



## NEW HAMPSHIRE CAMPUS CONSORTIUM Against Sexual and Interpersonal Violence

### Developing a Memorandum of Understanding Between Law Enforcement and Institutions of Higher Education

[RSA 188-H](#) Sexual Misconduct at Institutions of Higher Education was enacted by the General Court of New Hampshire in 2020. This statute requires institutions of higher education (IHEs) to take numerous actions in addressing sexual misconduct<sup>1</sup> in their campus community. The effort to pass this legislation was spearheaded by the Every Voice Coalition. New Hampshire was the first state to successfully pass this legislation.

Chapter 188-H contains a section on Collaboration with Law Enforcement ([188-H: 6](#)). Section 188-H: 6, paragraph I, requires IHEs to *“adopt policies and procedures with the **local law enforcement agency** having primary jurisdiction over the city or town wherein the institution's primary campus is located to establish the respective roles and responsibilities of each party related to the prevention of and response to on-campus and off-campus sexual misconduct.”*

The intent of this guidance is primarily to assist IHE and law enforcement (LE) with complying with RSA 188-H:6. While the statute lays out requirements for compliance, it is hoped that this guidance will not only clarify those requirements but also encourage both parties to build relationships which are broader than the minimum standards set by RSA 188-H:6.

Sexual assault and domestic violence investigations involving the IHE community have unique factors that distinguish them from those in the community-at-large. The IHE has Federal and State laws mandating that they take certain actions in response to any report of sexual misconduct within the campus community. The responses of IHEs and LE to campus sexual misconduct may appear superficially similar but are profoundly different. The goal of ensuring that IHE and LE professionals understand these differences is to provide the best services possible to a victim of sexual misconduct, especially in cases where both systems are involved in the response. For victims, engaging with both systems simultaneously can contribute to confusion about the overall response especially when there is a lack of role clarity among the professionals involved in each response. This guidance will hopefully minimize those confusions and promote best practices in the relationship between IHEs and LE.

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<sup>1</sup> Sexual misconduct refers to incidents of sexual violence or assault, dating or domestic violence, stalking, gender-based violence, violence based on sexual orientation or gender identity or expression, or sexual harassment, including incidents that may not rise to the level of a criminal offense in New Hampshire.

The relationship between an IHE and its local LE agency generally falls along a continuum, ranging from having an ineffective relationship (or no relationship), to having an effective-but-informal relationship, to having an established Memorandum of Understanding (MOU) or other type of written agreement. An MOU clarifies respective roles and responsibilities, outlines relevant procedures, identifies shared goals, and, when appropriate, documents agreements between the parties to help reach those goals. This can help create predictability, which can help each entity improve their response to those impacted by sexual and domestic violence.

Even if there is an effective relationship between the IHE and LE, there are benefits to establishing an MOU or revisiting an existing one, especially given the requirements of 188-H:6. When effective practices are based on informal relationships, an MOU can formalize those practices, so they are not impacted by turnover. If there is an MOU, RSA 188-H:6 does not aim to re-invent or replace existing agreements, but to enhance them.

Because both parties have other considerations that make compliance with RSA 188-H:6 complicated, this guidance includes appendices going into more detail about the different factors, which may complicate relationship building between an IHE and the LE.

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**Note on language:** One of the barriers that frequently arises when IHEs and LE work to coordinate their procedures is the different language used by each organization. Throughout this guidance, “sexual misconduct,” “reporting party,” “complainant” and “respondent” will be used when focused primarily on the campus response and laws or regulations that control campus response. “Domestic violence”, “sexual assault,” “victim,” and “suspect” will be used when focused on law enforcement or criminal justice system response.

## COMPLYING WITH RSA 188-H:6

The following section is a review of [RSA 188-H:6](#) by subparagraph, outlining points to be considered in discussions between the institutions of higher education (IHEs) and law enforcement (LE).

### Paragraph I

Subparagraphs (a) and (b) require IHEs and LE to:

- a. *Delineate sharing protocols for investigative responsibilities.*
- b. *Provide protocols for investigations, including standards for notification and communication and measures to promote evidence preservation.*

The goal of RSA 188-H:6 is for the IHE and LE to coordinate their response to sexual misconduct within the IHE's community. To do so, both IHEs and LE need to be aware of each other's policies, procedures, and protocols. It is important that each party understands the additional laws and constraints that control the other party's discretion and decision-making (such as [Title IX, Clery Act](#), the [NH Attorney General's Model Protocols](#), and any local practices.) It is also critical for the parties to formally identify how they can collaborate in responding to sexual misconduct despite the external limitations they may have due to other laws and protocols. Given these complexities, an MOU is useful to document the responsibilities of each party when receiving a report of sexual misconduct, providing support to the reporting party, and conducting investigations.

Further information can be found in the Appendices [“What Law Enforcement Need to Know About Campus Response to Sexual Misconduct”](#) and [“What Institutions of Higher Education Need to Know about Criminal Investigations”](#).

Subparagraph (c) requires IHEs and LE to coordinate *“training, programming, and requirements on issues related to sexual misconduct.”* There are two sub-issues to be considered:

- a. Cross-training between IHEs and LE regarding their respective policies, procedures, and protocols. This is important to ensure that each party can anticipate the other's response. The provided template MOU includes sections intended to help the IHE and LE identify opportunities for collaborative cross-training. IHEs and LEs are encouraged to utilize resources and forums that are already available, such as state-wide training and participation in a county-based [Sexual Assault Response Team \(SART\)](#).
- b. Joint community engagement by the IHE and the LE. Police departments often have community engagement programs which could be easily translated to an IHE's community, especially if co-presented with the IHE's campus safety program.

