



MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING AMONG CERTAIN ORGANIZATIONS AND THE COUNTY PROSECUTORS REGARDING THE REPORTING OF CERTAIN OFFENSES

Article 1 Preamble

The parties to this Memorandum pledge their continuing commitment to work together to protect victims of crimes. The parties recognize the value of cooperation and communication and the need to have in place clearly defined policies and procedures so that all employees of the signatory organization know what they are expected to do when in the course of their professional duties they have reasonable cause to believe that certain crimes have been committed. The parties are committed to addressing and alleviating the injuries caused by these crimes and to preventing the reoccurrence of such crimes to the greatest extent possible.

Article 2 Statement of Policies, Findings and Objectives

1. The parties to this Memorandum will continue to work together to prevent criminal activity. The parties recognize that the crimes addressed in this Memorandum are serious matters that warrant a full and prompt investigation by appropriate law enforcement authorities.
2. The parties recognize that this Memorandum calls for the sharing of information that may or may not result in a prosecution. Circumstances that may preclude prosecution include, but are not limited to, insufficient facts to sustain a prosecution or conviction, a statute of limitations, or a determination by the appropriate prosecuting authority that prosecution would not be appropriate considering the interests of the victim. The parties nonetheless recognize that it is ultimately the responsibility of the prosecutor to decide when and how to conduct a criminal investigation, and whether it is appropriate to present a matter to a grand jury to decide whether to initiate a criminal prosecution under the laws of the State of New Jersey.

Article 3 Definitions

For the purposes of this Memorandum "Employee" means any person who is employed by a signatory organization or a subdivision thereof in any activity

under the auspices of the signatory organization or the subdivision. "Employee" shall not mean anyone who is employed by any health care or skilled nursing facility, college or university owned by, or operated under the auspices of any signatory organization.

"Crime" means any of the following offenses under New Jersey law, or an attempt or conspiracy to commit any of the following offenses:

Sexual assault and aggravated sexual assault, as defined in N.J.S.A. 2C:14-2;

Criminal sexual contact and aggravated criminal sexual contact, as defined in N.J.S.A. 2C:14-3;

Child abuse, as defined in N.J.S.A. 9:6-1, 9:6-3 and 9:6-8.21. The term child abuse shall include any act constituting the offense of endangering the welfare of a child, as defined in N.J.S.A. 2C:24-4, including, but not limited to, sexual conduct which would impair or debauch the morals of the child, the offense of photographing or filming a child engaged in a prohibited sexual act as defined in N.J.S.A. 2C:24-4b(3), the offense of distribution of child pornography as defined in N.J.S.A. 2C:24-4b4(a), the offense of knowing possession or viewing of child pornography as defined in N.J.S.A. 2C:24-4b4(b), the offense of luring or enticing a child as defined in N.J.S.A. 2C:13-6, and the offense of lewdness as defined in N.J.S.A. 2C:14-4b where the offense involves a victim who at the time of the offense was less than 18 years of age.

Article 4 Liaisons

The signatories to this Memorandum will each designate one or more persons to serve as liaisons. The roles and functions of these liaisons are to:

1. Facilitate communication and cooperation between the signatory organization, the county prosecutors and the Division of Criminal Justice;
2. Provide and receive information concerning the crimes specified herein;
3. Identify issues or problems that arise in the implementation of this Memorandum and facilitate the resolution of any such problems, and
4. Act as the primary contact persons between the signatory organizations, the county prosecutors' offices and the Division of Criminal Justice.

Within 30 days following the execution of this Memorandum, the undersigned county prosecutors, the Division of Criminal Justice and the signatory

organization shall identify in writing the names, addresses, and contact numbers for the liaisons designated above. This information shall be updated by the county prosecutors, the Division of Criminal Justice and the signatory organization upon any change in the liaisons, and at least annually.

Article 5 Referral of Matters for Investigation

5.1 - Obligation to Report Certain Crimes

Subject only to the provisions of Section 5.3 of this Memorandum, whenever any employee of the signatory organization in the course of his or her employment or professional responsibilities has received or discovered information which establishes reasonable cause to believe that a crime as defined in Article 3 of this Memorandum has been committed, the employee shall immediately report the information to the liaison designated by the signatory organization who, subject only to the provisions of Section 5.3 of this Memorandum, shall then promptly notify the appropriate county prosecutor's office having jurisdiction over the matter, except that notification to the appropriate county prosecutor's office shall be made immediately when there is reason to believe that the criminal conduct is continuing to occur, or is about to occur, or where such conduct has recently occurred under circumstances where it is reasonable to believe that physical evidence of the criminal conduct might be destroyed or otherwise lost as a result of any delay in initiating a law enforcement investigation. Where more than one county prosecutor may have jurisdiction over the matter (that is, where the suspected criminal conduct occurred in more than one county), the designated liaison shall notify all appropriate county prosecutors, or shall notify the Division of Criminal Justice if the location of an offense is uncertain or the offense occurred outside the jurisdiction of the undersigned county prosecutors.

