



Guidance Paper on Creating Memoranda of Understanding with Correctional Institutions

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As the deadline for compliance with the federal Prison Rape Elimination Act standards draws closer, correctional facilities, including jails, state and federal institutions, youth facilities and immigration and detention centers are approaching rape crisis centers to enter into formal agreements to provide services. The Florida Council Against Sexual Violence has created this brief guidance paper on memoranda of understanding (MOUs) to outline responsibilities of each party, issues to be aware of and areas for negotiation between rape crisis centers and correctional institutions.

Responsibilities of rape crisis centers and correctional institutions

It is important to highlight in some detail the commitments each party agrees to carry out. Some MOUs specify the rape crisis centers' obligations but barely touch on the correctional facilities' duties. Basic items the MOU should include for each party are as follows.

The correctional institution will:

- Call the rape crisis center to respond to forensic exams.
- Provide orientation and training to rape crisis center staff and volunteers on working in the facility with inmates.
- Conduct and cover costs for background checks of rape crisis center staff and volunteers as necessary.
- Make the rape crisis center's phone number and mailing address available to inmates and place contact information in prominent areas.
- Communicate any questions or concerns to rape crisis center staff.
- Respect the nature of privileged communication between rape crisis center staff or volunteers and clients and abide by all state and federal laws governing confidentiality.

The rape crisis center will:

- Respond to requests for advocacy and accompaniment to forensic exams.
- Provide the correctional institution with a list of approved, background checked staff and volunteers.
- Provide the correctional institution with the name of the advocate responding to a forensic exam.
- Maintain privileged communication with clients as required by state and federal law and the rape crisis center's policies.
- Provide training to the correctional institution's staff on sexual violence and the role of the rape crisis center.
- Communicate any questions or concerns to the correctional institution staff.

Standard language for both parties regarding MOU commencement, renewal and termination:

- This MOU shall begin on [date] and shall expire on [date].
- This MOU may be renewed, at the option of the rape crisis center and the correctional institution. If both parties desire to renew this MOU, they shall exercise this option no later than 60 days prior to the MOU expiration.
- This MOU may be terminated by either party upon no less than 30 calendar days' written notice, without cause, unless a lesser time is mutually agreed upon by both parties.

Other issues to consider:

Forensic exam, rape crisis service delivery and follow-up:

- It is recommended to include in the MOU where the forensic exams will be conducted, either at the correctional facility or at a hospital or forensic exam facility.
- Some MOUs state that the correctional institution will call the rape crisis center to respond to reports of sexual assault regardless of when the assault occurred. How will your MOU address sexual assault reports where the time limit for the forensic exam has already expired?
- Various MOUs include language about follow-up. Draft language for that item is:

“The correctional institution will facilitate follow-up whenever possible, between victim and advocate, including after release from custody. The correctional institution will provide both the victim and advocate with the respective mailing addresses and as resources allow permit follow-up sessions by phone and in-person.”

Confidentiality

- You may want to include a more extensive confidentiality section. One state's MOU incorporates the following:

Confidentiality Compliance. Parties agree that the Parties shall follow State and Federal law and guidelines concerning confidentiality. Any records used or developed by the [rape crisis center] or the [correctional institution] under this agreement that relate to a particular person are to be kept confidential and may not be released to any other person or agency, except as provided by law. The sharing of other information, with the exception of survey aggregate findings, is limited to those Parties needing to know in accordance with policy, State or Federal statute, professional licensure and ethical standards.

- Any information regarding criminal activity, including sexual offenses, revealed by the population served to the [rape crisis center] will be held completely confidential, unless the [rape crisis center] is

required to reveal this information under State or Federal Law (such as in the mandatory reporting of a child or [vulnerable] adult).

- The [rape crisis center] and its contractors are not required to report these crimes under the Prison Rape Elimination Act of 2003 (42 USC §§15601-09) or other similar statutes that pertain to staff of the [correctional institution].
- All Parties will make every effort to remind the population served of this confidentiality clause and ensure their understanding of the clause and how it applies during the trainings and/or advocacy sessions.
- [The correctional facility] will, to the degree possible within resources and applicable laws, protect victims and reporters of sexual violence and misconduct from retribution.

Avoid victim blaming language

- One governmental correctional entities' standard MOU states that the rape crisis center shall advise inmates that:
"instances of sexual abuse occurring at [the institution] should be reported immediately to [the institution's] staff. [The rape crisis center] shall advise [the institution's] inmates that failure to provide the identity of the perpetrator to the [institution] or to other appropriate law enforcement agency, may compromise their own safety, and the security of other inmates."

As rape crisis centers would not adhere to this practice with victims/survivors from the general public, it is recommended not to include it in MOUs with correctional institutions. If the correctional facility wishes to include language about how the rape crisis center will handle abuse reporting conversations, a better option would be:

"The rape crisis center shall provide inmates with information about how to report sexual abuse, including the correctional institution's responsibility to investigate each report and to protect inmates and staff who report from retaliation."

Allow for funding negotiations

- One federal prison template being circulated states that the:
"[rape crisis center] understands and agrees that it would be unlawful for [the prison] to accept [the rape crisis center's] services if [the rape crisis center] had any expectation of compensation, financial benefit, or reimbursement from [the prison] or the United States.

It is recommended to ask the facility to remove this section. There is no evidence that it would be unlawful for a rape crisis center to be paid for providing services in federal facilities.

- Regardless of whether rape crisis services will be provided gratis or for a fee, consider including a clause that states the two parties can reevaluate the MOU and funding needs should the delivery of services be more involved than originally thought or the demand for services higher than expected.

Safety considerations

- Correctional facilities are very conscientious about visitors' safety. Still, it is important to review safety precautions with each facility and learn how their policies address visitors' interactions with inmates of different custody levels.
- For the safety of both advocates and other clients, FCASV recommends not seeing sexual assault survivors who are also known sex offenders at the center's office. These survivors do, however, still need and deserve services related to their own victimization. To find professionals in your area who can work with them, contact the Florida Association for the Treatment of Sexual Abusers at www.floridaatsa.com or (850)541-3521.

There is a great need for rape crisis services among incarcerated populations. Working together with correctional institutions in fair, equitable partnerships, rape crisis centers can help alleviate the trauma of sexual violence in these settings. As with any successful collaboration, the MOU is just the starting point. Successful implementation will require detailed protocols, training and ongoing evaluation.