Subparagraph (d) requires IHEs and LE to *“Ensure that reporting parties are able to move safely and comfortably between classes, extracurriculars, sports, and campus jobs.”* This addresses an understanding of and coordination between the IHE and LE regarding any personal safety planning or crime prevention programs, such as safety escorts, available through campus safety or student-run organizations. It is important that the IHE and LE are aware of each other’s resources and limitations so they can effectively connect those impacted by sexual misconduct to the appropriate services.

Subparagraph (e) requires IHEs and LE to:

- (e) Develop a protocol for sharing information about specific crimes, which may include a mechanism for sharing information anonymously, that:*
  - (1) Requires that the reporting party authorized or requested that such information be shared and is fully and accurately informed about what procedures shall occur if the information is shared; and*
  - (2) Is carried out in a manner that is consistent with the General Education Provisions Act, 20 U.S.C. section 1221, and any other applicable provisions under state law.*

Remembering that there are several stakeholders involved in investigations and that release-of-information protocols may impact the course of a criminal investigation and prosecution, it is important to identify who is impacted by the release of information and under what circumstances information should be shared.

Because IHEs are compelled to comply with [federal laws](#), it is important to take these into account as LE and IHEs try to coordinate their information sharing processes.

At a minimum, IHEs and LE should develop procedures outlining when and how they may notify one another upon receiving reports of sexual and domestic violence after receiving expressed consent from a reporting party who has been fully and accurately informed.

Circumstances may arise that do not allow for obtaining the reporting party’s consent before sharing information, such as when there are immediate safety concerns, statutory or professional reporting obligations. Developing additional protocols for these types of situations may be beneficial. While developing policies and procedures for sharing information without the reporting party’s consent, the following should be considered: existing laws and relevant policies, under what circumstances this may be needed, whether to create a mechanism to share pertinent case facts without identifying information, and what kinds of details may lead to the unintended identification within the community. Additionally, the procedure should include notifying the reporting party of what will be or was shared and with whom, prior to sharing the information, whenever possible.

Subparagraph (f) requires IHEs and LE to establish *“the methods for sharing the Clery Act reporting requirements and for facilitating the issuance of timely warnings and emergency*

*notifications required by the Clery Act relative to crimes that may pose a serious threat to the campus or near campus communities.”*

Using definitions provided in the [Clery Act](#), each IHE will have to determine what locations fall into its [Clery Geography](#) and collaborate with LE to develop a way the IHE can be notified of any qualifying events that would trigger a [timely warning or emergency notification](#).

IHEs and LE will have to work together to reconcile potential conflicts of releasing information to the public regarding an ongoing critical incident or investigation, understanding that IHEs may send out timely warnings or emergency notifications for Clery compliance without the knowledge or consent of the LE agency. There may be an opportunity to discuss if and under what circumstances the IHE may be able to inform LE prior to the release of an emergency notification or timely warning.

Subparagraph (g) states that an IHE must develop *“methods for notifying the appropriate county attorney’s office.”* Every county attorney’s office has an existing process for being notified by LE of crimes that would be prosecuted by that office. It is not anticipated that IHEs need to have a role in notifying the county attorney of sexual and domestic violence incidents. However, it is beneficial when each stakeholder understands the other’s processes and practices. The supplemental resources to this guidance and [county based SARTs](#) are resources to assist in this process.

Subparagraph (h) states that IHEs must *“Update [such] policies and procedures biennially.”* The parties will need to determine how to inform each other if either party has internal changes that would impact this MOU. The IHE should keep a record of when the MOU is updated and what, if anything, was changed.

Paragraph II states:

*“The commission may waive the requirements of this section in the case of an institution that demonstrates that it acted in good faith but was unable to adopt joint policies and procedures with the local law enforcement agency having primary jurisdiction over the city or town wherein the institution’s primary campus is located.”*

This section acknowledges that an IHE may encounter challenges in their efforts to collaborate with LE to comply with RSA 188-H:6. The remainder of this guidance is intended to help IHEs and LE navigate these challenges, including a list of offices or individuals who can provide consultation and technical assistance. If the IHE and LE cannot come to an agreement after reaching out for assistance and it appears that there are irreconcilable differences, the IHE should document its attempts and reasons for the lack of compliance.

RSA 188-H:6 speaks only to the LE agency with primary jurisdiction over an institution’s primary campus. However, including LE agencies that have jurisdiction over satellite locations or other campus property in the process of establishing or revising an MOU is beneficial to ensure consistent practices.

Paragraph III states:

*“Notwithstanding any general or special law to the contrary, a member of the department of state police or a local police department who acts as a first responder to a report of sexual misconduct at an institution of higher education shall receive training in the awareness of dating violence, domestic violence, sexual assault, and stalking and in trauma-informed response, subject to appropriation.”*

It is acknowledged that there may be differences between the roles of LE as first responders and as investigators. As such, the training required for each role would likely need to be different. While RSA 188-H:6 speaks specifically to LE as first responders, this provision does not replace the need for advanced training for those with investigative responsibilities. The foundational training for first responders is provided by the Police Standards and Training and the Attorney General’s Office. The Attorney General’s Office has developed protocols addressing [sexual](#) and [domestic violence](#). Protocols are updated periodically and training on updates is made available. Police departments should ensure their officers are familiar with and up to date on any changes to these protocols. The foundational training on the Attorney General’s protocols reflects best practices and is likely sufficient to meet the requirements of this statute for most LE personnel.

