

B. Campus Community Training and Collaboration

Parties should describe any outreach or other efforts on which they might be able to collaborate to the benefit of student and community awareness of rights and responsibilities to prevent and respond to sexual assault.

Additional potential agreements for Parties to consider include:

- Agree to engage in outreach and collaboration with the campus community to promote positive working relationships between law enforcement and students, faculty, staff, and other stakeholders;
- Agree to collaborate in the conduct of meetings with students, victim advocates, and other stakeholders, to discuss ways in which Parties can better respond to and prevent crime with special attention to campus sexual assault;
- Agree to work with internal and external individuals and organizations with expertise in sexual assault prevention and response efforts within their respective jurisdictions, and to hold at least one annual public meeting to solicit feedback on the effectiveness of their prevention and response policies, procedures and efforts;
- Agree to hold annual trainings that include students and staff actively involved in student life activities, including security, counselors, medical, resident advisors, Greek system officials, sporting event coaches and executive administration. Training will include information on Title IX rights as well as victims' rights under the California Penal Code and Constitution (Marsy's Law), and requirements under the Education Code section 67386;
- Agree that all incoming students should complete an awareness class, orientation, or training specifically to address sexual assault and what to do if one is a victim or witness. Information on how to report a sexual assault—whether on or off campus—should be made clear and available to all students, including, for example, on the back of student ID cards. The Parties agree to provide [Campus] with information needed for these classes and disclosures, including, for example, points of contact for students who wish to contact local law enforcement; and
- Agree to provide training to the campus community at least annually to address alcohol and drug use and its relation to sexual assault and other violent crimes, including how intoxication relates to culpability in campus and criminal proceedings.⁷

⁷ In both the criminal and campus disciplinary contexts, a victim's intoxication may render him or her unable to consent to the conduct, and the accused's intoxication is generally not a defense. (Ed. Code, § 67386, subd. (a)(2); Pen. Code, § 29.4; CALCRIM No. 3426.) For a more detailed analysis of these issues, please see: Attorney General Kamala D. Harris, California Department of Justice Information Bulletin No. 15-01 (January 27, 2015) p. 5, available at: http://oag.ca.gov/sites/all/files/agweb/pdfs/law_enforcement/info-bulletin-dle-2015-01.pdf.
<http://oag.ca.gov/campus-sexual-assault>

X. ACCOUNTABILITY

This section addresses the data and analysis Parties can use to determine the effectiveness of their efforts and ways they can improve. Parties should consider the data available to them to collect or analyze as they consider this section.

XI. MISCELLANEOUS

Parties should include any additional provisions here that do not fit in the above sections.