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

Law Enforcement Subcommittee

Recommendation Topic:

Federal Regulatory Requirements and Best Practice Timely Warning Issuance in Cases of Non-Stranger Sexual Assault

Recommendation:

Institutions of higher education in Virginia should issue timely warning notifications for all reported sexual assaults

The U.S. Department of Education requires timely warning notifications to be sent to alert the university community to potentially dangerous criminal situations [defined as serious and ongoing] so that community members have both the time and information necessary to take appropriate safety precautions. The Clery Act requires the alerting of the campus community to certain crimes, including sexual assault, in a manner that is timely and will aid in the prevention of similar crimes. All institutions are required to establish and to disclose a policy statement in the mandated Annual Security Report (ASR) that accurately depicts the timely warning procedures used by an institution.

Legal/Regulatory Guidance:

Limited guidance is provided in The Jeanne Clery Disclosure Act of Campus Security Policy and Campus Crime Statistics Act/ Clery Act: 20 USC § 1092 (F).

Department of Education (DOE) Handbook for Campus Safety and Security Reporting- 2/2011 Edition; Chapter-6; page 111.

Need:

Content of the timely warning message: The Clery Act does not specify what should be included in a timely warning. The intent of the timely warning is to enable members of the community to protect themselves and the warning should include all information that would promote safety and that would aid in the prevention of similar crimes. The institution must include information about the crime that necessitated the warning so as to educate and empower the community of similar dangers in the environment. The warning must also be reasonably likely to reach the entire community. Generally, the distribution is made via the mass e-mail and/or text messaging notification to community members.

Institutions can be fined by the U.S. Department of Education for violations of the Clery Act. Each violation can potentially have a penalty of \$ 35,000. Currently proposed legislation may increase this penalty to \$150,000 per violation.

The issuance of timely warnings by state institutions for reported sexual assaults provides prevention and educational information to the community for the intended purpose of preventing similar crime from occurring, and thus safeguarding the community.

Anticipated Challenges to Implementation of Recommendation:

The Clery Act articulates “the continuing danger to the campus community” as the most important determining factor when assessing whether or not a timely warning should be sent. Many argue that in an acquaintance sexual assault no ongoing risk or danger to the community is present; however, these situations are often very complicated and enough information is not known immediately to assess whether these activities would be limited to known acquaintances and not present a larger danger to the community.

The main function of the timely warning is expressly stated as prevention of the occurrence of similar crimes. The timely warning for sexual assault cases should contain limited specific information pertaining to the crime to protect the identity of the survivor and should be robust with prevention and educational information and resources pertaining to sexual assault, including an expressed statement of a zero tolerance for retaliation in any form for reporting such crimes.

Implementation:

Allow institutions to establish individual criteria. Criteria for timely warnings should be based on (3) factors:

1. Geographical location of the incident: Did the offense take place within Clery reportable geography or near proximity to such (i.e., just outside Clery reportable jurisdiction but may be considered campus, or considered campus by a layperson observer)?
2. Timeliness of the report: Allow institutions to determine relevant timeliness. Internal Protocol Example- If an incident is reported to police within 10 days of occurrence a timely warning will be issued. Protocols should allot for issuing a timely warning outside of the 10 day window for any credible report of violence by use of force, drugging, etc.
3. Use the 99-1 content formula for timely warnings. 1% of the information should be focused on the facts and details of the crime, 99% of the timely warning should be prevention and educational information.

Attachment A: Timely warning focusing on education / prevention of additional sexual assaults utilizing 99-1 formula.

This rationale will be supported by law enforcement agencies that place strong emphasis on prevention and education. Victim/Witness advocates and survivors of sexual assault would also support proactive preventative messaging in the form of a timely warning for acquaintance sexual assault cases. This demonstrates and supports an emerging and national best practice referred to as a ‘Trauma-Informed Practice Approach’.

The following are also recommended as best practices associated with issuing timely warnings:

Campus law enforcement agencies should meet collaboratively with sexual assault survivors, students, victim/witness specialists, and advocates to draft prevention language for inclusion into the timely warning that is accurate, effective, and sensitive. Doing this in a collaborative manner is a very effective way to establish language that is not offensive, insensitive, and irrelevant.

Survivors should be fully informed regarding the federal obligation of the institution to issue a timely warning. Survivors should also understand that the intention of issuing a timely warning is to prevent additional sexual assaults from occurring. Prior to distribution of the timely warning an agency representative should read the timely warning to the survivor.

Fiscal Impact:

This recommendation has not fiscal impact (due to prior federal requirement existing since the 1990s). This recommendation would not generate income and should not require a budget amendment.