Additional and specialized training may be obtained by attending learning opportunities through the Attorney General’s Office, participation on local SARTs, collaboration with local crisis centers, IHEs, and other outside organizations. It is recommended that IHEs and LE collaborate to assess and identify training needs for those investigating sexual misconduct through both the LE and the IHE processes.

## CREATING A MEMORANDUM OF UNDERSTANDING

New Hampshire RSA 188-H:6 requires institutions of higher education (IHE) to adopt policies and procedures with local law enforcement (LE) agencies holding primary jurisdiction over an IHE's primary campus location. These policies and procedures should establish roles and responsibilities when responding to on and off campus reports of [sexual misconduct](#). Developing a Memorandum of Understanding (MOU) is widely considered a best practice for creating a response reflective of the goals and mission of the organizations. This template is meant to provide guidance for creating an MOU that addresses the requirements under RSA 188-H:6 while also promoting best practices overall.

In creating this guidance, it is recognized that there is no “one-size-fits-all” model for collaboration or only one way to craft a document to reflect coordinated practices. It will be up to each IHE and corresponding LE agency (referred to collectively in this guidance as the “Parties”) to engage in meaningful discussion to determine which practices will work best, and how to document and memorialize the resulting agreements. The approaches that will be most effective will depend on each Party's resources and capacity, particulars of the community they serve, and the history of collaboration between the Parties.

### Using this template to develop an MOU:

- This template provides guidance for considering multiple facets of the collaboration. The template provided includes areas that the authors of this guidance identified as aspects that the Parties may wish to as they create their MOU. The Parties may choose to use, adapt, or omit provisions suggested here, address items in a different order, or structure their MOU differently.
- If the IHE and local LE are further along in their collaborative process and already have an MOU, this guidance can still be a useful reference for enhancing an existing MOU, implementing new provisions under RSA 188-H, and considering new strategies and practices to improve the response.
- Out of respect to the uniqueness of each IHE and LE pairing, this template provides “Content Considerations” rather than suggested wording. When crafting an MOU, it is advisable to be mindful of the level of specificity used. The goal is to be specific enough to meaningfully reflect collaborative practices to promote mutual accountability without being an additional obstacle to implementing necessary changes or hindering the adoption of an emerging best practice.
- This template does not constitute legal advice. Written understandings with community partners should be reviewed by legal counsel for consistency with applicable federal and state laws.

Considering stakeholders:

While the IHE and LE will be the named Parties to the MOU, it is important to identify other stakeholders who may have oversight or be impacted by the content of the MOU. It may be beneficial to include these identified stakeholders in the process by providing an opportunity to consult or review the proposed MOU. The following stakeholders have been identified as relevant to this process:

- The county attorney’s office may be either directly involved in the prosecution of the crime or providing guidance in the investigation.
- Other LE agencies with jurisdiction over campus property (i.e. satellite campuses, athletics fields in adjacent town) may be involved or consulted to promote consistent policies.
- The local crisis center may be either directly involved or consulted to ensure MOUs between all parties do not conflict or contradict one another.
- Members of the county-based Sexual Assault Resource Team (SART) may serve as a resource for established best practices.

*MOU BETWEEN [Institution of Higher Education] AND [Law Enforcement Agency]*

*PURPOSE*

*Most MOUs begin by identifying the purpose of the MOU and a statement to affirm that both Parties are entering into the MOU in support of said purpose. If the MOU is crafted to comply with specific laws and regulations, these may be referenced here as well. Many also make note of the individual nature of cases and state that the MOU is only meant as a general guide.*

**CONTENT CONSIDERATIONS:**

- Shared goals and interests of the Parties.
- Underlying principles and objectives of each Party’s process (i.e. prompt and equitable, trauma informed, victim-centered, and offender-focused).
- Acknowledgement of the legal and policy-based frameworks that have impacts on the processes, i.e.: Title IX, Clery, NH RSA 188-H, for IHE and NH Attorney General’s Protocols, IACLEA, and CALEA for Law Enforcement.

*GENERAL ROLES AND RESPONSIBILITIES OF EACH PARTY*

*This section is optional but could be utilized to provide a brief description and the general roles and responsibilities of each Party. Any jurisdictional issues may be addressed in this section.*



### *HISTORY OF COLLABORATION*

*Use this section to highlight the ways the Parties have worked together in the past. This can be an opportunity to formally document any effective approaches that have resulted from informal working relationships. Content in this section does not have to provide specific examples, but should mention every facet of the collaboration, not only those related to response to reports of sexual misconduct.*

#### **CONTENT CONSIDERATIONS:**

- All areas in which the Parties may have collaborated in the past, including but not limited to:
  - Responding to sexual assault, domestic violence, and stalking
  - Awareness and prevention programs
  - Cross-training
  - Communication related to Clery requirements
  - Mutual participation on county SART or attendance at same trainings
- If there has been limited opportunity for collaboration in the past, the Parties may recognize that they serve overlapping populations, share a common interest in public safety, and acknowledge that developing the MOU is an important step to strengthening the collaboration.

