

First Report of the Independent Reviewer

Covering June 19, 2013 – October 1, 2013

**The Agreement between the United States Department of
Justice and the University of Montana Regarding the
University of Montana Office Of Public Safety's Response to
Sexual Assault**

Respectfully Submitted By:

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November 6, 2013

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INTRODUCTION

On May 9, 2013 the University of Montana and the United States Department of Justice (“DOJ”) (collectively, “the Parties”) entered into an Agreement regarding the University of Montana (the “University”) Office of Public Safety’s (“OPS) response to sexual assault. (See full Agreement) <http://www.justice.gov/iso/opa/resources/249201359163319932992.pdf>

The Agreement was created to resolve DOJ’s investigation of the University of Montana’s Office of Public Safety initiated pursuant to its authority under the Violent Crime and Control Law Enforcement Act of 1994, 42 U.S.C. §14141 on May 1, 2012. Based on this investigation the University and DOJ engaged in open dialogue about the concerns raised by DOJ’s investigation regarding OPS’ response to sexual assault. This dialogue resulted in the above referenced Agreement.

The Parties recognize that OPS must respond to reports of sexual assault in accordance with applicable non-discrimination laws and University policies. The Parties’ mutual intent is to ensure adherence to the Constitution and laws of the United States; improve the safety and security of victims of sexual assault on the University of Montana’s campus and in Missoula; and increase public confidence in OPS’ response to sexual assault.

DOJ acknowledged that the University and OPS took proactive steps to help effectuate the intent of the Agreement and demonstrated their commitment to improving OPS’ response to reports of sexual assault within OPS’ jurisdiction. The Parties agreed that OPS would continue to implement improved policies, provide increased training, and modify practices, in order to further improve its response to sexual assault and ensure that there is no gender bias.

The Parties recognized the benefit of collecting and analyzing data regarding the incidence and outcomes of reports of sexual assault; of working with an Independent Reviewer, community-based organizations, and other stakeholders to develop and implement the improvements described in the Agreement; and of evaluating the effect of OPS’ efforts described in this Agreement.

The Parties acknowledge that the Agreement is intended to ensure the success of the University's efforts to improve its response to sexual assault, and that entering into the Agreement does not constitute an admission that the University has committed any wrongdoing.

The Parties entered into the Agreement and the University agreed to undertake the following measures for improvement that are generally listed below to fulfill the terms of the Agreement:

- Assess and Modify Sexual Assault Policies and Protocols
- Provide Initial and On-going Sexual Assault Response and Investigations Training
- Review of Policies and Training to Ensure that Terms of the Agreement are Included in MPD Policies and Training
- Enhance Investigation of Non-Stranger and Alcohol-or-Drug Facilitated Sexual Assault
- Enhance Victim-Centered Response to Sexual Assault
- Ensure Close Supervision and Internal Oversight of All Sexual Assaults
- Enhance Coordination with Law Enforcement and Community Partners to Improve the Reporting and Participation Experience for Victims of Sexual Assault
- Assess and Enhance Data Collection and Reporting for Improved Analysis of Sexual Assault Cases
- Establish External Review of (Felony) Sexual Assault Cases to be Conducted by a Panel of Qualified Representatives
- Participate in Community-Conducted Sexual Assault Response Safety and Accountability Audit with the City of Missoula (the "City") and Missoula Police Department (MPD)
- Independent Oversight by Selected Independent Reviewer (the "Reviewer") to Assess and Report Whether the Requirements of the Agreement Have Been Implemented

Thomas R. Tremblay was jointly selected by the Parties as the Independent Reviewer (the “Reviewer”) to oversee the terms of this Agreement with the understanding that the University / OPS bear the burden of demonstrating compliance with the Agreement.

The Agreement stipulates that the Reviewer shall continue in the role as described in the Agreement until the University / OPS demonstrate compliance with the entire Agreement. The Parties anticipate that compliance with the Agreement can be demonstrated no later than June 30, 2015.

Compliance as defined in the Agreement requires both sustained compliance with all material requirements of the Agreement, sustained and continuing improvement in the response to and investigation of reports of sexual assault, as demonstrated pursuant to the outcome measures determined by the Independent Reviewer.

The Reviewer is responsible for producing quarterly written, public reports covering the reporting period that shall include:

- A. Description of the work conducted by the Independent Reviewer during the reporting period;
- B. Listing of each Agreement requirement indicating which requirements have been:
 - (1) incorporated into implemented policy;
 - (2) the subject of adequate and appropriate training for all relevant OPS personnel;
 - (3) reviewed by the Independent Reviewer to determine whether they have been fully implemented in actual practice, including the date of the review; and
 - (4) found by the Independent Reviewer to have been fully implemented in practice;
- C. The methodology and specific findings for each review conducted;

- D. For any requirements that were reviewed and found not to have been fully implemented in practice, the Independent Reviewer's recommendations regarding necessary steps to achieve compliance;
- E. The methodology and specific findings for each outcome assessment conducted;
- F. A qualitative assessment of OPS' progress in achieving the desired outcomes for each area covered by the Agreement, noting issues of concern or particular achievement; and
- G. A projection of the work to be completed during the upcoming reporting period and any anticipated challenges or concerns related to implementation of the Agreement.

The Reviewer and the University signed a contract for service on May 29, 2013 beginning the independent review process.

This report is the first report from the Reviewer covering the period between May 29, 2013 and October 1, 2013. During this seventeen week time period the Reviewer has conducted over seventy hours of remote reviewing activity and consultation; and over one-hundred additional hours of on-site review activity, consultation, and training during three separate site visits to Missoula, MT.

The review services and consultation were specific to the terms of the Agreement and have included; sexual assault case reviews, policy development, sexual assault response and investigations training, interviews with community members and community service organizations, and the development of an external review panel of community members to review felony sexual assault cases in Missoula.

All OPS sworn officers and command staff have completed comprehensive Sexual Assault Response and Investigations training.

