

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

ANNA BORKOWSKI, et al., \*

Plaintiffs, \*

v. \*

Civil Action No. 1:18-cv2809

BALTIMORE COUNTY, MARYLAND, et  
al., \*

\*

Defendants.

\* \* \* \* \*

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT DILLON’S MOTION TO  
DISMISS OR, IN THE ALTERNATIVE,  
FOR SUMMARY JUDGMENT**

Defendant Paul Dillon, the Chief of Police of the University of Maryland, Baltimore County Police Department (“UMBC PD”), through his undersigned counsel, submits this Memorandum of Law in Support of his Motion to Dismiss the sole count against him. Count IV (misabeled as Count II), in which Plaintiff Frank asserts a claim under 42 U.S.C. §1983 against Defendant Dillon, should be dismissed for failure to state a claim upon which relief can be granted. Alternatively, Defendant Dillon is entitled to summary judgment and/or qualified immunity.

**INTRODUCTION**

Plaintiffs Anna Borkowski and Katelyn Frank have filed a multi-count putative class action complaint against a number of defendants, including the University of Maryland, Baltimore County (“UMBC” or the “University”) and some of its officials, including Chief Dillon, and numerous members of the Baltimore County Police Department (“BCPD”) and of the Baltimore County State’s Attorney Office (with the BCPD officers, the “Law Enforcement Defendants”).

Ms. Frank’s claims relate generally to UMBC’s handling of her allegation that she was sexually assaulted by another UMBC student on the UMBC campus in 2015. Complaint at ¶¶

130-176. At the time, Ms. Frank was a UMBC student. *Id.* at ¶ 130. After a Title IX investigation, UMBC Board of Review hearing, and internal appeal, UMBC found the alleged assailant not responsible. *Id.* at ¶¶ 169-175. Thereafter, Ms. Frank reported the alleged sexual assault to BCPD. *Id.* at ¶ 176. Ms. Frank asserts separate claims against some of the Law Enforcement Defendants regarding their handling of her criminal complaint. *Id.* at ¶¶ 177-190.

Ms. Borkowski's claims relate primarily to the Law Enforcement Defendants' handling of her allegations that she was sexually assaulted by three UMBC students in a Towson apartment. *Id.* at ¶¶ 191-318. Ms. Borkowski was a Towson University student at the time of the alleged assault. *Id.* at ¶ 191. She has not asserted any claims against Chief Dillon.

The only allegation in the entire complaint against Chief (then Deputy Chief) Dillon relates to a single interaction between Ms. Frank and Chief Dillon, when Ms. Frank reported the alleged assault to him. *Id.* at ¶¶ 135-144 and ¶¶ 352-56. Specifically, Ms. Frank alleges that Chief Dillon "improperly" persuaded her to not file a police report about the alleged assault. *Id.* at ¶ 136. In fact, Chief Dillon merely explained to Ms. Frank her reporting options: namely, to file an internal complaint with UMBC's Title IX office, pursuant to UMBC's "Interim Policy on Prohibited Sexual Misconduct and Other Related Misconduct in effect in September 2015" (the "Policy," a copy of which is attached as **Exhibit 4**); to file a police report; or both. Not only were Chief Dillon's actions not improper, even if the Court accepts Ms. Frank's allegations as true, they were not unlawful. Accordingly, the Court should dismiss the claim against him, grant summary judgment in his favor, or find that he is entitled to qualified immunity.

## FACTUAL BACKGROUND<sup>1</sup>

### ALLEGATIONS IN THE COMPLAINT

Ms. Frank alleges that on September 10, 2015, another UMBC student lured her into his dorm room and raped her. Complaint at ¶ 132. She reported the assault to Rina Rhyne<sup>2</sup> and, with her support, reported the alleged assault to Chief Dillon. *Id.* at ¶ 135. She alleges that Chief Dillon “improperly persuaded [her] not to ‘report’ her assault to the police” and told her that the “‘administrative method’ was ‘faster and easier,’ ‘more victim friendly,’ and was ‘easier to prove.’” *Id.* at ¶ 137. She further alleges that Chief Dillon “convinced [her] to handle the matter administratively” (*id.* at ¶ 140) in alleged violation of the terms of UMBC’s Memorandum of Understanding (“MOU”) with BCPD (*id.* at ¶ 138) and that he failed to include the assault in the University’s “Clery Report.”<sup>3</sup> *Id.* at ¶ 142. She alleges that Ms. Rhyne was “concerned” that Chief Dillon was violating the terms of the MOU, but Chief Dillon “brushed off” that concern and stated that the “incident was not sufficiently serious to report to BCPD.” *Id.* at ¶¶ 143-44. Finally, she alleges that Chief Dillon persuaded her not to pursue a criminal investigation of her assailant (*id.* ¶ 355), and as a result she did not report her rape to BCPD until later. *Id.* ¶ 356. She alleges it was “unlawful for a law enforcement officer to dissuade a victim from filing a police report” (*id.* ¶ 353) – although she does not cite the law that was allegedly violated. Based on these alleged facts, Ms. Frank contends that Chief Dillon violated 42 U.S.C. §1983. *Id.* at ¶¶ 352-56.

It should be noted that Ms. Frank does *not* allege that Chief Dillon failed to tell her about her option to file a police report or that he refused to accept a criminal complaint from her. Her

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<sup>1</sup> The Factual Background is divided into two parts: the allegations in the Complaint, and additional facts based on the affidavits and exhibits attached to this Memorandum of Law.

<sup>2</sup> In the Complaint, Plaintiffs misspell Ms. Rhyne’s last name; it is Rhyne, not “Rhine.”

<sup>3</sup> Federal law requires institutions of higher learning to prepare, publish, and distribute an annual report containing campus crime statistics and security policies. This is known as a “Clery Report.”

only allegation is that he persuaded her to file a Title IX complaint with UMBC pursuant to the Policy.

#### ADDITIONAL INFORMATION<sup>4</sup>

Chief Dillon is a sworn police officer who has worked for university police departments since 1987. *See Exhibit 1*, Dillon Affidavit at ¶ 2. He started as a Police Officer with the University of Maryland, College Park Police Department Operations Department, and rose through the ranks, eventually reaching the rank of Major in 2002. *Id.* In 2010, he joined the UMBC Police Department (“UMBC PD”) as Deputy Chief of Police. *Id.* He was promoted to Chief of Police in the UMBC PD in July of 2018.<sup>5</sup> During 2015, Chief Dillon was the Deputy Chief of the UMBC PD. As part of his duties, he regularly met with students who alleged they were victims of sexual assaults, often with Rina Rhyne. *See Ex. 1*, Dillon Aff. at ¶ 3; *Exhibit 2*, Rhyne Aff. at ¶ 8.

Rina Rhyne was the Program Coordinator for the Voices Against Violence (“VAV”) program at UMBC from August 25, 2014, until July 15, 2016. *See Ex. 2*, Rhyne Aff. at ¶ 2. In her position as Program Coordinator, one of her primary duties was to provide support to sexual assault victims. *Id.* She was not part of UMBC’s Title IX office and did not investigate allegations of sexual assault. *Id.* Instead, she provided the initial response efforts when a student disclosed sexual assault to non-confidential staff or faculty members or to her office directly. *Id.* In this role, she provided victims with an explanation of options and resources, helped victims to access on-campus and off-campus services, and generally served as support for them. *Id.* Pursuant to

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<sup>4</sup> This additional information is based on the affidavits of Chief Dillon and Rina Rhyne, a former UMBC employee, copies of emails, and the UMBC Sexual Misconduct Policy in effect in September 2015.

<sup>5</sup> A copy of Chief Dillon’s resume outlining his experience, education, awards and commendations is attached as **Exhibit 3**.

UMBC's Policy (**Exhibit 4**), Ms. Rhyne was a "quasi-confidential resource," which meant that victims' conversations with her and their identity could remain confidential if the victim chose not to report a sexual assault, unless there was a continuing threat of harm or a legal obligation to reveal such information. *See* Policy, § VI.B, at p. 9; Ex. 1, Dillon Aff. at ¶ 3.

In 2015 (and today), when a student alleges a sexual assault, the student has the choice of filing a criminal complaint (i.e., a police report), filing a complaint with the University's Title IX office under the Policy, filing both types of complaints, or not filing a formal complaint at all. *See* Ex. 4, Policy § VII, at p. 11 (giving a victim the choice of whether and when to report an alleged violation of the Policy, and providing that "A Reporting Party can choose to pursue both a report under this Policy and a criminal investigation at the same time.");<sup>6</sup> Ex. 1, Dillon Aff. at ¶ 4; Ex. 2, Rhyne Aff. at ¶ 4. A student is not compelled to file a formal report – the Policy specifically protects the student's right to choose not to do so - and the Policy does not obligate the University to file a police report if the student chooses to pursue only an administrative claim through the University's process or to not file any formal complaint. In short, the student chooses how and when to proceed. Ex. 4, Policy § VII; Ex. 2, Rhyne Aff. at ¶ 4. "[I]t is common for students who allege that another student sexually assaulted them to pursue university/college Title IX remedies only, or no process at all, and to not file criminal charges." Ex. 2, Rhyne Aff. at ¶ 5; *see also id.* at ¶ 11.

Ms. Frank, accompanied by her friends, came to meet with Ms. Rhyne in her capacity as Program Coordinator in mid-late September 2015. Ex. 2, Rhyne Aff. at ¶ 3. Ms. Frank reported that she was the victim of a sexual assault committed by another UMBC student. *Id.* Ms. Rhyne

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<sup>6</sup> Section XI of the Policy clarifies that a report to the University under the Policy is independent from any criminal investigation.

accompanied Ms. Frank, along with one of Ms. Frank's friends, another UMBC student, to Greater Baltimore Medical Center ("GBMC") for a SAFE exam. *Id.* UMBC did not conduct the SAFE exam and had no role in determining what would be done with the results of the exam. *Id.*

On or about October 7, 2015, Ms. Rhyne asked Ms. Frank if she would like to speak with a representative of the UMBC police department about her options. Ex. 2, Rhyne Aff. at ¶ 6. Ms. Frank agreed, and Ms. Rhyne asked then-Deputy Chief Dillon to attend a meeting with her. Ex. 1, Dillon Aff. at ¶ 5; Ex. 2, Rhyne Aff. at ¶ 6. The meeting took place on October 7, 2015, and included Ms. Rhyne, Chief Dillon, Ms. Frank, and Ms. Frank's mother. *Id.*

During the meeting, Chief Dillon explained the different reporting options Ms. Frank had:<sup>7</sup> filing a complaint with the University's Title IX officer to initiate a University investigation under the Policy; filing a criminal complaint with the UMBC police, which would likely be referred to the BCPD (if the allegations constituted rape in the first or second degree); filing both types of complaints; or doing neither and not filing a complaint. Ex. 1, Dillon Aff. at ¶ 5; Ex. 2, Rhyne Aff. at ¶ 7. Ms. Frank asked Ms. Rhyne and Chief Dillon about the differences between the criminal/judicial process and UMBC's process. Ex. 1, Dillon Aff. at ¶ 5; Ex. 2, Rhyne Aff. at ¶ 8. Chief Dillon provided details such as the timeline of the different types of investigations and the different evidentiary standards of the processes. Ex. 1, Dillon Aff. at ¶ 5; Ex. 2, Rhyne Aff. at ¶ 8. For example, he explained that the two processes have different standards of proof. Ex. 1, Dillon Aff. at ¶ 5. He explained that, to obtain a conviction in a criminal process, the prosecutor must show that the Respondent (i.e. the accused assailant) is guilty beyond a reasonable doubt, a stringently high standard. Ex. 1, Dillon Aff. at ¶ 5. He further explained that, in contrast, under UMBC's process the reporting party (i.e. Ms. Frank) must show by a preponderance of the

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<sup>7</sup> Ms. Rhyne also explained these options to Ms. Frank. Ex. 2, Rhyne Aff. at ¶ 4.

evidence that the Respondent was in violation of the Policy. Ex. 1, Dillon Aff. at ¶ 5. He explained that the preponderance of the evidence standard is a lower standard than the criminal standard of guilt beyond a reasonable doubt. *Id.* When asked about how long each process might take, he informed Ms. Frank (and her mother) that UMBC's Policy strives to adjudicate all Sexual Misconduct related matters within a sixty (60) day timeframe, whereas a criminal process could take longer. *Id.* Chief Dillon also explained that the evidentiary rules were different, adding that the Court holds subpoena powers whereas UMBC does not. *Id.*

Throughout this discussion, Chief Dillon only answered Ms. Frank's and her mother's questions and objectively informed them of the different processes and reporting options. Ex. 1, Dillon Aff. at ¶ 5; Ex. 2, Rhyne Aff. at ¶ 8. He never attempted to persuade or dissuade Ms. Frank from choosing one process over the other (or from filing complaints in both venues).<sup>8</sup> Ex. 1, Dillon Aff. at ¶ 5; Ex. 2, Rhyne Aff. at ¶ 8. He did not discuss possible outcomes, much less guarantee a certain outcome. Ex. 1, Dillon Aff. at ¶ 5. The meeting lasted for around twenty (20) minutes. *Id.* At the conclusion of the meeting, Ms. Frank informed Chief Dillon and Ms. Rhyne that she wanted to think about her options, but appeared to be more inclined to file a complaint with UMBC's Title IX office and not to file a police report. Ex. 1, Dillon Aff. at ¶ 5; Ex. 2, Rhyne Aff. at ¶ 9.

Contrary to the allegation in the Complaint, Chief Dillon did not tell Ms. Frank that the “administrative method” was “faster and easier,” “more victim friendly,” and was “easier to

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<sup>8</sup> While Ms. Rhyne was at UMBC, she met with several sexual assault victims with Deputy Chief Dillon, and at no time did she ever hear him try to persuade or dissuade a complainant from any course of action. Ex. 2, Rhyne Aff. at ¶ 8. She recalls Deputy Chief Dillon assisting several students who came through the VAV program with criminal complaints. *Id.* When a student would disclose a sexual assault to Chief Dillon, he would often call his contacts at BCPD to prepare them for a pending criminal complaint (as he did in this case, as discussed below). *Id.* Furthermore, Chief Dillon willingly arranged for his officers to take students to and from GBMC for SAFEs if they needed transportation, where they could also get connected to BCPD officers. *Id.*

prove.” (Complaint at ¶ 137). Ex. 1, Dillon Aff. at ¶ 6. At no time did he explicitly state that the UMBC Title IX proceeding would be easier or that any outcome was guaranteed. *Id.* Ms. Frank and Ms. Frank’s mother, however, may have drawn such conclusions from his explanation about the different processes, the anticipated length of the different proceedings, and the different burdens of proof. *Id.* Chief Dillon did not encourage or discourage Ms. Frank from pursuing one process over the other. Ex. 1, Dillon Aff. at ¶ 6; Ex. 2, Rhyne Aff. at ¶ 8. At all times, as stated in the Policy, it was Ms. Frank’s choice whether and how to report the alleged assault. Ex. 1, Dillon Aff. at ¶ 6; Ex. 2, Rhyne Aff. at ¶ 11; Ex. 4, Policy at § VII.