### *APPROACHES TO FOSTER COLLABORATION*

*To have an effective relationship, it is important that the Parties understand each other's processes and obligations. Use this section to document overall strategies toward building collaboration and partnership given the obligations for each agency. Any processes and strategies that the parties agree are of mutual interest but have not yet been specifically identified can be included in the MOU as a commitment for the parties to determine in the future.*

#### **CONTENT CONSIDERATIONS:**

- Each Party's key point(s) of contact for the other, by position or department, including scope/authority of each role. A commitment to updating the specified points of contact as needed in a timely manner.
- Strategies to support initial and continued training regarding each other's policies and procedures, development of productive working relationships, identifying and sharing information about trends, and collaborative problem solving.
- Process to identify Clery Geography, including providing updates as needed, and to ensure all parties understand how Clery Geography intersects with any relevant LE jurisdictions.
- A process regarding notification of crimes to facilitate the issuance of Clery Act-required timely warnings and emergency notifications. An acknowledgement that IHEs do not need to obtain LE approval prior to issuing any warnings or notifications, nor are they required to seek preclearance of the content, even though there may be an agreed upon process by which IHE coordinates with LE to the extent possible.

- Agreement made regarding how LE will assist in the collection of information required by the Clery Act for the purposes of the Crime Log and Annual Safety Report.
- Mutual understanding regarding anonymous reports including the need to share the information while maintaining the anonymity of the reporting party.
- Any agreements on how the jurisdiction’s current technology can assist in complying with statute (i.e. identifying crimes and Clery Geography).

***CONFIDENTIAL RESOURCE ADVISOR (CRA)***

*While the topic of the CRA will also be discussed by IHE and the local crisis center, it is important to acknowledge the impact the CRA may have on a criminal investigation, and how to prevent possible conflicts. If the CRA is an advocate with the local crisis center, the relationship between IHE, CRA and LE may already be well established. If the CRA is employed by the IHE, additional communication and guidelines are likely needed to prevent any challenges that may arise. The content of this section will greatly depend on who the IHE designates as their CRA.*

**CONTENT CONSIDERATIONS:**

- Identify whether the CRA is employed by the IHE or the local crisis center and how students can access them.
- Commitment that the Parties will respect the privilege held by CRAs under RSA 188-H:8, and agreement that neither LE or officials from the IHE will attempt to obtain case information from the CRA.
- If the CRA is a crisis center advocate, affirming that privilege under RSA 173-C will also apply.
- If the CRA is a campus employee:
  - Any agreements made regarding the way CRA(s) and LE will interact.
  - Opportunities for the CRA(s) and key members of law enforcement to build a productive working relationship outside of the context of a particular case, to allow for identifying trends, improving response practices, and problem-solving, and how the Parties will support such efforts.
  - Any agreements regarding law enforcement’s role in training the CRA(s).

***RESPONDING TO & INVESTIGATING SEXUAL MISCONDUCT***

*This section of the MOU is intended for the Parties to document policies and practices regarding the reporting, investigating, and adjudicating of sexual misconduct to minimize potential conflicts while recognizing the need to preserve the integrity of investigations.*

**CONTENT CONSIDERATIONS:**

- A commitment or process for LE to identify when a victim, suspect, or witness is affiliated with the IHE.
- Commitment of the Parties to provide the victim/reporting party with information about the options and resources available through the other Party. The IHE will assist victims

who wish to report to LE to do so promptly, in order to facilitate preservation of evidence and an effective response by trained criminal investigators.

- Identify mechanism for making an anonymous report to either Party, if one exists, the responsibility of the Party receiving the report to ensure anonymity is preserved, and under what circumstances the Party will follow up on the report.
- Any agreements the parties reach regarding collection and preservation of evidence to minimize any impact on the respective Parties' investigation.
- Commitment of the Parties to involve an advocate from the local crisis center or ensure the reporting party has access to an advocate to allow the opportunity to consider all options and understand the implication of each option.

### ***SHARING OF CASE INFORMATION***

*Communication and collaboration between the Parties is critical, given that there may be concurrent investigations, or a case may be investigated by the other Party in the future. In addition, NH RSA 188-H:6 section 1(e) requires that the Parties develop a protocol for sharing information about specific crimes, when the reporting party authorized or requested that such information be shared and is fully and accurately informed about what procedures shall occur if the information is shared. However, this can be challenging when laws and other factors limit a Party's access to the information they are seeking. Both Parties have limitations on what they are authorized to share: FERPA, which restricts sharing of educational records, is frequently cited as reason IHEs cannot share certain information while LE will have constraints based on protecting the integrity of the criminal investigation. Acknowledging and understanding the limitations on the other Party's ability to share information can help the Parties navigate these challenges successfully. Use this section to outline how the Parties will facilitate sharing case information.*

### **CONTENT CONSIDERATIONS:**

- Acknowledgement of the limitations on sharing case information, agreement to respect the other Party's limitations, and commitment to work together as effectively as possible in order to promote a safe campus community.
- Protocol for sharing information about specific crimes when authorized or requested by the reporting party. (i.e., standard methods of sharing information, what information is typically contained therein and who would have access, a shared understanding of what additional information may be requested on a case-by-case basis and how those requests will be made by each Party).
- Mutual understanding of expectations regarding how and if the Parties will share anonymous or de-identified reports, including circumstances leading to sharing the report, what happens to the report, how is it disseminated within the agency, and ways it may impact each Party's process and information sharing between the Parties (i.e. Clery warnings/notifications or Title IX Formal Complaint)

- Commitment to give reporting parties as much control over the information being shared between the agencies as possible.
- A process to seek the victim/survivor’s consent whenever possible and to ensure they are aware of what is done with the information if it must be shared without their consent in order to comply with law or policy.
- Any agreements between the Parties to continue sharing information regarding concurrent cases, as appropriate, with the shared goal of deconflicting the processes.
- Any practices deemed appropriate for the parties to communicate with each other regarding key stages of the investigation (i.e. notification to the respondent/defendant of the allegation) in order to support safety of the reporting party and the community at large.
- Acknowledgement that LE has an established practice for notifying the local County Attorney’s office of sexual and domestic violence investigations.

