

Federal Campus Crime Reporting “101”

September 2001

Volume I

In Federal Fiscal Years 1999, 2000 and 2001 Congress appropriated a total of \$20 million to institutions of higher education to address sexual assault, domestic violence and stalking. Through a cooperative agreement with the Violence Against Women Office, the California Coalition Against Sexual Assault (CALCASA) assists the US Department of Justice, Office of Justice Programs, Violence Against Women Office with the provision of technical assistance services to recipients of the “Grants to Reduce Violent Crimes Against Women on Campus Program.” As a part of the Training and Technical Assistance, CALCASA will provide a series of information packets on emerging issues related to various campus programs including, but not limited to, campus victim advocacy programs, prevention programs, and disciplinary proceedings.



Whether you are a resident advisor, dean of students, faculty advisor, or athletic director the federal crime reporting guidelines impact your role on a college campus. This information packet contains a brief history and definitions of some of the major terms found in the “Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act” (the Clery Act). A choice was made to highlight these particular terms because of their importance to understanding the Clery Act. By providing definitions for some of the Clery Act’s components such as the Annual Report, the Statement of Policy, and the Sexual Assault Victim’s Bill of Rights, this information packet provides a basic “map” of the requirements that the Clery Act imposes on institutions of higher education. Following the definitions portion of the packet is a frequently asked questions (FAQ) section to assist in clarifying some of the more intricate and sometimes confusing segments of the Clery Act. The resources list at the conclusion of the information packet includes all of the resources used in the information packet and offers a chance to research and find out more about the “Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.”



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History

The “Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act” codified at 20 USC 1092 (f) as part of Higher Education Act of 1965, is a federal law that requires colleges and universities to disclose an annual report about campus crime and security policies. Howard and Connie Clery envisioned the law, originally enacted by Congress in 1990 as the Student Right to Know and Campus Security Act (CSA), after their daughter Jeanne was murdered in 1986. Clery, a freshman at Pennsylvania’s Lehigh University, was sexually assaulted and murdered in her campus residence hall room by another student who gained access to the residence hall through a propped-open door. Upon further investigation, the Clerys discovered that there had been 181 propped-open door reports in the four months prior to their daughter’s murder. The school had not informed students about these reports and 38 violent crimes occurring on campus in the three years preceding her murder. The Clerys have remained advocates for victims of crime on college campuses. In order to make more information available about criminal activity on college campuses in the United States, President George Bush signed the CSA into federal law in 1990.

The Campus Security Act was the first inclusive attempt by Congress to regulate campus safety and it remains the foundation of campus security policy mandates today. Congress has amended the CSA three times. First, Congress clarified the timing of reporting dates. CSA was amended a second time in 1992 to include the provisions of the campus Sexual Assault Victims’ Bill of Rights. Passage of the CSA also required the Buckley Amendment Clarification Act, regarding the interrelation between the CSA’s crime reporting requirements and the privacy provisions of the Family Education Rights and Privacy Act of 1974 (FERPA) 20 U.S.C. section



1232(g). In October of 1998, Congress passed the third major amendment to the CSA, in its Higher Education Reauthorization Act including a name change from the CSA to the “Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act” (the Clery Act).

The scope of the Clery Act extends to all colleges that receive financial assistance under the programs authorized by Title IV of the Higher Education Act of 1965 (e.g. Pell Grants; Stafford Loans; Federal PLUS; SLS; FDSL; SSIG; Perkins Loans; FWS; FSEOG; PAS; and NEISP). This broad scope brings nearly all of the postsecondary trade and technical schools, two and four year colleges and universities in this country within the coverage of this law.

Definitions

Annual Report – This report needs to be published every year by October 1. The report compiles three years of campus crime statistics and certain security policy statements including sexual assault policies which ensure basic victims rights, the law enforcement authority of campus police, and where students should go to report crimes. The report is to be directly disclosed to all current students and employees. Prospective students and employees are to be provided a summary of its contents and afforded an opportunity to request a copy. Schools can comply using the internet as long as the required recipients are notified and provided the exact internet address where the report can be found and paper copies are available upon request. A copy of the statistics must also be provided to the U.S. Department of Education.

