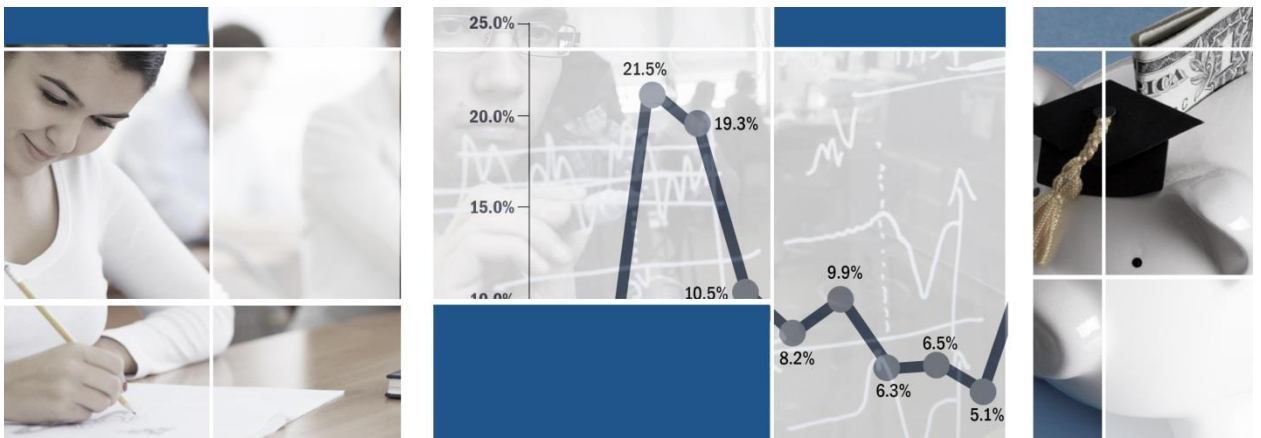


August 2017



Pilot Program for a Regional Center for the Investigation of Incidents of Sexual and Gender-Based Violence

Contents

Overview	1
Methodology	3
Conclusion	4
Legislative and Historical Background	4
Key Components and Functions	7
A Multidisciplinary Approach	11
Start-up and Operational Costs.....	12
Governance and Model for Long-term Shared Financial Support	15
Legislative Requirements	16
Potential Locations	16
Conclusion	16
Appendix A: Acts of Assembly.....	17
Appendix B: Sample Memorandum of Understanding	18
Appendix C: Letter from Ellen W. Plummer, Associate Vice Provost for Academic Administration at Virginia Tech on behalf of the Sexual Assault Advisory Committee	18
Appendix D: Letter from David M. McCoy, President of the Virginia Association of Campus Law Enforcement Administrators	18
Works Cited	19

Overview

Item 146, Paragraph k, Chapter 780, 2016 Acts of Assembly appropriated \$100,000 from the general fund to the State Council of Higher Education for Virginia (SCHEV) to study and design a pilot program for a regional center for the investigation of incidents of sexual and gender-based violence at the Commonwealth's institutions of higher education. SCHEV is to "communicate the pilot design to the Secretaries of Education and Public Safety and Homeland Security and to the Chairs of the House Appropriations and Education and Senate Finance and Education and Health Committees by August 1, 2017."

Specifically, this legislative charge requires that the pilot program include:

a partnership between higher education, law enforcement, and state government where criminal incidents of sexual and gender-based violence could be reported directly to the center for independent and neutral investigation. The center would be staffed with trauma-informed investigators who would coordinate with both colleges and universities and law enforcement to carry out the investigative responsibilities outlined by Title IX and the Violence Against Women Act. The program design shall include start-up and operational costs, staffing needs, sample memorandum of understanding between higher education institutions, law enforcement and Commonwealth's attorneys' offices, any legislative requirements, and a model for long-term shared financial support. The center's scope would apply only to allegations of criminal behavior.

All institutions of higher education that receive federal funds are obligated to "provide a safe and nondiscriminatory living, learning, and work environment," as well as to "prevent sexual and gender-based harassment, interpersonal violence, and to take immediate responsive action when such conduct occurs in connection with the educational institution's programs or activities."¹ Every institution also has the responsibility to enforce its own code of student, faculty and employee conduct, which may include many violations of the criminal code including sexual assault.

¹¹ (Gomez & Smith, 2016)

While fulfilling these obligations, institutions of higher education are required to investigate and adjudicate sexual and gender-based crimes in accordance with the law, while also supporting victim-complainants, respondents and witnesses, in a timely and fair manner. For many institutions, the financial and staffing burden of Title IX investigations is enormous, but they must comply with federal laws and regulations regardless of resources. Additionally, there can be a “perception of institutional bias, meaning that if and when they do err, they are presumed to have done so to protect the institution.”² This perception can lead to underreporting of sexual violence and additional trauma for victim-complainants. Also, it can expose the Commonwealth and its institutions to a liability and potential lawsuit in every single case it investigates.³ Proponents of the consortial regional center model believe it could address issues that arise naturally as institutions of higher education grapple with how to provide competent, fair, and cost-efficient investigations. A consortial approach could be particularly effective for under-resourced institutions of higher education, as they can leverage common resources to reduce costs. However, if the regional center includes large, well-resourced institutions, the large caseloads from these schools could overwhelm the center and perhaps prevent timely investigations.

The pilot program explored here aims to improve communication between law enforcement and educational institutions in order to ensure a fair and timely investigation of sexual and gender-based violence. Among its goals would be the reduction of victim re-traumatization and the improvement of due process for both complainants and respondents by providing a multidisciplinary approach to Title IX investigations.

A pilot center would employ neutral, trauma-informed investigators who would operate with increased cooperation with local law enforcement and institutional advocates to navigate each school’s adjudication process. Additionally, the regional center would aim to reduce the cost to the Commonwealth’s colleges and universities for investigating these incidents by pooling resources. The Commonwealth’s four-year institutions average 40 investigations of criminal incidents of sexual and gender-based violence by a known and affiliated person (such as a student, employee, or faculty

² (Gomez & Smith, 2016)

³ (Gomez & Smith, 2016)

member) per institution, per year.⁴ This does not include the total number of investigations for the Commonwealth's community colleges, which have fewer cases per year but would add to the total investigated by a regional center. The cost of each investigation can be upwards of \$30,000, resulting in a potential \$16.8 million expenditure every academic year to investigate and adjudicate these cases, not including the potential for litigation expenses.⁵

Per the legislative requirements, the regional center is to be based on the model of the Children's Advocacy Center, which implements a multidisciplinary approach to investigating allegations of child abuse.⁶ The Children's Advocacy Center model is a "child-focused, facility-based program in which representatives from core disciplines — law enforcement, child protection, prosecution, mental health, medical, and victim advocacy — collaborate to investigate child abuse reports, conduct forensic interviews, determine and provide evidence-based interventions, and assess cases for prosecution."⁷ The Children's Advocacy Center model works well for minor children who have limited choice due to their status as minors, and whose cases are adjudicated within the criminal codes that protect them. This model does not translate to an institutional setting where the complainants are typically adults operating in a framework governed by an administrative code of conduct, and is led by victim-choice.

Methodology

In researching and developing the pilot program, SCHEV staff engaged subject-matter experts, law enforcement, victims' advocates, various representatives from Virginia's public and private colleges and universities, as well as commonwealth's attorneys and the Office of the Attorney General for Virginia (OAG). SCHEV's Sexual Violence Advisory Committee (SVAC) was engaged on three occasions to provide input on the regional-center pilot study. The SVAC is composed of experts and practitioners who advise on programs, policies, training and education opportunities to prevent and

⁴ Self-reported by some of the Commonwealth of Virginia's two- and four-year institutions of higher education for the purposes of this report, however, not all institutions are represented in this figure due to non-response.