**ENSURING SAFETY**

*While some MOUs may include content relevant to this within other sections, given the specificity with which it is addressed in RSA 188-H, it may be beneficial to outline these elements in a separate section. While no one agency or institution can completely guarantee a victim/survivor’s safety, it is important for each Party to outline their efforts toward ensuring safety and to acknowledge that a strategic coordinated effort between the Parties is more likely to be successful than what any one agency or organization can do alone. For the purposes of this template, this section is designed to address services and resources that are provided for individual victims/survivors to utilize if appropriate in their unique case circumstances and if they choose. Suggestions for content regarding programs and efforts that address safety more broadly can be found in the section on education, awareness, and prevention. If there have historically not been programs or resources aimed at ensuring victim/survivor safety, given RSA 188-H:6, this is an opportunity for the IHE and LE to reach a mutual understanding and agreement of how they both will support this goal.*

**CONTENT CONSIDERATIONS:**

- Acknowledgement of the shared responsibility the Parties hold to help support the safety of reporting parties regarding their individual safety concerns.
- A brief overview of the safety-related programs or services the IHE provides, i.e.: campus safety escort, administrative no contact order.
- A brief overview of LE’s role in providing access to, serving, and enforcing protective orders, along with any other relevant safety programs or services offered by LE.
- Role of IHEs in responding to protective orders considering factors such as need to reallocate housing, change in course schedules, removal from campus etc.
- Any agreements made by the Parties regarding notification of service or violation of a protective order.
- A procedure for IHE officials to request assistance from LE if a situation rises above the IHE’s capacity or resources to ensure the safety of reporting parties.

## ***AWARENESS & PREVENTION***

*Rather than being specific about the awareness & prevention programs and efforts that will be implemented, the Parties can use this section to document the process they will use to collaboratively plan programming.*

### **CONTENT CONSIDERATIONS:**

- Identify point(s) of contact who may be involved in programming efforts, if different from points of contact named above.
- A commitment to, on an ongoing basis:
  - Assess current programming efforts.
  - Identify future opportunities for collaboration.
  - Identify current trends affecting the campus community and corresponding programming needs & opportunities. (i.e., reviewing results of climate survey and/or relevant crime data.)
  - Identify opportunities to coordinate with stakeholders, including but not limited to the local crisis center.

## ***TRAINING***

*With the goal to ensure a coordinated response to sexual misconduct in the campus community, this section of the MOU is the opportunity for IHE and LE to commit to identifying opportunities and methods to implement reciprocal training. IHEs and LE should collaborate to identify the content and audiences appropriate to their unique community who will need training to implement the policies and procedures outlined in the remaining sections of this MOU. To comply with RSA 188:6 III, first responders must receive training on the awareness of dating violence, domestic violence, sexual assault & stalking and trauma-informed response. This mandate may be met through the initial training on the Attorney General (AG)'s [sexual assault](#) and [domestic violence](#) protocols provided during the Academy at Police Standards and Training Council and through additional training about protocol updates when offered.*

### **CONTENT CONSIDERATIONS:**

- Agreement that each Party's leadership will have regular conversations and will arrange for ongoing cross-training.
- Commitment of IHE to identify roles on campus who are involved in sexual misconduct reports, appropriate training for each role and how local LE may assist with the training.
- Commitment of LE to seek continued training as needed to stay up-to-date and effectively familiar with current protocols.
- Acknowledgement that the fundamentals of the AG's protocols may not be sufficient for dedicated investigators, and statement affirming that LE will seek opportunities for those who will be more involved with sexual assault and domestic violence investigations to further their knowledge and skills. (i.e., AG's conference, local IHE and crisis center, NHCADSV and county-based SART).

### *MISCELLANEOUS*

*This is a section to address anything that has not been addressed previously and can include any standardized language either Party utilizes.*

#### **CONTENT CONSIDERATIONS:**

- Agreement that the policies and procedures developed in and pursuant to this MOU will be reviewed biennially, in accordance with RSA 188-H, and as needed upon major law, policy, or personnel changes.
- Acknowledgement of each Party's ability to terminate or modify the MOU and identified method in which this would be done.

### **CONCLUSION**

In summary, RSA 188-H:6 is meant to facilitate stronger partnerships between IHEs and LE. Regardless of what stage the respective organizations are at in the relationship building process, this guidance and the attached tools are intended to help enhance communication and collaboration.

## APPENDIX A: WHAT LAW ENFORCEMENT NEEDS TO KNOW ABOUT CAMPUS SEXUAL MISCONDUCT

### RSA 188-H

This statute came into effect in January 2021. While there are numerous provisions that institutions of higher education (IHEs) need to implement, the primary section that concerns law enforcement (LE) is [H:6](#) (see [Complying with RSA 188-H:6](#)). In addition, there are requirements for IHEs around: policy development; campus climate survey implementation; prevention, awareness, and training; designation of a Confidential Resource Advisor (CRA) and collaboration with the local crisis center. Of these other sections of the statute, the one most likely to impact LE is the provision regarding CRAs.

