TSUS Clery Act Training Class
(2.5 Day)

Presented by:

D Stafford & Associates

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Have you joined NACCOP yet? If not, go to www.naccop.org to become a member of this professional association supporting Clery Compliance Officers.

Once an institution is a member, individual membership is $95.00. You can sign up your entire Clery Compliance Committee for membership!
## CLERY ACT COMPLIANCE
Conducted by: D. Stafford & Associates

### 2.5 DAY CLERY ACT COMPLIANCE CLASS AGENDA FOR TSUS
*(Custom class 2.5 day class will provide a comprehensive overview of the Clery Act with an additional focus on classifying and counting crimes. Examples used will be based on the audit findings at TSUS Component Institutions)*

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William (Bill) Lafferty
Director, Regulatory Compliance and Public Safety Services

Bill Lafferty retired from active service in Law Enforcement and Public Safety after 35 years of experience and with over 25 years of experience within Higher Education. He began his career with the U.S. Air Force as a Security Police Specialist. During his military service, he worked his way up through the ranks and performed a variety of specialized duties within the law enforcement and security field. These duties included patrol officer duties, patrol supervision, crime prevention programming coordinator, asset and resource protection specialist, and a quality assurance reviewer. Bill was also instrumental in implementing an Air Force Anti-Terrorism response plan and protocol during his tenure.

After the Air Force, Bill joined the public safety team at Villanova University where he performed duties as a Patrol Sergeant, Shift Lieutenant, Assistant Director of Housing Security, and Associate Director of patrol and investigatory operations. After nearly seven years at Villanova, Bill left to become the Director of Public Safety at Gettysburg College. Bill served 20 years at Gettysburg College, completing his career there as the Assistant Vice President of College Life. Bill’s responsibilities included: direct strategic management oversight of all public safety operations; sexual and relationship violence response and investigation policy and protocol development; emergency operations management; life and fire safety; behavioral threat assessment; the oversight of institutional Clery Act and Title IX compliance requirements for the college; and during his tenure with Gettysburg, he managed student life development areas including: Greek Life, Student Activities, Experiential Education, and Student Conduct.

Bill went full-time with the National Association of Clery Compliance Officers and Professionals (NACCOP) and D. Stafford & Associates (DSA) in October of 2021, continuing his service as the Director of Federal Relations for NACCOP and serving as the Director, Regulatory Compliance and Public Safety Services for DSA. In his role with DSA, Bill will continue his work as an instructor of the Clery Compliance classes, including the Clery Academy and the Advanced Clery Academy, and teaching for the DSA Procedural Justice Training Institute. Bill will also serve as a team member in conducting Clery Act Audits and Assessments, Procedural Justice Assessments, and Organizational Assessments of campus police and public safety agencies.

Bill has served as the Director of Federal Relations with NACCOP since May of 2016. In this role, Bill is responsible for monitoring key public policy issues facing institutions of higher education, with a particular focus on those that impact the Clery Act. Bill is NACCOP’s representative to federal agencies, Congress and
other associations regarding NACCOP’s views and legislative priorities within the higher education community, public safety, and beyond. Bill has also served as an Associate of D. Stafford & Associates since 2016 as well, teaching classes and participating in Clery Act Audits and Assessments.

Bill is a graduate of Eastern University, where he earned a Bachelor’s Degree in Organizational Development, and Villanova University, where he earned a Master’s Degree in Criminal Justice Administration. Bill was certified as a NACCOP Clery Compliance Officer (CCO) as part of the program’s first cohort in July of 2017. Bill previously served a two-year term as President for the Northeast Colleges and Universities Security Association (NECUUSA).
Lindi J. Swope  
Director of Clery Compliance Activities

Lindi Swope has been a consultant with D. Stafford & Associates since 2011, providing Clery Act consulting services and leading training programs across the country. Ms Scope most recently served at the Director of the National Association of Clery Compliance Officers and Professionals (NACCOP) between April 2013 and December 2018.