⁵ Self-reported by some of the Commonwealth of Virginia's two- and four-year institutions of higher education for the purposes of this report, however, not all institutions are represented in this figure due to non-response.

⁶ (2016 Virginia Acts of Assembly, 2016)

⁷ (National Children's Alliance, 2017)

respond to sexual violence within the Commonwealth's institutions of higher education.⁸ Additionally, Virginia's public college and university presidents, and public and private college and university provosts were invited to provide feedback on the regional center. SCHEV staff attended a conference and trainings through the Virginia Department of Criminal Justice on the subject of campus sexual violence and met with representatives from the Greater Richmond Child Advocacy Center (on whose model the regional center was to be based). Subject-matter experts on the institutional response to sexual and gender-based harassment and violence were invited to present to one of the SVAC meetings, and their expertise was utilized on several occasions while devising the regional center. Finally, SCHEV staff met with representatives from campus law enforcement, several commonwealths' attorneys and their assistants, as well as liaisons from the OAG to provide feedback on the legal and functional role of a regional center.

Conclusion

The following sections lay out a design for the regional center for the investigation of sexual and gender-based violence, and its positives and negatives. However, in studying and devising this concept, in consultation with Virginia's institutions of higher education, law enforcement, victims' advocates and the Office of the Attorney General, it is a conclusion of this report that the regional-center model entails too many difficulties and unresolved problems to make it feasible.

Legislative and Historical Background

Several federal laws make up the regulatory framework surrounding investigations of sexual and gender-based violence at institutions of higher education. Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination on the basis of sex in educational institutions that receive federal funds either directly or indirectly.⁹ It applies to students, employees, and third parties, and its protections apply to conduct that occurs either on- or off-campus involving someone associated with an institution of higher education.¹⁰ Sexual violence is defined by Title IX as "physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent

⁸ (State Council of Higher Education for Virginia, 2016)

⁹ (Title IX and Sex Discrimination, 2015)

¹⁰ (Ali, 2011)

(e.g., due to the student’s age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.”¹¹

In 2011, the U.S. Department of Education’s Office for Civil Rights (OCR) released a “Dear Colleague” letter (DCL), which clarifies the Title IX requirements and outlines specific guidance to institutions of higher education that receive federal funding with regard to student-on-student sexual harassment and sexual violence.”¹² Specifically, it provides:

guidance on the unique concerns that arise in sexual violence cases, such as a school’s independent responsibility under Title IX to investigate (apart from any separate criminal investigation by local police) and address sexual violence; provides guidance and examples about key Title IX requirements and how they relate to sexual violence, such as the requirements to publish a policy against sex discrimination, designate a Title IX coordinator, and adopt and publish grievance procedures; discusses proactive efforts schools can take to prevent sexual violence; discusses the interplay between Title IX, the Family Educational Rights and Privacy Act (FERPA), and the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act) as it relates to a complainant’s right to know the outcome of his or her complaint, including relevant sanctions imposed on the perpetrator; and provides examples of remedies and enforcement strategies that schools and OCR may use to respond to sexual violence.¹³

In 2014, the Office for Civil Rights released a “significant guidance document” titled “Questions and Answers on Title IX and Sexual Violence,” which further clarifies its interpretation of policy on a school’s obligations for ensuring all students’ Title IX rights in regards to sexual violence.¹⁴ It outlines a school’s obligation to respond to sexual violence, procedural requirements, investigations and hearings, interim measures, remedies and notice of outcome, and appeals, among other relevant topics.

¹¹ (Lhamon, 2014)

¹² (Ali, 2011)

¹³ (Lhamon, 2014)

¹⁴ (Lhamon, 2014)

In addition to the Title IX requirements, two other major federal laws affect institutional responses to sexual violence. The Jeanne Clery Act of 1990 requires institutions of higher education to report crimes, issue timely warnings, provide education and prevention programs, and create policies and procedures for many other crimes in addition to sexual violence.¹⁵ Currently, the fine for failing to provide a timely warning under the Clery Act is \$35,000 per violation. The Violence Against Women Reauthorization Act of 2013 amends the Clery Act to expand sexual-assault reporting requirements to include dating violence, domestic violence and stalking, and expands its application to all students and employees.¹⁶

In 2014 Governor McAuliffe announced a Task Force on “Combating Campus Sexual Violence,” which was chaired by Attorney General Mark Herring.¹⁷ The Task Force recommendations fall under five themes:

- I. Engaging Our Campuses and Communities in Comprehensive Prevention;
- II. Minimizing Barriers to Reporting;
- III. Cultivating a Coordinated and Trauma-Informed Response;
- IV. Sustaining and Improving Campus Policies and Ensuring Compliance; and
- V. Institutionalizing the Work of the Task Force and Fostering Ongoing Collaborations.¹⁸

Under the recommendation of the Governor’s Task Force, SCHEV regularly convenes the SVAC and engages its members’ expertise on pertinent topics regarding campus sexual violence.

Since 2008, there have been 11 active and resolved Title IX investigations by the OCR at Virginia public institutions of higher education.¹⁹ Currently, the College of William and Mary, George Mason University, James Madison University, the University of Mary Washington, the University of Virginia and Virginia Commonwealth University are all under active investigation by OCR. The University of Virginia, Virginia Commonwealth University and Virginia Military Institute all have come to resolution with OCR in some or all cases. Three private Virginia institutions of higher education are also currently

¹⁵ (The Clery Center, 2017)

¹⁶ (Violence Against Women Reauthorization Act of 2013, 2013)

¹⁷ (Governor's Task Force On Combating Campus Sexual Violence, 2015)

¹⁸ (Governor's Task Force On Combating Campus Sexual Violence, 2015)

¹⁹ (The Chronicle’s Title IX investigation tracker, 2017)

under investigation by OCR, including Liberty University, the University of Richmond and Washington and Lee University.²⁰

In November 2014, *Rolling Stone* magazine published an article describing a purported gang rape at the University of Virginia and the alleged victim's inability to receive justice at the university level.²¹ The account and article, which was found to be false and then was subsequently retracted by the magazine, brought Virginia institutions of higher education and Title IX investigations to national attention.²² Following the now-retracted article and the subsequent media scrutiny, the University of Virginia initiated a discussion with the Virginia Department of Education relating to a proposed regional center for the investigation and adjudication of incidents of sexual and gender-based violence. The idea never progressed to the point of a formal proposal; however, the 2016 Virginia State Budget included a line item appropriating \$100,000 for the purposes of its study and outlining its requirements.²³

Key Components and Functions

In order to accomplish the goals set forth in the legislative charge,²⁴ a regional center for the investigation of sexual and gender-based violence would investigate and adjudicate criminal conduct that occurs at any of Virginia's institutions of higher education.

Investigations of incidents that do not meet the criminal threshold would occur at the institutional level. However, colleges and universities would still be required to investigate and adjudicate noncriminal violations of conduct, so the establishment of a regional center would not eliminate staffing needs for Title IX functions. Duplication of Title IX staff, including investigators, would negate any cost savings that could be associated with a consortial approach, as shown in the figures below.

The regional center would be an objective, investigative body, staffed with forensically trained trauma-informed professionals. The employment of independent professional forensic interviewers and investigators could inoculate against the perception of

²⁰ (The Chronicle's Title IX investigation tracker, 2017)

²¹ (Erdely, 2014)

²² (Sisario, Spencer, & Ember, 2016)

²³ (Summary of Budget Actions for the 2014-16 Biennium, 2016)

²⁴ (2016 Virginia Acts of Assembly, 2016)

institutional bias and provide consistent and reliable results.²⁵ The center staff would also be free from conflict of interest in a “word-against-word” model, which is often the case in incidents of sexual violence at institutions of higher education.²⁶ However, the state potentially could open itself up to more litigation and higher costs under this model because the regional center would carry out some of the required Title IX functions; it would therefore be subject to investigation by OCR along with the institution itself. If a respondent files a lawsuit in a case that was investigated and adjudicated by the regional center, s/he would likely file against both the institution and the regional center. In this model the Commonwealth would bear the cost of this litigation, even if the center and affiliated institutions of higher education all are granted immunity by the General Assembly, due to the fact that most of the litigation involving institutions of higher education in the Commonwealth is based on allegations of violating federal law and the U.S. constitutional due process, and the General Assembly cannot grant immunity from those claims.

