
Governor Terry McAuliffe's Task Force on Combating Campus Sexual Violence
Chair Attorney General Mark Herring

Law Enforcement Subcommittee

Recommendation Topic:

Develop and maintain best practices and training in coordinated response to campus sexual assault designed to increase reporting and provide a trauma-informed response.

Recommendation:

The Department of Criminal Justice Services (DCJS) should establish and provide curriculum and training on Trauma Informed Sexual Assault Investigation. This training should also cover the obligations of universities and community colleges under Title IX, the Clery Act, and the Violence Against Women Act. The training should be multi-disciplinary to include, law enforcement, Title IX coordinators and investigators, campus law enforcement, local law enforcement, Commonwealth's attorneys, victim advocates, and forensic nurses. Best practices for conducting a coordinated response should be developed, maintained and made available. Likewise models such as the You Have Options Program (<http://www.reportingoptions.org>) should be considered when looking for best practices. These programs can work to allay the concerns of victims as they enter into a process where it is imperative that they maintain some sense of control.

Need:

There is no comprehensive training or recognized set of best practices for coordinated response to campus sexual assault. Each institution and jurisdiction has developed independent practices and memoranda on this topic with varying degrees of cooperation and collaboration. Providing training that highlights the important timelines and opportunities for the reduction of duplication of effort and investigatory overlap would be beneficial as a starting point for entities addressing these issues. Recent legislative efforts will go some way in providing a more robust statutory framework for these efforts. Although these systems largely work toward the same goals, there is a basic lack of understanding of the full processes required on the part of the others. As a result, professionals charged with executing each process can hinder each others progress, overexpose the victim and put thorough investigations at risk on both sides without any intention of doing so. With a better understanding of the parameters of each process, Title IX and law enforcement/judicial professionals can work collaboratively to be more effective.

To that end, best practices developed should involve consideration of the following:

Reporting

- Upon receiving a report and notification of law enforcement, clear explanation to the complainant the differences between the campus (Title IX) adjudication process and a criminal investigation, and provide whatever assistance possible should the reporting party wish to refer the matter to the criminal justice system.

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- The university should not in any way discourage a complainant from pursuing criminal prosecution.
 - The university should help the reporting party to understand the importance of prompt collection of evidence and a PERK exam, and the ability of PERK evidence to be stored anonymously, to preserve the option of pursuing criminal charges even if the complainant is not prepared at that time to make such a decision.
 - If resources for independent victims' advocates are available in the community, the complainant should be made aware of those as well.
 - For any matter involving possible criminal behavior, the university should immediately notify local or campus police. If the complainant has given an initial indication that he or she does not wish to pursue a criminal case, the university should still report to the police any information, short of the name and identifying information of the complainant, which could be useful in a criminal investigation.
 - The complainant should be encouraged to speak with a law enforcement investigator about the matter, while receiving assurances that after such a conversation it will remain the choice of the complainant whether he or she will cooperate in the criminal investigation.
 - If an initial report of a sexual assault involving a member of the university community is first reported to local law enforcement or a Commonwealth's Attorney, they should immediately share the report with the university.

Investigation Timetable

- If a criminal investigation proceeds, the university should at the request of the Commonwealth's Attorney pause elements of its Title IX investigative that could reasonably compromise a criminal investigation. However, campus officials may still be obliged under Title IX to act immediately to provide assistance and remediation to the complainant, or to ensure the safety of the campus. To the extent possible, they should do so in a manner consistent with reasonable requests from the investigators.
- While federal law encourages campus officials to halt temporarily a Title IX process so as not to complicate a criminal investigation, it does not allow them to do so indefinitely. Once an arrest warrant has been issued or an indictment handed down (indicating sufficient evidence has been collected to establish probable cause), or the Commonwealth's Attorney has concluded charges will not be immediately forthcoming, the university should be

notified and allowed to fulfill its obligations under federal law and proceed with its own process.

Interview of the Complainant

- Both local law enforcement and campus officials should use a trauma-informed process for speaking with potential victims of sexual assault, cognizant of the now-well-documented effects of trauma on memory and the need for sensitivity in questioning about traumatic events. Every effort should be made to minimize the number of times a complainant must recount his or her story.
- After an initial report is received, the university should honor any request from law enforcement to conduct and lead an initial interview in which the complainant provides his or her account of events. The Commonwealth's Attorney should generally allow a university Title IX official to be present for that interview, or should provide a recording or transcript to the Title IX official immediately afterward. Law enforcement should recognize that the university official may be required by obligations under federal law to ask different and additional questions, and should allow the university official to do so unless the Commonwealth's Attorney believes that could put the criminal investigation at risk. In such a case, the university should honor any reasonable request by the Commonwealth's Attorney to postpone the university's additional portion of the interview until the points in the process noted above – issuance of a warrant or indictment, or confirmation of a decision not to press charges.

Interview with other witnesses and the respondent

- The Commonwealth's Attorney may have a legitimate interest in holding off interviewing certain witnesses or the respondent until other elements of the investigation have been first completed, so as to avoid "tipping off" key parties about the investigation. In general, university officials should honor such requests until the completion of the investigation. However, university officials should not be asked to take steps that would put them at risk of violating their federal obligations for timely notice of a potential ongoing threat to the community.

Coordination of Title IX and criminal processes after an arrest or indictment

- At the completion of a criminal investigation stage, a campus Title IX coordinator should meet with a Commonwealth's Attorney, or his or her representative, and may request information from the criminal investigation that may be used in the campus Title IX process. Evidence such as forensics, videotape and other tangible evidence should as a matter of course be made available to the Title IX officer to be reviewed and used in campus proceedings.

Anticipated Challenges to Implementation of Recommendation:

While opposition should be minimal it is important to note that autonomy to deal with the differences in campus environments, student populations, and law enforcement agencies must be taken into account when developing model best practices or implementing pilot programs. All of the individuals involved have extensive training and professional requirements already, many Commonwealth's Attorneys may not have institutions of higher education within their jurisdictions, however they could, at any time, find themselves prosecuting a case that is also under Title IX investigation. Resistance would most likely be time/resource-based rather than substantive objection.

Implementation:

While best practices will need to be developed in coordination with recent statutory changes and in conjunction with federal law there should be no need for further legislation. Mandating training would require legislation; encouraging training without a legislative mandate would not and could be a good first step. Efforts on the adoption of models aimed at fostering increased reporting could also be voluntary with training provided or true pilot programs of models such as the You Have Options Program. Proponents would likely include higher education professionals and victim advocates, recognizing that a more informed approach benefits all parties involved and creates an atmosphere conducive to increased reporting. Support could also come from law enforcement within localities with institutions of higher learning that would benefit from having Title IX coordinators better understand the potential effects on the investigations arising from sexual misconduct.

Fiscal Impact:

Training should be developed and provided by DCJS. DCJS should work with the State Council of Higher Education for Virginia (SCHEV) to assure the full participation of the appropriate individuals from each institution of higher learning in the state. Periodic updates would be dealt with in the same manner as initial development. This would be an incremental addition to their already robust training mission. If charges apply for the training it could potentially generate revenue. DCJS would need to be consulted to ascertain whether or not a budget amendment would be required and at what level. Likewise for any effort undertaken to increase reporting DCJS would need to provide comprehensive training for investigators on the forensic experiential trauma interview and other evidence based investigation techniques for sexual assault.