Ms. Swope formerly served as the Manager of Transportation Services and Compliance Activities at the George Washington University, for nearly 11 years. During her career at GW, Ms. Swope co-wrote the campus police department’s Clery compliance manual and was the lead coordinator for Clery compliance for the campus. Additionally, she directed the university’s safety transportation service which transported over 160,000 students annually.

Ms. Swope has experience with all aspects involved with Clery compliance requirements. Ms. Swope was charged with analyzing and counting crime data, publishing the institutions ASR and maintaining all necessary files to demonstrate compliance. She developed relationships and collaborated with local law enforcement agencies as well as the Department of Education. She worked closely with the university’s Housing, General Counsel and Student Affairs administrators.

Ms. Swope obtained her Bachelor’s in Psychology from the George Washington University. Ms. Swope is a IACLEA Certified Clery Act Trainer and is a lead instructor for the D. Stafford & Associates Clery Act Compliance Training Academy.
CLERY ACT

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CLERY ACT ACADEMY: ACRONYMS

ASR: Annual Security Report (often used as a reference to the Annual Security Report and/or the Annual Security and Fire Safety Report) that must be published by each institution of higher education.

CSA: Campus Security Authority—Individuals on each campus who have been identified by the Department of Education as persons who are required to report crimes that they become aware of to the Reporting Structure at each institution.

DCL: Dear Colleague Letter—this is a formal name of the method of communication from the Department of Education to college campuses. It is like naming their official “memo” to campuses.

ED: The Department of Education

FBI: Federal Bureau of Investigation

FERPA: Family Educational Rights and Privacy Act

GO: General Order—some departments describe their operating procedures as general orders

HEOA: Higher Education Opportunity Act—the broader law that contains the Clery Act language and the fire safety and missing person language that is in the law but not contained within the “Clery Act” portion of the law.

MOU: Memorandum of Understanding—an official agreement that outlines specific duties and responsibilities developed between law enforcement/public safety agencies.

NIBRS: National Incident-Based Reporting System. 1 of 2 crime reporting systems developed by the FBI, but not the system that you are required to use for Clery Reporting—the only portion of this system that is used for Clery Act purposes are the 4 forcible and 2 non-forcible sex offense definitions.

OCR: Office of Civil Rights—the unit of the Department of Education that oversees Title IX Compliance.

PD: Police Department

PS: Public Safety

SMS: Short Message Service—systems used to send text messages to cell phones and PDAs

SOP: Standard Operating Procedures—some departments describe their operating procedures as Standard Operating Procedures.

TWN: Timely Warning Notice

UCR: Uniformed Crime Report. This is 1 of 2 crime statistics reporting systems developed by the FBI. Institutions are required to use UCR Standards for counting and classifying crimes for reporting the Clery statistics.
The review teams will require unrestricted access to un-redacted originals of incident reports generated by the Institution's campus police, security guards, or other campus security authorities as defined by the Clery Act. Please be advised that we will endeavor to protect the confidentiality and privacy rights of all subjects.

Documents that will be requested by the Department of Education auditors:

- A list of all Campus Security Authorities for Clery Act purposes.
- A copy of the catalog and student handbook for the College and for each separate school, division, or location within the Institution for academic years 2007-2008 and 2008-2009 (Indicate (flag/tab) the specific portion or location that relates to the Clery Act).
- A copy of the organizational chart for the policing and security-related functions for the Institution for all separate schools, divisions, etc. within the Institution.
- A complete set of the Institution's Police Department's Standard Operation Procedures regarding the following functions (dispatch, response to calls, report writing, arrests including issuance of citations, and protocols for responding to and/or investigating arson, sexual assault, and active shooter scenarios).
- The relevant portion of any applications, brochures, disclosures, forms, and other publications related to the Clery Act that is normally distributed to 1) prospective students; 2) prospective employees; 3) first-time students; and, 4) new hires of the Institution and all separate schools, divisions, etc. within the Institution that address campus crime and campus security.
- Copies of all agreements and/or contracts with any agencies or organizations that provide any protective service, security, counseling, or other service related to the Institution's policing, security and safety programs.
- A detailed description of all dispatch/response and recordkeeping systems (hardcopy; software; etc.) utilized by any of the Institution's offices or contractors with security-related responsibilities (Police, Judicial Affairs, Residence Life, Student Life; etc.);
- Copies of all campus, patrol, and/or sector maps (with legends) utilized by the Institution's Police, contract security agency, and/or the Institution's real estate office.
- A comprehensive list of all buildings and property owned or controlled by the Institution including leased property (the list should include the address, the building code, and category of the property as defined by the Clery Act: (on campus, residence halls, non-campus property, and public property, etc).
- A list of all buildings and property owned or controlled by any Institution –recognized student organizations including leased property (the list should include the address, the building code, category of the property as defined by the Clery Act).
• A list of all incidents of crime reported to the Institution's Police Department or other campus security authority in calendar year 2008.

• Copies of the two most recent Campus Security Reports prepared by the Institution for purposes of complying with the Clery Act and evidence of when these reports were distributed to the Institution's students and employees.

• An "audit trail" that includes a list of all incidents of crimes (organized by category of crime and incident report number) reported to the Institution's Police Department or other campus security authority that were included in the statistical disclosures contained in the Institution's Campus Security Reports for the 2006, 2007, and 2008 calendar year (this should include the date and time of the incident, name of the accused, type and location of the offense, and the incident number);

• An "audit trail" that includes a list of all arrests and disciplinary referrals (organized by category of crime) to the institution's student disciplinary process for violations of laws or institutional policies involving alcohol, drugs, and weapons during the 2006, 2007, and 2008 calendar year that were included in the statistical disclosures contained in the Institution's Campus Security Reports, which shall include referrals from any campus housing on/off campus and counseling offices (this should include the date and time of the incident, name of the accused, type and location of the offense).

• Copies of all timely warnings issued by the Institution during calendar year 2006, 2007, and 2008, and a description of the means or media used to disseminate the warning.

• A copy of the Institution's daily crime log for calendar year 2006, 2007, and 2008 (hardcopy or electronic).
Categorizing Your Education Abroad Program

1. Does your institution have a branch campus abroad?
   - Geographically apart and independent of the main campus
   - Permanent in nature
   - Offers courses in educational programs leading to a degree or other recognized credential
   - Has its own faculty and administrative or supervisory organization
   - Has its own budgetary and hiring authority

   Yes
   No

   Report as a Separate Campus

   No

3. Does your institution:
   - Own or control land or a building,
   - Have an organized program of study, and
   - Have administrative personnel on-site?

   Yes
   No

   Report as Noncampus

   No

2. Does your institution own or control land or a building that is:
   - Used in direct support of, or in relation to, the institution’s educational purposes;
   - Frequently used by students, and;
   - Not considered part of the core campus?

   Yes
   No

   Not Clery Reportable
Clery Act Training Class

Lindi Swope
- 11 Years at the George Washington University
  - Responsible for Managing Clery Compliance
  - Responsible for Transportation Services
- IACLEA Certified Clery Act Instructor
- Associate with D. Stafford & Associates since 2010.
  - Reviews Annual Security & Fire Safety Reports
  - Conducts Audits
  - Conducts Training
- Former Director of National Association of Clery Compliance Officers and Professionals (NACCOP)
  - 2013-2018

Bill Lafferty, CCCO
- Director, Regulatory Compliance and Public Safety Services
  - D. Stafford & Associates
- Director of Federal Relations
  - National Association of Clery Compliance Officers & Professionals (NACCOP)
- 38-year law enforcement/public safety veteran:
  - Gettysburg College (Assistant Vice President for College Life & Executive Director of Public Safety)
  - Villanova University (Associate Director of Public Safety)
  - U.S. Air Force (Security Police Specialist)
  - Past-President for the Northeast Colleges and Universities Security Association (NECUUSA)
Resource Materials