Matters that will be reported to the county prosecutor pursuant to this Article include, but are not limited to, the following circumstances:

1. A person whose identity is known to an employee of a signatory organization, or who appears in person, reports to the employee of a signatory organization that he or she is a victim of a crime addressed by this Memorandum, or claims to be the parent, guardian or legal custodian of a person alleged to be the victim of a crime addressed by this Memorandum; or
2. An employee of a signatory organization receives information pertaining to a crime addressed by this Memorandum that causes the signatory organization to assign an employee or response team to investigate the matter.

5.2 Obligation to Immediately Report Kidnapping of a Minor to Police

Subject only to the provisions of Section 5.3, whenever any employee of the signatory organization in the course of his or her employment or professional responsibilities has received or discovered information which establishes reasonable cause to believe that a minor has been, is, or is about to be kidnapped, the employee shall immediately notify the local police department having jurisdiction over the matter by means of the 9-1-1 system.

5.3 Privileges

Nothing in this Memorandum is intended to abrogate or impair any privilege including, but not limited to, those currently codified at N.J.S.A. 2A:84A-23 (Evid.R.511) and N.J.S.A. 2A:84A-22.15 (Evid.R.517).

5.4 Consent of Victim Not Required

Subject only to the requirements of Section 5.3, the obligation to report suspected crimes pursuant to Section 5.1 and 5.2 is not dependent upon the consent of the victim, or of the parent or legal guardian of a minor victim, or of any person providing information about the crime.

5.5 Information to be Provided

The notification to the county prosecutor's office pursuant to Section 5.1 shall include all information about the incident or incidents, including, where known, (a) the name, address and age of the victim; (b) in the case of a child victim, the name and address of the victim's parent, guardian or other person having custody and control of the victim; (c) the nature and extent of any injuries suffered by the victim, including information concerning any previous injuries or abuse; (d) the identity and present whereabouts of the person suspected of committing the offense; and (e) any other information that may be helpful with respect to a full and prompt investigation of the matter.

5.6 Nonaccusatorial Nature of the Referral

A referral of information to the county prosecutor's Office is only a transmittal of information that might be pertinent to a law enforcement investigation. A referral of information is not an accusation or formal charge.

5.7 Supersedure of Civil Confidentiality Agreements

The parties recognize that to resolve potential or actual civil claims, it might be appropriate to enter into confidentiality agreements, which would protect and advance privacy interests from public disclosure. However, reporting of crimes pursuant to Section 5.1 or Section 5.2 of this Memorandum shall not be

excused or otherwise affected in any way by the terms of a confidentiality clause contained in an agreement to settle a claim.

5.8 Commitment to Ongoing Cooperation

The signatory organization will fully cooperate with the county prosecutor on an ongoing basis.

A county prosecutor will not serve a grand jury subpoena upon a signatory party for documents or testimony concerning a crime that has been reported pursuant to Section 5.1 or Section 5.2 of this Memorandum without first notifying the designated liaison, and, upon the request of the liaison, without first conferring with the Director of the Division of Criminal Justice or his designee.

Article 6 Preserving Confidentiality of Investigative Information Provided Pursuant to this Memorandum

It is the intent and expectation of the parties that all information provided to a county prosecutor pursuant to Section 5.1 of this Memorandum will be kept strictly confidential and will only be used for law enforcement investigative purposes. The parties recognize that information and documents provided pursuant to Section 5.1 of this Memorandum are criminal investigatory records within the meaning of P.L. 2001, c. 404, and as such are permanently exempt from the public disclosure requirements of that statute. The county prosecutor will not disclose information or documents provided pursuant to Section 5.1 of this Memorandum to any person, other than to a law enforcement officer or, where appropriate, to the Division of Youth and Family Services* or other government agency, unless such disclosure is required by Court Rules governing the discovery and inspection of material by a person charged with a criminal offence, or unless the disclosure is required by an order of a court of competent jurisdiction. Before disclosing any such information or documents that had been provided pursuant to Section 5.1 of this Memorandum, the county prosecutor will notify the designated liaison who had provided the information or documents, and will, upon the request of the liaison, confer with the Director of the Division of Criminal Justice or his designee to discuss any applicable grounds for objecting to the disclosure.

Article 7 Notification of Reporting Responsibilities to Employees of Signatory Organization

The signatory organization shall use all appropriate means to advise all employees about what they are to do when they learn of possible criminal conduct of the type discussed in this Memorandum, and shall establish and

* *Editor's Note:* The Division of Youth and Family Services is now the Division of Child Protection and Permanency.

maintain an internal communications and reporting system to ensure that information about crimes is immediately reported by the employees to the designated liaison, and is then referred promptly (or immediately, as may be required by the terms of this Memorandum) to the appropriate county prosecutor's office. The signatory organization shall inform new employees, and regularly remind existing employees, of what they are to do when they learn of possible criminal conduct of the type discussed in this Memorandum.

Article 8 Limited Scope of the Memorandum

This Memorandum is intended to express the commitment of the parties to work cooperatively with each other. Nothing in this Memorandum is intended to, or shall be construed to, impose any duty or obligation of any type, kind, nature or description upon any person or entity and nothing herein shall be construed in any way to create any rights, substantive, procedural or otherwise or confer any private right of action upon any individual or entity against any signatory organization or any officer, agent, trustee, director, servant or employee of such entity.

Article 9 Maintenance of the Memorandum

The parties shall revisit this Memorandum of Understanding as the need may arise, but in no event later than five years from the date of execution by the parties.