Statement of Policy—Each institution of higher learning shall develop and distribute a statement of policy regarding the institution’s campus sexual assault programs, which shall be aimed at prevention of sex offenses, and the procedures followed once a sex offense has occurred.

The policy shall address the following areas:

- √ Education programs to promote the awareness of rape, acquaintance rape, and other sex offenses.
- √ Possible sanctions to be imposed following the final determination of an on-campus disciplinary procedure regarding rape, acquaintance rape, or other sex offenses, forcible or nonforcible.
- √ Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported.
- √ Sexual Assault Victim’s Bill of Rights – In 1992, Congress enlarged the scope of the Student-Right-To-Know and Campus Security Act by amending it to include the provisions of what is known as the Sexual Assault Victim’s Bill of Rights or the Ramstad Amendment. This amendment added a section conveying certain rights to students and victims of campus sexual violence. Specifically, the rights communicated include:
 - Procedures for on-campus disciplinary action in cases of an alleged sex offense, which shall include a clear statement that –
 - The accuser and the accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding; and
 - Both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault.
 - Informing students of their options to notify proper law enforcement authorities including on-campus and local police and the option to be assisted by campus authorities in notifying such authorities if the student so chooses.
 - Notifying students of existing counseling, mental health, or student services for victims of sex offenses both on-campus and in the community.
 - Notifying students of options for and available assistance in changing academic and living situations after an alleged sex offense incident if so requested by the victim and if such changes are reasonably available.

Campus Security Authorities – To determine whether an institute must collect crime statistics from a particular employee or official, or provide a timely warning report based on crimes reported or known to the employee or official, an institution must first determine whether that official is a campus security authority. In addition to campus law enforcement staff, a campus security authority is someone with significant responsibility for student and/or campus activities. The following is a list of officials and personnel who, depending on their duties, are likely to be deemed campus security authorities:

- Student affairs officials
- Judicial affairs officials
- Student activities officials
- Residence life (including Resident Advisors/Assistants) staff
- Campus Law enforcement officials
- Counselors (except professional and pastoral counselors as defined in regulation)
- Team coaches
- Athletic directors



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Definitions

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- Any other individual who your institution designates as a reporting resource, and other official who your institution may define as having significant responsibility for student and campus activities
- Schools are also expected to make a "good faith" effort to obtain crime report information from local police.

Actions that constitute criminal offenses – Crimes are reported in the following seven categories with several sub-categories.

Criminal homicide

Manslaughter by negligence –the killing of another person through gross negligence.

Murder and nonnegligent – the willful (nonnegligent) killing of one human being by another

Forcible sex offenses – Any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent.

Forcible rape – the carnal knowledge of a person, forcibly and/or against that person's will; or not forcibly against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Forcible sodomy – oral and anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Sexual assault with an object – the use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Forcible fondling – the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against the person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental incapacity

Nonforcible sex offenses – Unlawful, nonforcible sexual intercourse

Incest – Nonforcible sexual intercourse between two persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory rape – Nonforcible sexual intercourse with a person who is under the statutory age of consent.

Robbery – The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

Aggravated assault –An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.)

Burglary – The unlawful entry of a structure to commit a felony or theft. For reporting purposes this definition includes: unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safe-cracking; and all attempts to commit any of the aforementioned. **Motor vehicle theft** – The theft or attempted theft of a motor vehicle.

Arson – Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc. following information for each entry: the nature, date, time, and general location of each crime; and the disposition of the complaint, if known. This information must appear in the log within two business days unless disclosure is prohibited by law or would jeopardize the confidentiality of the victim.

Additional actions that require reporting -Where an arrest or disciplinary referral is made, a school must also report statistics concerning the following:

Liquor law violations – The violation of laws or ordinances prohibiting: the manufacture, sale, transporting, furnishing, possessing of intoxicating liquor; maintaining unlawful drinking places; bootlegging; operating a still; furnishing liquor to a minor or intemperate person; using a vehicle for illegal transportation of liquor; drinking on a train or public conveyance; and all attempts to commit any of the aforementioned. Drunkenness and driving under the influence are not included in this definition. (If both arrest and referral are made, only the arrest is counted.)