A regional center also would provide a centralized way for incidents to be reported. It would be equipped with a hotline and an easily navigable website that allows for reporting, similar to what most institutions already have in place. Institutional websites also would have the option for those reporting criminal incidents of a sexual and gender-based nature to connect directly to the regional center’s reporting form. This capability for centralized reporting could provide a quick investigative response, which is required under Title IX.²⁷ However, having a regional center provide intake for cases before the police could result in lost time and degradation of evidence, thus reducing the effectiveness of both the criminal and Title IX investigations. Additionally, records-maintenance practices that are consistent with good investigative practice could well violate FERPA requirements.

Investigative functions would include conducting independent fact-finding separate from the institution of higher education. According to OCR,

the term ‘investigation’ refers to the process a school uses to resolve sexual violence complaints. This includes the fact-finding investigation and any hearing

²⁵ (Gomez & Smith, 2016)

²⁶ (Gomez & Smith, 2016)

²⁷ (Ali, 2011)

and decision-making process the school uses to determine: (1) whether or not the conduct occurred; and, (2) if the conduct occurred, what actions the school will take to end the sexual violence, eliminate the hostile environment, and prevent its recurrence, which may include imposing sanctions on the perpetrator and providing remedies for the complainant and broader student population.²⁸

However, one major issue regarding these investigations is that each institution of higher education in Virginia has its own policies and procedures regarding Title IX investigations, in addition to individual university cultures, which the regional center must take into account. This may require standardization across all institutions with regards to sexual assault investigations.

The regional center would provide at least one mobile unit that is equipped with a video recording system specifically designed for forensic interviews. This aims to prevent victim re-traumatization by conducting only one interview with the complainant, which can be shared with law enforcement, if necessary.²⁹ OCR requires a “timely” investigation, which typically occurs in a 60-calendar-day timeframe.³⁰ A mobile unit could be dispatched immediately to anywhere in the Commonwealth to ensure that the federal time requirement is met. However, transferring the investigative function to the regional center does not relieve the institutions of higher education from the responsibility of compliance with Title IX and OCR for those cases. The institutions still need to provide accommodations to students affected by misconduct, impose interim safety measures, provide counseling, etc. Compliance with these requirements means that institutions would have to be involved with the regional center’s investigation to know the facts of a case in order to take action before final decisions of responsibility are made. Compliance also requires the institutions to have repeated contact with the complainant and respondent, which undercuts the goal of reducing victim re-traumatization. Additionally, one interview is not consistent with the requirements under due process, because the respondent must be given an opportunity to question the complainant, which is in opposition to OCR guidance.

²⁸ (Lhamon, 2014)

²⁹ (Gomez & Smith, 2016)

³⁰ (Ali, 2011)

OCR regulations do not require a hearing, and specifically recommend that respondents and complainants not directly question one another.³¹ Due to the nature of the regional center being a purely investigative model, it would not include a standard hearing. However, it would, as a part of the investigation, allow both complainants and respondents to submit written questions and receive responses from all parties including witnesses. While OCR guidance would sanction such a purely investigative model in which there is no traditional hearing where the accused can question their accuser, the model may not stand up to judicial scrutiny regarding due process for the respondent, as was the case in a claim against the state of Pennsylvania in 2015.³²

Following fact-gathering, investigators would be required to report a “responsible” or “not responsible” finding based on the evidence collected, using the preponderance-of-evidence standard of proof required by OCR.³³ A finding of “responsible” under this standard would mean that the investigators are more than 50% certain the respondent is responsible, based on the evidence. The finding would be binding on the institution. There are different legal standards for a finding of guilt in the criminal justice system and the finding of responsibility under Title IX, as the reasonable-doubt burden of proof in a criminal case is much higher than the preponderance-of-evidence standard.

Once a finding is determined, the Commonwealth’s institutions of higher education will provide notice to both parties in writing about the outcome of the investigation, as required by Title IX and according to OCR’s guidance.³⁴ If there is a finding of responsibility, each institution would be expected to impose an appropriate sanction and other remedies according to its own guidelines and policies.³⁵

If an appeal is requested by either party, the school will also follow its own guidelines and policies regarding appeals. Title IX does not require that an institution provide a process for appeals. OCR, however, “does recommend that the school do so where procedural error or previously unavailable relevant evidence could significantly impact the outcome of a case or where a sanction is substantially disproportionate to the

³¹ (Ali, 2011)

³² (John Doe II v. The Pennsylvania State University; Eric Barron; and Danny Shaha, 2015)

³³ (Ali, 2011)

³⁴ (Lhamon, 2014)

³⁵ (Ali, 2011)

findings.”³⁶ Most appeals relate to a finding of responsibility, so the institution would be responsible for reviewing the determination made by the regional center. Many institutions incorporate hearings into the appeals process, and depending upon its particular policies, the investigator may have to be present at an appeal hearing.

A Multidisciplinary Approach

A regional center for the investigation of sexual and gender-based violence would require the cooperation of various stakeholders including institutions of higher education, law enforcement and the offices of the commonwealth’s attorney. Due to the criminal nature of these incidents, a certain degree of cooperation is already in effect through the use of Sexual Assault Response Teams, or coalitions of local agencies that serve victims of sexual violence. Cooperation is simple when an incident is confined to a single institution and locality. However, some cases of sexual assault take place between students at different institutions or in multiple localities, which can make cooperation difficult, particularly if an incident involves an institution that is not involved with the regional center, and where a Memorandum of Understanding (MOU) may not be in place. The model also does not take into account the fact that some assaults take place outside of Virginia during school breaks.

Other services, such as counseling, health, and adjudicative advisors already are offered at each institution of higher education in Virginia, as well as in the communities surrounding each school. Based on anecdotal statements from practitioners in this area, these community partnerships work well and provide convenient local access to the necessary services that a victim-complainant might require. Therefore, it is recommended that the regional center not “re-create the wheel” by also offering or coordinating these services. Doing so may actually prevent the victim-complainant from receiving the necessary services in a timely manner, depending on their geographic location and particular needs. The institutions of higher education will continue to support these students before, during and after the investigation and adjudication, so they are best-equipped to provide and coordinate these other services.

Criminal incidents of sexual and gender-based violence would be reported directly to the regional center for independent and neutral investigation, either by the

³⁶ (Lhamon, 2014)

complainants, the institution of higher education or law enforcement, depending upon the nature of the incident and to whom it is originally reported. However, this could conflict with the principle of allowing the victim to choose whether or not to pursue an investigation, criminal or otherwise. In the Commonwealth, the majority of complainants do not wish to proceed with a criminal investigation. In keeping with OCR guidance, complainants should have a say with regard to whether or not an investigation occurs. Under this model, depending upon the mode of reporting, the wishes of the complainant may not be considered — for example, if an institution that opts in to the regional center is required to send all of its potentially criminal conduct to the center for investigation, regardless of the wishes of the complainant. This is further complicated when considering the scenario of parties from two different institutions — one that is a participant in the center — and one that is not. If the complainant's institution is not a participant in the center, but the respondent's is, then the complainant would be forced to deal with the investigation through the center because of the respondent's affiliation. This scenario would also require the complainant's institution to deal with the center, potentially without an MOU in place, opening it up to further liability. Further, victims' advocates fear that the regional center being so similar to a law enforcement investigation, and requiring cooperation with the police, could potentially decrease the reporting of incidents of sexual violence, defeating the purpose of the center.