In the evening of October 7, 2015, Ms. Frank and Chief Dillon exchanged emails. Ex. 1, Dillon Aff. at ¶ 7. Ms. Frank sent Chief Dillon a statement describing the sexual assault and providing him with information about her vehicle so that UMBC PD could make alternative parking accommodations for her.<sup>9</sup> Ex. 1, Dillon Aff. at ¶ 7. In that email exchange, Chief Dillon asked Ms. Frank to confirm in writing her “wishes for no police report and . . . for the Univ. Investigation.” Ms. Frank responded that “I forgot to include in my original statement that I would like to go through with a university investigation, not a police investigation.” Ex. 1, Dillon Aff. at ¶ 7. A true and accurate copy of this email exchange is attached as **Exhibit 5**. Thus, Ms. Frank confirmed in writing that it was her “wish” to file a complaint under UMBC’s Policy and not a police report.

Ms. Rhyne interacted with Ms. Frank and her mother throughout the University’s investigation of Ms. Frank’s complaint against the Respondent, and at no time did Ms. Frank ever

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<sup>9</sup> Due to the sensitive nature of the allegations, a copy of the emailed incident statement is not attached to this Motion, and the identifying details about Ms. Frank’s vehicle are redacted in Exhibit 5. These documents are available to the Court and Ms. Frank’s counsel should they desire to see them.

complain to Ms. Rhyne that she had wanted to pursue criminal charges but that Chief Dillon had discouraged her or otherwise obstructed her in any way from doing so. Ex. 2, Rhyne Aff. at ¶ 10.

If Ms. Frank had decided to file a criminal report, UMBC PD would have referred the matter to the BCPD, if the allegations were of a 1<sup>st</sup> or 2<sup>nd</sup> degree rape, pursuant to the terms of the MOU between BCPD and UMBC PD, and BCPD would have handled the criminal investigation. Ex. 1, Dillon Aff. at ¶ 8. Ms. Frank alleges that Ms. Rhyne expressed concern that, by not causing a police report to be filed about the alleged sexual assault, Chief Dillon was violating the terms of the MOU. Complaint ¶¶138, 142-43. Actually, Ms. Rhyne never expressed that concern (Ex. 1, Dillon Aff. at ¶ 9; Ex. 2, Rhyne Aff. at ¶ 12), and the MOU did not require UMBC PD to file a report with BCPD when the victim chose not to file a police report. *Id.* To the contrary, the Policy specifically provided that it was Ms. Frank's decision, and Ms. Frank's decision alone, to decide if she wanted to make a police report to BCPD and thus initiate a criminal investigation. Ex. 1, Dillon Aff. at ¶ 9; Ex. 2, Rhyne Aff. at ¶¶4,11; Ex. 4, Policy at § VII.

Ms. Frank also alleges that Chief Dillon said the incident was not sufficiently serious to report to BCPD. Complaint at ¶ 144. That is incorrect.<sup>10</sup> Ex. 1, Dillon Aff. at ¶ 10. To the contrary, at 4:03 pm on October 7, 2015, immediately after Chief Dillon's meeting with Ms. Frank, her mother, and Ms. Rhyne, Chief Dillon emailed Michael Peterson, who at that time was a Lieutenant in charge of the Sexual Crimes Division with BCPD, to advise him of a possible upcoming report of an alleged rape (although, consistent with the Policy, he did not reveal Ms.

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<sup>10</sup> See Note 8. Making such a statement would be contrary to Chief Dillon's regular practice, as observed by Ms. Rhyne, of actively supporting students who decided to file criminal charges, and is contradicted by the fact that he immediately contacted BCPD about Ms. Frank, as described herein. See Ex. 2, Rhyne Aff. at ¶ 8.

Frank's name). Ex. 1, Dillon Aff. at ¶ 10. A copy of the email is attached as **Exhibit 6**. Chief Dillon advised Officer Peterson that he:

just had a meeting with a rape victim along with her mother... The mother and daughter just really wanted to know about options they had about filing a police report and how a Title IX process would work as well. I answered their questions and she is going to think about it... I asked no questions about the incident just [sic] answered questions about the process. If she decides to come forward to us-then you I [sic] would like to make arrangements for her to meet with your folks directly, will that be OK? I think it is unlikely she will file a police report she [sic] seemed more inclined to go the Title IX route.

*Id.* Officer Peterson responded on October 8, 2015, in pertinent part as follows: "I am glad you had the opportunity to inform the victim of her options. We will be glad to assist in any way, should the victim wish to file a police report..." *Id.* Thus, not only does evidence indicate that Chief Dillon did *not* tell Ms. Frank that her allegations were not serious enough to report to BCPD, he specifically informed a Lieutenant in charge of the Sexual Crimes Division with BCPD about the rape allegations immediately after his meeting with Ms. Frank, in case she wanted to pursue criminal charges. The choice was hers whether or not to do so.

Ms. Frank also alleges that her report of a sexual assault does not appear in UMBC's Clery reporting statistics. Complaint at ¶ 142. This is incorrect. Ex. 1, Dillon Aff. at ¶ 11. Attached as **Exhibit 7** to the Memorandum is a copy of UMBC's Clery crime statistics report for 2015. For 2015, UMBC reported ten reported "Rape" cases in the Clery Report. *See* Ex. 7; Ex. 1, Dillon Aff. at ¶ 11. Also attached to Exhibit 7 is the detailed report of sexual assault crimes reported in the Clery Report. Ex. 1, Dillon Aff. at ¶ 11. Ms. Frank's allegation of a sexual assault is listed as item no. 5 in the category of "Forcible Rape Cases" and was included in the Clery Report's listing of ten reported "Rapes." Ex. 1, Dillon Aff. at ¶ 11. Thus, UMBC did report Ms. Frank's alleged sexual assault in its 2015 Clery Report.

### **STANDARD OF REVIEW**

To survive a motion to dismiss for failure to state a claim on which relief can be granted, “a complaint must contain sufficient factual matter, accepted as true, ‘to state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Although the Court is required to “‘take the facts in the light most favorable to the plaintiff,’” the Court “need not accept legal conclusions couched as facts or ‘unwarranted inferences, unreasonable conclusions, or arguments.’” *Wag More Dogs, LLC v. Cozart*, 680 F.3d 359, 365 (4th Cir. 2012) (quoting *Giarratano v. Johnson*, 521 F.3d 298, 302 (4th Cir. 2008) (internal citation omitted)). “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.” *Iqbal*, 556 U.S. at 679.

To the extent that the Court considers documents not referenced and not integral to the Complaint, the summary judgment standard applies. *See* Fed. R. Civ. P. 12(d). Under Fed. R. Civ. P. 56, this Court must grant summary judgment when there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). “Recent cases of the Supreme Court have made increasingly clear...the affirmative obligation of the trial judge to prevent ‘factually unsupported claims and defenses from proceeding to trial.’” *Felty v. Graves-Humphreys Co.*, 818 F.2d 1126, 1128 (4th Cir. 1987) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)). In determining whether summary judgment may be granted, the Court must perform a dual inquiry into the genuineness and materiality of any purported factual issues. *Ross v. Communications Satellite Corp.*, 759 F.2d 355, 364 (4th Cir. 1985) (emphasis in original), *rev’d on other grounds by Price Waterhouse v. Hopkins*, 490 U.S. 228, 238 (1989).

**ARGUMENT**

**I. BECAUSE PLAINTIFF HAS FAILED TO IDENTIFY ANY CONSTITUTIONAL PROVISION OR FEDERAL LAW THAT CHIEF DILLON VIOLATED, HER CLAIM THAT HE VIOLATED 42 U.S.C. § 1983 FAILS AS A MATTER OF LAW.**

Even without considering extrinsic evidence, the Complaint fails to state a claim against Chief Dillon for violation of 42 U.S.C. § 1983. Ms. Frank’s only allegation against Chief Dillon is that it was “unlawful” for him to dissuade her from filing a police report regarding the alleged rape. Complaint at ¶¶ 353, 355. As noted above, Plaintiff does not allege that Chief Dillon failed to inform her of her options or prohibited her from filing a police report - just that he discouraged her from doing so.

“Section 1983 imposes liability on state actors who cause the deprivation of any rights, privileges, or immunities secured by the Constitution. To state a claim under § 1983 a plaintiff “must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” *Loftus v. Bobzien*, 848 F.3d 278, 284–85 (4th Cir. 2017) (internal citations and quotations omitted). Thus, Ms. Frank must allege facts showing that Chief Dillon’s actions violated her rights under the Constitution or federal law.

The Complaint fails to satisfy this standard. Ms. Frank does not allege *what* law Chief Dillon violated when he allegedly discouraged her from filing criminal charges. Chief Dillon is not required to guess the basis for the claim against him. “To proceed under 42 U.S.C. § 1983, a plaintiff must establish violation of a Constitutional right or federal law. A plaintiff must specify what constitutional provision or federal laws were allegedly violated, and identify the actors who allegedly violated these provisions or laws.” *Asemani v. Wexford Health Sources, Inc.*, No. RDB-16-3488, 2016 WL 6462065, at \*2 (D. Md. Oct. 31, 2016) (citations

omitted); *see also Cumbo v. Dovey*, No. JFM-15-3374, 2017 WL 978975, at \*3–4 (D. Md. Mar. 10, 2017) (dismissing plaintiffs’ § 1983 claims with prejudice because “[plaintiff] does not specify what federal law or constitutional guarantee either [defendant] allegedly violated by [the alleged actions], and none is apparent from the record”). Thus, in a similar case of a plaintiff failing to identify the basis for a §1983 claim (even though, unlike here, the basis was discernible), the District Court for the Middle District of North Carolina held, “the Court notes that Plaintiff’s Complaint itself does not state any basis for Plaintiff’s § 1983 claim. In other words, Plaintiff’s Complaint does not identify any ‘right, privilege or immunity’ secured by a provision of the Constitution or laws of the United States that has been violated. Therefore, Plaintiff has failed to state a claim for violation of § 1983, and the Court will grant Defendants’ Motions to Dismiss as to this claim.” *Beck v. City of Durham*, 129 F. Supp. 2d 844, 849–50 (M.D.N.C. 2000) (citation omitted).

Ms. Frank’s complaint wholly fails to meet this simple pleading standard. She does not allege any constitutional or federal statutory legal prohibition on a police officer discouraging (but not prohibiting) a victim from filing a criminal complaint. Nor could she, as there is no such prohibition.<sup>11</sup> The closest allegation Ms. Frank makes is the conclusory assertion that Chief Dillon violated the MOU between UMBC and BCPD by not reporting her allegations to BCPD. Complaint at ¶ 138. Even if this conclusory allegation were true, and even if the MOU had the

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<sup>11</sup> *See, e.g., Banisaied v. Clisham*, 992 F. Supp. 128, 131 (D. Conn. 1998). In that case, the court dismissed claims against a chief of police who allegedly attempted to dissuade plaintiffs from pursuing a criminal complaint against him. *Id.* The court found that the actions did not violate any federally guaranteed right. *Id.* The court also noted a distinction between discouraging someone from filing a complaint and refusing to accept a criminal complaint. *Id.* at 131-32 (“Moreover, plaintiffs do not aver that defendant, while acting in his capacity as Chief of Police, took action to prevent an investigation into his conduct.”).

force of Maryland state law, it would not support a § 1983 claim. A § 1983 claim cannot be based on the violation of state or local laws or common law torts. *See Snider Intern. Corp. v. Town of Forest Heights, Md.*, 739 F.3d 140, 145 (4th Cir. 2014) (“Conduct violating state law without violating federal law will not give rise to a § 1983 claim.”); *Street v. Surdyka*, 492 F.2d 368, 370-71 (4th Cir. 1974) (“[S]ection 1983 does not provide a remedy for common law torts. Instead it creates a federal cause of action against those acting under color of state law who cause a ‘deprivation of any rights, privileges, or immunities secured by the Constitution and laws (of the United States).’”) (quoting 42 U.S.C. § 1983).

Accordingly, Count IV of the Complaint should be dismissed with prejudice.

**II. BECAUSE MS. FRANK HAS NOT ALLEGED THAT SHE SUFFERED ANY DAMAGES AS A RESULT OF CHIEF DILLON’S ALLEGED CONDUCT, HER CLAIM UNDER 42 U.S.C. § 1983 FAILS AS A MATTER OF LAW.**

Ms. Frank’s § 1983 claim also fails because Ms. Frank has not alleged that she suffered any compensable damages as a result of Chief Dillon’s actions. It is undisputed that Ms. Frank was able to pursue her Title IX claims against the respondent, which was her express choice. *See Ex. 5*. Even though she was unhappy with the ultimate outcome of that process, she does not allege that Chief Dillon was in any way responsible for the University’s ultimate decision that the Respondent was not responsible for violating the Policy. She also complains that by the time the Title IX process was over, the results of the SAFE exam had been destroyed and that, when she did file a criminal complaint, the Law Enforcement Defendants failed to handle it properly. Complaint at ¶¶ 150-51, 356. It is undisputed, however, that Chief Dillon (and UMBC) had no control over either the disposition of the SAFE exam or the handling of the criminal complaint. *Ex. 2, Rhyne Aff.* at ¶ 3; Complaint at ¶¶ 177-90. Ms. Frank has not alleged any specific injury that she suffered as a result of Chief Dillon’s discouraging her from filing criminal charges in

October 2015. Because Ms. Frank has failed to allege that she suffered any compensable damages proximately caused by Chief Dillon, her § 1983 claim fails as a matter of law.

**III. CHIEF DILLON IS ENTITLED TO SUMMARY JUDGMENT.**

Even if Count IV of the Complaint is not defective on its face, Chief Dillon is entitled to summary judgment on the claim. Chief Dillon did not discourage Ms. Frank from filing a police report, as confirmed by both Chief Dillon's and Rina Rhyne's affidavits.<sup>12</sup> Moreover, the fact that Chief Dillon did not discourage Ms. Frank from filing a police report is confirmed by the email exchange between Ms. Frank and Chief Dillon, in which Ms. Frank explicitly confirmed her wish to proceed only with a University investigation, and not a criminal investigation. **Ex. 5.** It is also confirmed by the email exchange between Chief Dillon and Lt. Peterson, immediately after Chief Dillon's meeting with Ms. Frank, in which Chief Dillon specifically advised Lt. Peterson that he had just met with a rape victim who might wish to file a criminal complaint. **Ex. 6.** This email exchange proves that not only did Chief Dillon not discourage Ms. Frank from filing a police report, he actually laid the groundwork for her to file a police report with the BCPD if she chose to do so.

Because the factual predicate of Ms. Frank's § 1983 claim is refuted by the affidavits of Chief Dillon and Rina Rhyne and the contemporaneous email correspondence between Chief Dillon and Ms. Frank and Chief Dillon and Lt. Peterson, the Court should enter summary judgment in favor of Chief Dillon on this claim.

**IV. CHIEF DILLON IS ENTITLED TO QUALIFIED AND ELEVENTH AMENDMENT IMMUNITY.**

In addition to the legal defects set forth above, the claim against Chief Dillon should be

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<sup>12</sup> Ms. Rhyne's affidavit is particularly entitled to weight, as she is not a party to the case and is no longer employed by UMBC.

dismissed and/or summary judgment granted in his favor because Chief Dillon is entitled to qualified and Eleventh Amendment immunity. The immunity defenses should be addressed at this initial stage in the case, as qualified immunity is an “immunity from suit rather than a mere defense to liability.” *Pearson v. Callahan*, 555 U.S. 223, 237 (2009). The Supreme Court has thus stressed granting “qualified immunity at the earliest possible stage of litigation.” *Id.* at 232. Unless the complaint states a “violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal *before the commencement of discovery.*” *S.P. v. City of Takoma Park, Md.*, 134 F.3d 260, 265 (4th Cir. 1998) (citation omitted) (emphasis added). “The qualified immunity doctrine relieves officers of having ‘to stand trial or face the other burdens of litigation’; thus, it is crucial for courts to ‘resolv[e] immunity questions at the earliest possible stage in litigation.’” *McCaskill v. Yankalunas*, 245 Fed. App’x 274, 277 (4th Cir. 2007) (quoting *Saucier v. Katz*, 533 U.S. 194 (2001)). This means that the Court can take into account external evidence and consider it, in the context of a summary judgment motion, at an early stage in the proceedings before discovery. Given the paucity of the allegations against Chief Dillon, the absence of any clearly established legal standard he is alleged to have violated, and the overwhelming factual evidence that he did not discourage Ms. Frank from filing a criminal complaint, he is entitled to qualified immunity on the § 1983 claim.