This training included national best practices emphasizing the importance of a multi-disciplinary approach, examining the myths and realities of sexual violence and the potential for bias interference, victim centered services that is trauma informed, effective communication and interviewing skills with sexual assault victims to promote the collection of sensory and peripheral details as evidence, developing successful investigative strategies for stranger and non-stranger sexual assault including alcohol / drug facilitated sexual assault, understanding offender conduct, successful approaches to suspects, and report writing and documentation.

The OPS Sexual Assault Policy has gone through significant assessment and review and is in final draft form. As part of the policy development OPS reviewed national best practices in sexual assault response and investigations including model policies and related resources from the International Association of Chiefs of Police (IACP).¹

As part of their policy assessment and development process OPS also reviewed information and resources from Ending Violence Against Women International (EVAWI).²

OPS has demonstrated national best practice in policy development by seeking comments, feedback, and agreement on policy language from community resources and advocacy agencies that provide services to sexual assault victims and survivors, including the University of Montana Student Assault Resource Center (SARC).

OPS was involved in the development of an External Review Panel (ERP) which consists of Sexual Assault Victim and Survivor Advocates that will be reviewing future OPS investigations to ensure comprehensive and bias-free responses and investigations.

¹ The International Association of Chiefs of Police, Police Response to Violence Against Women Project, with funding from the Department of Justice's Office on Violence Against Women (OVW), focuses on the development of tools and policies to assist law enforcement in responding effectively to human trafficking, sexual assault, domestic violence, domestic violence by police officers, and all other crimes against women. - See more at: <http://www.theiacp.org/PublicationsGuides/Projects/ViolenceAgainstWomen/PoliceResponsetoViolenceAgainstWomen/tabid/372/Default.aspx#sthash.NgviEFyw.dpuf>

² EVAWI Mission: Inspire and educate those who respond to gender-based violence, equipping them with the knowledge and tools they need to support victims and hold perpetrators accountable. We promote victim-centered, multidisciplinary collaboration, which strengthens the response of the criminal justice system, other professionals, allies, and the general public -- making communities safer. <http://www.evawintl.org>

The ERP is in the process of finalizing the review protocol that was created by Anne Munch Consulting, in consultation and cooperation with the Women's Law Project³ and their review of sexual assault cases in Philadelphia, PA.

The ERP began reviewing felony sexual assault cases on September 18, 2013, however there were no currently closed sexual assault cases from OPS for ERP review. During the reporting period for this report OPS received two reports of misdemeanor sexual assaults and a third-party report of a felony sexual assault involving an unknown victim. All three of these reports were received in September of 2013 and were not eligible for review by the ERP as the investigations were not concluded within the reporting period. As a result, there has been limited review and observation by the Reviewer of OPS responding to and investigating reports of sexual assault.

The ERP will be providing feedback to OPS on their reviews of future cases in an effort to improve OPS' response, investigations, and services to sexual assault victims.

The Reviewer is pleased to report throughout this initial report that OPS has made substantial progress on the terms of the Agreement, but more importantly these efforts are beginning to show the intent of the Agreement which is to ensure the success of OPS effort to improve its response to adult sexual assault.

While it is too early in the review and assessment process to accurately measure the improvements, especially given the limited investigations reported to OPS to date, the Reviewer has initially observed positive impacts of the sexual assault response and investigations training. The Reviewer has noted OPS' efforts to enhance communication and coordination with community partners, and observed improved policy development process for the creation of a sexual assault response and investigation policy.

³ Women's Law Project: For over two decades, the Women's Law Project has worked to improve system responses to violence against women. From our [groundbreaking role in working with the Philadelphia Police Department](#) in reforming police practice investigating sex crimes to playing a major role in [reforming insurance practices](#) and [state welfare requirements](#), WLP continues to push for systemic changes that will positively impact women's lives. <http://www.womenslawproject.org/NewPages/wkViolenceAgainstWomen.html>

The remainder of this report documents the current activities and observations of the Reviewer and the progress that OPS is making to fulfill the terms of the Agreement to ensure the success of OPS' effort to improve its response to adult sexual assault.

**Description of Work Conducted by the Independent Reviewer during the reporting period;
May 29, 2013 – October 15, 2013**

Work of the Reviewer began immediately by establishing and completing the following initial tasks:

1. Establishing open lines of communication with the DOJ, the University, and OPS
2. Review and understand the DOJ findings regarding their investigation of OPS
3. Review and understand the Agreement between the University / OPS and DOJ
4. Conduct initial independent research and background on the University / OPS to better understand their mission, their capacity and the challenges OPS faces in providing overall policing and public safety services
5. Conduct initial independent research and background on OPS coordination and collaboration with the City of Missoula (City) and the Missoula Police Department (MPD)
6. Obtain City of Missoula Business License
7. Plan and coordinate initial site visit

The initial site visit was planned and scheduled for June 23 – 28, 2013. The goals and objectives for the initial site visit were established as follows:

Initial Site Visit Goal:

To establish professional relationships and effective communication with the University / OPS and their community partners and create clear expectations for the first year of independent review.

Initial Site Visit Objectives:

1. Meet with the University / OPS and the community partners in Missoula that are involved in the response to sexual violence, and/or are impacted by the Agreement;
2. Gain a deeper understanding of OPS' overall mission and operations;
3. Gain immediate and remote access to OPS facilities, necessary documents, databases, policies, and relevant information to begin planning the monitoring and assessment objectives described in the DOJ Agreement;
4. OPS to demonstrate and confirm they understand the terms of their Agreement and provide initial overview of their plans to fulfill terms of the Agreement
 - a. Demonstrate managerial and operational understanding for the implementation of each term, reform, and requirement of the respective DOJ Agreement
 - b. Establish proposed initial timelines for each term, reform, and requirement of the DOJ Agreement and how they will successfully measure compliance
 - c. Discuss and make recommendations for, including how we successfully measure actions, progress, and compliance
 - d. Learn what initial compliance activities have taken place to date at OPS
5. Establish clear expectations of roles and responsibilities for the coming year; July 1, 2013 – June 30, 2014.
6. Establish notification procedures to the Independent Reviewer for new reports of sexual assault, or others acts involving reported incidents of sexual deviance or violence;
7. Develop proposed budget for Independent Review for the University / OPS for FY 14.