- Available at [www.dstaffordandassociates.com](http://www.dstaffordandassociates.com) under the “Resources” tab
  - FBI Summary Reporting System User Manual (Updated 6-20-13)
  - FBI Uniform Crime Reporting 2019 National Incident Based Reporting System (NIBRS) User Manual (Updated 3-30-18)
  - FBI Hate Crime Data Collection Guidelines and Training Manual (Updated 2-27-15)

- Available at [www.naccop.org](http://www.naccop.org) under the “General Resources”
  - Other NACCOP-authored whitepapers of interest

Obtaining Guidance

- Campus Safety and Security Help Desk
  - HandbookQuestions@ed.gov

- Clery Act Compliance Team
  - clery@ed.gov

2016 Handbook Structure

- 14 Sections
  - Introduction: Overview of Campus Safety and Security Reporting
  - Geography
  - Crime Statistics: Counting and Classifying
  - Crime Statistics: Collecting from CSAs/Local Law Enforcement
  - The Daily Crime Log
  - Emergency Notification and Timely Warnings
  - Policy Statements
  - VAWA Policies, Procedures, Programs
  - Annual Security Report
  - Missing Students
  - Fire Safety Disclosures
  - The Fire Log
  - Fire Statistics
  - Annual Fire Safety Report
**Handbook Purpose**

- This handbook reflects the Department’s interpretations and guidance, as of the date of publication, and was written to assist you, in a step-by-step and readable manner, in understanding and meeting the various HEA requirements.

- This revised handbook replaces the previous versions of the handbook. It does not supplant or replace the HEA.

- The HEA and its regulations take precedence if there are any differences between them and the handbook.

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**10/9/20 Recission and Replacement of 2016 Handbook**

- …no statutory or regulatory requirements related to Clery Act reporting have changed…

- While this rescission will inform the Department’s views moving forward, the rescission will not retroactively apply to previous Department determinations regarding Clery Act violations, fines, enforcement actions, or any other related actions by the Department.

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**10/9/20 Recission and Replacement of 2016 Handbook**

- The Department recognizes that many Clery practitioners have become accustomed to the 2016 edition, as well as previous editions, and may continue to rely on it for direction.

- …the 2016 edition will be archived on the Department’s website, but, where appropriately applied to prior calendar years, will continue to be referenced in [ED program reviews].
**Clery Act Statutes/Regulations**


**Regulations**

- 34 C.F.R. § 668.41(e) – Annual security report and annual fire safety report.
- 34 C.F.R. § 668.46 – Institutional security policies and crime statistics.
- 34 C.F.R. § 668.49 – Institutional fire safety policies and fire statistics.
- Appendix A to Subpart D of Part 668—Crime Definitions in Accordance With the Federal Bureau of Investigation's Uniform Crime Reporting Program

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**The Legislation**

- Crime Awareness and Campus Security Act (1990)

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**The Purpose of the Clery Act**

*To provide the campus community with timely, accurate and complete information about crime and the safety of campus so that they can make informed decisions to keep themselves safe.*
Will You Be Audited?

How Does a Clery Audit Happen?

- ED-Based
- ED-Random
- Media Assessment
- FBI-UCR Audit
- ED-Financial Aid Audit

Consequences of Noncompliance

- A suspension or limiting of the institution’s Title IV funding
- The institution’s name will be provided to Congress by Secretary of ED
- ED can issue civil fines for each violation
- Final Review Determination Reports are public records (https://studentaid.ed.gov/sa/about/data-center/school/clery-act-reports#)
- The institution will receive negative media attention

Why Does My Institution Have to Comply with the Clery Act?