If a center were to be created, due to the wide geographic spread of Virginia's institutions of higher education it would be most effective to establish a regional center as a centrally located brick-and-mortar facility for administrative functions, in addition to a mobile facility equipped for forensic interviews. Incidents of sexual and gender-based violence could be reported to the center — via telephone, email or an anonymous online form — which would launch the investigation.

Start-up and Operational Costs

The staffing and infrastructure needs for a regional center have been examined, with minimal components in place for the provision of effective services. This includes staffing, office space and equipment. The estimated overall yearly budget of one regional center would be \$3,106,617. Start-up costs would require an estimated

Pilot Program for a Regional Center for the Investigation of Incidents of Sexual and
Gender-Based Violence

additional \$168,000, for a total of \$3,274,617. Start-up and annual expenses would include funding for:

Role	Salary	Benefits	Health Benefits	Total
Director of the Regional Center	\$150,000	\$36,435	\$18,756	\$205,191
15 Certified forensically-trained, trauma-informed investigators (FTE)	\$110,000	\$26,719	\$12,792	\$2,242,665
2 Campus liaisons (FTE)	\$30,000	\$7,287	\$7,140	\$88,854
Support staff: Webmaster (FTE)	\$40,000	\$9,716	\$12,792	\$62,508
Support staff: Financial officer (FTE)	\$40,000	\$9,716	\$12,792	\$62,508
Additional staff attorney for the office of the Attorney General (FTE)	\$150,000	\$36,435	\$18,756	\$205,191
TOTAL	\$520,000	\$126,308	\$83,028	\$2,866,917

Pilot Program for a Regional Center for the Investigation of Incidents of Sexual and
Gender-Based Violence

Item	Cost
Rent for office space	\$150,000 per year
Equipment (computers, printers, mobile phones)	\$63,000 (21 at \$3,000 per employee)
Office supplies	\$5,000 per year
Van outfitted for interviews	\$100,000 start-up costs
Laptop forensic video equipment with USB-connected cameras	\$6,800 start-up costs
Lease for state automobiles	\$41,400 (15 at \$2,760 each) per year
Insurance for state automobiles	\$4,500 (15 at \$300 each) per year
Fuel for state automobiles	\$27,000 (15 at \$1,800 each) per year
Professional development costs	\$10,000 per year
TOTAL (including staffing costs)	\$3,274,617

Staffing requirements include a director to oversee the entire center and liaise with law enforcement and other government agencies such as the OAG and SCHEV.

Additionally, 15 full-time forensically trained, trauma-informed investigators, who must be certified in forensic interviewing, would be needed to fulfill the large caseload. Two campus liaisons would coordinate the investigations between the regional center and the institution including interviews, responses and communicating with each Title IX office. Support staff would include a webmaster, who would build, maintain and monitor the online reporting system, and a financial officer who would be responsible for procurement, audits and other financial reporting. The staffing requirements for an around-the-clock center are complex and require staff that can respond immediately while also taking into account time for personal leave, sick leave, court appearances, training and travel time.

The costs included in the charts above account for a brick-and-mortar, centrally located building for administrative offices, which would not cover all of the public colleges and universities in the Commonwealth. Initially, it would only cover a select test-pilot region — the Richmond area, for example. However, if the pilot center is successful there is the potential for future satellite offices to reach a geographically diverse constituency, which would significantly increase the start-up and operational costs. Each mobile unit includes a one-time start-up cost; however, it is conceivable that the center may need to purchase additional vehicles or invest in forensic video equipment

that can be used in various locations. The additional regional centers and mobile units could increase the cost by fivefold — upward of \$16 million per year.

Governance and Model for Long-term Shared Financial Support

While devising a pilot regional center, several options for governance structures were considered. This study assumes that the regional centers would be governed and funded as arms of the local commonwealth's attorney in which the center is located, as it is investigating allegations of criminal behavior. However, this approach could impinge on the discretion of the commonwealth's attorneys, and their ethical requirement to protect the innocent as strongly as they engage the guilty. It would require ceding review of a case in their jurisdiction to a "neutral" investigator, and could expose the commonwealth's attorneys to further judicial and media scrutiny.

Additional governance as a separate state agency, or a division within an existing state agency or institution of higher education could also be considered. The agency option could provide additional oversight and expertise on issues related to sexual and gender-based violence at institutions of higher education, while allowing the local commonwealth's attorney's offices to focus on the allegations of criminal behavior. Alternately, the governing structure could be an authority under the guidance of an independent board or representation of local governments where either the center, satellite offices, or institutions of higher education are located. With any option, the governing body would liaise with the center's director to facilitate collaboration among the various constituencies. However, in all of these options, the requirement of the commonwealth's attorney to cede review of a case to a separate investigator and potentially an entire body, poses serious ethical and legal issues.

Institutions of higher education would contribute funds based on an algorithm that accounts for population size and the number of cases each school sends per fiscal year. The financial model in the previous section accounts for a large regional center that has a membership consisting of all of the institutions of higher education in that particular region. For the regional center to be financially feasible it would require that at the minimum a large percentage of institutions participate, which is unlikely to occur given the institutional response to the regional center. Therefore, in order to guarantee its funding, participation must be mandatory for all public two- and four-year institutions.

Legislative Requirements

In order for the regional center to be successful, institutional and regional-center immunity must be explicit in the Virginia statute. This may require statutory clarification regarding the immunity of investigators and institutional advocates (for both the complainant and respondent), similar to the laws protecting sworn law enforcement. However, it would only provide immunity for state claims, which would still leave the Commonwealth open to federal lawsuits.

Additionally, legal support for the regional center must come from the Office of the Attorney General, similar to the legal support that is currently provided for each public institution of higher education. Again, this may not require an act of legislation, but it will need to be explicitly recognized by the OAG, and would require the OAG to hire an additional attorney.

Potential Locations

Virginia is a geographically diverse state, with colleges and universities that reflect this diversity. In order for a regional center for the investigation of sexual and gender-based crimes to be effective, it must be located in a geographically efficient region, with the potential for offices in the further reaches of the Commonwealth in addition to high-density population areas, should they be required.

Conclusion

Improving investigational outcomes of sexual and gender-based crimes at the Commonwealth's institutions of higher education for both victim-complainants and respondents is a commendable goal. The pilot study detailed above has outlined a way to employ a regional center for the investigation of sexual and gender-based violence, as required by Item 146, Paragraph k, Chapter 780, 2016 Acts of Assembly. While it is possible to create such a regional center, it is not a feasible pilot program for the Commonwealth to pursue at this time. It entails too many legal and structural issues that could end up costing significant sums in duplicate roles, equipment and litigation, while failing to improve outcomes for complainants, respondents and institutions of higher education.

Included in Appendices C and D are examples of thoughtful feedback from knowledgeable constituents on a proposed regional center. Ellen W. Plummer, associate vice provost for academic administration at Virginia Tech, submitted a letter on behalf of the SVAC outlining their concerns regarding the conflation of the educational and administrative processes with the criminal processes, protecting and supporting the reporting party, and potential reporting delays, among others. Additionally, David M. McCoy, president of the Virginia Association of Campus Law Enforcement Administrators (VACLEA), acknowledged the commitment and effort by SCHEV to study a regional center in a letter but expressed opposition to a shift in sexual-assault investigations due to other recent legislative changes related to campus sexual violence whose effects have yet to be reviewed and assessed.

It is a conclusion of this report, with these concerns and objections in mind, as well as those outlined in the pilot study, that the Commonwealth of Virginia not pursue a regional center for the investigation of sexual and gender-based crimes at its institutions of higher education.

