

610 CMR 14.00: Coordination with Local Law Enforcement to Prevent and Respond to Sexual Misconduct

Section

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14.01: Scope and Purpose

610 CMR 14.00 governs the adoption of a memorandum of understanding between each institution of higher education with a physical location in the Commonwealth and a local law enforcement agency for purposes of determining each entity's roles and responsibilities regarding preventing and responding to incidents of on- and off-campus sexual misconduct, as set forth in M.G.L. c. 6, § 168E(c), and the Department of Higher Education's role in implementing that requirement.

14.02: Definitions

As used in 610 CMR 14.00:

Board of Higher Education (Board). The Commonwealth's state higher education authority established pursuant to applicable provisions of M.G.L. c. 15A, § 4; responsible for public higher education system oversight and coordination pursuant M.G.L. c. 15A, § 1 et seq.; and responsible for private higher education degree granting authority and financial screening and assessments pursuant to M.G.L. c. 69, § 30 et seq.

Campus Safety Advisor: The person appointed by the Commissioner of Higher Education, within the Department of Higher Education, to coordinate and help advance statewide campus safety initiatives at public and private institutions of higher education, pursuant to M.G.L. c. 6, § 168E(d).

Commissioner of Higher Education (Commissioner): The chief executive and administrative officer of the Department of Higher Education and the Board of Higher Education, pursuant to M.G.L. c. 15A, § 6.

Department of Higher Education (Department): The agency established pursuant to M.G.L. c. 15A, § 6.

Institution: A public or independent institution of higher education located in the Commonwealth and authorized to grant degrees pursuant to any general or special law.

Local Law Enforcement Agency: A law enforcement agency, such as a municipal police department or Massachusetts State Police unit, with jurisdiction on or around an institution's campus, including property owned and not owned by the institution. As set forth below in 610 CMR 14.03(2), an institution subject to the jurisdiction of more than one local law enforcement agency may enter into one MOU with multiple law enforcement agencies.

Memorandum of Understanding (MOU): A written agreement between an institution and a local law enforcement agency adopted pursuant to the standards and procedures established herein for the purpose of delineating the respective roles and responsibilities of each party related to the prevention of and response to incidents of sexual misconduct occurring on-campus and off-campus.

Sexual Misconduct: An incident of sexual violence, dating violence, domestic violence, gender-based violence, violence based on sexual orientation or gender identity or expression, sexual assault, sexual harassment, or stalking.

14.03: Memoranda of Understanding

Each institution shall, to the extent feasible, enter into an MOU with each local law enforcement agency having jurisdiction to report as a first responder to an incident of sexual misconduct occurring on or around a campus of the institution. The purpose of the MOU is to facilitate opportunities for communication between the institution and the law enforcement agencies and to establish the respective roles and responsibilities of both the institution and the law enforcement agency regarding the prevention of and response to sexual misconduct; to share information, in accordance with applicable federal and state confidentiality laws, regarding sexual misconduct incidents involving students or other campus community members of the institution; and to identify opportunities for sharing best practices and training resources.

Each MOU shall:

- a. identify the primary points of contact for the institution and for the local law enforcement agency on matters involving the interpretation and enforcement of the MOU;
- b. describe the jurisdiction of each local law enforcement agency based on the location and type of incident, specifying therein which law enforcement agency has primary jurisdiction for investigating an incident of sexual misconduct occurring on or near the institution's campus;
- c. provide for cross-jurisdictional or multi-jurisdictional response to and investigation of an incident of sexual misconduct, as appropriate;
- d. delineate the institution's operational and investigative responsibilities and procedures under state or federal law, including Title IX of the federal Education Amendments of 1972, to respond to complaints of sexual misconduct;
- e. describe protocols and standards for reporting, notification, communication and information-sharing among the parties, subject to applicable confidentiality and privacy laws, and victim consent protocols; and