Initial University / OPS Site Visit Agenda: Meeting w/ VP Michael Reid, Legal Counsel Lucy France, Chief Gary Taylor

Introductions and the site visit goals and objectives were discussed as well as expectations and responsibilities of the Reviewer. It was clearly communicated to VP Reid, Legal Counsel France and Chief Taylor that it is not the Reviewer's responsibility to implement the requirements of the agreement, but rather this is the responsibility of the University / OPS.

All agreed that in order to comply with the Agreement the University / OPS must take managerial and operational responsibility for the implementation of the terms, reforms, and requirements of the Agreement. It was further understood that OPS is responsible for documenting and measuring their efforts and the Reviewer is responsible to assess OPS' efforts and report whether the requirements of the Agreement have been implemented by OPS.

The Reviewer is pleased to report that the University / OPS pledged full cooperation with the Reviewer's expectations and responsibilities. VP Reid and Counsel France reported that the entire leadership of the University was supporting OPS' efforts to move forward. VP Reid and Counsel France provided timelines and documentation of their efforts and plans to fulfill the terms of the Agreement. The Reviewer was introduced to staff and provided work space and a tour of the campus during the site visit.

In a meeting with Chief Taylor he did discuss his frustration with the way the DOJ investigation was handled. Chief Taylor offered that it was his opinion that there was a lack of communication from DOJ and the investigation had an impact on the morale of his department.

The Reviewer was aware that OPS had shared this opinion previously and that DOJ disagrees that there was a lack of communication. The Reviewer is also aware that DOJ believes it is more important to move forward to implement the agreed upon reforms than continue discussing disagreements regarding the investigation.

Chief Taylor indicated that despite his frustration, OPS is focused on moving forward to determine what efforts can be made to enhance their responses and investigations of reports of sexual assault and to fulfill the terms of the Agreement.

Initial Site Visit Agenda: Tour of OPS Facility

Chief Taylor provided an overview of OPS operations and a tour of the OPS facility including introductions to staff. Chief Taylor reported that one of his major concerns is the current staffing level for OPS. Chief Taylor reported that OPS is challenged with only twelve fulltime officers to provide 24 / 7 public safety services for a campus of fourteen thousand students.

Chief Taylor reported that MPD provides support for felony criminal investigations that occur on campus, including sexual assault, but that OPS investigates all other misdemeanor cases. Chief Taylor reported that all criminal cases handled by OPS are referred to the County Prosecutor's office for criminal prosecution.

Chief Taylor reported that OPS have limited relationships with community partners in Missoula and on campus that provide sexual assault advocacy. Chief Taylor recognized the need to build stronger relationships with community partners on and off campus. Chief Taylor indicated that it was especially important to improve relationships with the University of Montana Student Assault Resource Center (SARC).

Initial Site Visit Agenda: Visit with Community Partners

Chief Taylor did not arrange for meetings with community partners; however MPD Chief Mark Muir arranged meetings and introductions to the following community partner organizations:

- Missoula City/County Crime Victim Advocate Program
- YWCA Pathway Program / 24 Hour Crisis Line
- First Step Resource Center, Providence St. Patrick Hospital

The Reviewer explained to the community partner organizations the roles and responsibilities of the Reviewer for MPD and OPS as it relates to the Agreement. Each organization explained their individual and collective roles in providing services to victims of sexual assault.

It was generally agreed that community resources for victims and survivors of sexual assault were strong, but that communication and coordination of services with MPD and OPS needed to be strengthened.

The Reviewer was pleased to see the commitment and professionalism of these organizations. All pledged full support for MPD and OPS efforts to fulfill the terms of their respective Agreements, recognizing an opportunity to strengthen a community coordinated response to sexual assault. The Reviewer provided contact information to each organization as ongoing communication with these community resources will be important throughout the term of the Agreement.

Meeting with University of Montana Student Assault Resource Center (SARC)

Chief Taylor recommended that I meet with Interim Director Drew Colling of the Student Assault Resource Center. Director Colling provided an overview of SARC and their mission. Director Colling agreed with Chief Taylor's assessment of the relationship between SARC and OPS. She reported that the relationship between SARC and OPS is limited and needed to improve. Director Colling reported that SARC will continue to look for opportunities to partner with OPS and improve relationships and understanding.

This should be a priority for OPS as SARC provides peer counseling and crisis intervention to survivors of sexual violence throughout the year.

Discussion with Karissa Drye, New Student Orientation Director:

During the initial site visit the University of Montana was holding a new student orientation. Director Karissa Drye provided the Reviewer with the new student orientation packet and informed the Reviewer of the week long activities.

Director Drye reported that OPS was involved in student orientation, panel discussions about life on campus, and that OPS staffed a booth providing public safety information.

Director Drye also indicated that OPS is involved in discussions regarding presentations about campus life and safety; specifically a presentation titled “A Slice of Campus Life...UM Style.” This presentation introduces students to many aspects of college life and is designed to spur questions that will lead to dialogue with peers and families about college life at UM, including alcohol related issues and sexual violence awareness and prevention. Director Drye spoke positively about the value of OPS involvement in new student orientation.

Initial Site Visit Agenda: Meet with County Attorney Fred Van Valkenburg

MPD Chief Mark Muir arranged a meeting with County Attorney Fred VanValkenburg. The Reviewer’s role was explained for both MPD and OPS. The Reviewer and Mr. Van Valkenburg exchanged contact information and encouraged open lines of communication throughout the process.