Definitions

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Drug law violations – Violations of state and local laws relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs. The relevant substances include: opium or cocaine and their derivatives (morphine, heroin, codeine); marijuana; synthetic narcotics (Demerol, methadone); and dangerous non-narcotic drugs (barbiturates, Benzadrine). (If both arrest and referral are made, only the arrest is counted.)

Illegal weapons possession – The violation of laws ordinances dealing with weapon offenses, regulatory in nature, such as: manufacture, sale, or possession of deadly weapons; carrying deadly weapons, concealed or openly; furnishing deadly weapons to minors; aliens possessing deadly weapons; and all attempts to commit any of the aforementioned. (If both arrest and referral are made, only the arrest is counted.)

Hate crimes – Any other crime involving bodily injury reported to local police agencies or to a campus security authority, that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability.

Reporting Categories - An institution of higher education shall distinguish by means of separate categories any criminal offenses that occur on-campus, in or on a non-campus building or property, on public property, or in dormitories or other residential facilities for students on campus.

Campus – any building or property owned or controlled by an institution of higher education within the same reasonable contiguous geographic area of the institution and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and property within in the same reasonably contiguous area of the institution that is owned by the institution but controlled by another person, is frequently used by the students, and supports institutional purposes (such as a food or other retail vendor).

Non-campus building or property – any building or property owned or controlled by a student organization recognized by the institution; and any building or property (other than a branch campus) owned or controlled by an institution of higher education that is used in direct support of, or in relation to, the institution's educational purposes, is used by students, and is not within the same reasonably contiguous geographic area of the institution.

Public property – All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.

Timely Warnings – The Clery Act requires an institution to make timely reports to the campus community on those crimes that are included in the annual report, are reported to the police or to a campus security authority, and are considered by the institution to represent a threat to students and employees. These reports must be provided in a manner that is timely and will aid in the prevention of similar occurrences. If a threat is posed to any members of the campus community by an event occurring anywhere, colleges are well-served by releasing a timely warning as soon as possible to students and employees both on and off campus if necessary and practicable regardless of whether the act is covered by the Clery Act's timely warning mandate. State tort laws place an obligation on most institutions to warn resident (and often non resident) students and employees of known, foreseeable dangers. Timely warnings can satisfy this duty, though the Clery Act only requires timely warnings for on campus incidents.

Colleges should avoid including the name of an alleged perpetrator in a timely warning unless it is absolutely necessary to student safety, because some state laws allow for a defamation action against a college under such circumstances. The identity of the victim should never be disclosed directly; furthermore, institutions are cautioned that giving location information or the identity of the perpetrator may serve to reveal the victim's identity in some cases. Ultimately this may be required in order to serve the safety needs of the greatest number even at the cost of the victim's privacy. Less serious incidents should be reported within sufficient time for students to react to them and change their behavior to create greater safety even if the gap in time is three days or as long as a month. An investigation should usually only delay, not pre-empt timely warning.

Open Campus Police Logs – Institutions that maintain a police or security department of any kind are required to maintain a written, easily understood daily crime log that records, by the date the crime was reported, any crime that occurred on-campus, on a non-campus building or property, on public property, or within the patrolled jurisdiction of the campus police or the campus security department and is reported to the campus police or the campus security department. The log must include the following information for each entry: the nature, date, time, and general location of each crime; and the disposition of the complaint, if known. This information must appear in the log within two business days of the report of the information to the campus police or campus security department unless disclosure is prohibited by law or would jeopardize the confidentiality of the victim.

Frequently Asked Questions

What are the penalties for not disclosing campus crime statistics?

The Higher Education Amendments of 1998 specifically prescribed penalties for non-compliance with the Clery Act. Institutions that substantially misrepresent crime will face fines of up to \$25,000 for each violation.

What relationship does the Family Education Rights and Privacy Act of 1974 have with the Clery Act?

The Family Education Rights and Privacy Act (FERPA) of 1974 ensures confidentiality of a student's education records and restricts disclosure to or access by third parties except as authorized by law. The 1994 regulations of the Clery Act made it clear that reporting statistics to comply with the Clery Act would not violate the privacy protections given to students under FERPA, because statistics submitted by institutions may not include the identification of the victim or the person accused of committing the crime. Furthermore, informing accusers of the outcome in on-campus disciplinary proceedings regarding sexual assaults, as required by the Sexual Assault Victim's Bill of Rights, does not constitute a violation of FERPA.