*1. Chief Dillon is Entitled to Qualified Immunity in His Personal Capacity.*

The “doctrine of qualified immunity is designed to ensure that government officials performing discretionary functions can exercise their duties ‘free from the specter of endless and debilitating lawsuits.’” *Jackson v. Hogan*, 2016 WL 6680209, at \*4 (D. Md. Nov. 14, 2016) (Xinis, J) (quoting *Torchinsky v. Siwinski*, 942 F.2d 257, 260 (4th Cir. 1991)). To decide qualified immunity, the Court conducts a two-pronged inquiry:

First, we must decide whether a constitutional right would have been violated on the facts alleged. Next, assuming that the violation of the right is established, courts must consider whether the right was *clearly established at the time* such that it would be *clear to an objectively reasonable officer* that his conduct violated that right.

*Cloaninger ex. rel. Estate of Cloaninger v. McDevitt*, 555 F.3d 324, 330-31 (4th Cir. 2009) (emphasis added). The Court may use its “discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first...” *Pearson*, 555 U.S. at 236.

Here, the first prong is not satisfied because, as discussed above, Ms. Frank has failed to allege any constitutional or federal statutory right of hers that Chief Dillon violated. She is unable to proceed on the basis of an alleged violation of the MOU because that document does not create any right under the Constitution or federal law. Moreover, even if she did have a right to be free from persuasion to not file a police report, the evidence shows Chief Dillon did not discourage her from doing so.

The second prong is not satisfied either. For a constitutional right to be “‘clearly established’ means more than that it is well-known or easily articulated.” *Cloaninger*, 555 F.3d at 331. Rather,

the right the official is alleged to have violated must have been clearly established in a more particularized, and hence more relevant, sense: The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.

*Id.* (quotations and citations omitted). Qualified immunity shields “bad guesses in gray areas” and permits liability only “for transgressing bright lines.” *Raub v. Campbell*, 785 F.3d 876, 881 (4th Cir. 2015) (quotations omitted). It protects officials from “being blindsided by liability derived

from newly invented rights or new, unforeseen applications of pre-existing rights.” *Pinder v. Johnson*, 54 F.3d 1169, 1173 (4th Cir. 1995). In deciding whether a right is “clearly established,” federal district courts are generally limited to “the decisions of the Supreme Court, this court of appeals, and the highest court of the state in which the case arose.” *Doe ex rel. Johnson v. So. Carolina Dep’t of Social Servs.*, 597 F.3d 163, 176 (4th Cir. 2010).

In this case, the plaintiff cannot establish that Chief Dillon violated a “clearly established” law, when she fails to allege what law he violated.

Chief Dillon should not be exposed to a claim for money damages of this magnitude on such a speculative and frivolous claim.

2. *Chief Dillon is Immune from Suit in His Official Capacity.*

Chief Dillon is also entitled to immunity in his official capacity. The Eleventh Amendment bars federal courts from hearing claims brought by a citizen against a State. U.S. Const. amend. XI. UMBC is an instrumentality of the State of Maryland and partakes “of the State’s Eleventh Amendment immunity.” *Palotai v. Univ. of Md. College Park*, 959 F.Supp. 714, 716 (D. Md. 1997) (“University of Maryland is such an arm of the State partaking of the State’s Eleventh Amendment immunity.”); Md. Ann. Code, Educ. §§ 12-101(b)(6)(i)(2); 12-102(a)(2). Although Congress may waive immunity, “Maryland is not a ‘person’ within the meaning of § 1983.” *Pavlovic v. Univ. of Md. Baltimore County.*, 2013 WL 4775530, at \*4 n.5 (D. Md. Sept. 4, 2013) (citing *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989)). Therefore, any Section 1983 claims against Chief Dillon “in [his] official capacities seeking monetary or retrospective damages are barred by the Eleventh Amendment.” *Middlebrooks v. Univ. of Md.*, 980 F. Supp. 824, 828 (D. Md. 1997). The Court should therefore dismiss Chief Dillon in his official capacity.

**WHEREFORE**, Defendant Dillon requests that this Court dismiss the claim against him with prejudice or, in the alternative, grant summary judgment in his favor.

Respectfully submitted,

BRIAN E. FROSH  
Attorney General of Maryland

*Christopher B. Lord*  
CHRISTOPHER B. LORD, #26117  
ERIK J. DELFOSSE, #18881  
Assistant Attorneys General  
Office of the Attorney General  
200 St. Paul Place, 17<sup>th</sup> Floor  
Baltimore, MD 21202-2021  
Telephone (410) 576-6559  
[clord@oag.state.md.us](mailto:clord@oag.state.md.us)  
[edelfosse@oag.state.md.us](mailto:edelfosse@oag.state.md.us)



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

ANNA BORKOWSKI, et al., \*

Plaintiffs, \*

v. \*

Civil Action No. 1:18-cv2809

BALTIMORE COUNTY, MARYLAND, et \*

al., \*

Defendants.

\* \* \* \* \*

**DEFENDANT DILLON’S MOTION TO DISMISS**  
**OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

Defendant Paul Dillon, through his undersigned counsel, submits this Motion to Dismiss the sole count against him. Count IV (misabeled as Count II), in which Plaintiff Frank asserts a claim under 42 U.S.C. §1983 against Defendant Dillon, should be dismissed for failure to state a claim upon which relief can be granted. Alternatively, Defendant Dillon is entitled to summary judgment and/or qualified immunity. For grounds, Defendant Dillon adopts and incorporates the attached Memorandum of Law.

Respectfully submitted,

BRIAN E. FROSH  
Attorney General of Maryland

*Christopher B. Lord*  
CHRISTOPHER B. LORD, #26117  
ERIK J. DELFOSSE, #18881  
Assistant Attorneys General  
Office of the Attorney General  
200 St. Paul Place, 17<sup>th</sup> Floor  
Baltimore, MD 21202-2021  
Telephone (410) 576-6559  
[clord@oag.state.md.us](mailto:clord@oag.state.md.us)  
[edelfosse@oag.state.md.us](mailto:edelfosse@oag.state.md.us)



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

ANNA BORKOWSKI, et al., \*

Plaintiffs, \*

v. \*

Civil Action No. 1:18-cv2809

BALTIMORE COUNTY, MARYLAND, \*

et al., \*

Defendants.

\* \* \* \* \*

**AFFIDAVIT OF PAUL M. DILLON**

1. I, Paul M. Dillon, am over eighteen years of age, competent to testify, and have personal knowledge of the facts and matters contained herein. I am submitting this affidavit in connection the Motion to Dismiss or in the Alternative for Summary Judgment (“Motion”) I am filing in this lawsuit in response to the allegations against me.

2. I was a sworn police officer working for university police departments between 1987 and 2007 and then again from 2015 to today. In May 1987 I became a Police Officer with the University of Maryland, College Park Police Department (“UMCP PD”) Operations Department. I stayed with UMCP PD through 2010, rising through the ranks and eventually reaching the rank of Major in 2002. I also worked as a security consultant at the Universities of Shady Grove (a University System of Maryland campus hosting academic programs from several USM institutions) between 2007 and 2010. In 2010, I joined the University of Maryland, Baltimore County Police Department (“UMBC PD”) as Deputy Chief of Police. I was promoted to Chief of Police in the UMBC PD in July of

2018. A copy of my resume outlining my experience, education, awards and commendations is attached as **Exhibit 3** to the Memorandum of Law in Support of the Motion (“Memorandum”).

3. During 2015, I was the Deputy Chief of the UMBC PD. As part of my duties, I would regularly meet with students who alleged they were victims of sexual assaults. In that role, I regularly interacted with the Voices Against Violence (“VAV”) Program Coordinator, Rina Rhyne. At that time, Ms. Rhyne was a victims advocate who assisted student reporting parties, including advising them of their options after they reported a suspected sexual assault. Pursuant to UMBC’s Interim Policy on Prohibited Sexual Misconduct and Other Related Misconduct in effect in September 2015 (the “Policy,” a copy of which is attached as **Exhibit 4**), Ms. Rhyne was a “quasi-confidential resource,” which meant that victims’ conversations with her could remain confidential, if the victim chose not to report a sexual assault, unless there was a continuing threat of harm or a legal obligation to reveal such information. *See* Policy, §VI.B, at p. 9.

4. In 2015 (and today), in any case in which a student alleges a sexual assault, the student has the choice whether to file a criminal complaint (i.e. a police report), a complaint with the University’s Title IX office under the University’s Sexual Misconduct Policy, or to not file a formal report at all. *See* Ex. 4, Policy §VII, at p. 11 (giving a victim the choice whether and when to report an alleged violation of the Policy, and providing that “A Reporting Party can choose to pursue both a report under this Policy and a criminal investigation at the same time.”) Section XI of the Policy clarifies that a report to the University under the Policy is independent from any criminal investigation.

5. On October 7, 2015, Ms. Rhyne asked me to meet with her and UMBC student Katelyn Frank. Ms Frank alleged that she had been sexually assaulted by a fellow student. I attended a meeting with Ms. Frank, her mother, and Ms Rhyne. During the meeting, I explained the different reporting options she had: filing a complaint with the University's Title IX officer to initiate a University investigation under the University's sexual misconduct policies; and/or filing a criminal complaint with the UMBC police, which would likely be referred to the Baltimore County Police Department; or doing neither and not filing a complaint. Ms. Frank asked Ms. Rhyne and me about the differences between the criminal/judicial and UMBC's processes. Based on my training, experience, and expertise, answered that the two processes first and foremost have different standards of proof. I explained that to find a conviction in a criminal process, the prosecutor must show that the Respondent is guilty beyond a reasonable doubt, explaining that such standard is a stringently high standard. In contrast, I further explained that under UMBC's process, the reporting party (i.e. Ms. Frank) must show by a preponderance of the evidence that the Respondent was in violation of the UMBC Sexual Misconduct Policy (the "Policy"). I explained that the preponderance of the evidence standard is a lower standard compared to beyond a reasonable doubt. When asked about how long each process may take, I informed Ms. Frank (and her mother) that UMBC's Policy strives to adjudicate all Sexual Misconduct related matters within a sixty (60) day timeframe (but that it could take longer), whereas a criminal process may take longer. I also explained that the evidentiary rules were different, adding that the Court holds subpoena powers whereas UMBC does not. Throughout this discussion, I only answered Ms. Frank's and her mother's questions,

informed her of the different processes and reporting options. I never attempted to persuade or dissuade Ms. Frank from choosing one process over the other (or filing complaints in both venues), did not discuss possible outcomes, and did not guarantee a certain outcome. The meeting lasted for around twenty (20) minutes. At the conclusion of the meeting, Ms. Frank informed me she wanted to think about her options, but appeared to be more inclined to file a complaint with UMBC's Title IX office and not file a police report.

6. I am aware that Ms. Frank now alleges that I told her that the “‘administrative method’ was ‘faster and easier,’ ‘more victim friendly,’ and was ‘easier to prove.’” (Complaint ¶137). At no time, did I explicitly state that the UMBC Title IX proceeding would be easier or that any outcome was guaranteed. Ms. Frank and Ms. Frank's mother, however, may have drawn these conclusions based on my explanations about the different processes, the anticipated length of the different proceedings, and the different applicable standards of proof. I did not encourage or discourage Ms. Frank to pursue either process over the other. At all times, as stated in the Policy, it was Ms. Frank's choice whether and how she wanted to formally report the assault.

7. In the evening of October 7, 2015, Ms. Frank and I exchanged emails. She sent me a statement describing the sexual assault and providing me with information about her vehicle so that we could make alternative parking accommodations for her. In that email exchange, at 8:25 pm, I asked her to confirm in writing her “wishes for no police report and your wishes for the Univ. Investigation.” Ms. Frank responded at 8:33 pm that “I forgot to include in my original statement that I would like to go through with a

university investigation, not a police investigation.” A true and accurate copy of this email exchange is attached to the Memorandum as **Exhibit 5**.

8. If Ms. Frank decided to file a criminal report, UMBC PD would refer the matter to Baltimore County Police Department (“BCPD”), if the allegations were of a 1<sup>st</sup> or 2<sup>nd</sup> degree rape pursuant to the terms of the Memorandum of Understanding (“MOU”) between BCPD and UMBC PD, and BCPD would handle the criminal investigation.

9. I am aware that Ms. Frank now alleges that Ms. Rhyne stated that she was concerned that by not causing a police report to be filed about the alleged sexual assault, I was violating the terms of the MOU. (Complaint ¶¶138, 142-43). That claim is false, as the MOU did not require UMBC PD to file a report with BCPD when the victim chose not to file a police report. It was Ms. Frank’s decision, and Ms. Frank’s decision alone, to decide if she wanted to make a police report to BCPD and thus initiate a criminal investigation.

10. Ms. Frank also alleges that I stated that the incident was not sufficiently serious to report to BCPD. (Complaint ¶144). This allegation is false. In fact, at 4:03 pm, immediately after my meeting with Ms. Frank, her mother, and Ms. Rhyne, I emailed Michal Peterson, who at that time was a Lieutenant in charge of the Sexual Crimes Division with BCPD. A copy of the email is attached as **Exhibit 6**. Officer Peterson was a liaison for us at BCPD. I advised Officer Peterson that I “just had a meeting with a rape victim along with her mother... The mother and daughter just really wanted to know about options they had about filing a police report and how a Title IX process would work as well. I answered their questions and she is going to think about it.... I asked no questions about

the incident just [sic] answered questions about the process. If she decides to come forward to us-then you I [sic] would like to make arrangements for her to meet with your folks directly, will that be OK? I think it is unlikely she will file a police report she [sic] seemed more inclined to go the Title IX route.” *Id.* Officer Peterson responded on October 8, 2015, in pertinent part as follows: “I am glad you had the opportunity to inform the victim of her options. We will be glad to assist in any way, should the victim wish to file a police report....” *Id.*

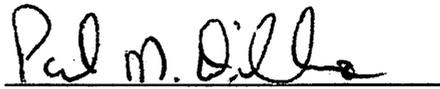
11. I am aware that Ms. Frank alleges that her report of a sexual assault does not appear in UMBC’s Clery reporting statistics. (Complaint ¶ 142). This allegation is false. Attached as **Exhibit 7** to the Memorandum is a copy of UMBC’s Clery crime statistics report for 2015.<sup>1</sup> For 2015, UMBC reported ten “rape” cases in the Clery Report. *See id.* Also attached to Exhibit 7 is the detailed report of “rape” and other sexual-related crimes reported in the Clery Report. The alleged sexual assault of Ms. Frank is listed as item no. 5 in the category of “Forcible Rape Cases,” and was included in the Clery Report’s listing of ten reported rapes.

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<sup>1</sup> Federal law requires institutions of higher learning to prepare, publish, and distribute a report concerning campus crime statistics and security policies on an annual basis through appropriate publications, mailings or computer networks to all current students and employees, and all prospective students and prospective employees upon request. This is known as a “Clery Report.”