Appendix A: Acts of Assembly

K. 1. Out of this appropriation, \$100,000 the first year from the general fund is designated to design a pilot program to create a regional center for the investigation of incidents of sexual and gender-based violence similar to the multi-disciplinary approach used in child advocacy centers. The pilot program shall include a partnership between higher education, law enforcement, and state government where criminal incidents of sexual and gender-based violence could be reported directly to the center for independent and neutral investigation. The center would be staffed with trauma-informed investigators who would coordinate with both colleges and universities and law enforcement to carry out the investigative responsibilities outlined by Title IX and the Violence Against Women Act. The program design shall include start-up and operational costs, staffing needs, sample memorandum of understanding between higher education institutions, law enforcement and Commonwealth's attorneys' offices, any legislative requirements, and a model for long-term shared financial support. The center's scope would apply only to allegations of criminal behavior.

2. The State Council shall communicate the pilot design to the Secretaries of Education and Public Safety and Homeland Security and to the Chairs of the House Appropriations and Education and Senate Finance and Education and Health Committees by August 1, 2017.

Appendix B: Sample Memorandum of Understanding

- I. A possible framework for a Memorandum of Understanding between higher education institutions, law enforcement, and Commonwealth's Attorneys' offices would include the following elements:
 - a. Statement of agreement between parties describing the purpose of the MOU
 - b. Outline of each party's duties and responsibilities
 - i. Commonwealth's Attorneys
 - ii. All law enforcement agencies with jurisdiction in and around the institutions of higher education reporting to the regional center
 - iii. Institutions of higher education reporting to the regional center
 - c. Signatures of representatives of each of the above
- II. An executed MOU for the Charlottesville-Albemarle area responders is attached in order to clarify the elements of the charge expressed in Item 146, Paragraph k, Chapter 780, 2016 Acts of Assembly.

Appendix C: Letter from Ellen W. Plummer, Associate Vice Provost for Academic Administration at Virginia Tech on behalf of the Sexual Assault Advisory Committee

Appendix D: Letter from David M. McCoy, President of the Virginia Association of Campus Law Enforcement Administrators

Works Cited

- The Chronicle's Title IX investigation tracker*. (2017, May 09). Retrieved from The Chronicle of Higher Education:
http://projects.chronicle.com/titleix/investigations/?search_term=&status=active&states=Virginia§or=public&start=&end=
- 2016 Virginia Acts of Assembly*. (2016, May 20). Retrieved from Chapter 780:
<https://budget.lis.virginia.gov/get/budget/3039/>
- Ali, R. (2011, April 4). *United States Department of Education Office for Civil Rights Dear Colleague Letter*. Retrieved from United States Department of Education Web Site:
<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>
- Erdely, S. R. (2014, July 08). A Rape on Campus. *Rolling Stone*. Retrieved from
<http://www.rollingstone.com/culture/features/a-rape-on-campus-what-went-wrong-20150405>
- Gomez, L. M., & Smith, G. M. (2016). The Regional Center for Investigation and Adjudication: A Proposed Solution to the Challenges of Title IX Investigations in Higher Education. *The Penn State Law Review*, 996-997.
- Governor's Task Force On Combating Campus Sexual Violence*. (2015, May 28). Retrieved from <http://www.oag.state.va.us/programs-initiatives/campus-sexual-violence-task-force>
- John Doe II v. The Pennsylvania State University; Eric Barron; and Danny Shaha, 4:15-cv-02108-MWB (The United States District Court for the Middle District of Pennsylvania November 06, 2015).
- Lhamon, C. E. (2014, April 29). *Questions and Answers on Title IX and Sexual Violence*. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>
- National Children's Alliance. (2017, January 1). *Standards for Accredited Members*. Retrieved from National Children's Alliance:
<http://www.nationalchildrensalliance.org/sites/default/files/downloads/NCA-Standards-for-Accredited-Members-2017.pdf>

S.47 - Violence Against Women Reauthorization Act of 2013. (2013, 03 07). Retrieved from Congress.gov: <https://www.congress.gov/bill/113th-congress/senate-bill/47>

Sisario, B., Spencer, H., & Ember, S. (2016, November 04). Rolling Stone Loses Defamation Case Over Rape Story. *The New York Times*. New York, NY, USA. Retrieved from https://www.nytimes.com/2016/11/05/business/media/rolling-stone-rape-story-case-guilty.html?_r=0

State Council of Higher Education for Virginia. (2016, December 06). Sexual Violence Advisory Committee. Richmond, Virginia, USA. Retrieved from <http://schev.edu/index/agency-info/advisory-committees/sexual-violence-advisory-committee>

Summary of Budget Actions for the 2014-16 Biennium. (2016, June 9). Retrieved from http://sfc.virginia.gov/pdf/Budget_Summary_Post_2016/SFC%20Complete%20Summary%20Document.pdf

The Clery Center. (2017, May 1). *Summary of the Jeanne Clery Act*. Retrieved from Clery Center: <https://clerycenter.org/policy-resources/the-clery-act/>

Title IX and Sex Discrimination. (2015, April 29). Retrieved from U.S. Department of Education Office for Civil Rights: https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html

Violence Against Women Reauthorization Act of 2013. (2013, 03 07). Retrieved from Congress.gov: <https://www.congress.gov/bill/113th-congress/senate-bill/47>

SEXUAL ASSAULT RESPONSE TEAM (SART)
MEMORANDUM OF UNDERSTANDING AMONG
CHARLOTTESVILLE-ALBEMARLE COMMUNITY RESPONDERS

October 10, 2016

Pursuant to Virginia Code § 15.2-1627.4, this working agreement (hereinafter, “Memorandum of Understanding” or “MOU”) is recognized as a collaborative commitment among the undersigned officers, agencies, departments and institutions of higher education to directly support a multi-disciplinary, coordinated response to survivors of sexual assault and other forms of sexual and gender-based violence. This commitment is acknowledged by the signature of each participant’s representative.

All parties agree to:

- Attend the annual SART meeting and other meetings, as necessary to accomplish the purpose of this MOU;
- Establish and periodically review guidelines for response by the community to sexual assault and other forms of sexual and gender-based violence (hereinafter, referred to as “SART Protocols”), consistent with those established by the Department of Criminal Justice Services pursuant to Va. Code § 9.1-102(37d), including, without limitation: (i) the collection, preservation, and secure storage of evidence from Physical Evidence Recovery Kits (hereinafter PERK) examinations consistent with Va. Code § 19.2-165.1, and (ii) information sharing guidelines consistent with federal and state laws;
- Integrate SART Protocols into their individual responses to incidents of sexual assault and other forms of sexual and gender-based violence, achieving consistent, high-quality, effective responses throughout the Charlottesville-Albemarle community, protecting the confidentiality of survivors of sexual assault in accordance with applicable laws;
- Designate a liaison to actively participate on the SART;
- Promote policies and practices to increase arrest and prosecution rates for sexual assault, including non-stranger sexual assault;
- Participate, as appropriate, in cross-training, education, and prevention efforts with allied professionals, law enforcement personnel, the University of Virginia, other community agencies and institutions of higher education, and representatives from respective Commonwealth’s Attorneys Offices regarding sexual assault and other forms of sexual and gender-based violence;
- Participate in the development and approval of SART Protocols and their annual review; and
- Develop SART Protocols to implement the SART MOU in an expedited manner with a goal of achieving mutual agreement on final SART Protocols within 90 days of the effective date of this MOU. This time frame can be extended upon request of any party to this MOU.