What relationship does Title IX of the Education Amendments of 1972 have with the Clery Act?

Title IX states that no person in the United States shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

Title IX requires that when an incident of sexual assault is brought to the attention of institution officials, according to federal law, the institution must act to investigate and adequately resolve the incident. The degree in which confidentiality is maintained for the victim is determined by whether or not the victim reported the incident and supports the pursuit of an investigation and resolution by the institution.

Are faculty members required to report campus crime statistics?

Faculty members should also be included as campus security authorities when their level of student involvement reaches beyond the basic requirements of their professional roles, such as when faculty serve as advisors to student groups, clubs, organizations or run internship programs, study abroad activities or other programs which add to the level of significant responsibility faculty members have for student and/or campus activities.

Are professional and pastoral counselors required to report campus crime statistics?

The November 1, 1999 regulations provide that professional and pastoral counselors were exempted from statistical reporting. A professional counselor is defined as someone who is an employee of the institution whose official responsibilities include providing mental health counseling and who is functioning within the scope of his or her license or certification. The exemption does not include nonprofessional or an informal counselor. A pastoral counselor is a person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor.

Under the current amendments, although professional and pastoral counselors are exempted, voluntary compliance is allowed. Thus colleges may implement policies that allow counselors to provide anonymous information on a case-by-case voluntary basis. Finally, in the annual report, colleges must disclose whether or not they have a policy which encourages exempted counselors to inform persons they are counseling of procedures for the voluntary reporting of crime statistics.

Does a crime need to be investigated in order to be included in the statistics?

No. The Clery Act does not require, as is commonly misunderstood, that an investigation must take place to substantiate a report or that a campus adjudication must occur – and a “responsible” verdict rendered – before an incident is officially included in the annual campus security report. In fact, even if there is a finding of “not responsible” in a campus adjudication or a criminal prosecution, the statistic must still be counted. The only way for an institution to remove a reported statistic is for the law enforcement authorities to unfound a crime as provided by the FBI's Uniform Crime Reporting System. The Clery Act requires counting of reports, not confirmed incidents.



Frequently Asked Questions

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What do campuses report if more than one crime occurred at the same time?

According to the FBI's Uniform Crime Report (UCR), it is important to note that all crimes should be reported. For reporting and ranking purposes, the UCR separates crimes into two different distinct categories; part one and part two. The crimes are ranked from most severe to least severe. If there are two part one offenses committed in the same incident, only the highest ranking should be reported. For example, if there is an incident of robbery and assault, both of which are part one offenses, only the robbery would be reported because it has a higher ranking than the assault. Similarly, if a robbery and a sex offense are part of the same incident, the rape would outscore the robbery and thus, only the rape would be noted as a statistic.

Should campuses include statistics from incidents reported by anonymous or third parties?

Yes. Under the Clery Act, reporting statistics from anonymous or third parties is expected, as long as the campus security authority to whom it is reported has a "good faith" belief in the report.

Are branch campuses to be included with the main campus's statistics?

No. In cases where branch campuses of an institution of higher education, schools within an institution of higher education, or administrative divisions within an institution are not within a reasonably contiguous geographic area, such entities shall be considered separate campuses for purposes of the reporting requirements in this section.

How do schools consistently report crimes occurring in different reporting categories (i.e. campus, non-campus building or property, public property)?

In 1999, regulations allowed schools to use a map to establish its reporting area; the map must accurately depict the areas defined by regulation and it must be provided to the campus community. A map can alleviate questions when reporting statistics and provide accuracy and consistency in statistic collection.

What if the victim of a crime is not a student?

The Clery Act is not limited to crimes against students only. In fact, the status of the victim and perpetrator are irrelevant.

When can a campus withhold information from the campus police log?

Institutions may withhold information if there is clear and convincing evidence that this disclosure would jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence. However, information must be included in the crime log within two business days after the conditions above are no longer met. The crime log must be made available for public review during regular business hours.





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Resources



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