I solemnly declare under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Date: October 5, 2018

A handwritten signature in cursive script that reads "Paul M. Dillon". The signature is written in black ink and is positioned above a horizontal line.

Paul M. Dillon



# **EXHIBIT 2**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

ANNA BORKOWSKI, et al.,

\*

Plaintiff,

\*

v.

\*

BALTIMORE COUNTY, MARYLAND,  
et al.,

Civil Action No. 1:18-cv2809

\*

Defendant.

\*

\* \* \* \* \*

**AFFIDAVIT OF RINA RHYNE**

1. I, Rina Rhyne, am over eighteen years of age, competent to testify, and have personal knowledge of the facts and matters contained herein.

2. From August 25, 2014 until July 15 2016, I was the Program Coordinator for the Voices Against Violence (“VAV”) program for the University of Maryland, Baltimore County (“UMBC”). In my position as Program Coordinator, one of my primary duties was to provide support to sexual assault victims. I was not part of the Title IX office and I did not investigate allegations of sexual assault. Instead, I provided the initial response efforts when a student disclosed sexual assault to non-confidential staff or faculty members or to my office directly. In this role, I provided an explanation of options and resources, helped victim’s access on-campus and off-campus services, and generally served as support for them.

3. Ms. Frank came to meet with me, accompanied by her friends, in mid-late September 2015, in my capacity as Program Coordinator. Ms. Frank reported that she was the victim of a sexual assault committed by another UMBC student. I accompanied Ms.

Frank to GBMC for a SAFE exam; one of her friends, another UMBC student, was in attendance. The majority of my time was spent in the waiting area until the exam was done and I ensured Ms. Frank and her friend were on their way back to UMBC safely. UMBC did not conduct the SAFE exam and had no role in determining what would be done with the results of the exam.

4. In my meetings with Ms. Frank, I explained to her what her options were regarding reporting the alleged assault. These options included: filing a complaint with the University's Title IX officer to initiate a University investigation under the University's sexual misconduct policies; and/or filing a criminal complaint with the UMBC police, which would likely be referred to the Baltimore County Police Department; or doing neither and not filing a complaint.

5. Explaining these options, as well as providing support resources, was part of my regular practice in my capacity as Program Coordinator at UMBC and is my regular practice in my current capacity as the Deputy Title IX Coordinator at Goucher College; in other words, I would routinely explain to complainants in situations similar to Ms. Frank's about these options. In my experience, it is common for students who allege that another student sexually assaulted them to pursue university/college Title IX remedies, or no process at all, and to not file criminal charges.

6. On or about October 7, 2015, I asked Ms. Frank if she would like to speak with a representative of the UMBC police department about her options. Ms. Frank indicated in the affirmative, and I asked then-Deputy Chief of UMBC Police Paul Dillon to attend a meeting with Ms. Frank.

7. I attended a meeting with Deputy Chief Dillon and Ms. Frank on October 7, 2015 (I also believe Ms. Frank's mother was there; it was during this meeting or a subsequent meeting. I talked and met with Ms. Frank's mother multiple times to provide support and answer questions). During that meeting, Deputy Chief Dillon explained to Ms. Frank what her reporting options were if she wanted to file a complaint – i.e. to file a complaint with UMBC's Title IX office, which would initiate an investigation under the University's sexual misconduct policies; to file criminal charges with the UMBC Police Department, which would likely result in a referral to the Baltimore County Police Department ("BCPD"); or both.

8. In our meeting, Ms. Frank asked questions regarding her different options regarding filing charges. At no time did Deputy Chief Dillon attempt to influence Ms. Frank in her choice as to whether to file University Title IX charges, criminal charges, or both. Per his usual practice, Chief Dillon provided details such as timeline of the different types of investigations, evidentiary standards, and general details of the processes, but he did not discourage her from filing criminal charges. While I was at UMBC I met with several sexual assault victims with Deputy Chief Dillon, and at no time did I ever hear him try to persuade or dissuade a complainant from any course of action. I recall Deputy Chief Dillon assisting multiple students that had come through the VAV program with criminal complaints. When a student would disclose a sexual assault to Chief Dillon, he would often call his contacts at BCPD to prepare them for a pending criminal complaint. Furthermore, Chief Dillon willingly arranged for his officers to take students to/from GBMC for SAFEs if they needed transportation, where they could also get connected to BCPD.

9. At the conclusion of the meeting, Ms. Frank did not indicate that she wanted to file criminal charges. Either that same day or after this meeting, Ms. Frank provided me with the name of her alleged assailant. As I routinely did, I contacted Deputy Chief Dillon and he arranged for the student to be removed from the residence hall on an interim basis.

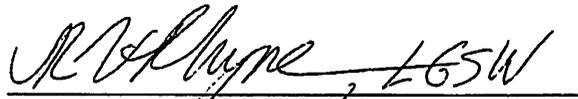
10. I later learned that Ms. Frank had decided to file a complaint for sexual assault against the respondent student with the UMBC's Title IX office. I continued to interact with Ms. Frank and her mother throughout the University's investigation, and at no time did she ever complain to me that she had wanted to pursue criminal charges but that Deputy Chief Dillon had discouraged her or otherwise obstructed her from doing so in any way.

11. It was my understanding that the UMBC police department would not pursue or initiate a criminal investigation in cases of alleged sexual assault if the victim does not want to file criminal charges. In my experience, it was and is common for students in similar situations as Ms. Frank's (i.e. alleging that they were sexually assaulted by other students) to only pursue university/college Title IX charges and not file criminal charges, and in such cases the university, college and county police departments will not pursue criminal charges or initiate a criminal investigation.

12. In connection with our interactions with Ms. Frank, I had no concerns that Deputy Chief Dillon was violating UMBC's memorandum of understanding ("MOU") with BCPD by not reporting the alleged assault or initiating a criminal investigation, and I have never said that I had any such concerns. Not only was not filing a police report not uncommon, I only know minimal details about what the UMBC/BCPD MOU requires and

I had no reason to believe that UMBC was violating it by not reporting Ms. Frank's allegations.

I solemnly declare under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Handwritten signature of Rina Rhyme in cursive script, written over a horizontal line.

Rina Rhyme

Date: 10/5/18

# **EXHIBIT 3**

PAUL M. DILLON

Job Target:

**Pertinent Work Experience**

**Deputy Chief of Police**

9/10-Present

University of Maryland Baltimore County, Baltimore MD, 21250

Responsible for the direct supervision of 24 sworn officers including two Lieutenants and three Sergeants. Supervise the Operations and Administrative functions within the agency to include patrol, investigations, communications, records, logistics, emergency preparedness, and the student marshal program. Responsible for planning and conducting emergency exercises. Developed and manage emergency preparedness training for entire campus. Have trained over 500 staff in Emergency Preparedness response. Responsible for Clery and Title IX compliance for agency. Manage and directed Internal Affairs investigations and Professional Standard Reviews for agency. Develop agency goals and implementation of patrol strategies. Manage agency budget to include overtime expenses, training costs, equipment procurement, and software purchases. Serve as Acting Chief of Police. Manage Threat Assessment Program for the agency and represent Law Enforcement on University Behavioral Assessment Team. (BRACT). Member of following committee's/teams on Campus; Event Service Providers, Parking Committee, Sexual Assault Consultation Team, Behavioral Team, Critical Incident Team, Student Event Team, and LGBTQ Consultation Team.

**Public Spokesperson/Internal Affairs Coordinator**

3/07-09/10

University of Maryland Police Department, College Park, MD

**Public Information Officer Duties:**

Responsible for disseminating information to upper level University Administrators and providing timely notifications for critical events. Review agency reports and filter for critical information to be released to administrators, students, parents, and the media. Communicate regularly with media outlets, providing information as appropriate. Be onsite for critical events requiring the presence of public information officer. Handle request for interviews from members of the community. Ensure compliance with the Jeanne Clery Act by preparing and disseminating timely warnings to the community for specific crimes. Coordinate information sharing with the Prince George's County Police.

**Internal Affairs Coordinator Duties:**

Develop and maintain expert status in the provisions of the Law Enforcement Officers Bill of Rights (LEOBOR). Track and log all complaints against agency personnel. Provide guidance, assistance, and supervision to agency personnel who are investigating alleged employee misconduct. Review, analyze, and critique all internal investigations and professional standard reviews to ensure completeness, factual

**PAUL M. DILLON**

integrity, and fact-supported conclusions. Complete annual internal affairs report. Manage the routine review process for use of force and accidents involving departmental vehicles.

**Security Consultant**

**8/07-05/10**

**Universities at Shady Grove, Rockville, MD**

Responsible for developing a comprehensive security strategy and program for the campus. Analyze security needs through various information gathering techniques and develop a strategy for a successful security program. Ensure campus compliance with Jeanne Clery Act. Develop Emergency Preparedness plans compliant with University System audit guidelines. Programs/initiatives developed to date: Automated External Defibrillator (AED) program, special event protocols, active shooter exercise, installation of surveillance system, and development of emergency management protocols.

**Major, Commander Police Services Bureau**

**03/02-3/07**

**University of Maryland Police Department, College Park, MD**

Responsible for the direct supervision of over 70 sworn officers including three Captains, four Lieutenants, and seven Sergeants. Supervised the Patrol, Criminal Investigations, and Crime Prevention Units within the department. Directed the Special Events Unit providing service for over 400 events throughout the year including major sporting events. Managed and developed incident action plans using the Incident Command and National Incident Management system for large scale mobilizations in response to civil disturbances, terrorist threats and natural disasters. Managed and directed Internal Affairs investigations and Professional Standard Reviews within Bureau. Developed Bureau goals and implementation of patrol strategies. Managed Bureau budget to include overtime expenses, training costs, equipment procurement, and software purchases. Responsible for ensuring bureau compliance with accreditation (CALEA) standards. Served as Acting Chief of Police. Member of Office of Human Relations Program Advisory Board. Member of the following; Search Committee for Director and Associate Director of Resident Life, President's Commission on LGBT issues, Student Affairs Senate Committee, Graduate Student Task Force, and member of University Threat Assessment Team.

**Captain, Patrol Division, Patrol Commander**

**11/00-03/02**

**University of Maryland Police Department, College Park, MD**

Responsible for the direct supervision of two Captains, three Lieutenants, and six patrol squads who provided police services to the community. Other responsibilities/duties included: Incident Commander for several large-scale mobilizations and campus events; Public Information Officer for high-profile incidents and events; managing overtime allocations; determining patrol staffing levels; Chair of the Merit Pay committee; chaired two-day hearing board for Salisbury University Police; member of Student Senate Policy Committee; member of President's Commission on Lesbian, Gay, Bisexual, and Transsexual issues; member of search committee for Campus Compliance Officer; member of Alcohol Coalition.

**Lieutenant, Patrol Division, Assistant Patrol Commander**

**01/99-11/00**

**University of Maryland Police Department, College Park, MD**

Responsible for the direct supervision of two patrol squads providing police services to the community, which included managing and approving leave; and making decisions on daily staffing requirements.

## PAUL M. DILLON

Additional duties included: serving as Community liaison to various campus groups; managing critical and high-profile investigations and incidents; Co-chair of Awards Committee; co-facilitator for off-site departmental retreat; preparing and presenting cases for administrative hearings; reviewing and approving time entries for police services bureau; conducting internal investigations and fielding citizen complaints.

### **Sergeant, Patrol Division, Commander Squad 1**

**11/91-01/99**

Responsible for the direct supervision of two Corporals and twelve police officer providing services to the community such as; report taking, field investigations, traffic enforcement, crime prevention presentations and efforts, targeted enforcement, and community policing. Responsible for evaluating, coaching, and disciplining all officers on the squad.

### **Sergeant, Student Auxiliary Division, Assistant Commander**

**04/90-11/91**

Responsible for the direct supervision of two police officers and five student supervisors. Assistant Commander for the Division that employed approximately 100 student providing various security services for a variety of clients on campus.

### **Police Officer, Operations Division**

**05/87-04/90**

Responsible for responding to calls for service on Campus as a member of a patrol squad. Handled routine report taking and preliminary investigations. Other duties included crime prevention programs, traffic enforcement, staffing major special events, and other duties as assigned.

## **Abilities**

- Communicate information clearly and accurately using strong written, verbal and interpersonal skills.
- Develop comprehensive Incident Action Plans using Incident Command System principles for large-scale mobilizations and events.
- Develop Emergency Operations Plans for the University covering a wide array of catastrophic events.
- Incident Commander for large groups of officers from multiples agencies in hostile crowd control situations.
- Educate both law enforcement officers as well as citizen groups.
- Build group consensus and cohesion.
- Ensure compliance with the Jeanne Clery Act.
- Represent the agency in administrative hearings.
- Coordinate all internal investigations and professional standards reviews.
- Communicate effectively with the media in high stress situations.
- Represent management and negotiate collective bargaining agreements.
- Develop diversity initiatives for agency.

## **Crisis Management and Response**

- Was instrumental in developing strategies to manage large scale civil disturbances related to sporting events on campus. Developed Incident Action Plans that significantly reduced the negative impact of these disturbances to include; minimizing destruction of property, injuries to participants and officers, and held participants accountable for their actions through criminal arrests and referrals to the Office of Student Conduct. These strategies included collaboration with the Maryland State Police, Prince George's County Police, and the Maryland National Park and Planning Police.

## PAUL M. DILLON

- Assisted in developing a training program and response protocol aimed at preparing our agency for terrorist attacks. This included developing response and protocols to mirror the national threat level.
- Developed agency response to the sniper crisis of 2001. A comprehensive plan was developed that included; visual surveillance of entrances to campus, response protocols for suspicious persons/vehicles, and dissemination of information to the community.
- Led the agency's response to the tornado in 2001. This included developing strategies for search and rescue and short and long term recovery plans.
- Created both on-line and live Emergency Preparedness training for the entire UMBC campus.

### Programs/Initiatives

- Proposed, developed, and delivered a three day departmental program on customer service for all agency employees. The program resulted in a reduction of service related complaints in subsequent years.
- Was part of a team of sexual harassment trainers for the University that piloted a comprehensive training program for several hundred employees in sexual harassment prevention.
- Worked with student groups to develop and organize an annual charity basketball game that raised over \$20,000 for Special Olympics.
- Developed and implemented a new program for tracking complaints involving agency employees. This program streamlined the Internal Affairs process resulting in; timelier investigations, citizen and employee involvement during process, positive and negative discipline, and a system for identifying employees in crisis.
- Helped develop the Threat Assessment Management Team for Public Safety charged with analyzing risks of workplace and domestic violence.
- Developed and coordinated an "Active Shooter" Exercise with the Montgomery County Police at Shady Grove Campus along with exercise in 2011 with Baltimore County Police at UMBC.
- Collaborated with Resident Life on several projects to include; community meet and greet events, RA training, crime prevention programs, and policy development. Represented the agency at numerous Resident Life Senior Staff meeting to advise group on a variety of issues relating to safety and security. Was integral in helping open lines of communication between the police and resident life staff.