Initial Site Visit Agenda: OPS Presentation on Terms of the Agreement

As part of the Initial Site Visit, OPS was asked to conduct a presentation for the Reviewer on their understanding of the DOJ Agreement and their plans to fulfill the terms of the Agreement. The objectives of the presentation were as follows:

1. Demonstrate managerial and operational understanding for the implementation of each term, reform, and requirement of the DOJ Agreement
2. Establish proposed initial timelines for each term, reform, and requirement of the DOJ Agreement and how OPS will work to successfully measure compliance
3. Learn what initial compliance activities have taken place to date at OPS
4. Discuss and make recommendations for the Independent Review Plan, including how we successfully measure actions, progress, and compliance

The OPS presentation was conducted by Chief Taylor. Also present during the presentation was University VP Michael Reid, Captain Ben Gladwin, Community Liaison Officer Casey Gunther, and Operations Manager / Dispatch Supervisor Shelley Harshbarger.

The Reviewer is pleased to report that OPS not only demonstrated a thorough knowledge of the terms of the Agreement, they also demonstrated that prior to the Agreement they had already taken action to begin reviewing their policies and procedures, established a work plan and timeline to begin implementation of the terms of the Agreement, and they were involved in community collaboration with MPD for the creation of a comprehensive sexual assault community resource guide titled; “It’s Your Call 911.”⁴

Furthermore, OPS reported that they recognized a need to enhance relationship and trust with students so they created a new Community Liaison Officer (CLO) position to connect with students and other campus partners.

⁴ The Missoula Police, The University of Montana and multiple community advocate groups are working together to address these crimes — on campus or off — with responses that help victims and enhance public safety. When you call 911, it does not obligate you to file a police report. It does, however, help you open doors to services available in the community. <http://www.missoula911.com/>

An office for the CLO has been established in Jesse Hall, a University dormitory, in an effort to make OPS more accessible and visible to students. While the effort to enhance relationships and trust with students should be commended, OPS must ensure that this effort is the responsibility of all employees of OPS and not just the CLO.

Chief Taylor reported that CLO Gunther has also created a sexual assault awareness seminar for students which includes self-defense specifically for women instructed by a woman with a sixth degree black belt in Kenpo Karate.

The Reviewer met with CLO Gunther to review the sexual assault seminar. The Reviewer was impressed with CLO Gunther's enthusiasm. While this initial effort should be commended, the seminar appeared specific to risk reduction and self-defense training directed at women for incidents involving stranger sexual assault.

While research and experience clearly show that women are most often the victim of sexual assault committed by men, successful sexual assault prevention and education programs on campuses should be inclusive of all students, and should include information specific to men's role in sexual assault prevention.

Bystander intervention strategies, understanding healthy relationships, and understanding consent in the context of sexual intimacy are successful strategies directed at non-stranger sexual assault which occurs more often on college campuses as part of dating and / or intimate partner violence.

Most importantly, the sexual assault awareness seminar lacked any involvement with sexual assault advocacy, specifically SARC. The Reviewer recommends OPS and SARC work together with community advocacy to enhance the sexual assault awareness seminar to show a community coordinated effort for sexual assault awareness and prevention.

During the OPS presentation, OPS identified challenges they face as they must fulfill their Agreement with DOJ to respond to criminal complaints of sexual assault and at the same time the University has a separate agreement with the Department of Education as it relates to the Universities responsibilities in accordance with Title IX.

The Reviewer identified a lapse of coordinated communication between the University Administration and OPS on some of these issues and this was brought to the attention of the University and OPS.

The University in its entirety remains ultimately responsible for the appropriate, effective, and lawful response to reports of sexual harassment or assault, regardless if the matter is reported to OPS as a criminal case, reported to the University as Administrative investigation in accordance with Title IX, or both.

During the OPS presentation, OPS acknowledged the difficult task of how to measure progress and effectiveness of their efforts, and also ensure that unintended consequences of their actions are identified and remedied.

The following areas of measurement were initially identified for OPS to incorporate into their managerial and operational responsibility for documenting and measuring their efforts in accordance with the Agreement:

- Victim participation rates in the process
- Number of cases going to trial and number of cases resulting in conviction
- Timelines that track the case from initial response, time of investigation, when cases are referred to the County Prosecutor, and when the County Prosecutor makes a decision to charge / not to charge
- Increased training; hours spent on sexual assault training, pre and post testing and evaluation results
- Feedback and review by community groups and partners
- Feedback and review by External Review Panel
- Approval rates of External Review Panel
- Victim survivor survey in cooperation with community partners / SARC

OPS acknowledged that they will have to review and analyze their Records Management System (RMS) to ensure they can collect additional data that will be helpful for their efforts to document compliance with the Agreement.

The Reviewer agreed with OPS that the initial efforts for compliance with the Agreement should be directed at the following requirements of the Agreement:

- Assess and Modify Sexual Assault Policies and Protocols
- Provide Initial and On-going Sexual Assault Response and Investigations Training
- Establish External Review of (Felony) Sexual Assault Cases to be Conducted by a Panel of Qualified Representatives

The Reviewer is pleased to report that progress on these efforts has been substantial. The OPS policy is in final draft, the initial training for officers and detectives has been completed and the External Review Panel (ERP) received training and conducted the first case reviews in September 2013. (See further details of progress noted in the compliance graph on page 27 – 35)

The Reviewer and OPS established notifications procedures to the Reviewer for all new reports of sexual assault cases beginning with the fall semester 2013. The notification procedures include remote confidential access to review ongoing cases reported to OPS. Between the start of the fall semester and the time of this report, three reports of sexual misconduct or sexual assault have been reported to OPS.

Because these investigations occurred late in the reporting period, and given the nature of these three reports, there has been limited opportunity to review, assess, and document OPS response and investigations to sexual assaults in this report.

Case review by the Reviewer is ongoing and will continue throughout the term of the Agreement, including tracking reported cases to ensure Clery Law compliance. The Reviewer will identify areas of concern and bring them to OPS' attention to ensure they are being addressed by OPS in training, policy review, and direct feedback to officers and detectives for professional development.