The Commonwealth's Attorneys agree to:

- Convene a meeting, at least twice per year, to discuss implementation, review, and refinement of SART Protocols;
- Refer survivors, family members and friends to the Sexual Assault Resource Agency (hereinafter "SARA") for crisis intervention, advocacy, and therapy services, as appropriate;
- Refer survivors, family members and friends to the Victim/Witness Program for information about victims' rights, assistance with filing for victim's compensation, and education regarding options and processes, and to provide court accompaniment throughout the criminal justice system, as appropriate;
- Ensure that an attorney is available to the University of Virginia for consultation at all times, upon request. Principal topic areas for consultation include, but are not limited to, whether the reported behavior is a criminal offense; whether the behavior, if criminal, constitutes a felony or a misdemeanor; and, if criminal, the degree to which the reported behavior presents a significant and articulable threat to the health or safety of a student or to any other member of the community;
- Provide educational outreach and training on prevention and all reporting options, including law enforcement and the University of Virginia, for sexual assault and other forms of sexual and gender-based violence throughout the community;
- Allow a sexual assault advocate, unless declined by the survivor, to be present during interviews by law enforcement; and
- Use Forensic Nurse Examiners (hereinafter "FNE") as witnesses during criminal trials.

The Albemarle County Police Department, Charlottesville Police Department, and University of Virginia Police Department agree to:

- Refer all survivors to the hospital or other designated health care center and FNE program for medical treatment and/or a forensic exam when the reported incident is acute, *i.e.*, has occurred within the last 72 hours;
- Inform survivors that they are entitled to a forensic exam regardless of whether the survivor has decided to make a report, talk to law enforcement, or cooperate in a criminal prosecution;
- If the survivor is going to the hospital or police station, direct the Emergency Communications Center (hereinafter "ECC") to activate the SART response (including FNE, on-call detective, and SARA);
- Transport or arrange for transport of survivor to the hospital and, once the PERK exam is complete, transport or arrange for transport of survivors to a safe location;
- Allow the survivor privacy during the physical examination by the FNE by not remaining in the room;
- Receive medical/forensic evidence that has been collected from survivors and/or perpetrators;
- Conform department-established policies to SART Protocols regarding interviews of survivors and evidence collection and storage;
- Allow the sexual assault advocate to be present during interviews and other communications with officers/investigators unless the survivor becomes a suspect in a crime, the environment is not safe for the advocate, the advocate is acting inappropriately, or the survivor expresses a wish that an advocate not be present;

- Ensure that an on-call detective (or another law enforcement officer designated by the chief of police) is available to confer with representatives of the University of Virginia at all times, upon request;
- Ensure that a law enforcement officer designated by the chief of police is available to confer immediately with the University of Virginia at all times, upon request, regarding the issuance of a timely warning under the Clery Act for sexual offenses;
- During a pending criminal investigation or prosecution, share information, evidence and records concerning that investigation or prosecution with other SART members when doing so: (i) would not compromise any pending criminal investigation or prosecution, (ii) would not violate any confidentiality laws, and (iii) would further SART's purpose in ensuring the most thorough, accurate, consistent and timely criminal investigation, and the most effective criminal prosecution, of sexual assaults and other forms of sexual or gender-based violence;
- Nothing set forth in this MOU shall preclude any law enforcement agency or law enforcement personnel from disclosing law enforcement records to SART partners to the extent permitted by law.

The University of Virginia agrees to:

- Prohibit acts of sexual or gender-based violence and other forms of Prohibited Conduct as defined by University policy;
- Contact the designated law enforcement officer[s] for the City of Charlottesville or County of Albemarle on an expedited basis (as soon as possible but within the first 24 hours) after receipt of a report alleging that an act of sexual or gender-based violence occurred within the last 72 hours in those jurisdictions and provide as much information as possible during this initial contact to the extent permitted by law;
- In administering its legal responsibilities under the Clery Act, the responsible University personnel agree to consult, as needed, with the designated law enforcement officer of the law enforcement agency responsible for investigating a criminal incident concerning the continuing danger to the community, if any, and the potential negative impact on law enforcement efforts;
- Assemble a review committee, consisting of at least three persons, including the Title IX Coordinator or designee, an officer of the University Police Department, and a Student Affairs representative, within 72 hours of receiving a report of an act of sexual violence, to determine: (a) whether there is a significant and articulable threat to the health or safety of a student or to any other member of the community; and (b) whether the alleged act of sexual violence constitutes a felony violation as defined by Virginia Code. In making the foregoing decisions, the review committee will consult, as needed, with the on-call Commonwealth's Attorney and appropriate law enforcement representatives without disclosing personally identifiable information;
- Immediately disclose all available information (including the names of the parties, any witnesses, and/or any other third parties with knowledge of the reported incident) to the law enforcement agency responsible for investigating the alleged act of sexual violence, when a review committee determines that there is a significant and articulable threat to the health or safety of a student or to any other member of the community;

- Immediately disclose information to the appropriate Commonwealth’s Attorney when the review committee determines that the alleged act of sexual violence constitutes a sex-based felony violation as defined by Virginia Code, Article 7 (§18.2-61 et seq.) of Chapter 4 of title 18.2 of the Code of Virginia. (Such disclosure will exclude the names and any other information that identifies the parties, any witnesses, and/or any other third parties with knowledge of the reported incident, unless this information was disclosed to law enforcement under the health and safety exception outlined above, in which case, the same (non-redacted) information will be disclosed to the Commonwealth’s Attorney);
- In cases where there is a report to a law enforcement agency, to the extent permitted by law, temporarily pause a University investigation to allow for law enforcement to complete its initial fact-finding and, where possible, communicate and cooperate with the law enforcement agency during the initial evidence gathering phase of the investigatory process;
- Encourage survivors to seek immediate medical attention following an incident of sexual assault or exploitation, emphasizing the time sensitivity and potential benefits of a FNE examination;
- Train employees about their reporting obligations under federal and state law;
- Support survivors in understanding any and all reporting options and strongly encourage that they immediately report any sexual or gender-based violence to the applicable law enforcement agency and offer and provide assistance to survivors seeking to connect with the applicable law enforcement agency;
- Work with SART partners to educate the University community, including students, faculty, and staff, about Prohibited Conduct;
- Ensure billing procedures for forensic exams are compliant with the policies of the Virginia Criminal Injuries Compensation Fund (hereinafter “CICF”); and
- Continue to strengthen relations among University and community agencies for the common goals of eliminating and preventing all sexual assault and sexual and gender-based violence.

The Forensic Nurse Examiner Program agrees to:

- Promote a reasonable response time from the time the call is received to the time the FNE arrives at the hospital or the University of Virginia Elson Student Health Center (during regular business hours);
- Conduct medical/forensic examinations for sexual assault patients in accordance with best practices and all protocols and procedures approved by the FNE Program;
- Address patient safety and medical care needs;
- Notify SARA that a patient has been transported or has arrived;
- Encourage/support use of SARA advocates for sexual assault patients and obtain patient permission before introducing the patient to a SARA advocate;
- Maintain chain of custody of forensic evidence and transfer to a law enforcement agency, officer, or to the Division of Consolidated Laboratory Services;
- Collaborate with the local law enforcement agency(s) to obtain an adequate supply of PERKs;
- Be available to criminal justice professionals to review the case when authorized by law; and
- Maintain contact and communication with criminal justice and other professionals as authorized by law.

The Sexual Assault Resource Agency agrees to:

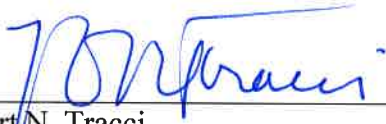
- Dispatch, upon request of the survivor, a person calling on behalf of the survivor, law enforcement, or FNE, a trained sexual assault advocate to the hospital, University of Virginia Elson Student Health Center, or law enforcement agency location to provide accompaniment, emotional support, and information to survivors, family members, and friends;
- Provide crisis intervention, advocacy, therapy, criminal justice information and support, and court preparation and orientation for survivors, as appropriate;
- Coordinate the above services for survivors, family members, and friends with the local Victim/Witness Program, as appropriate;
- Refer survivors to the hospital or the University of Virginia Elson Student Health Center (during regular business hours), as appropriate; and
- During medical exams, police interviews, and court accompaniments, stay strictly within the role of providing support to the survivors.