- f. identify protocols for notifying the appropriate district attorney's office.
- (1) Coordination with Multiple Local Law Enforcement Agencies. If an institution is subject to the jurisdiction of more than one local law enforcement agency, one MOU among the institution and multiple, relevant local law enforcement agencies shall comply with this subsection.
- (2) Periodic Review and Revision. Each institution shall review the MOU with each law enforcement agency that is a signatory every three (3) years. As part of the review process, the institution shall contact each signatory law enforcement agency to discuss how changes in policies or procedures at either the institution or the law enforcement agency may impact the provisions of the MOU. If changes in policies or procedures are identified that impact the provisions of the MOU, the institution and the law enforcement agency shall update the MOU, as necessary. Such review and revision process may also consider input from internal and external entities.

14.04: Institutional Reporting and Certification Requirements

- (1) Annual Report and Compliance Certifications: As part of the Annual Report required under M.G.L. c. 6, § 168E(q) each institution shall submit the following information and certifications to the Department in accordance with a schedule, format, and manner to be determined by the Department:
 - a. a list of local law enforcement agencies the institution has identified with jurisdiction on or around the institution's campus; and
 - b. a certification that:
 - i. the institution has entered into an MOU, the terms of which are in compliance with 610 CMR 14.03, with each local law enforcement agency with jurisdiction on or around the institution's campus; and/or
 - ii. the institution has determined, pursuant to 610 CMR 14.04(2), that entering into such an MOU is infeasible; and
 - c. a copy or copies of any executed MOUs.
- (2) Feasibility Determinations: M.G.L. c. 6, § 168E(c) requires each institution to adopt an MOU with local law enforcement agencies "to the extent feasible." A determination that it is not feasible to enter into an MOU with a local law enforcement agency may be based on several factors, including, but not limited to: a local law enforcement agency refusing, or failing to timely respond to, reasonable requests to enter into an MOU under 610 CMR 14.03; or a local law enforcement agency only committing to enter into an MOU that, if followed, would cause the institution to be in violation of federal or state law; or an MOU cannot be negotiated despite the good faith efforts of both parties.

An institution that has determined it is not feasible to enter into an MOU with a local law enforcement agency, as required by section 168E(c) of Chapter 6 and 610 CMR 14.04(2),

shall so notify the Department by submitting, along with its Annual Report and Compliance Certification, a feasibility report, which at a minimum includes the following:

- a. A summary of and attestation to the institution's good faith efforts towards entering into an MOU, the proposed terms of which meet the minimum criteria set forth in 610 CMR 14.03, with a local law enforcement agency;
 - b. A copy or copies of draft MOU(s) submitted for consideration to a local law enforcement agency that were ultimately rejected or not acted upon, and the reasons for the local law enforcement agency's action or inaction, to the best of the institution's understanding; and
 - c. Any additional efforts since the institution's last feasibility report that the institution has made towards establishing an MOU with a local law enforcement agency that includes the minimum requirements set forth in 610 CMR 14.03.
- (3) The Department will review each institution's Annual Report and Compliance Certification submission, including any applicable Feasibility Determinations, and may request additional information from the institution to document compliance with this regulation. Annual Report and Compliance Certifications, including any Feasibility Determinations, which, in the Department's discretion, are determined to be incomplete or not supported with the necessary documentation will be noted as such through the Department's annual reporting process.

14.05: Department Annual Reporting

The Department will make available to the public through the Department's website the status of each institution's compliance with section 168E(c) of Chapter 6 and these regulations. The timeline and format for posting and updating the Department's annual report shall be determined by the Department through policy, provided that the Department shall post and update such information at least annually, with the first report to be published by August 1, 2022. The Department may also post other relevant information such as links to sample MOUs, sample policies or best practices which help advance the minimum criteria set forth in 610 CMR 14.03.

REGULATORY AUTHORITY

610 CMR 14.00: M.G.L. c. 6, s. 168E(c); St. 2020 c. 337.