[RSA 188-H:7](#) creates the new role of a CRA. The CRA can be an employee of the IHE (except for the Title IX Coordinator or a student) or an advocate from the local crisis center. Regardless of which organization the CRA is employed by, providing this resource to students will require close collaboration between the IHE and the crisis center. The role of the CRA includes providing the reporting party with information, referral, and assistance navigating services. Upon the reporting party's request, the CRA may also provide assistance with reporting to LE. The CRA holds a confidential relationship under [RSA 188-H:8](#) and cannot share information with LE without a written release.

### FEDERAL LEGISLATION

NH RSA 188-H is not the only law that governs how IHEs respond to sexual misconduct. IHEs must adhere to certain Federal laws (e.g., Title IX, FERPA, and the Clery Act) that require the IHE to take specific actions when they become aware of an incident of sexual misconduct, including possible notification to the campus community under certain circumstances. Failure to act can have financial ramifications for the IHE through significant fines or loss of federal funding. Local LE should be aware that IHEs have non-discretionary obligations and any request for information is in that context.

RSA 188-H:6 requires IHEs to coordinate with LE to adopt policies and procedures, many of which are established by Title IX and the Clery Act.

#### *Title IX*

Title IX reads that *"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance."* Over time, the understanding of discrimination in the context of Title IX evolved to broadly include [sexual misconduct](#). Title IX has been instrumental in giving IHEs the tools necessary to address sexual misconduct that happens on campus and among members of their educational community.

The interpretation and practical application of Title IX has and will continue to evolve and be informed by case law and regulatory changes<sup>2</sup>. The regulations primarily address when and how the IHE must respond to sexual misconduct. In addition to what is within the scope of Title IX, many IHEs have supplemental policies. From the perspective of an off-campus professional, the procedure may look similar. Under most circumstances, the reporting party (also referred to as “complainant” under the current Title IX regulations) will have the choice whether to participate or not. In broad terms, the procedural stages of a formal process are: 1) the investigation 2) the hearing 3) the outcome (decision) and 4) the appeal. Not every reporting party will seek a formal process and an institution may provide alternative resolutions. Regardless of whether they participate in a formal process, the IHE must make supportive measures available.

Supportive Measures are services meant to “restore or preserve equal access to education, protect student or employee safety, or deter sexual harassment” under Title IX.

Supportive Measures **cannot** be punitive towards the respondent and are available to a reporting party regardless of whether they file a formal complaint.

[Appendix C](#) includes a flowchart to illustrate additional information regarding IHEs responses to sexual misconduct. This is not meant to be a complete or universal depiction of the Title IX adjudication process. For specific questions related to a unique campus and a more thorough discussion of their adjudication process, contact the IHE’s Title IX Coordinator. Because LE may become involved during any stage of a Title IX adjudication, it can be helpful to understand the context of these processes.

### *Clery Act*

In 1990, the Federal Government passed the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, commonly referred to as the “Clery Act.” The Clery Act is a broad act that places various requirements on IHEs related to managing and reporting crimes and emergencies on campuses. The Clery Act mandates refer to multiple types of crimes, not only sexual misconduct. For the Clery Act, crimes are categorized by Uniform Crime Report (UCR) definitions, not by state definitions. The same fact pattern may be defined differently by LE under NH law and IHEs under the UCR. The information contained here is to provide context for the compliance efforts for NH RSA 188-H and is not meant to replace additional training or a complete review of Clery Act requirements. Further questions about the Clery Act should be directed to the IHE’s Clery Compliance Office.

### *Clery Geography*

The Clery Act only applies to crimes that happen on or near campus, as determined by Clery Geography. The Clery Act provides definitions regarding what qualifies as on campus, non-

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<sup>2</sup> The regulations directing IHE’s response to sexual misconduct may change based on regulatory and statutory requirements. At the time this guidance was created new regulations are anticipated, however, the most recent regulations issued by the Department of Education were released in 2020 and have been further clarified by case law. In the context of statutory and regulatory changes, readers may need to adapt information provided in this guidance.



campus and public property for this purpose, and IHEs should be communicating to LE what locations fall within its Clery Geography.

Given the way Clery Geography is defined, this could mean that a sexual assault in one building would be subject to Clery requirements, but a building down the street would not be, even if they both involve students. Clery Geography may also include buildings or facilities in multiple LE jurisdictions, requiring IHEs to have a shared understanding with each of these agencies. In their collaboration with IHEs, it is important for LE to be aware that the Clery Act requires the following:

- Crime Log: IHEs are required to record criminal incidents and alleged criminal incidents reported to campus police or non-sworn campus safety. The crime log is a public record and every reportable crime must be added into the log within two (2) business days.
- Annual Safety Report: IHEs are obligated to compile crime statistics and publish them annually. In addition to what is reported directly to campus officials, IHEs typically contact the local police departments to ensure they have complete data about crimes occurring within their Clery Geography. IHEs need to know where and when the crime occurred, when the crime was reported to the IHE and/or law enforcement and the specific crime. IHEs and local law enforcement should have procedures for IHEs to have the information required to compile its annual statistics.
- Notification of/communication with campus community: When an assault or other crime happens within Clery Geography the IHE has procedures it must follow regarding notification. In collaboration with the IHE, law enforcement will need to develop policies and procedures to ensure the IHE receives notification of any qualifying events that may trigger a timely notification or emergency warning.