The Victim/Witness Programs agree to:

- Provide referrals to area resources, such as SARA;
- Provide advocacy, criminal justice information and support, courtroom assistance, and court preparation and orientation, as appropriate;
- Coordinate the above services for survivors, family members, and friends with SARA as appropriate;
- Provide assistance in petitioning for protective orders;
- Facilitate the provision of separate waiting areas for survivors and witnesses of crime;
- Provide assistance in the filing and processing of claims with CICF, in obtaining return of the survivor's property when collected as evidence, and in seeking restitution of economic loss;
- Upon request of the survivor, provide notification to friends, relatives and employers of the occurrence of the crime, provide intervention with employers, notices of court dates, and status of release of defendants or prisoners from custody;
- Assist survivors in submitting a Victim Impact Statement;
- Ensure that survivors have reasonable notification of upcoming hearing and/or trial dates; and
- Ensure the survivor meets with the Commonwealth's Attorney, as appropriate, prior to hearings and/or trial.

This agreement shall be effective on DATE and shall remain in effect until any party terminates their commitment in writing. The agreement shall be reviewed annually. Any modifications to the agreement must be mutually agreed upon by all parties, documented in writing, and acknowledged by a signature of each agency's representative.

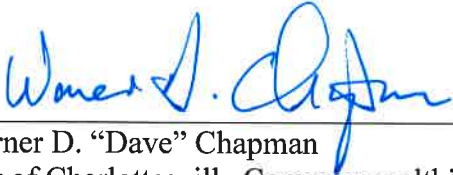
Signatures of Agency Representatives:



Robert N. Tracci
County of Albemarle Commonwealth's Attorney

10 - 12 - 14

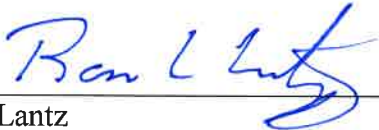
Date



Warner D. "Dave" Chapman
City of Charlottesville Commonwealth's Attorney

10/13/16

Date



Ron Lantz
County of Albemarle Chief of Police

10/13/16

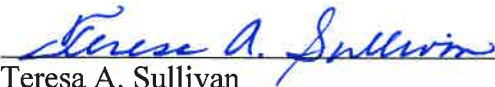
Date



Alfred S. Thomas, Jr.
City of Charlottesville Chief of Police

10/10/16

Date



Teresa A. Sullivan
President, University of Virginia

10/13/16

Date



Michael A. Gibson
University of Virginia Chief of Police

10/13/2016

Date

Susan M. Painter

Susan Painter
Coordinator, Albemarle County Victim/Witness Program

10-13-16

Date

Maggie Cullin

Maggie Cullinan
Director, Charlottesville Victim/Witness Assistance Program

10/12/16

Date

Benjamin Rexrode

Benjamin Rexrode
Coordinator
University of Virginia Victim/Witness Assistance Program

10/13/16

Date

Rebecca Weybright

Rebecca Weybright
Executive Director
Sexual Assault Resource Agency

10/13/16

Date

June 15, 2017

Peter Blake
Director, State Council of Higher Education for Virginia
101 North 14th Street, 10th Floor
James Monroe Building
Richmond, VA 23219

Dear Mr. Blake:

On behalf of the Sexual Violence Advisory Committee (advisory committee), please allow me the opportunity to thank you, Beverly Covington, and our colleagues at SCHEV for exercising the leadership necessary to establish and regularly convene the advisory committee. As you well know, institutions in the commonwealth are unique in the country for developing practices to respond to reports of sexual violence within a complex framework of federal regulations, legislative requirements unique to the commonwealth, and varied institutional policies and procedures. Since its inception in the fall of 2015, members of the advisory committee have shared information with one another and, when appropriate, provided guidance to SCHEV staff on legislation and policy matters as they pertain to responding to reports of sexual violence at the commonwealth's institutions. SCHEV's willingness to convene and support the advisory committee provides institutional leaders and administrators with valuable opportunities to learn, share, and develop practices that strengthen our institutional responses to the problem of sexual violence.

In 2016, SCHEV received a legislative charge to study and design a pilot for a "regional center for the investigation of incidents of sexual and gender-based violence at the commonwealth's institutions..." Ashley Lockhart has done a very thorough job of preparing a draft proposal that outlines a model for a regional center. Advisory committee members read the draft proposal, discussed its merits and disadvantages.

In short, the advisory committee cannot find a way to support the creation of a regional center. The disadvantages outweigh the possible advantages posed by the prospect of centralizing investigations and adjudications of reports.

Feedback on the proposed regional center model is organized thematically.

Conflating educational/administrative processes with criminal processes

The regional center model is based on the multidisciplinary approach used in child advocacy centers whose mission is to investigate reports of abuse and neglect involving

Invent the Future

a minor. The framework of a child advocacy center rests upon shared understandings of criminal and civil law designed to protect minors.

Institutions of higher education use a framework of policies expressed as contracts between adults (students) and the institution. When responding to reports of misconduct, colleges and universities pursue an investigation as a breach of a contract and do not (cannot) determine if misconduct is criminal in nature. Criminal investigations are conducted solely by law enforcement. In addition to operating within state and federal law and regulations, an institution's student and employee conduct policies are shaped by the mission, heritage, and culture of the institution. For example, the community colleges and the four-year institutions each have distinct policies and processes for investigations and adjudication. Within most institutions, misconduct is investigated and adjudicated as a violation of policy within an educational mission and framework.

The board of visitors at each of the institutions in the commonwealth has the obligation to oversee the discipline of students. Consequently, each institution's student code of conduct reflects the unique guidance and requirements of its board. It is difficult to imagine how personnel at a regional center could determine responsibility for violating an institution's policy and articulate appropriate sanctions. These decisions are made at each institution by trained administrators who have knowledge of the institution's policies, processes for protecting the rights of all parties, and case precedents upon which sanctions and subsequent appeals might be determined.

The regional center is predicated upon a determination that the reported misconduct is criminal in nature. Most institutional policies and processes are designed to respond to and discern responsibility for violating institutional policy and not criminal behavior. The US Department of Education, Office of Civil Rights (OCR) requires that institutions use the "preponderance of the evidence" as the standard for determining responsibility. In the criminal system, responsibility is determined using a standard of "beyond a reasonable doubt". These standards cannot be employed simultaneously.

The proposed regional center will attend to reports of misconduct that is determined to be criminal in nature. However, it is illogical to suggest that institutional investigators will be able to apply the two standards (guilt beyond a reasonable doubt versus a preponderance of the evidence) in a consistent and realistic fashion. If the correct standard is not used, institutions can be found responsible by OCR for violating Title IX, and found liable for due process or Title IX violations by the courts.

Protecting and Supporting the Reporting Party

Protecting the rights of the person who is the victim of sexual violence ought to be paramount in all response practices and policies. Current federal, state, and institutional obligations threaten to undermine the right of the reporting party to decide when, and with whom, to share the information regarding the incident(s) sexual violence. In the

proposed model for a regional center, institutions that opt-in would be required to send all matters involving potentially criminal conduct (sexual assault, stalking, dating violence, cyber-stalking, etc.) involving a respondent who is a student of that institution to the center for investigation, *regardless of the wishes of the victim*.

The hallmark of the OCR guidance is that victims should have some say in what happens. Our concerns with maintaining victim choice and control over this process become even more significant when considering the scenario of parties from two different institutions – one that is a participant in the center and one that is not. For example, imagine two universities in the same region of the state. University A (UA) is a participant in the center and University B (UB) is not. A UA student sexually assaults a UB student. The victim (the UB student), would be forced to undergo an investigation through the center because the UA student attends an institution that has opted-in to the center.