Following the Initial Site Visit, and in line with the contract for services between the Reviewer and the City, the Reviewer produced a budget for services for Fiscal Year 2014.

August 6 – 7, 2013 Two Day Sexual Assault Training for Investigators

In accordance with the Agreement, Section III, B. 5, OPS is required to provide in-depth sexual assault training to OPS detectives. This training was designed by Anne Munch Consulting to meet the requirements detailed in this section of the Agreement. The training was delivered by Anne Munch, Esq., with the Reviewer assisting in the training delivery.

One of the requirements of the training was a section on the Montana sexual assault laws. Missoula County Attorney Fred Van Valkenburg was invited to work with Anne Munch to deliver this section of the training. Mr. Van Valkenburg respectfully declined to conduct the training and recommend that someone from the Montana Attorney General's Office provide the training. Mr. Van Valkenburg assisted in securing Assistant Attorney General Ole Olson to provide the training on Montana Law.

The training was attended by seven members of OPS including detectives, Chief Taylor, and the OPS command staff. The training was open to other Montana police departments, the County Attorney's Office and community agencies that are involved in sexual assault related services.

Over ninety multi-disciplinary participants attended representing law enforcement, advocacy, health care / Sexual Assault Nurse Examiners (SANE), and several members of the County Attorney's Office including Missoula County Attorney Fred Van Valkenburg.

The training included a pre and post-test and daily evaluations. Review of the evaluations and feedback for the training were overwhelmingly positive with participants agreeing that the training provided new information to help them feel better prepared to address sexual assault cases. Pre and Post test scores showed the following improvements for OPS personnel attending the training:

- Pre Test Combined Average Score for OPS personnel in attendance: 68.5
- Post Test Combined Average Score for OPS personnel in attendance: 90.7
- Combined Improvement Between Pre and Post Test Score: 22.2

One point of interest surfaced during the training and in fact was an identified concern of the Reviewer while reviewing MPD cases. The Reviewer noted during MPD case reviews that there appeared to be minimal planning and collection of background information around the approach to the suspect. Furthermore, the Reviewer noted a lack of non-custodial interview approaches and an overreliance on custodial interviews requiring Miranda warnings. There was debate around both of these issues during the training.

Several investigators and prosecutors in attendance expressed that Montana laws and court decisions limited their approaches for non-custodial versus custodial interviews with suspects.

The issue related to custodial and non-custodial interviews is currently in review. The Reviewer suggested a legal opinion from the Montana Attorney General's Office of current controlling laws or court decisions on this point. Once legal review and guidance on these issues is received, OPS should reassess their policy and future training needs on this issue.

OPS relies on MPD to conduct all felony sexual assault investigations, but both OPS and MPD should have consistent and lawful approaches to the suspect. Also, because OPS and MPD have investigative responsibilities for criminal cases of sexual assault, and the University has investigative responsibilities for administrative investigations in accordance with Title IX, the University and OPS will need to ensure their policies are coordinated with MPD.

OPS Sexual Assault Policy

The OPS Sexual Assault Investigation Policy has gone through substantial assessment and development. OPS followed national best practices and sought and received feedback for their policy from community partners that provide advocacy and related services for victims and survivors of sexual assault.

The Reviewer referred OPS to the following documents and research materials to assist in policy assessment and development:

- International Association of Chiefs of Police (IACP) Model Policy
- IACP Sexual Assault Issues and Concepts Paper
- IACP Sexual Assault Guidelines Investigative Strategies Booklet and Supplemental Report Form
- Ending Violence Against Women International (EVAWI) Website and Resources

OPS has submitted their sexual assault policy modifications for feedback from the Reviewer and DOJ. The OPS policy is currently in final draft and it is anticipated that it will be fully implemented and publicly posted before January 2014.

OPS will have to ensure their final policy for criminal investigations of sexual assault is coordinated with the University's policies and requirements for administrative investigations in accordance with the University's Title IX responsibilities.

September 17 & 19, 2013 Initial Training for First Response Officers

In accordance with the Agreement, section III B.3., OPS is required to provide initial training to OPS officers in sexual assault response. This training was designed by Anne Munch Consulting to meet the requirements detailed in this section of the Agreement for first response officers. The training was delivered by Anne Munch Consulting with the Reviewer assisting in the training delivery.

The one day training was provided twice to allow OPS to adjust schedules to ensure adequate 24 hour police coverage for the campus, while also allowing personnel on all shifts to adjust their schedules to attend. All OPS personnel received the training as required by the Agreement.

The training included a pre and post-test and daily evaluations. Review of the evaluations and feedback for the training were overwhelmingly positive with participants agreeing that the training provided new information to help them feel better prepared to address sexual assault cases. Pre and Post test scores showed the following improvements for OPS personnel attending the training:

- Pre Test Combined Average Score for OPS personnel in attendance: 84.7
- Post Test Combined Average Score for OPS personnel in attendance: 97.5
- Combined Improvement Between Pre and Post Test Score: 12.8

September 18 – 20, 2013, External Review Panel Training and Case Review

In accordance with the Agreement, section IV 15 – 17, OPS is required to create an External Review Panel (ERP) to review cases of sexual assault that are reported to, or investigated by OPS, including cases referred to MPD. During the planning process of the ERP, the Parties agreed to specifically review felony cases only. Misdemeanor sexual assault cases can still be reviewed if OPS, MPD, or the Reviewer determines the need to review a misdemeanor case.

ERP members were nominated by MPD and OPS and then selected with oversight of the Reviewer and DOJ. The initial ERP protocol was designed and implemented by Anne Munch Consulting in cooperation and consultation with the Women’s Law Project and their external review efforts in Philadelphia.

The ERP began operation September 18, 2013 with initial protocol training conducted by Anne Munch Consulting. ERP members provided feedback during the training to help create the review protocol. The training and implementation of the review protocol were observed by the Reviewer and DOJ.