- Signed Program Participation Agreement (PPA) to participate in Title IV student financial assistance programs, including:
  - Pell Grants,
  - the Federal Supplemental Educational Opportunity Grants (FSEOGs),
  - the Federal Work-Study Program,
  - the Federal Perkins Loans,
  - the Federal Direct Loan Program, and
  - Leveraging Educational Assistance Partnership (LEAP).
Program Participation Agreement Excerpt

2. a. The Institution certifies that on the date it signs this Agreement, it has a drug abuse prevention program in operation that it has determined is accessible to any officer, employee, or student at the Institution.
   b. The Institution certifies that on the date it signs this Agreement, it is in compliance with the disclosure requirements of Section 485(f) of the HEA (Campus Security Policy and Campus Crime Statistics).

Clery Compliance is an Institutional Responsibility

- Clery Act compliance should not be relegated only to campus police/public safety.
  - The Clery Act is a campus security and crime prevention law with a consumer information and protection focus. Effective implementation requires the participation and cooperation of officials across the enterprise. Stated simply, the Clery Act is not merely a campus policing law. At most institutions, other offices ranging from residence life to student affairs will play an essential role in the overall campus safety program and are indispensable to compliance with the Clery Act. The student and employee conduct function plays a major role on both counts. (Penn State FPRD, 2016, p. 10)

Collecting, Classifying and Counting Crime Reports
Collecting, Classifying & Counting Crime Reports Performance Objectives

- Campus Security Authorities (CSAs) – Identify, notify, train, and collect crime reports from CSAs.

- Clery Geography – Identify and categorize locations.

- Identifying Separate Campuses.

Collecting, Classifying & Counting Crime Reports Performance Objectives

- Understanding what crime categories to include and how to count them.

- Arrests and referrals—how to accurately report both.

- Understanding the difference between referrals for violations of state laws and local ordinances versus violations of institutional policies regarding liquor, drug, and weapons violations.

- Applying the Hierarchy Rule to counting crimes

Compliance is a Complex Task

- A 2014 study found that 99.3% of professional members of the Association for Student Conduct Administration (ASCA) were unable to correctly classify and count crime reports (DeBowes, 2014).

- A 2016 study found that “almost half of IACLEA member and non-member institutions are likely not in full compliance with the Clery Act because of a wide variety of compliance issues related to ASRs, audit trails, lack of full-time staff who are dedicated to and understand all of the complexities of compliance, inappropriate record keeping and other individual issues” (Gregory, Giblin, Stafford, & DeBowes, 2016, p. 710).
Three Part Test for Reporting and Disclosing Offenses

1. Was the crime reported to a Campus Security Authority or local law enforcement agency?

2. Is the crime a Clery Act crime?

3. Did the crime occur on or within the institution’s reportable Clery Geography?

Campus Security Authorities

- Identifying & Notifying
- Training
- Collecting Crime Reports
- Documenting the Process

MSU CSA Noncompliance Findings

“Michigan State substantially failed to actively seek out, identify, and notify institutional officials who are or were CSAs.

CSAs are responsible for the intake of information regarding incidents of crimes that have to be reported to them. This information must then be compiled by the institution and reflected in the University’s disclosure of crime statistics.

This information must also be evaluated to determine if a Timely Warning or Emergency Notification must be issued…"
MSU CSA Noncompliance Findings

This serious, systemic, and persistent condition contributed significantly to Michigan State’s ongoing failure to disclose accurate and complete campus crime statistics in its ASRs throughout the review period, and as far back as 1997” (Michigan State University Campus Crime Program Review Report, 2018, p. 22).

Campus Security Authorities

- Even at institutions with a police department on campus, a student who is the victim of a crime may be more inclined to report it to someone other than the campus police.
- For this reason, the Clery Act requires all institutions to collect crime reports from a variety of individuals and organizations that Clery considers to be “Campus Security Authorities.”

Identifying CSAs

Function, Function, Function!!!!!