Best practice is to honor the wishes of the reporting party or victim by providing confidential options whenever possible and to offer as many alternatives for seeking assistance and redress as is feasible. Recent experience with mandated reporting has had the effect, at some institutions, of reducing the number of individuals who seek help from administrators because the reporting party does not want their information investigated or shared. Frequently, they are seeking support and do not want to participate in administrative processes designed to determine responsibility.

Possible Delays

Several federal and state obligations require that institutions secure facts regarding a report of sexual violence as soon as feasible. The OCR requires a timely response to a report and requires that institutions provide interim accommodations to the parties involved in a report. The federal Clery Act requires timely warnings of safety and security concerns to institutional communities, and state statute requires that institutions employ the expertise of a campus-based threat assessment team and review team to determine when conduct might be a threat to safety.

Turning over a report of sexual violence to a regional center does not absolve an institution of its obligations to respond, provide appropriate accommodations, assess threat, and warn the institution's community. Institutions have to know some facts associated with a report of sexual violence to take appropriate action well-before investigations are completed and decisions of responsibility are made with whether misconduct occurred. For assessing threat, knowledge of the facts of the incident is required to make recommendations on interim suspension of the respondent or other actions.

Stalking and relationship violence cases are complex and can have serious safety consequences. Many of our institutions have international populations where the issues

of violence get additionally complicated by people's visa status. A centralized function might not be in a position to act quickly to protect a victim of battering or stalking who is scared to report and might risk deportation of her or himself and/or the respondent.

The reality of a timely institutional response to a report of sexual violence frequently requires that the reporting party speak with trained administrators with the authority to provide guidance, activate needed accommodations, and – if necessary – alert the institution's communities of a possible threat. Most institutions currently employ the best practice of coordinating, over time, an iterative and trauma-informed response to a report of sexual violence. The addition of a regional center might inadvertently delay the institution's ability to respond in a timely and appropriate way to the reporting party, the responding party, and the institution's communities.

Possible Legal Issues

Institutions have a legal liability to the reporting party and to the respondent. The regional center model may impede institutions from following applicable law under Title IX and the due process clause. Under the proposed model, once a person is found responsible for a conduct policy violation by personnel at the center, the sanctioning of the responsible party would be the responsibility of the institution. For example, if a respondent is dismissed from school, that individual will claim the loss of a protected property interest, i.e., attending the public institution. The institution will have the obligation of defending the action taken by the regional center even though it had no input into the decision. There is no corresponding responsibility held by the regional center. Consequently, the institution becomes an insurer of the center even though it has had no oversight ability.

One of the main features of the model for the center is civil immunity for the institutions that participate. First, it seems highly unlikely that the General Assembly would pass any legislation that gives institutions of higher education immunity in the area of sexual violence. Second, even if the General Assembly were to approve statutory immunity, it would only apply to state actions. Most of the suits we have seen are filed in federal court because they are based in due process violation, Title IX violation, or both.

A legal question exists because the creation of a regional center would generate processes for sexual misconduct cases that would be distinct from institutional processes for infractions of the criminal laws [e.g. theft, or simple assault]. The courts may have reservations about processing different types of offenses differently.

Logistical Barriers

In areas of Virginia with less dense population (Southwest Virginia, for example) it is foreseeable that a center could be two to three hours from the reporting party or victim. Requiring a victim to travel could deter reporting and potentially re-traumatize victims. In

addition, consider a scenario in which an act of sexual violence occurs in a location far from the institution and involves multiple jurisdictions with pending criminal investigations. To provide the necessary collaboration with the criminal investigations, this matter would go to the regional center causing disruption, potential trauma to the victim, and increasing costs to all involved.

It is not clear from the proposed model how student confidentiality would be addressed. Institutions go to great lengths to protect student records. Without carefully crafted and approved agreements, institutional administrators would not be free to share information without the consent of the parties involved in the report. Within the institution, appropriate information sharing is sanctioned.

Funding

The expectation that institutions will contribute financially to the regional center is not realistic. It is unclear how the costs for the regional centers will be apportioned. If institutions do not want to participate in the regional center, will they still have to pay to support the centers?

In addition, there are no cost savings at the institutional level if the institutions assist in funding a regional center. Should a regional center be created, each college and university will continue to be required to have appropriate personnel and associated costs in place for responding to complaints at their institution. Essentially, institutions might perceive this as “paying” twice for federal and state mandates for which no resources are allocated.

Duplication and Complexity

Institutions are obligated to respond to reports of sexual violence as possible violations of policy. Institutions will continue to have to provide ample resources to respond to reports and will invest in recurring prevention, education, and outreach efforts. The regional center approach will not result in a financial savings to most institutions.

A regional center might add additional bureaucracy to an already complicated system. A regional center would require the articulation of additional agreements and has the potential to increase the possibility of missteps. Several institutions report that the addition of OCR-required investigations has resulted in fewer reports or diverting reports of sexual violence from law enforcement and victim advocates. The addition of administrative investigations has not had the intended result. Fewer, not more, victims are reporting and getting help.

Alternatives

The advisory committee welcomes the invitation to consider alternatives to a regional center. Preferred partners for the institutions continue to be SCHEV and the Education Section of the Attorney General's Office.

While unable to support the implementation of a regional center, the advisory committee continues to identify needs associated with responding to reports of sexual violence.

An interest in incentivizing multi-institution trainings and education that result in institution and state-specific policies, processes, and programs. Sharing costs for a variety of training and the development of educational and prevention programs would benefit multiple institutions

Provide funds to support travel of in-state institutional colleagues who are willing to share expertise with the commonwealth's colleges and universities. For example, among the members of the advisory committee are professionals with experience in administrative investigations, student conduct hearings, criminal investigations, policy development, prevention and education program development, and survey instrumentation. The advisory committee could offer small teams to institutions who might welcome assistance and may not have resources necessary for expensive national vendors or programs.

Provide funds to further support the multidisciplinary on and off-campus Sexual Assault Response Teams.

The commonwealth would benefit from an infusion of Sexual Assault Nurse Examiners (SANE nurse). An allocation of funds to support training nurses and to incentivize hospitals.

Many thanks for your continued leadership. We appreciate the opportunity to provide guidance and support to SCHEV and to our institutions.

On behalf of the Sexual Assault Advisory Committee,

Ellen W. Plummer
Member of the Committee



VIRGINIA ASSOCIATION OF CAMPUS LAW ENFORCEMENT ADMINISTRATORS

July 13, 2017

Ashley Lockhart
Policy Specialist
State Council of Higher Education for Virginia

Pilot Program for a Regional Center for the Investigation of Sexual and Gender Based Violence

Dear Ashley:

The Virginia Association of Campus Law Enforcement Administrators (VACLEA) acknowledges the commitment and effort by SCHEV to complete the study for the pilot program. However, VACLEA opposes this shift in investigations.

In addition to current federal review, which may affect Title IX processes, our association believes those legislative changes implemented over the past few years related to sexual violence at institutions of higher education have made a positive impact in the Commonwealth and should be given more time to review outcomes prior to a major shift in practice.

VACLEA continues to work closely with the Virginia Center for School and Campus Safety within DCJS as well as the DCJS Division of Programs and Services particularly with victim services related to advocates, SART's and crisis centers.

Specific examples include the completion of the DCJS training "Trauma Informed Sexual Assault Investigations", which launches this summer, and the revision to *Virginia Code 23.1-806-Reporting of Acts of Sexual Violence*, which added the use of a review committee. Both of these examples achieve the primary goals that the regional center program seeks to offer.

VACLEA continues to support increasing the number of Forensic Nurse Examiners across Virginia. The number of cases and consults conducted by a Sexual Assault Nurse Examiner continues to climb as reports of sexual assault increase. An appropriate staffing model across Virginia will provide quality service to not only the VACLEA community but to all the citizens in the Commonwealth impacted by sexual violence.

David M. McCoy
President
Virginia Association of Campus Law Enforcement Administrators