### *Timely Warning and Emergency Notifications*

When a crime or other emergency occurs on or near campus, the IHE may have an obligation under the Clery Act to issue a campus-wide communication. These communications are referred to as timely warnings or emergency notifications, depending on the nature of the event.

- Timely warning: A warning to the campus community that a Clery crime has occurred on Clery Geography.
- Emergency notification: A warning of an ongoing threat, which may include environmental hazards or criminal activity.

It is recommended that the IHE and LE agency have a clear understanding about what needs to be communicated, when, and the way information will be shared. Ideally, this understanding will be addressed in an MOU or other written document.

### FERPA

Family Educational Rights and Privacy Act (FERPA) is a federal law addressing the privacy of student educational records, including at IHEs. FERPA may limit communication between law enforcement and campus officials, though it does not prevent access to necessary information. Generally, IHEs cannot release information from the student's record, including any records of allegations of sexual misconduct, without the student's consent. In complying with FERPA, IHEs may not be able to share reports or investigatory materials pertaining to alleged sexual misconduct with LE without a search warrant or subpoena. IHEs can release information in a student's records under some limited circumstances, which include:

- Sharing information with school officials who have a legitimate educational interest.
- Sharing records with schools to which a student is transferring.
- For the purposes of providing financial aid to the student.
- To comply with a search warrant or subpoena, or under exigent circumstances (such as urgent health and safety concerns).

## APPENDIX B: WHAT IHEs NEED TO KNOW ABOUT CRIMINAL INVESTIGATIONS

The purpose of this section is to provide IHEs with a foundational understanding of the existing constraints and legal requirements under which LE operates. Similar to IHEs, the differences among LE agencies across the state make it nearly impossible to provide a “one size fits all” solution. Relationship building and communication will be essential for understanding roles and responsibilities at the outset and facilitating problem solving when challenges arise. For purposes of general guidance, this section will outline some of the factors that shape LE response and some of the challenges that might pose for information sharing.

### FACTORS THAT INFLUENCE LAW ENFORCEMENT RESPONSE

#### *New Hampshire Attorney General’s Protocols*

The New Hampshire Attorney General’s Office has created model protocols for both [sexual assault](#) and [domestic violence](#) that set the standard for how LE agencies in NH respond to and conduct investigations into these crimes. These protocols cover not only the ways in which LE conducts themselves as first responders, but also how they conduct further interviews and investigations. Additionally, these model protocols provide information about how other disciplines may be involved in the investigation and prosecution of sexual and domestic violence crimes that are likely important for campuses to be aware of for their respective jurisdiction. While these protocols apply to all LE throughout the state, the ways that they are implemented will likely vary between jurisdictions depending on resources and departmental or county-wide practices. The remaining information in this section is meant to provide IHEs with additional context to better understand how LE with jurisdiction over their campus implements these protocols.

#### *County Attorney’s Office Guidance*

Another influence on law enforcement processes will be the local county attorney’s office. While the Attorney General’s model protocols serve as the unifying set of policies, procedures, and principles that apply to all LE agencies throughout the state, how each county attorney interprets and enacts the Attorney General’s protocols will vary. Prosecution of crimes could be handled either by the local police department’s prosecutor or the county attorney’s office. Even when the local police department is prosecuting the case, the County Attorney’s office provides guidance and oversight.