### Select Awards and Commendations

- 2016 Board of Regents Staff Award
- 2009 Special Unit Commendation, Reduction in Departmental Expenditures
- 2008 Lesbian and Gay Staff and Faculty Award, Defender of Diversity
- 2006 Certificate of Commendation
- 2004 Chiefs Award, Prince George's County Police
- 2001 Certificate of Commendation, Sexual Assault Investigation  
Certificate of Achievement, Academy of Languages
- 2000 Commendation of Excellence, Meritorious Service Medal  
Certificate of Appreciation, Coordination of Investigation of Hate Bias Incident
- 1998 Key Person Award, Operations Division,  
Certificates of Commendation, Death Investigation, Fire Rescue, Harassment Investigation
- 1997 Directors Award for Excellence  
Key Person Award, Operations Division  
Commendation for Excellence, Police Academy Instructor
- 1996 Supervisor of the Year
- 1995 Commendation for Excellence, Charity Basketball Events
- 1994 Commendation for Merit, Life Saving Efforts/CPR
- 1993 Supervisor of the Year  
Key Person Award, Operations Bureau
- 1992 Meritorious Service Medal, New Budgeting System Development

## PAUL M. DILLON

- 1991 Commendation for Valor, Citation for Bravery Medal  
1990 Directors Award for Excellence, Governor's Crime Prevention Award  
Commendation for Merit Medal, Life Saving Efforts

### Professional Presentations/Associations/Committees

- Presentation on Civil Disturbances at IACLEA conference 2003.
- Presentation on Hate Crimes at Institute of Implementation and Institutionalization 2003, 2004.
- Presentation on Sports related civil disturbances at ACLEA conference 2004.
- Presentation on Hate Crimes-Student Affairs Conference, University of Maryland College Park-2005
- Presentation on Hate Crimes-National Conference on Race and Ethnicity-NYC-2005
- Presentation on Threat Assessment Management (TAM)-Student Affairs Conference-2006
- Member of Maryland Chiefs of Police Association.
- Member of Office of Human Relations Advisory Board-2003, 2004.
- Member of Olympic bid Committee for 2010 Gay Olympics-2003.
- Member of Gender, Diversity and Student-Athlete Well-Being Sub-committee- 2009.
- Member of Title IX Campus Community Response Team (CCRT)-2017.
- Completed the OVW Training and Technical Assistance Institute-2017.
- Member of LGBTQ Climate Group-2010 to present.
- Advisor on Relationship Advocate team-2010-2015.
- Member of Search and Selection Committees for the University to include; Resident Life Director, Associate Director for Resident Life, and the Campus Compliance Officer, Associate Director for Student Affairs, and numerous others.
- Member of Association of Threat Assessment Professionals.

### Education

- 09/88 – 09/94 Master of Science, Applied Management  
University of Maryland, University College
- 08/83 – 06/87 Bachelor of Science, Criminology  
University of Maryland, College Park

### Continuing Education and Certifications

- 05/08 Jeanne Clery Act Compliance Training
- 08/03 Command level certification/Civil Disturbances
- 04/99 Administrator School  
Maryland Police and Correctional Training Commission
- 03/93 Sexual Harassment Instructor Class
- 06/91 Certified Instructor  
Maryland Police and Correctional Training Commission

# **EXHIBIT 4**

**The University of Maryland Baltimore County  
Interim Policy on Prohibited  
Sexual Misconduct and Other Related Misconduct**

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**Including Sexual and Gender Based Harassment, Sexual Violence,  
Relationship Violence, Domestic Violence, Sexual Exploitation,  
Sexual Intimidation, Sex and Gender Based Stalking, and Retaliation**

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<b>Policy Effective Date:</b>	<b>December 31, 2014</b>
<b>Policy Amended Effective Date:</b>	<b>August 24, 2015</b>
<b>Responsible Offices:</b>	<b>Office of the General Counsel Office of Human Relations</b>
<b>Replacement for:</b>	<b>UMBC VI-1.20.01 Policy on Sexual Harassment</b>

## INTRODUCTION

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The University of Maryland, Baltimore County (“University” or “UMBC”) is a dynamic public research university integrating teaching, research and service. UMBC understands that as an educational institution, it plays an essential role in preparing the future generations of leaders. By virtue of this special role, the University is fully committed to providing an environment where all UMBC community members are treated with respect and dignity and UMBC community member differences are honored. To achieve this environment, the University recognizes its responsibility to maintain an environment which is free from Sexual Misconduct and other Related Misconduct. Such acts violate the essential dignity of our community members and are contrary to our institutional values.

To that end, this Policy sets forth how the University defines Sexual Misconduct and other Related Misconduct, describes available resources and reporting options, explains whether and to what extent interactions with various resources are confidential, identifies interim measures that may be available in particular cases, and describes the University’s education and prevention programs.

The accompanying Procedures set forth how the University will address reports of Sexual Misconduct and other Related Misconduct, as well as identify the rights of all parties involved in the process.

## University of Maryland Baltimore County Notice of Non-Discrimination

The University of Maryland, Baltimore County (“University” or “UMBC”) values safety, cultural and ethnic diversity, social responsibility, lifelong learning, equity, and civic engagement. Consistent with these principles, the University does not discriminate in offering equal access to its educational programs and activities or with respect to employment terms and conditions on the basis of an UMBC community member’s race, creed, color, religion, sex, gender, pregnancy, ancestry, age, gender identity or expression, national origin, veterans status, marital status, sexual orientation, physical or mental disability, or genetic information.

The University’s protection of these statuses, is in accordance with applicable federal, state, and local laws and regulations, as well as University System of Maryland (“USM”) policies. Relevant laws and policies include, but are not limited to: Title IX of the Education Amendments of 1972 as amended (“Title IX”), Title VI of the Civil Rights Act of 1964 as amended (“Title VI”), Title VII of the Civil Rights Act of 1964 as amended (“Title VII”), Jeanne Clery Disclosure of Campus Security and Crime Statistics Act, 20 U.S.C. § 1092(f) (“Clery Act”), Section 304 of the 2013 Amendments to the Violence Against Women Act (“VAWA”), Equal Pay Act of 1963, Lilly Ledbetter Fair Pay Act of 2009, Executive Order 11246 as amended, Executive Order 13672, Section 504 of the Rehabilitation Act of 1973 (“Rehab Act”), Americans with Disabilities Act of 1990 as amended (“ADA”), Age Discrimination in Employment Act of 1967 as amended (“ADEA”), Uniformed Services Employment and Reemployment Rights Act (“USERRA”), Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (“VEVRAA”), Veterans Employment Opportunities Act of 1998 as amended (“VEO”), Genetic Nondiscrimination Act of 2008 (“GINA”), Pregnancy Discrimination Act (“PDA”), Immigration Reform and Control Act of 1986, Small Business Act of 1958 as amended, Section 15(g)(1), and USM Policies VI-1.00, VI-1.05, and VI-1.60.

Inquiries concerning the application of Title IX may be referred to:

Stephanie Lazarus, Title IX Coordinator  
University of Maryland Baltimore County  
Office of Human Relations  
1000 Hilltop Circle  
Administration Building, Room 902  
Baltimore, MD 21250  
(410) 455-5745  
[slazar@umbc.edu](mailto:slazar@umbc.edu)

U.S. Department of Education  
Office for Civil Rights  
Lyndon Baines Dept. of Education Bldg.  
400 Maryland Ave., SW  
Washington, DC 20202  
Telephone: 202-453-6100

U.S. Department of Education  
Office for Civil Rights  
The Wanamaker Bldg., Region III Office  
100 Penn Square, East-Suite 505  
Philadelphia, PA 19107  
Telephone: 215-656-6010

TDD: 800-877-8339  
[OCR@ed.gov](mailto:OCR@ed.gov)  
[www2.ed.gov](http://www2.ed.gov)

**Inquiries concerning the University's Notice of Non-Discrimination may be referred to:**

**Bobbie L. Hoye**  
**Assistant General Counsel/Human Relations Officer**  
**University of Maryland Baltimore County**  
**Office of Human Relations**  
**1000 Hilltop Circle**  
**Administration Building, 9<sup>th</sup> Floor**  
**Baltimore, MD 21250**  
**(410) 455-1606**  
**[bhoye@umbc.edu](mailto:bhoye@umbc.edu)**

**David R. Gleason**  
**General Counsel**  
**University of Maryland Baltimore County**  
**Office of the General Counsel**  
**1000 Hilltop Circle**  
**Administration Building, 10<sup>th</sup> Floor**  
**Baltimore, MD 21250**  
**(410) 455-2870**  
**[gleason@umbc.edu](mailto:gleason@umbc.edu)**

## UMBC Resource Page for Sexual Misconduct and Other Related Misconduct

**How to Get Help in the Event of an Emergency:** Because Sexual Misconduct may constitute both a violation of this Policy and criminal activity, the University encourages all students, faculty, staff, and community members affected by Sexual Misconduct to seek Immediate Assistance from the University Police or a local law enforcement agency. University police may also be contacted directly, by using the Blue Light emergency phones, located throughout the UMBC campus along sidewalks and buildings. Additionally, individuals can call 410.455.3133 if they are in need of a University escort on campus.

### Emergency Response:

Emergency Law Enforcement:	Call 911
University Police (assistance provided 24 hours a day, 7 days a week):	410.455.5555
Baltimore County Police Department:	410.887.2214

### On-Campus Support and Resources for Students:

#### Confidential Support and Resources:

University Health Services:	410.455.2542
Counseling Center:	410.455.2472

#### Quasi Confidential Support and Resources:

Voices Against Violence:	410.455.3748
Women's Center:	410.455.2714

### On-Campus Support and Resources for Faculty and Staff:

Employee Assistance Program (INOVA):	1.800.346.0110
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### Additional Resources\*:

#### Greater Baltimore Medical Center (GBMC)

6701 North Charles Street

Baltimore (Towson), MD 21204

SAFE Program:	443-849-3323
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Emergency Room:	443-849-2226
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#### Mercy Hospital

301 Saint Paul Street

Baltimore (City), MD 21202

SAFE Program:	410-332-9499
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Emergency Room:	410.332.9477
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#### Howard County General Hospital

5755 Cedar Lane

Columbia, MD 21044

Emergency Room and SAFE Program:	410-740-7778
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\*If you are interested in a free Sexual Assault Forensic Exam (SAFE) exam, it should happen within 120 hours/5 days of the assault and, if possible, before showering, using the bathroom, and changing or washing clothes. The University Health Services, Voices Against Violence, or University Police can arrange for free transportation for a SAFE exam.

## **Helplines**

Hopeworks (Columbia, MD)	410-997-0304 or 1-800-752-0191 (24-hr hotline)
TurnAround, Inc. (Baltimore City and Towson, MD)	443-279-0379 (24-hr hotline)
Baltimore County Domestic Violence Referral Program	410-828-6390 (24-hr hotline)
Rape, Abuse, Incest National Network (RAINN) Sexual Assault	1-800-656-4673 (24-hr hotline)
	Online chat hotline: <a href="https://ohl.rainn.org/online/">https://ohl.rainn.org/online/</a>
National Domestic Violence Hotline	1-800-799-7233 (24-hr hotline)
	Online chat hotline: <a href="http://www.thehotline.org">http://www.thehotline.org</a>
Family & Children's Services (Catonsville, MD)	410-281-1334

## **Website Resources (Campus, Local, and National)**

Voices Against Violence at UMBC <http://vav.umbc.edu/>

Relationship Violence Awareness & Prevention (RVAP) at UMBC <http://rvap.umbc.edu/>

Turnaround, Inc, a local sexual assault and domestic violence center [www.turnaroundinc.org](http://www.turnaroundinc.org)

House of Ruth, local domestic violence provider [www.houseofruth.org](http://www.houseofruth.org)

Maryland Network Against Domestic Violence [www.ndvh.org](http://www.ndvh.org)

Maryland Coalition Against Sexual Assault [www.mcasa.org](http://www.mcasa.org)

National Sexual Assault Hotline [www.rainn.org](http://www.rainn.org)

National Sexual Violence Resource Center [www.nsvrc.org](http://www.nsvrc.org)

Gay and Lesbian National Hotline [www.glnh.org](http://www.glnh.org)

Assistance for Stalking Victims <http://stalkingvictims.com/>

The contact information for the resources listed was confirmed at the time the Policy was amended, effective August 26, 2015. The contact information will be periodically updated, however, up to date contact information and additional resources can always be found at the University's website <http://umbc.edu/>.

The University of Maryland Baltimore County  
Interim Policy on Prohibited  
Sexual Misconduct and Other Related Misconduct

---

**Including Sexual and Gender Based Harassment, Sexual Violence, Relationship Violence,  
Domestic Violence, Sexual Exploitation, Sexual Intimidation,  
Sex and Gender Based Stalking, and Retaliation**

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## I. Policy Statement

The University is dedicated to fostering an inclusive and welcoming environment for all members of the campus community and recognizes its responsibility to maintain a campus environment which is free from Sexual Misconduct, and other Related Misconduct. This Policy embodies the University's commitment to increasing awareness of such prohibited conduct and actively promoting prevention and educational programs for community members in an effort to eliminate occurrences, prevent reoccurrences, and address and remedy the discriminatory effects of the Sexual Misconduct.

This Policy expressly prohibits all forms of **Discrimination** and **Harassment** on the basis of an UMBC community member's sex (including pregnancy), gender, sexual orientation, or gender identity or expression (collectively referred to as "**Protected Status**") in its educational programs and activities or with respect to terms and conditions of employment. It expressly, therefore, also prohibits **Sexual Misconduct**, which is a form of sex discrimination, including **Sexual and Gender Based Harassment, Sexual Violence, Relationship Violence, Domestic Violence, Sexual Exploitation, and Sexual Intimidation**. This Policy further expressly prohibits **Sex and Gender Based Stalking**. Finally, this Policy expressly prohibits **Retaliation** against an UMBC community member for their good faith participation in reporting, assisting others in reporting, or opposing a violation of this Policy. University faculty, staff, and students who violate this Policy may face disciplinary action up to termination or dismissal.

**Discrimination, Harassment, Sexual Misconduct (including Sexual and Gender Based Harassment, Sexual Violence, Relationship Violence, Domestic Violence, Sexual Exploitation, Sexual Intimidation, and Sex and Gender Based Stalking), and Retaliation (collectively hereafter referred to as "Prohibited Conduct")** are defined below in Section IV of this Policy.

The University's commitment is consistent with the values and standards of an intellectual community of distinction, as well as the law and USM policies.

The University is also committed to the principles of free inquiry and expression. Nothing in this Policy is intended to abridge teaching methods, freedom of expression, or the University's educational mission.

## II. Scope and Applicability

### A. UMBC Community Members Covered By This Policy

This Policy applies to the conduct of, and protects all students (including but not limited to, undergraduate, graduate, professional and doctoral, post-doctoral, and student employees), faculty, and staff.

The Policy also applies to the conduct of and protects all interns, contractors, volunteers, guests, visitors, and other third parties under circumstances within the University's control.

The individuals covered by this policy, shall be collectively hereafter referred to as "member of the UMBC community" or "UMBC community member."

## B. Jurisdiction

This Policy applies to Prohibited Conduct in connection with any UMBC office, or regional center education program or activity. Including Prohibited Conduct: (1) in any UMBC facility or on any UMBC property; (2) in connection with any UMBC sponsored, recognized, or approved program, visit, or activity, regardless of location; (3) that impedes equal access to any UMBC educational program or activity or adversely impacts the employment of a member of the UMBC community; or (4) that otherwise threatens the health or safety of a member of the UMBC community. Nothing in this policy is intended to supersede or conflict with any federal compliance obligation.

## C. Reports Involving Minors

Any member of the UMBC community, who suspects that a child is being harmed, or observe a child being harmed, should contact law enforcement by dialing 911 or 410-455-5555.