ERP members provided helpful feedback following the training to help develop a Final Review Protocol. Once the ERP agrees on the Final Review Protocol, the Protocol will be sent to the Reviewer and DOJ for approval.

The ERP protocol is designed for the ERP members to “examine each case of sexual assault and rape on (a) the comprehensiveness of the investigation; and (b) indication of bias present in the investigation.”

OPS attended the ERP training which included an actual case review of an MPD case to work through the protocol and discuss how case review feedback would be delivered to MPD and OPS. This review included reading of all written reports, observation of the digital recording of the victim interview and observation of the digital recording of the suspect interview.

The initial case reviews by the ERP did not involve any cases handled by OPS as there were no current cases of sexual assault within the time frame of ERP cases reviewed (June 2013 – August 2013).

In September 2013 OPS received two reports of misdemeanor sexual assaults and a third party report of one felony sexual assault without consent involving an unknown victim. These three reports were not eligible for initial review by the ERP as they occurred late in the reporting period for this report, and the investigations were not concluded within reporting period. As a result, there has been limited review and observation by the ERP and the Reviewer of OPS responding to and investigating reports of sexual assault.

OPS is in the process of developing an internal protocol to ensure future ERP feedback and recommendations are shared with supervisors and individual officers and incorporated into policy updates, training, and employee development; or to re-open, or reexamine cases where warranted. OPS will also monitor the ERP feedback and case coding data to help measure the effectiveness of the training, policy, and ERP feedback.

For the duration of the Agreement the ERP will continue case reviews at least semi-annually or more often if necessary if the case load requires.

One issue of concern was identified by the Reviewer during site visits to MPD and OPS, and it was also observed with cases being reviewed during the External Review Panel. The issue of concern is the reported delay in charging decisions from the County Attorney's Office.

MPD and OPS response to questions by the Reviewer suggested that the time between an investigator referring a felony or misdemeanor case to the County Attorney's Office for a charging decision, and the delay in the response from the County Attorney's Office, can often times be several weeks or months, or in some cases approaching a year before a decision is made.

The Reviewer contacted County Attorney, Mr. Van Valkenburg to hear his perspective regarding this concern. Mr. Van Valkenburg said it would be helpful to have a specific case that the Reviewer was referencing. The Reviewer asked Mr. Van Valkenburg if he could speak generally about this concern. Mr. Van Valkenburg reported that his office is very busy and that he and his staff do the best they can with the resources they have.

Mr. Van Valkenburg indicated that the priority for staff time is directed to currently charged cases that are active in court. Mr. Van Valkenburg said that his office does not have a current protocol or policy in place to ensure timely charging decisions, but rather they rely on MPD detectives to stay on top of the Attorneys to get the decisions they need. Mr. Van Valkenburg said that if he does not hear from the Detective of the case he assumes the case is not a priority for the Detective. Mr. Van Valkenburg added that when the Attorneys in his office have spare time they review cases for charging decisions.

The Reviewer sees a concern with a lack of process or protocol to ensure timely review and charging decisions between MPD, OPS, and the County Attorney's Office. Case reviews and charging decisions should be done thoroughly, however a process and reasonable time frame for review should be worked out between MPD, OPS, and the County Attorney's Office as soon as possible to better reflect these crimes as a priority.

A case review and charging decision protocol with suggested timelines would certainly be helpful to all involved, especially victims of sexual assault, as well as persons accused of sexual assault. A protocol would also be further evidence of a true community coordinated response.

Assessment of Progress to Date on the Requirements of the Agreement:

It is too early in the review process for qualitative assessment of OPS' progress in achieving the desired outcomes for each area covered by the Agreement. However, the following compliance graph shows all the requirements of the Agreement and the work that OPS has accomplished to date.

The compliance graph uses compliance definitions to categorize the status of each requirement of the Agreement.

The compliance definitions are as follows:

Pending compliance: Current plans for implementation but not yet implemented in approved policy, training, or actual practice

Partial Compliance: Plans for compliance have been implemented, reflected in approved policy and training, but not yet observed in actual practice

Compliance: Plans for compliance have been implemented in approved policy and training, and evidence of actual practice

Sustained Compliance: Found by the Reviewer to have been fully implemented in practice based on a qualitative assessment showing MPD achieved the desired outcomes for the area covered by the Agreement

University of Montana – DOJ Agreement Action Items – Deadlines – Compliance

Pending compliance, **Partial compliance**, **Compliance**, **Sustained compliance**

DOJ ACTION ITEM	PROPOSED ACTION	DEADLINE	COMPLIANCE
I.	Recitals	N/A	N/A
II	Definitions and Abbreviations	N/A	N/A
III.A.	Improving OPS’ Response to Sexual Assault	Jan 1, 2014	Pending compliance ; ongoing effort by OPS has included substantial assessment and policy modifications. OPS has also sought input and review of draft policy from community partners including advocacy. Policy modifications have included ongoing review by independent reviewer and most recently by DOJ.
III.A.2. III. A.2. a - i	Develop detailed victim-centered sexual assault response policy that incorporates the requirements of the agreement and comports with best practices and current professional standards. OPS’ sexual assault policy should include guidance on responding to sexual assault and incorporate the requirements of the International Association of Chiefs of Police Model Policy on Investigating Sexual Assault and include the details of III.A.2. a. – i.	Jan 1, 2014	Pending compliance ; ongoing effort includes review of IACP Model policy, IACP Sexual Assault Guidelines and Supplemental Report Form. Policy is still in draft awaiting final draft for review and approval. (Implementation must include employee review and understanding of new policy, procedures and terms of the Agreement)
III.B.	Sexual Assault Response Training	Nov 1, 2013	Partial compliance ; initial training of all OPS officers, detectives and recruits designed and completed by Anne Munch Consulting Inc., including pre and post testing. On-going effort to develop annual training program and supervisor review training.