- Because official responsibilities and job titles vary significantly on campuses, an all-inclusive list of specific titles and positions is not provided in the regulations.
- To determine specifically which individuals or organizations are campus security authorities for your institution, consider the function of that individual or office.
The “Function” of Employees

Internal Policy-Best Practice Information—not in ED Handbook:

- Individuals may be designated as CSAs based on whether they perform the following functions:
  1) their official job responsibilities involve significant interaction with students and/or campus activities
  2) they serve as informal or unofficial mentors to students
  3) they serve as a member in an office or of a committee to whom students are instructed and informed to report or discuss crimes, allegations of crimes, and other troubling situations, and/or
  4) they have oversight for or involvement in disciplinary procedures.

Campus Security Authorities

- **Group 1:** All members of campus police/security department
  - Note: A security department can be as small as one person.
- **Group 2:** Individuals responsible for security—which includes student or professional employees
  - Access monitor—any institution owned or controlled facility (including parking facilities)
  - Contract and Event security, such as for sporting events or large, registered parties, or
  - Individuals who provide safety escorts around campus (including other students)

- **Group 3:** Officials of the institution with significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline and campus judicial proceedings
  - “Official” is defined as any person who has the authority and duty to take action and respond to particular issues on behalf of the institution.
Campus Security Authorities

- Student Affairs Professionals
  - Dean (Assistant Dean) of Students
  - Directors/Coordinators of Student Housing
  - Resident Assistant/Hall Director
  - Student Conduct Officers
  - Coordinator of Fraternity/Sorority Life

- Director/Assistant Directors of Athletics and all athletic coaches (including part-time employees and graduate assistants)

- Athletic Trainers (MSU)

Campus Security Authorities

- Others you should include:
  - Administrators who oversee separate campuses
  - a student who monitors access to dormitories or buildings that are owned by recognized student organizations
  - Title IX Coordinator
  - Study abroad coordinators and off-site trip coordinators
  - Faculty or staff advisors to student organizations

Note: whether or not your institution pays an individual is not a factor in determining whether that individual is a CSA.

Campus Security Authorities (PSU)

- Others you should include:
  - Students and other employees (beyond student conduct personnel) who are involved in adjudicating disciplinary issues on campus
  - members of student conduct hearing/appeal boards
  - members of student organization hearing boards, such as fraternity and sorority governing bodies authorized to discipline members and organizations
  - Human Resources (and others responsible for disciplining employees)
    - staff who receive reports of employee misconduct or who have disciplinary enforcement authority within HR

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Campus Security Authorities

- Additional officials who generally are CSAs:
  - the director of a campus health or counseling center;
  - an ombudsperson (including student ombudspersons);
  - victim advocates or others who are responsible for providing victims with advocacy services, such as assisting with housing relocation, disciplinary action or court cases, etc.;
  - members of a sexual assault response team (SART) or other sexual assault advocates; and
  - officers from local law enforcement who are contracted by the institution to provide campus safety-related services.

Campus Security Authorities

- Group 4: Any individual or organization specified in an institution’s statement of campus security policy as an individual or organization to which students and employees should report criminal offenses.
  - What does your Annual Security Report (ASR) say?
  - Who should a crime be reported to?

Listing CSAs in ASR (PSU)

- Listing (in the ASR) the campus police/public safety department as the only organization to which crimes should be reported for TWN and statistical reporting purposes may not be sufficient to comply with this required disclosure.
  - ...victims and witnesses should have these options and deserve to know where such reports can be directed and what actions will follow from filing a report. While it is not necessary, advisable, or in many cases even possible to list every CSA, the intent of the regulation is to provide a list of CSAs that the institution has designated as the preferred receivers of reports from students and employees beyond the PSUPD or local law enforcement.” (Penn State University Campus Crime Final Program Review Determination, 2016, p. 49).
Campus Security Authorities

- The following are CSAs if they are identified by your institution as someone to whom crimes should be reported or if they have significant responsibilities for student and campus activities:
  - A Physician in a Campus Health Center
  - A Counselor in a Campus Counseling Center
  - Counselors, including peer counselors (except for professional or pastoral counselors addressed later in this chapter); and
  - Health educators, including peer health educators.