In addition, pursuant to Family Law Article of the Maryland Annotated Code, Sections 5-701 through 5-708, any member of the UMBC community, who has a reason to believe that a child has been abused or neglected, has a mandatory obligation to report that suspicion to the local department of social services or local police department and to the University's Designee for reporting child abuse.

The Baltimore County Department of Social Services:	410.853.3000
University Police Department:	410.455.5555
Baltimore County Police Department:	410.887.2214
UMBC Title IX Coordinator	410.455.5745

Detailed information regarding reporting suspected child abuse and neglect may be found at [www.usmh.usmd.edu/regents/bylaws/SectionVI/VI150.pdf](http://www.usmh.usmd.edu/regents/bylaws/SectionVI/VI150.pdf).

## III. Preservation of Evidence

Seeking assistance promptly may be important to ensure physical safety, obtain medical care, or other support including assistance with peace/protective orders. It may also be necessary to preserve relevant evidence, particularly forensic evidence, which can assist the University and/or law enforcement in responding effectively. Because the standards for finding a violation of criminal law are different from the standards for finding a violation of this Policy, criminal investigations or reports are not determinative of whether Sexual Misconduct, for purposes of this Policy, has occurred. In other words, conduct may constitute Sexual Misconduct under this Policy even if it is not a crime or law enforcement agencies lack sufficient evidence of a crime and therefore decline to prosecute.

## **IV. Prohibited Conduct**

This Policy prohibits all forms of Discrimination and Harassment, due to a UMBC community member's Protected Status. This Policy expressly prohibits Sexual Misconduct, which is a form of sex discrimination, which includes Sexual and Gender Based Harassment, Sexual Violence, Relationship Violence, Domestic Violence, Sexual Exploitation, Sexual Intimidation, and Sex and Gender Based Stalking. Finally, this Policy expressly prohibits Retaliation against any UMBC community member for their good faith participation in reporting, assisting others in reporting, or opposing a violation of this Policy.

The use of alcohol, drugs, and/or legally prescribed medication, does not justify or excuse behavior that constitutes Prohibited Conduct under this Policy. Further, the use of alcohol, drugs, and/or legally prescribed medication never makes an individual at fault for being subjected to behavior that constitutes Prohibited Conduct under this Policy.

### **A. Discrimination**

This Policy prohibits Discrimination. For the purposes of this Policy, Discrimination is defined as any unlawful preference or prejudice to a UMBC community member as compared to others, that is based on the UMBC community member's Protected Status, and that is sufficiently serious to unreasonably interfere with or limit a UMBC community member's: access to employment or conditions and benefits of employment; ability to participate in, access, or benefit from educational programs, services, or activities; or ability to participate in, access, or benefit from the University's extracurricular programs.

### **B. Sexual Misconduct**

This Policy prohibits Sexual Misconduct. For purposes of this Policy, Sexual Misconduct is defined as a form of sex discrimination, which includes Sexual and Gender Harassment, Sexual Violence, Relationship Violence, Domestic Violence, Sexual Exploitation, Sexual Intimidation, and Sex and Gender Based Stalking, as defined below.

#### **1. Sexual and Gender Based Harassment**

This Policy Prohibits Sexual and Gender Based Harassment. For purposes of this Policy, Sexual and Gender Based Harassment includes Quid Pro Quo Harassment and Hostile Environment Harassment.

##### *a. Quid Pro Quo Harassment*

This Policy prohibits Quid Pro Quo Harassment. For purposes of this Policy, Quid Pro Quo Harassment is defined as unwelcome conduct based on the UMBC community member's Protected Status, where submission to, or rejection of, such unwelcome conduct is used, explicitly or implicitly, as the basis for any decision affecting a UMBC community member's education, employment, or participation in a University sponsored, recognized, or approved program, visit, or activity.

***b. Hostile Environment Sexual and Gender Based Harassment***

This Policy prohibits Hostile Environment Sexual and Gender Based Harassment. For purposes of this Policy, Hostile Environment Sexual and Gender Based Harassment is defined as any unwelcome sexual advance, unwelcome request for sexual favors, unwelcome verbal, physical, electronic or other conduct of a sexual nature, that targets a UMBC community member because of their Protected Status, when: such conduct is sufficiently severe or pervasive that it alters the conditions of education, employment, or participation in a University sponsored, recognized, or approved program, visit, or activity; and creates an environment that a reasonable person in similar circumstances would find intimidating, hostile, humiliating, demeaning or a sexually offensive. An isolated incident, unless sufficiently severe, does not amount to Hostile Environment Sexual and Gender Based Harassment.

Hostile Environment Sexual and Gender Based Harassment is also defined as harassment for exhibiting what is perceived as a stereotypical characteristic for one's sex or gender or for failing to conform to stereotypical notions of masculinity and femininity, regardless of the individual's actual or perceived sex, gender, sexual orientation, or gender identity or expression.

**2. Sexual Violence**

This Policy prohibits Sexual Violence. For purposes of this Policy, Sexual Violence is defined as physical sexual acts perpetrated or attempted without consent. Sexual Violence includes, but is not limited to, rape, sexual assault, sexual battery, and sexual coercion. Sexual Violence, in any form, is a criminal act.

***a. Sexual Assault I***

This Policy prohibits Sexual Assault I. For purposes of this Policy, Sexual Assault I is defined as any act of non-consensual sexual intercourse (vaginal, anal, or oral). For purposes of this Policy, non-consensual sexual intercourse can occur between UMBC community members and between a UMBC community member and a Non-UMBC community member. Sexual intercourse includes vaginal or anal penetration (however slight) by a penis, object, tongue, finger, or any body part; and oral copulation involving mouth to genital or genital to mouth contact.

***b. Sexual Assault II***

This Policy prohibits Sexual Assault II. For purposes of this Policy, Sexual Assault II is defined as any act of non-consensual sexual contact (however slight) without consent. For purposes of this Policy, non-consensual sexual contact can occur between UMBC community members and between a UMBC community member and a Non-UMBC community member. Non-consensual sexual contact means any intentional touching of the intimate body parts of another person, causing another person to touch someone's intimate body parts, or disrobing or exposure of another person without consent. Intimate body parts may include genitalia, groin, breast, buttocks, or clothing covering them, or any other body part that is touched in a sexual manner. Non-consensual sexual contact also includes attempted non-consensual sexual intercourse.

### **3. Relationship Violence**

This Policy prohibits Relationship Violence. For purposes of this Policy, Relationship Violence is defined as physical violence, coercion, threats, intimidation, isolation, stalking, or other forms of emotional, sexual, or economic abuse directed towards a person who is or has been in a social relationship of a romantic or intimate nature with a UMBC community member. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound another. Relationship Violence can be a single act or a pattern of behavior.

The existence of a social relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

### **4. Domestic Violence**

This Policy prohibits Domestic Violence. For purposes of this Policy, Domestic Violence is defined as physical violence, coercion, threats, intimidation, isolation, stalking, or other forms of emotional, sexual, or economic abuse directed towards: a.) a UMBC community member's current or former spouse or intimate partner; b.) a person with whom the UMBC community member shares a child in common; c.) a person who is cohabitating with or has cohabitated with the UMBC community member as a spouse or intimate partner; d.) a person similarly situated to a spouse of the UMBC community member; or e.) any other person who is protected from those acts under the domestic or family violence laws of Maryland. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound another. Domestic Violence can be a single act or a pattern of behavior.

### **5. Sexual Exploitation**

This Policy prohibits Sexual Exploitation. For purposes of this Policy, Sexual Exploitation is defined as non-consensual or abusive sexual advantage of another person for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose. Sexual Exploitation may take many forms, subtle and indirect or blatant and overt.

### **6. Sexual Intimidation**

This Policy prohibits Sexual Intimidation. For purposes of this Policy, Sexual Intimidation means threatening to sexually assault another person; Sex and Gender-based Stalking, including cyber-stalking; or engaging in indecent exposure.

### **7. Sex and Gender Based Stalking**

This Policy prohibits Sex and Gender Based Stalking ("Stalking"). For purposes of this Policy, Stalking is defined as a form of Sexual Intimidation, when there is a course of conduct that would cause a reasonable person to fear for their immediate health or safety or the safety of others, or suffer substantial emotional distress, which is directed at a specific person based upon that person's Protected Status.

### **C. Retaliation**

This Policy prohibits Retaliation. For the purposes of this Policy, Retaliation is defined as intimidating, threatening, coercive, or discriminatory action, inaction, conduct, or words, taken against a UMBC community member, for the purpose of interfering with any right or privilege secured by law or this Policy that is intended to discourage a reasonable person from engaging in a protected activity. Retaliation does not include petty slights and annoyances.

Protected activity includes a UMBC community member's: good faith participation in filing, reporting, investigating, or resolving an alleged violation of this Policy; opposition to policies, practices, or actions that a UMBC community member has a good faith and reasonable belief are in violation of this Policy; providing assistance to another UMBC community member in filing or reporting an alleged violation of this Policy; or participation as a witness in an investigation of an alleged violation of this Policy. Protected activity does not include unlawful activities such as acts or threats of violence.

## **V. Related Concepts used in this Policy**

### **A. Coercion**

For purposes of the Policy, Coercion is defined as unreasonable pressure to persuade or compel a person to engage in any conduct or behavior, including sexual activity.

### **B. Complicity**

For purposes of this Policy, Complicity is defined as any act that knowingly aids, facilitates, promotes, or encourages the commission of a violation of this Policy.

### **C. Consent**

For purposes of this Policy, Consent is defined as a knowing, voluntary, and affirmatively communicated willingness to mutually participate in a particular sexual activity or behavior. It must be given by a person with the ability and capacity to exercise free will and make a rational and reasonable judgment. Consent may be expressed either by affirmative words or actions, as long as those words or actions create a mutually understandable permission regarding the conditions of sexual activity or behavior. It is the responsibility of the person who wants to engage in sexual activity or behavior to ensure that they have the consent from the other person to engage in the sexual activity or behavior.

- Consent cannot be inferred from silence, passivity, or a lack of resistance.
- There is no requirement that a UMBC community member verbally or physically resist unwelcome sexual activity or behavior.

- Consent must be present throughout the entire sexual activity or behavior and may be withdrawn at any time. Once consent is withdrawn, the sexual activity or behavior must cease immediately. If there is confusion as to whether there is consent or whether prior consent has been withdrawn, it is essential that the sexual activity or behavior cease until the confusion is resolved.
- Consent cannot be obtained by force, threat, coercion, fraud, manipulation, reasonable fear of injury, intimidation, or through the use of one's mental or physical helplessness or incapacity.
- Consent cannot be implied based upon the mere fact of a previous or existing consensual dating or sexual relationship. In the context of a current relationship, consent for future sexual activity or behavior cannot be implied.
- Consent to one form of sexual activity or behavior cannot automatically imply consent to engage in other forms of sexual activity or behavior.

#### **D. Group Infractions**

For purposes of this Policy, Group Infractions are defined as members of a group, organization, team, or individuals acting collusively, who commit an act that constitutes Prohibited Conduct under this Policy. The individuals may be charged as a group or individually, depending upon the specific circumstances.

#### **E. Incapacitated or Incapacitation**

For the purposes of this Policy, Incapacitation is a state in which a person's decision-making ability is impaired such that the person lacks the ability to understand the "who, what, where, why, or how" of their sexual activity or behavior. Incapacitation may result from sleep or unconsciousness, temporary or permanent mental or physical disability, or the influence of alcohol, drugs, including but not limited to, Rohypnol, Ketamine, GHB, Burundanga, and other substances used to facilitate date-rape or Sexual Misconduct, or legally prescribed medication. Incapacitation may also occur when a person is physically restrained, without their consent, so the person is physically unable to resist sexual activity or behavior.

#### **F. Interim Protective Measures**

For purposes of this Policy, Interim Protective Measures are defined as the reasonably available steps the University may take to protect UMBC community members in response to an allegation of Prohibited Conduct under this Policy.

#### **G. Protected Status**

For purposes of this Policy, Protected Status is defined as a UMBC community member's gender, gender identity or expression, sex (including pregnancy), and/or sexual orientation.

##### **1. Gender**

For purposes of this Policy, Gender is defined as a person's socially constructed status based on the behavioral, cultural, or psychological traits typically associated with societal attribution of masculinity and femininity, typically related to one's assigned sex at birth.

## **2. Gender Identity or Expression**

For purposes of this Policy, Gender Identity or Expression is defined as a person's actual or perceived gender identity, self-image, appearance, behavior, or expression, regardless of whether that identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the person's gender at birth.

## **3. Pregnancy**

For purposes of this Policy, Pregnancy is defined as a range of matters concerning the childbearing process, including current pregnancy, past pregnancy, potential or intended pregnancy, and medical conditions related to pregnancy or childbirth.

## **4. Sex**

For purposes of this Policy, Sex is defined as an individual's biological status of male or female.

## **5. Sexual Orientation**

For purposes of this Policy, Sexual Orientation is defined as the identification, perception, or status of an individual as to homosexuality, heterosexuality, or bisexuality.

## **H. Reporting Party**

For purposes of this Policy, Reporting Party is defined as the UMBC community member, who has been subjected to conduct that constitutes Prohibited Conduct under this Policy, regardless of whether the Reporting Party makes a report or seeks redress under this Policy.

## **I. Responding Party**

For purposes of this Policy, Responding Party is defined as the UMBC community member, group, organization, team, or individuals acting collusively, alleged to have committed an act that constitutes Prohibited Conduct under this Policy.

# **VI. University Employee Reporting Obligations**

The University values the privacy of its students, faculty, and staff and will make every effort to respect and safeguard the information they share. Information related to a report made under this Policy will only be shared with others, on a limited need-to-know basis. However, pursuant to

federal and state law, in some circumstances, certain UMBC community members have specific reporting obligations.

### A. Confidential Resources

The University understands that some individuals may not be prepared to make a report to law enforcement or to the University. Therefore, the University has Confidential Resources available to provide confidential counseling, crisis support, medical care, and/or advocacy services for UMBC community members affected by an incident of Prohibited Conduct.

**Pastoral Counseling:** Professional, licensed, ordained clergy, who provide pastoral counseling to members of the UMBC community at the University are Confidential Resources.

**Professional Licensed Mental Health Providers:** Professional, licensed mental health providers who provide mental-health counseling to members of the UMBC community, and also those who act in roles under the supervision of a licensed counselor, through the Counseling Center (for students) and the Employee Assistance Program (for employees) are Confidential Resources. Conversations with these Confidential Resources will remain confidential, *except*, when there is clear and imminent danger that someone's life is at risk, there is apparent or suspected abuse of a child or dependent adult; or there is a legal obligation to reveal such information under enforceable court order.

**Professional Licensed Healthcare Providers:** Professional, licensed healthcare providers who provide medical care to members of the UMBC community, and other health provider who act in roles under the supervision of a licensed healthcare provider, through the University's Health Services, are Confidential Resources. Conversations with these Confidential Resources will remain confidential, *except*, when there is clear and imminent danger that someone's life is at risk, there is apparent or suspected abuse of a child or dependent adult; or there is a legal obligation to reveal such information under enforceable court order.

Notification to any of the Confidential Resources, identified above, does not constitute notice to the University nor does it trigger an obligation on the part of the University to investigate the alleged Prohibited Conduct.