<p>III.B.3.</p>	<p>OPS shall provide initial and ongoing annual in-service training to all OPS officers and detectives, and recruits about law enforcement response to sexual assault. This initial and annual in-service training shall ensure that all OPS officers and detectives understand and can perform their duties pursuant to the Agreement, and shall reflect and incorporate any developments in applicable law, best practices, and professional standards. Annual in service training shall address also any training need identified throughout the previous year. The initial and in-service training shall be of sufficient length and scope to include details of III.B.4-7.</p>	<p>Sep 30, 2013</p>	<p>Partial compliance; initial training completed by all OPS officers, detectives, and recruits conducted by Anne Munch Consulting Inc., including daily evaluations, pre and post testing. Training dates; Aug 6 – 7, 2013, Sep 17 & 19, 2013 On-going effort to develop annual in-service training program and supervisor review training.</p>
<p>III.B.4.</p>	<p>This training shall include presentations by victims of sexual assault, if available, or presentations which adequately convey victims’ experiences and shall include victims’ advocates in order to provide officers with the unique perspectives of those who have been victimized by sexual assault and/or those who work with sexual assault survivors.</p>	<p>Sep 30, 2013</p>	<p>Partial compliance; initial training conducted by Anne Munch Consulting Inc., included perspectives of those victimized by sexual assault and/or those who work with sexual assault survivors. On-going effort to ensure this perspective is included in annual in-service training.</p>
<p>III.B.5.a.– d.</p>	<p>OPS shall provide additional in-depth training in sexual assault investigations to all OPS detectives who conduct such investigations. The training shall include the details of III.5. a. – d.</p>	<p>Aug 9, 2013</p>	<p>Compliance; Training designed and conducted by Anne Munch Consulting Inc., on Aug 8-9, 2013 in accordance with this section of the Agreement. Pre and Post Test with daily evaluation included.</p>

<p>III.B.6.</p>	<p>OPS personnel who provide direct supervision of officers who respond to reports of sexual assault and detectives who investigate sexual assault allegations shall receive training on how to review sexual assault response and investigations for comprehensiveness and to detect indications of bias, including how to implement the supervisory reviews and responsibilities contained in this agreement.</p>	<p>Nov 1, 2013</p>	<p>Pending compliance; ongoing effort.</p>
<p>III.B.7.</p>	<p>Training pursuant to the Agreement shall be provided in accordance with best practices and include adult-learning methods that incorporate role-playing scenarios and interactive exercises, as well as traditional lecture formats. Training shall also include testing and/or writings that indicate that OPS personnel taking the training comprehend the material taught.</p>	<p>Nov 1, 2013</p>	<p>Partial compliance; All training to date was designed and conducted by Anne Munch Consulting Inc., and was delivered in live presentations and included best practices, adult-learning methods, lecture format, pre and post testing and daily evaluations. Ongoing effort to ensure that these requirements are included in annual training.</p>
<p>III.C.</p>	<p>Review of Policies and Training</p>	<p>Jun 15, 2015</p>	<p>Pending compliance; ongoing effort</p>
<p>III.C.8.</p>	<p>Each of the requirements of this agreement shall be incorporated into OPS policy, and all applicable OPS officers and employees shall be trained on how to meet the requirements of this agreement. OPS shall submit new and revised policies and protocols related to sexual assault and/or the terms of the Agreement, and all curricula for trainings developed pursuant to this agreement, to the Independent Reviewer and DOJ for review and comment prior to implementation and/or training delivery.</p>	<p>Jun 15, 2015</p>	<p>Partial compliance; OPS policy is in draft form and updated drafts are submitted to the independent reviewer. A draft copy of the OPS policy has initially been reviewed by DOJ. Training Consultant, Anne Munch Consulting Inc., was retained by MPD / OPS to design and conduct the initial training in agreement approved by DOJ. Ongoing effort to ensure that the OPS policy will be implemented in accordance with the Agreement and that all OPS officers and employees will be trained on the policy and how to meet the requirements of the Agreement.</p>

III.C.9.	OPS sexual assault related policies shall be publicly available.	Jan 1, 2014	Pending compliance; ongoing effort to ensure policies will be publicly available upon completion.
III.D.	Investigating Alcohol or Drug Facilitated and Non-Stranger Sexual Assault	Jun 15, 2015	Partial compliance; initial training designed and conducted by Anne Munch Consulting Inc., included these requirements. Ongoing effort to ensure that these requirements are included as part of annual training and the OPS policy.
III.D.10.	OPS shall enhance and improve policy, training, and oversight to ensure that officers: 1) recognize the prevalence of non-stranger and alcohol-or drug facilitated sexual assault, and relative infrequency of false reporting, and 2) accordingly take all appropriate investigative steps when investigating non-stranger sexual assault, sexual assault facilitated by alcohol or drugs, and sexual assault involving victim who were incapacitated at the time of the assault or otherwise unable or unwilling to clearly describe the assault.	Jun 15, 2015	Partial compliance: initial training designed and conducted by Anne Munch Consulting Inc., included these requirements. Ongoing efforts to ensure these requirements are included as part of annual training and the OPS policy.
III.E.	Victim-Centered Response to Sexual Assault	Jun 15, 2015	Pending compliance; ongoing effort
III.E. 11 a-g	OPS shall enhance and improve policy, training, and oversight to ensure victim-centered practices in the areas of sexual assault response, interviews, and investigations in order to increase the likelihood of victims' continued participation with law enforcement; improve the experience for victims; and strengthen sexual assault investigations. These practices include the details of III.E.11. a-g	Jun 15, 2015	Partial compliance; initial training designed and conducted by Anne Munch Consulting Inc., was complete with victim centered practices. Ongoing efforts to ensure that victim centered practices are included in OPS policy and annual training.