#### *Law Enforcement Agency Policies and Procedures*

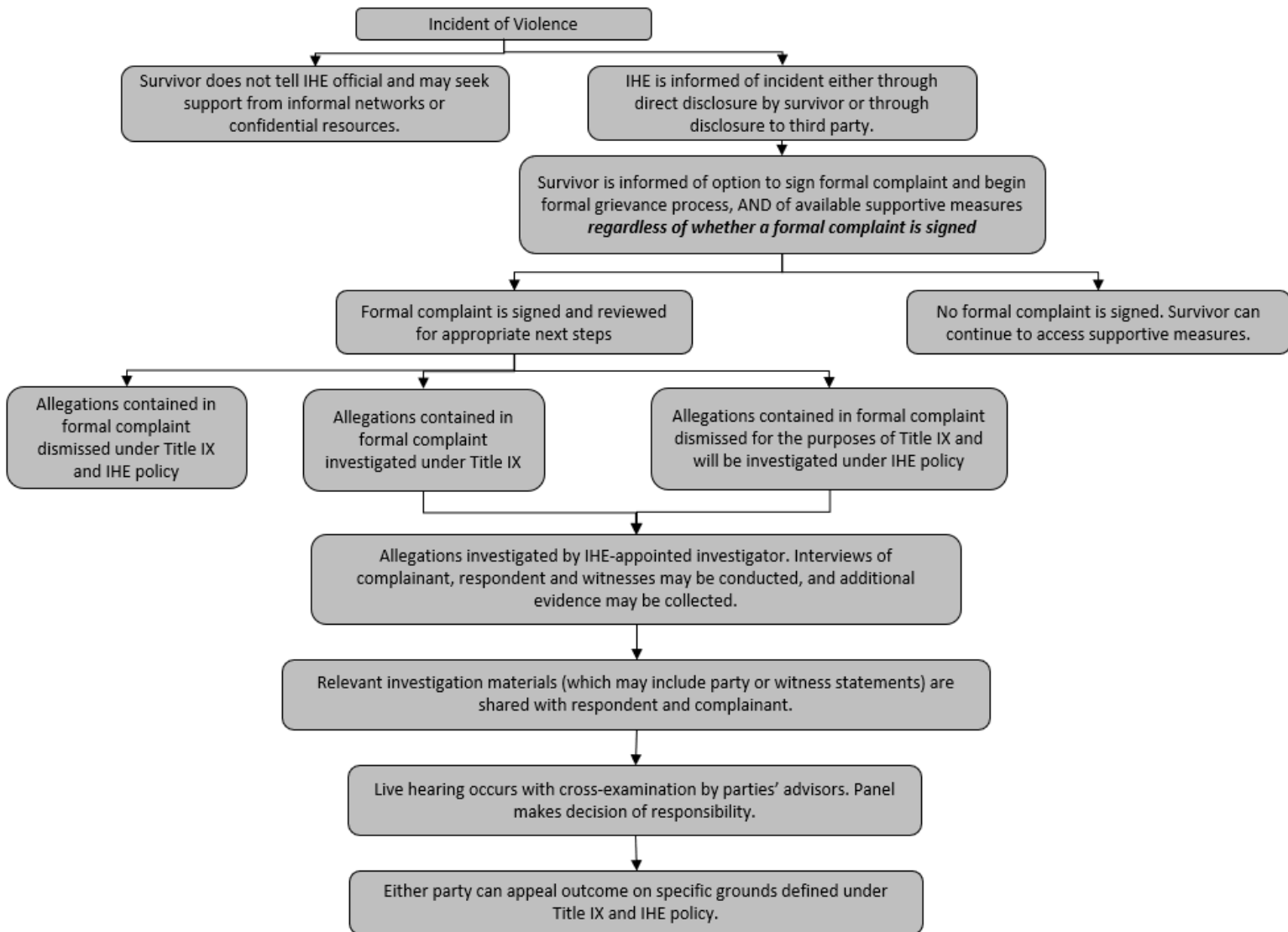
Some local LE agencies may be subject to additional policies and procedures that control their response to sexual and domestic violence crimes, and the agency may have limited discretion in changing those policies. For example, if a local police department is accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA) and/or the International Association of Campus Law Enforcement Administrators (IACLEA), it must maintain policies and procedures that reflect the best practice standards recommended by CALEA / IACLEA to maintain their accreditation.

## IMPACT ON INFORMATION SHARING

Beyond having different protocols to guide investigations of sexual and domestic violence crimes, the differing protocols and practices will likely impact the ways in which IHEs and LE are able to share information contained within police reports. Prosecution of crimes can be handled by either the local police department prosecutor or the county attorney's office, which can add a layer of complication that must be navigated. Generally, the agency prosecuting the case controls access to the investigation. The decision of who prosecutes a particular crime is determined at the county and local level. When requesting the release of information, it is important for IHEs to understand the delineation between county attorney offices and LE agencies with jurisdiction over their campus. This delineation will impact who can authorize the release of information, and this may vary depending on the status of the case. How far the case has progressed may also impact whether an IHE is able to access information and from whom they seek that information. If the case has been declined for prosecution, IHEs may be able to receive information that they wouldn't otherwise if the case were going to be prosecuted. Understanding the nuances in how cases are investigated and prosecuted can be beneficial for an IHE as they develop shared practices with LE.

The goal of the county attorney's offices and LE agencies is to maintain the integrity of their investigation and subsequent prosecution, which means reducing the possibility of jeopardizing the case by the accidental misuse of confidential information. This may mean that no information will be shared with an IHE, and often this is a case-by-case decision. There may be cases that look similar but contain substantively different material facts. These may make a significant difference in the degree to which releasing information poses a risk to the integrity of the case. While this may appear to lack the consistency wanted by an IHE, the priority of LE is to successfully resolve the case to the benefit of the victim/survivor. This can create tension between the IHE and the local LE agency, who are both trying to fulfill their obligations but cannot freely share information or work in close collaboration. The goal of MOU development is that IHE and LE understand each other's decision-making to avoid contention about sharing information during the course of an investigation.

## APPENDIX C: FLOWCHART OF TITLE IX FORMAL GRIEVANCE PROCESS



## APPENDIX D: RESOURCE LIST

This guidance was authored by:

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For questions and guidance about complying with the statute:

NH Department of Education  
Email: [RSA188TaskForce@doe.nh.gov](mailto:RSA188TaskForce@doe.nh.gov)  
Phone: (603) 271-0257

For questions and assistance regarding the information provided in this guidance:

College Consortium Coordinator, NH Attorney General’s Office  
Email: [consortiumcoord@doj.nh.gov](mailto:consortiumcoord@doj.nh.gov)  
Phone: (603) 271-3671

Quick reference list of resources recommended within this guidance:

This can be used to document points of contact to be included or consulted while creating an MOU.

Your Local Crisis Center: \_\_\_\_\_

(if you are unsure, contact the New Hampshire Coalition Against Domestic and Sexual Violence [www.nhcadsv.org](http://www.nhcadsv.org))

Point of Contact at Local Law Enforcement Agency: \_\_\_\_\_

Your Local County Attorney’s Office: \_\_\_\_\_

IHE’s Title IX Coordinator: \_\_\_\_\_

IHE’s Clery Compliance Officer: \_\_\_\_\_

Other Law Enforcement Agencies with Jurisdiction: \_\_\_\_\_

Attorney General’s Protocols:

- [Domestic Violence](#)
- [Sexual Assault](#)
- [Stalking](#)