### B. Quasi-Confidential Resources

Non-Licensed Counselors, Non-Licensed Healthcare Providers, and/or Advocates who work or volunteer at the Counseling Center, University Health Services, Voices Against Violence, or Women's Center are Quasi-Confidential Resources. Conversations with these Quasi-Confidential Resources can remain confidential *unless*, there is a continuing threat of harm, as determined in the sole discretion of the University, or there is a legal obligation to reveal such information (for example in cases of mandatory reporting related to abuse or neglect of minors or in response to a legally sufficient subpoena). Further, Quasi-Confidential Resources may report incidents of Prohibited Conduct under this Policy, without any identifying information and will send the reports to the University's Title IX Coordinator.

### C. Responsible Employees

The University recognizes that some UMBC community members may be most comfortable disclosing information about an incident of Prohibited Conduct to someone they know. Many University employees have been designated as Responsible Employees.

For purposes of this Policy, a Responsible Employee is defined as including any UMBC community member who (1) has the authority to take action regarding Prohibited Conduct covered under this Policy; (2) is an employee who has been given the duty of reporting Prohibited Conduct under this Policy; or (3) is someone another UMBC community member could reasonably believe has this authority or duty.

Responsible Employees are ***Non-Confidential*** which means they will safeguard the UMBC community member's privacy, however they are required to immediately share the known details of an incident of Prohibited Conduct (date, time, location, names of parties involved, description of the incident, etc.), to the Title IX Coordinator and other need-to-know University officials. Responsible Employees will try to ensure that any UMBC community member making a disclosure to a Responsible Employee, understands the Responsible Employee's reporting obligations. Those identified below have been designated as Responsible Employees:

- Title IX Coordinator
- All Title IX Team Members
- All employees in Human Resources
- All employees in the Office of the General Counsel
- All University Police
- All UMBC Administrators (President, Provost, Vice Presidents, Vice Provosts, Deans, Associate Deans, Directors, Department Chairs)
- All UMBC Supervisors (excluding Supervisory Confidential Resources)
- All UMBC Faculty (including Adjuncts)
- All UMBC Graduate Assistants
- All UMBC Academic Advisors
- All UMBC Athletic Coaches (including Volunteer Coaches), Trainers, and Advisors
- All UMBC Resident Assistants
- All UMBC First Responders (excluding First Responders who are Confidential Resources)

### D. Disclosures to Others on Campus Not Designated As Confidential or Quasi-Confidential Resources or Responsible Employees

All members of the UMBC community are strongly encouraged to forward all information received about an incident of Prohibited Conduct to the Title IX Coordinator and/or other Designated Responsible Employees. However, if a UMBC community member receives information about a child being abused or neglected, this information must be immediately reported, as explained in more detail under Section II. C of this Policy.

## VII. Reporting Prohibited Conduct

The University has a variety of welcoming and accessible ways for UMBC community members to raise concerns and report instances of Prohibited Conduct. While there are multiple reporting options available across the University, the University recognizes that centralized reporting is an important tool in addressing, ending, and preventing Prohibited Conduct under this Policy. The University encourages UMBC community members to report and/or seek support, regardless of when or where an incident occurred.

The University understands that at the time a report is made, the Reporting Party may only want to seek resources and support and may not be prepared to decide what steps in the process they want to take. Choosing to make a report and informing the University of the Reporting Party's preferred method of addressing the report, can unfold over time as the process proceeds. The University recognizes that the decision whether or not to make a report of Prohibited Conduct is personal, and that there are many barriers and influences, both individual and societal, to reporting. A Reporting Party can choose to pursue both a report under this Policy and a criminal investigation at the same time.

#### **A. Making a Report to a Designated Responsible Employee**

Under the Policy, a Reporting Party can make a report to the University by telling a **Designated Responsible Employee** what happened, in-person, by telephone, in writing, by e-mail, electronically, or anonymously. Designated Responsible Employees are *Non-Confidential*, which means they will disclose the known details of the incident (date, time, location, names of parties involved, description of the incident, etc.), to the Title IX Coordinator and other need-to-know University administrators.

Reports of incidents of Prohibited Conduct can be made to any of the **Designated Responsible Employees** identified below:

- Paul Dillon, University Police  
410.707.6012
- Jeff Cullen, Student Judicial Programs  
410.455.2453
- John Fox, Office of Residential Life  
410.455.2591
- Lee Hawthorne, Office of Student Life  
410.455.1745
- Stephanie Lazarus, Title IX Coordinator:  
410.455.5745

#### **B. Making a Report to a Quasi-Confidential Resource**

Under the Policy, a Reporting Party can make a report to the University by telling a **Quasi-Confidential Resource** what happened, in-person, by telephone, in writing, by-email, electronically, or anonymously. Quasi-Confidential Resources will report incidents of Prohibited Conduct under this Policy, without sharing any identifying information to the University's Title IX Coordinator.

Reports of incidents of Prohibited Conduct can be made to any of the following **Quasi-Confidential Resources** identified below:

- Rina Rhyne, Voices Against Violence Coordinator  
410.455.3748
- Jess Myers, Women's Center  
410.455.2714

### C. Anonymous Reporting

Any UMBC community member may make an anonymous report of Prohibited Conduct to the University without disclosing one's name and without identifying the Responding Party or requesting any action. Based upon the amount of information provided about the incident and the UMBC community member's involved, the University's response to an anonymous report may be limited.

## VIII. Reporting Party Requests for Confidentiality

A Reporting Party may request that their identity is not disclosed to anyone else, including the Responding Party or that the University not investigate or take action. While such request may limit the University's ability to address and respond to the reported Prohibited Conduct, in consultation with the Title IX Coordinator, the request will be taken into consideration and weighed against the University's responsibility to provide a safe and non-discriminatory environment for all UMBC community members. However, the University will endeavor to honor any request, whenever possible, considering the totality of the circumstances. The University will promptly notify the Reporting Party whether the request can be honored, and, if not, the reasons why it cannot be honored and discuss any appropriate Interim Protective Measures.

## IX. Time Frame For Resolution

The University will seek to resolve every report of Prohibited Conduct within sixty (60) calendar days after receiving the report, excluding any appeal. The time frame may be extended for good cause, as determined on a case-by-case basis, as necessary to ensure the integrity and completeness of an investigation, comply with a request by law enforcement, reasonably accommodate the availability of witnesses, reasonably accommodate delays by the parties, account for University closures, or address other legitimate reasons, including the complexity of the investigation (e.g. the number of witnesses and volume of information provided by the parties) and the severity and extent of the alleged Prohibited Conduct.

## X. Amnesty

The University prohibits student conduct action (except for mandatory intervention/assessment for substance abuse) for a violation of the University's alcohol or drug use policies by a student who reports Prohibited Conduct to the University or law enforcement or participates in a matter that

involves Prohibited Conduct as a witness, if the institution determines that (1) the violation occurred during or near the time of the alleged Prohibited Conduct; (2) the student made the report of Prohibited Conduct, or is participating in an investigation as a witness, in good faith; and (3) the violation was not an act that was reasonably likely to place the health or safety of another individual at risk.

## **XI. Co-Occurring Criminal Investigation**

The filing of a report of Prohibited Conduct that constitutes Sexual Misconduct under this Policy is independent of any criminal investigation or proceeding, which means a report made to law enforcement, does not preclude a person from proceeding with a complaint of Sexual Misconduct under this Policy. The University is required to conduct an investigation in a timely manner, which means in most cases, the University will not wait until a criminal investigation or proceeding is concluded before conducting its own investigation or implementing Interim Protective Measures to protect the safety of the Reporting Party and/or the entire UMBC campus community, if necessary. However, at the request of law enforcement, the University's investigation may be delayed temporarily, during the initial evidence gathering stage of the criminal investigation, as long as the delay does not inhibit the University's ability to respond to the Prohibited Conduct in a prompt manner. If such a request is made, the University Police will submit the request in writing to the Title IX Coordinator, and the Reporting Party and Responding Party will be notified. In addition, when possible, in cases where there is a co-occurring criminal investigation by University Police, Baltimore County Police or the local prosecutor's office, the University will work collaboratively and supportively with each respective agency within the parameters outlined above.

## **XII. Exceptions for Public Disclosures and Certain Research-Based Disclosures**

Disclosures in the following categories shall not be considered notice to the University of Prohibited Conduct for the purpose of triggering its obligation to investigate any particular incident(s):

### **A. Public Disclosures**

Public disclosures include disclosures of incidents of alleged Sexual Misconduct during or in connection with public awareness events such as "Take Back the Night," candlelight vigils, protests, "survivor speak-outs," or other forums. Although such disclosures do not constitute notice to the University of Sexual Misconduct for purposes of triggering its obligation to investigate any particular incident(s), such disclosures may inform the need for campus-wide education and prevention efforts, and the University will provide information at these events about UMBC community members' Title IX rights and about available University and community resources and support services.

### **B. Certain Research-Based Disclosures**

Research-based disclosures include disclosures of incidents of alleged Sexual Misconduct made by a University student during such student's participation as a subject in an Institutional Review Board-approved human subject's research protocol. Institutional Review Boards may, however, in appropriate cases, require researchers to provide information to all subjects of a study about their Title IX rights and about available University and community resources and support services.

### **XIII. Clery Act Compliance and Release of Information**

In handling reports related to Prohibited Conduct, the University remains responsible for complying with the requirements of the Crime Awareness and Campus Security Act of 1990 ("Clery Act") and its amendments. The University will comply with Clery Act requirements, including crime recording and reporting requirements, where compliance is not otherwise reached by actions under this Policy

Pursuant to the Clery Act anonymous statistical information regarding reported criminal incidents must be shared with the UMBC Police Department for inclusion in the daily crime log. This information will be included in the University's Annual Security Report and the University may also share aggregate and non-personally identifiable data about reports, outcomes, and sanctions.

### **XIV. Interim Protective Measures**

Interim Protective Measures are temporary actions taken by the University prior to concluding the investigation which may be applied to the Reporting Party, Responding Party, and other involved UMBC community members as appropriate to ensure their safety and well-being and to limit undeterred campus educational and employment access. Interim measures may be requested by the Reporting Party or the Responding Party, or the University can initiate the Interim Measures in the absence of a request, at any time, during the process. Individuals can make a request for Interim Protective Measures in-person or in-writing to any of the Designated Responsible Employees listed above, in Section II.

When a report is received, the University, in consultation with the Title IX Coordinator, can impose reasonable and appropriate Interim Protective Measures.

Interim Protective Measures are taken based on the information available at the time and are not intended to be permanent resolutions. Interim Protective Measures may be withdrawn or amended as additional information is discovered. The University will take appropriate, responsive, and prompt action to enforce Interim Protective Measures and to respond to any reports about the inadequacy or failure of another UMBC community member to abide by the Interim Protective Measures. The range of Interim Protective Measures can include, but are not limited to:

- Access to counseling and medical services and assistance in setting up initial appointments, both on and off campus
- Imposition of a campus "No-Contact Order"
- Rescheduling of exams and assignments

- Providing alternative course completion options
- Change in class schedule, including the ability to drop a course without penalty or to transfer sections
- Change in work schedule or job assignment
- Arranging for class incompletes, a leave of absence, or withdrawal
- Change in campus housing assignment or housing license
- Assistance from University support staff in completing University housing relocation
- Restricting access to certain University facilities, resources, or activities pending resolution of the report
- To the extent practicable, preserving eligibility for academic, athletic, or other scholarships, institution-based financial aid, or program eligibility
- Providing academic support services, such as tutoring
- University-imposed leave or suspension for the Responding Party

## **XV. Range of Disciplinary Actions or Sanctions**

This Policy prohibits a broad range of conduct, which is serious in nature. In keeping with the University's commitment to fostering an environment that is safe, respectful, inclusive, and free of Prohibited Conduct, this Policy allows for wide latitude in the imposition of disciplinary actions or sanctions tailored to the facts and circumstances of each report, the impact of the Prohibited Conduct on the Reporting Party and surrounding UMBC community members, and accountability for the Responding Party. The imposition of disciplinary actions (in employment context) or sanctions (in educational context) are designed to eliminate Prohibited Conduct under the Policy, prevent its recurrence, and remedy its effects, while supporting the University's mission and federal obligations. Disciplinary actions or sanctions may include educational, restorative, rehabilitative, and punitive components. Some conduct, however, is so egregious in nature, so harmful to the individuals involved and the entire UMBC community, or so deleterious to the educational or working environment, that it requires severe disciplinary action, up to and including termination from the University or severe sanctions, up to and including dismissal from the University.

Disciplinary actions which may be imposed on faculty, staff, and student employees in the employment context, can include, but are not limited to the following: no contact orders, a letter of reprimand, censure, service to the University, counseling, retraining, transfer, demotion, suspension, and/or termination.

Sanctions which may be imposed on students in the academic context, can include, but are not limited to the following: no contact orders, housing restrictions (including removal from on-campus housing), community service, educational requirements, written warning, reprimand, probation, suspension, and/or dismissal.

Individuals who commit certain Prohibited Conduct in violation of federal, state, or local law may also be subject to criminal charges and penalties.

## **XVI. Agreements with Local Law Enforcement and Rape Crisis Programs**

**UMBC will pursue formalized agreements with (1) the local law enforcement and (2) a State designated rape crisis program and/or federally recognized sexual assault coalition. The agreement with law enforcement will comply with Title IX and clearly state when the University will refer a matter to local law enforcement. The agreement with rape crisis or sexual assault programs will formalize a commitment to provide trauma-informed services to victims/survivors of sexual assault and to improve the University's overall response to sexual assault.**

## **XVII. University Sexual Assault Climate Survey**

**On or before March 1, 2016, and at least every two (2) years thereafter, the University will: (1) develop an appropriate Sexual Assault campus climate survey using nationally recognized best practices for research and climate surveys; and (2) administer the Sexual Assault campus climate survey to students in accordance with the procedures set by the Maryland Higher Education Commission (MHEC). On or before June 1, 2016, and at least every two (2) years thereafter, each institution shall submit to MHEC a report in accordance with the requirements set forth in Md. Code Annotated, Education Article, Section 11-601(g).**

## **XVIII. University Procedures for Responding to Reports of Prohibited Conduct**

**Procedures for Reports of Prohibited Conduct against Students: Reports alleging Prohibited Conduct by students under this Policy shall be reviewed in accordance with the Procedures for Reporting and Responding to Reports of Sexual Misconduct and Other Related Misconduct when the Responding Party is a Student.**

**Procedures for Reports of Prohibited Conduct against Staff: Reports alleging Prohibited Conduct by staff under this Policy shall be reviewed in accordance with the Procedures for Reporting and Responding to Reports of Sexual Misconduct and other Related Misconduct when the Responding Party is Staff.**

**Procedures for Reports of Prohibited Conduct against Faculty: Reports alleging Prohibited Conduct by faculty under this Policy shall be reviewed in accordance with the Procedures for Reporting and Responding to Reports of Sexual Misconduct and other Related Misconduct when the Responding Party is Faculty.**

Procedures for Reports of Prohibited Conduct against Interns, Contractors, Volunteers, Guests, Visitors, and/or Other Third Parties: If a member of the UMBC community is subjected to Prohibited Conduct under this Policy by an intern, contractor, volunteer, guest, visitor, or other third party, the University can/may request that a formal letter be issued to deny their access to the University. The University is authorized to deny campus access to third-parties who engage in disruptive behavior under Maryland State Law, §§ 26-101 and 26-102, Education Article, Annotated Code of Maryland.