III.F.	Close Supervision and Internal Oversight	Jun 15, 2015	Pending compliance; ongoing effort
III.F.12. a-g	OPS shall establish and implement measures to ensure close supervision and internal oversight of all sexual assault cases investigations including details of III.F.12 a-g	Jun 15, 2015	Pending compliance; ongoing effort
III.G.	Coordination with Law Enforcement and Community Partners	Jun 15, 2015	Partial compliance; ongoing effort. Prior to independent review, MPD coordinated with law enforcement, including OPS, and community partners in the development of community resource booklet for sexual assault victims / survivors titled; “It’s Your Call.” Ongoing effort has included community partners’ review of OPS draft Sexual Assault policy, community partner involvement in initial training, and the collaboration and creation of the External Review Panel.
III.G.13. a-d	To improve the reporting and participation experience for victims of sexual assault, OPS shall increase and improve its communication, coordination, and collaboration with community and law enforcement partners, including the University, MPD, prosecutors, and University, community, and system advocates. OPS shall include details of III.G.a-d.	Jun 15, 2015	Partial compliance; OPS coordinated and collaborated with the University, MPD, Montana, Missoula County Attorney’s Office (MCAO), and community advocates as indicated above. Initial training and the draft policy supports this continued effort. Ongoing efforts include working with the University Administration and Student Assault Resource Center (SARC) to ensure that administrative responsibilities in accordance with Title IX and victim centered services are in line with the draft OPS policy. OPS is also working to include SARC and other community partners in the delivery of annual training.

<p>III.H.14.</p>	<p>Data Collection and Reporting</p>	<p>Jun 15, 2015.</p>	<p>Pending compliance; ongoing effort</p>
<p>III.H.14. a-c</p>	<p>To identify shortcoming, assess improvement, and increase community confidence in the University’s response to sexual assault, OPS shall enhance its data collection, analysis, and reporting and shall include details of III.H.14. a-c.</p>	<p>Jun 15, 2015</p>	<p>Pending compliance; ongoing effort</p>
<p>IV.</p>	<p>External Review of Sexual Assault Cases (In conjunction with MPD)</p>	<p>Jun 15, 2015</p>	<p>Partial compliance; External Review Panel (ERP) was selected with oversight of the independent reviewer and DOJ. The ERP protocol was designed and implemented by Anne Munch Consulting Inc., modeled after and in consultation with the Women’s Law Project and their efforts in Philadelphia. The ERP began operation Sep 18, 2013 with protocol training and review of ongoing felony sexual assault cases submitted by MPD and OPS. (There were no current cases submitted for review by OPS during the initial ERP) Ongoing effort to continue consistent reviews at least semi-annually, or as case load requires.</p>

<p>IV.15-17</p>	<p>The parties shall jointly select and establish a group of qualified representatives, including experienced sexual assault prosecutors, legal providers, experienced sexual assault investigators, and/or advocates, to serve as an external review group for sexual assault cases. Beginning, August 9, 2013 (three months after effective date of agreement) the external review group shall review, on a semi-annual basis, all reports of sexual assault received by OPS, and all investigations of those reports opened by OPS since the Effective Date. Thereafter, this external review group shall review all reports of sexual assault received by OPS and investigations of those reports opened by OPS, since the external review group's last such review including details of IV.15-17</p>	<p>Aug 9, 2013 Sep 18, 2013</p>	<p>Partial compliance; The ERP was selected with approval of the independent reviewer and DOJ in Sep 2013. On Sep 18, 2013, the ERP was trained on the review protocol and began reviewing felony sexual assault cases submitted by MPD and OPS. Ongoing effort to ensure that ERP feedback and recommendations are shared with supervisors and incorporated into policy updates, training, and employee development, and to re-open or reexamine cases where warranted.</p>
<p>V. V.18.</p>	<p>Community-Conducted Sexual Assault Response Safety and Accountability Audit (In conjunction with MPD) The University shall participate in and cooperate with any effort by the City of Missoula to organize and lead a sexual assault safety and accountability audit designed to assess how Missoula City, Missoula County, and the University of Montana respond to and collaborate to address sexual assault, with focus on enhancing victim safety, support, and participation in the law enforcement process.</p>	<p>Jun 15, 2015</p>	<p>Pending compliance; ongoing efforts</p>

VI.	Independent Oversight	Current / ongoing	
VII.	Agreement Implementation and Enforcement	Current / ongoing	
VIII.	Termination of the Agreement	Jun 15, 2015	Pending “Full and Sustained Compliance”

Conclusion:

As observed by DOJ throughout their investigation, findings, and settlement Agreement, the University and OPS continued to cooperate fully and professionally with the Reviewer in their initial efforts to fulfill the terms of the Agreement.

While much progress has been made, there is substantial work that needs to be accomplished. OPS identified challenges they face as they must fulfill their agreement with DOJ to respond to criminal complaints of sexual assault and at the same time the University has a separate agreement with the Department of Education as it relates to the Universities responsibilities in accordance with Title IX.

The Reviewer identified a lapse of coordinated communication between the University Administration and OPS on some of these issues and this was brought to the attention of the University and OPS.

The University in its entirety remains ultimately responsible for the appropriate, effective, and lawful response to reports of sexual assault, regardless if the matter is reported to OPS as a criminal case, or the University as an administrative investigation in accordance with Title IX, or both.

The Reviewer remains impressed with the quality and service offered by community resources in Missoula for victims and survivors of sexual assault. Continued efforts are underway to enhance communication and coordination between OPS, the County Attorney's Office, and the community resources to achieve a true community coordinated response to sexual assault. Special attention and effort to build effective working relationship and trust between OPS and SARC should be a priority.

Continued sexual assault case reviews by the Reviewer and the ERP have been limited for cases reported to OPS as the University was in summer semester during the majority of this review period. Case reviews by the Reviewer will occur for all cases reported to OPS and misdemeanor cases may also be referred by the Reviewer to the ERP.

The OPS Sexual Assault Investigations Policy is in final draft and needs to be implemented including training all call-takers/dispatchers and sworn personnel on the new policy. OPS presented an initial plan for implementation which will be evaluated by the Reviewer in the next report. Continued progress on the remaining requirements of the Agreement is expected.

The Reviewer looks forward to the work ahead and the continued commitment of the University, OPS, and the community of Missoula.