## **XIX. Title IX Coordinator and Title IX Team**

Pursuant to Title IX of the Education Amendments of 1972 and the U.S. Department of Education's implementing regulations at 34 C.F.R. Part 106, the University's Title IX Coordinator has primary responsibility for coordinating the UMBC's efforts to comply with and carry out the University's responsibilities under Title IX, which prohibits sex discrimination in all the operations of the University, as well as retaliation for the purpose of interfering with any right or privilege secured by Title IX. The Title IX Coordinator oversees the University's response to reports and complaints that relate to Prohibited Conduct involving UMBC community members, to monitor outcomes, identifies and addresses any patterns, and assesses effects on the campus climate, so the University can address issues that affect the wider campus community. The Title IX Coordinator is also responsible for leading the University's Title IX Team, which may include Deputy Title IX Coordinators, Title IX Investigators, members from University Police, Student Affairs, the Provost's Office, Human Resources, and other campus members who work with matters of gender equity and/or sexual violence.

## **XX. Educational and Prevention Programs and Training**

The University's Division of Student Affairs, Women's Center, Office of Human Relations, Human Resources, and other campus partners offer educational and prevention programs to promote the awareness and prevention of incidents of Prohibited Conduct. The educational and prevention programs include an overview of the University's policies and procedures; discussion of the impact of alcohol and illegal drug use; safe and positive options for bystander intervention; and information about risk reduction.

The University's Voices Against Violence ("VAV") program addresses all aspects of sexual violence prevention, response, and referral and further serves as a coordinated and collaborative campus resource. The VAV program has established a University protocol for receiving and responding to reports of sexual violence. University-wide training regarding the VAV protocol is provided throughout the year and is available for groups, upon request.

The University sponsors the Peer Health Educators program which partners students with the University's Health Services to provide educational programs about sexual violence to residence halls, classes, sports teams, and greek organizations. Further, the University supports the "I

Deserve” campaign, which raises awareness about relationship violence, and the “What Is Your Green Dot” campaign, which provides awareness and training regarding bystander intervention.

Further, incoming first year and transfer students and new employees will receive primary prevention and awareness training as part of their orientation. Returning students and employees will also have ongoing opportunities for training and education.

Also, all persons involved in any way in responding to, investigating, or adjudicating reports involving Prohibited Conduct, including but not limited to, the Title IX Team, Responsible Employees, law enforcement, pastors, counselors, health professionals, resident advisers, and on-campus advocates, must have annual training in receiving, reporting and handling complaints of Prohibited Conduct; must be familiar with the University’s procedures; and must understand the parameters of confidentiality.

## **XXI. Record Keeping**

The University will keep records of Prohibited Conduct matters, including, but not limited to records of any (1) complaints/ reports of Prohibited Conduct; (2) investigation, adjudication and resolution of complaints; (3) training (including, but not limited to, lists of trainees, training dates and content); and (4) related surveys and reports. Records will be maintained in accordance with the University’s Records Retention Schedule.

## **XXII. Related Policies**

University of Maryland Baltimore County Policy on Amorous and Sexual Relationships, Revised July 1, 2004

## **XXIII. External Reporting Agencies**

In addition to or as an alternative to the University’s procedures for reporting Prohibited Conduct, reports of Prohibited Conduct, may be filed with the following agencies:

- Equal Employment Opportunity Commission (EEOC)  
City Crescent Building  
10 S. Howard Street, Third Floor  
Baltimore, Maryland 21201  
Phone: 1.800.669.4000  
Fax: 410.962.4270  
TTY: 1.800.669.6820  
Website: [www.eeoc.gov](http://www.eeoc.gov)
- Maryland Commission on Civil Rights (MCCR)

**William Donald Schaefer Tower**  
6 St. Paul Street, Ninth Floor  
Baltimore, Maryland 21202  
Phone: 410.767.8600  
Fax: 410.333.1841  
TTY: 410.333.1737  
Website: [www.mccr.maryland.gov](http://www.mccr.maryland.gov)

- **Office for Civil Rights**  
U.S. Department of Education  
The Wanamaker Building  
100 Penn Square East, Suite 515  
Philadelphia, PA 19107-3323  
Phone: 215.656.8541  
Fax: 215.656.8605  
TDD: 1.800.877.8339  
Email: [OCR.Philadelphia@ed.gov](mailto:OCR.Philadelphia@ed.gov)  
Website: [http://www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html)
- **Reporting parties who wish to file complaints with these external agencies should make contact as soon as possible, to verify any applicable filing time limits and deadlines.**

# **EXHIBIT 5**

**Paul Dillon**

---

**From:** Katie Frank  
**Sent:** Wednesday, October 7, 2015 8:33 PM  
**To:** Paul Dillon  
**Subject:** Re: Statement update

I forgot to include in my original statement that I would like to go through with a university investigation, not a police investigation

Sent from my iPhone

> On Oct 7, 2015, at 8:25 PM, Paul Dillon <pdillon@umbc.edu> wrote:

>

> Got it, also could you drop a quick email expressing your wishes for no police report or investigation and your wishes for the Univ. investigation.

>

> Paul Dillon

> Deputy Chief

> University of Maryland Baltimore County

> [REDACTED]

>

>> On Oct 7, 2015, at 8:04 PM, Katelyn Frank U T [REDACTED] wrote:

>>

>> Hi Paul,

>> My license plate number is [REDACTED]. I drive a [REDACTED], and

>> it is parked in the Patapsco side parking lot. Thanks again for all your help Katie

# EXHIBIT 6

**Paul Dillon**

---

**From:** Michael Peterson  
**Sent:** Thursday, October 8, 2015 9:25 AM  
**To:** pdillon  
**Subject:** Re: Student Rape Victim

Raul,  
I am glad you had the opportunity to inform the victim of her options. We will be glad to assist in any way, should the victim wish to file a police report. The victim having chosen to complete the SAFE exam is also an important step. If she does decide to file, please contact me, Sergeant Brady, or any of our detectives. We will also bring a Wilkens Precinct officer with us.

Thanks,  
Mike

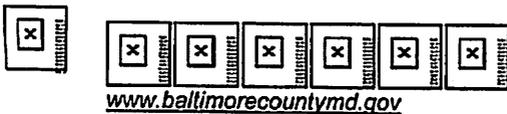
>>> pdillon <pdillon@umbc.edu> 10/7/2015 4:03 PM >>>  
Mike I just had a meeting with a rape victim along with her mother and our Victim Advocate. The mother and daughter just really wanted to know about options they had about filing a police report and how a Title IX process would work as well. I answered their questions and she is going to think about it. The incident happened on Campus. The bad part is it happened 3 weeks ago, the good part is she did get a SAFE exam within the 120 hours. She knows her assailant. I asked no questions about the incident just answered questions about the process. If she decides to come forward to us-then you I would like to make arrangements for her to meet with your folks directly, will that be OK? I think it is unlikely she will file a police report she seemed more inclined to go the Title IX route. Thanks.

Paul Dillon  
Deputy Chief of Police  
UMBC Police Department  
1000 Hilltop Circle  
Baltimore, MD 21250-0002

  
410-455-3733 (Office)

e2campus Alert – Receive campus emergency information on your text enabled device.  
Subscribe at [www.my.umbc.edu](http://www.my.umbc.edu) and click on the “Alerts” button at the top of the page or at [www.umbc.edu/police](http://www.umbc.edu/police) and click on the Emergency Notification “Log in” button.

CONNECT WITH BALTIMORE COUNTY



# **EXHIBIT 7**

UMBC 2015 Clery Statistics												
OFFENSE *	On-Campus Property			Non-Campus Property			Public Property			On-Campus Residence Halls **		
	Reported to Police	Reported To Other CSAs †	Total	Reported to Police	Reported To Other CSAs †	Total	Reported to Police	Reported To Other CSAs †	Total	Reported to Police	Reported To Other CSAs †	Total
Murder/Non-Negligent Manslaughter	-	-	0	-	-	0	-	-	0	-	-	0
Negligent Manslaughter	-	-	0	-	-	0	-	-	0	-	-	0
Rape	-	10	10	-	-	0	-	-	0	-	8	8
Forcible Fondling	4	3	7	-	-	0	-	-	0	-	-	0
Incest	-	-	0	-	-	0	-	-	0	-	-	0
Statutory Rape	-	-	0	-	-	0	-	-	0	-	-	0
Robbery	-	-	0	-	-	0	-	-	0	-	-	0
Aggravated Assault	1	-	1	-	-	0	-	-	0	-	-	0
Motor Vehicle Theft	1	-	1	-	-	0	-	-	0	-	-	0
Arson	-	-	0	-	-	0	-	-	0	-	-	0
Burglary	4	-	4	-	-	0	-	-	0	-	-	0
Liquor Law Arrest/Citations	-	-	0	-	-	0	-	-	0	-	-	0
Liquor Law Referrals	202		202	-		0	-		0	197		197
Weapons Law Arrest	-	-	0	-	-	0	-	-	0	-	-	0
Weapons Law Referrals	0		0	-		0	-		0	0		0
Drug Law Arrest/Citation	2	-	2	-	-	0	-	-	0	1	-	1
Drug Law Referrals	37		37	-		0	-		0	33		33
Stalking	2	2	4	-	-	0	-	-	0	-	1	1
Domestic Violence	1	-	1	-	-	0	-	-	0	-	-	0
Dating Violence	8	2	10	-	-	0	-	-	0	5	1	6

\* The statistics reflect a 2015 University population of approximately 13,839 students and 2113 faculty & staff employees

\*\* The On-Campus Residence Halls statistics are duplicative. They are included in the On-Campus Property statistics that occurred within residence halls on campus.

† "Reported to Other CSAs" are crimes that have been reported to UMBC officials who are considered Campus Security Authorities other than police and security officers. These are not duplicative of police reports.

**2015 Unfounded Crimes = 3**

**2015 Hate Crimes**

**Destruction, Damage, or Vandalism of Property**

Hate Crime Basis	On-Campus Property			Non-Campus Property			Public Property			On-Campus Residence Halls **		
			Total			Total			Total			Total
Religion	2		2	-	-	0	-	-	0	1		1

**Intimidation**

Hate Crime Basis	On-Campus Property			Non-Campus Property			Public Property			On-Campus Residence Halls **		
			Total			Total			Total			Total
Religion	1		1	-	-	0	-	-	0	-	-	0
Race	1		1	-	-	0	-	-	0	-	-	0

	VAV ID	UMBC Police Case #	Details of what occurred	Advocate Clery Case #	Disposition	Incident date	On Campus	Student Housing	Public Property
<b>Forcible Rape Cases</b>									
1	UC2101		Sex Assault w/ penetration	R00001-2015	Not reported to LE	01/21/15		X	
2	FJ3004-2		sex assault, no details		Not reported to LE	04/30/15	UNK	UNK	UNK
3	DI3108		Health- non-consensual sex- Cannot recall- blackout		Not reported to LE	08/31/15	UNK	UNK	UNK
4	BA2411		Rape, no other details		Not reported to LE	09/15		X	
5	FK1409		Sex after alcohol in his dorm room		Not reported to LE	09/14/15		X	
6	OA2309		Min details in her dorm room		Not reported to LE	09/23/15		X	
7	SA0310	15-00268	Rape 2 <sup>nd</sup> Degree – (Unfounded)	R00092-2015	Baltimore County PD, case # 15-276-0267	10/03/15		X	
8	BS1811	15-00332	Rape 2 <sup>nd</sup> Degree – (Unfounded)	R00113-2015	Baltimore County PD, case # 15-322-1378	11/18/15		X	
9	SJ1211		assault in residence 3-4 times at UMBC refused added details		Not reported to LE Add one to 2013, 1 to 2014	11/12/15		X	
10	KB2311		Sex assault and release from housing request		Not reported to LE	11/23/15		x	
<b>Forcible Fondling Cases</b>									
1		15-00127	4 <sup>th</sup> degree	R00117-2015	arrest	04/27/15	X		
2	MS2704	15-00130	4 <sup>th</sup> degree	R00115-2015	Arrest- lifted skirt	04/27/15	x		
3	RP2704	15-00129	4 <sup>th</sup> degree	R00116-2015	arrest	04/27/15	x		
4	KY0705	15-00149	4 <sup>th</sup> degree	R00114-2015	No arrest- suspect not identified	05/07/15	x		
5	GH0712		Male RA, male assault by other male- minimum details given		Not reported to LE	12/07/15	x		
6	CS1015		Att rape by male & female friends while intox		Not reported to LE	12/10/15	UNK	UNK	UNK
7	KM1212		Assault at Persian student by treasurer- put finger up her butt		Not reported to LE	12/12/15	x		
<b>Stalking Cases</b>									
1	WL1304		Stalking by UG student		Not reported to LE	04/13/15	x		
2	PJ1508-2		Tapping phone, limiting movement	R00053-2015	Not reported to LE	08/15/15		X	
3		15-00313	Woman stalking male	R00125-2015	Civil matter- debt related	11/04/15	x		
4		15-00318	Through dating app	R00126-2015	Off-campus, no further action	11/05/15	x		

**Dating Violence Cases**

1	KM1902	15-00031	Stalking & assault	R00119-2015	Arrested	02/18/15	x		
2	MT2302	15-00037	Assault	R00120-2015	Refused to prosecute	02/23/15	x		
3	GO1803		Reported in statement to SJP		Not reported to LE	03/24/15	x		
4	WL1305	15-00151		R00038-2015	Refused to prosecute	05/13/15	X		
5	WL1305	15-00151	Two victims to count	R00038-2015	Refused to prosecute	05/13/15	x		
6		15-00166	Refused to prosecute	R00045-2015	Charged in SJP process	06/12/15	x		
7	KS2208	15-00202	Refused to prosecute	R00054-2015	Refused to prosecute	08/22/15	x		
8		15-00283	e-mail threat	R00127-2015	Did not reach a crime	10/13/15	x		
9		15-00341		R00128-2015	Refused to prosecute	11/24/15	x		
10			Placed unreasonable restrictions	R00101-2015	Reported to RL only	12/05/15			X

**Hate/ Bias Incidents**

1		15-00005	RRE- possible – spray paint swastika	R00124-2015	Suspect- insufficient evidence	01/15/15	x		
2		15-00033	RRE- swastika religious	R00118-2015	No suspect	02/19/15			x
3		15-00168	Posting on social media	R00129-2015	SJP	06/18/15	x		
4		15-00306	Race- blogs by	R00123-2015	Determined to not be a crime	10/29/15	x		

**Domestic Violence**

1		15-00022	Husband-wife assault	R00130-2015	Wife refused prosecution	02/04/15	x		
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**Crimes**

1		15-00009	Aggravated Assault	R00049-2015		01/15/15	x		
2		15-00195	Burglary	R00107-2015		07/30/15	x		
3		15-00197	Burglary	R00108-2015		07/31/15	x		
4		15-00199	Burglary	R00109-2015		08/12/15	X		
5		15-00356	Burglary	R00110-2015		12/07/15	x		
6		15-00182	Motor Vehicle Theft	R00111-2015		07/09/15	x		

**Arrest**

1		15-00056	Drugs	R00016-2015		03/23/15			X
2		15-00080	Drugs	R00022-2015		04/02/15			X
3		15-00085	Drugs	R00023-2015		04/06/15			X
4		15-00089	Drugs	R00106-2015		04/07/15			X
5		15-00094	Drugs	R00027-2015		04/09/15			X
6		15-00212	Drugs	R00105-2015		08/27/15	X		
7		15-00218	Drugs	R00057-2015		08/31/15	X		
8		15-00269	Drugs	R00071-2015		10/04/15			X
9		15-00290	Drugs	R00076-2015		10/18/15			X
10		15-00290	Drugs	R00076-2015		10/15/15			X
11		15-00349	Drugs	R00100-2015		12/04/15			X