MSU Program Review: Advocacy Offices

- Advocacy offices and its employees (except those whose counseling duties can be separated) are CSAs
  - Michigan State employs several individuals in the specific role of “advocate,” including those situated in the SAP office. The University also has employees that serve in a dual role that includes both advocacy and counseling responsibilities.
  - If those roles cannot be separated into confidential and non-confidential responsibilities, then that individual is considered to be a CSA, and is obligated to report any Clery Act crimes that are reported to him/her, or any Clery crimes of which s/he becomes aware” (MSU PRR, 2018, p. 26).

Who is NOT a CSA?

- Faculty members who are not advisors of student groups (i.e., no responsibility for student or campus activities beyond the classroom)

Most support staff
- Clerical
  - Secretaries
  - Receptionists
- Facilities Staff
  - Plumbers
  - Electricians
- Food Service Workers
  - Cashiers
  - Cooks
**Who is NOT a CSA? – Inquiry to ED**

**QUESTION TO ED:**

- **Academic Advisors**
  - Professors or administrators who are assigned to assist students with choosing their classes so they graduate on time and take the right courses.

- **Internship Supervisors**
  - Faculty or staff who work with students who are working internships as part of their course work. They meet periodically during the internship to discuss and evaluate the internship experience.

**Who is NOT a CSA? – Inquiry to ED**

- **A licensed/certified counselor who sits on the Behavioral Threat Assessment Team (BTAT).**
  - On some campuses, incidents can be reported directly to a BTAT—so some campuses list the team as an entity to whom problems (that could be crimes) can be reported to... Thus, the teams are often listed as “reporting entity” because they receive the phone reports or the reports from websites where people can go to report concerns.
  - On other campuses, they simply receive information from the police dept, security dept or other sources like the Dean of Students, but people don’t “directly report” to the team and the team is not set up as a “reporting entity.”

**ED RESPONSE:**

- Any of these people could be CSAs if the school’s policies specify them as individuals to whom students and employees should report criminal offenses.

- However, the position of academic advisor, internship supervisor or BTAT counselor would not automatically be considered a CSA unless their job function gave them “significant responsibility for student and campus activities.”
Who is Exempt from CSA Status?

**Professional Counselors**
- Includes individuals who are unlicensed and uncertified but acting under the supervision of an exempt counselor, e.g., a graduate student doing an internship.

**Pastoral Counselors**
- NOTE: These positions are exempt only when acting within the scope of their duties as a counselor or trainee.

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**Professional Counselor**
- A person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of his or her license or certification.
  - This definition applies even to professional counselors who are not employees of the institution but are under contract to provide counseling at the institution.

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**Professional Counselor Clarification**
- State licensing requirements for professional counselors typically include completion of a minimum of 3,000 hours of post-master's degree supervised clinical experience, performed within two years before a license is awarded.
- If an unlicensed counselor has completed his or her master's degree course work and is acting in the role of a licensed counselor under the supervision of a licensed professional in order to gain the required supervised clinical experience in a two-year period, he or she would be exempt from CSA requirements.
Pastoral Counselor

- 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.

Conditional Exemption

- To be exempt from disclosing reported offenses, pastoral or professional counselors must be acting in the role of pastoral or professional counselors.
  - Example: A Dean of Students who has a professional counselor’s license, but is employed by the institution only as a dean and not as a counselor, is NOT exempt from reporting.
  - If that same dean is employed by the institution as both a professional counselor and an academic counselor, and she learns of a criminal incident while she is engaged in academic counseling, she is not exempt from reporting that incident.

Who is Exempt from CSA status?

- An individual who is counseling students and/or employees, but who does not meet the Clery Act definition of a pastoral or professional counselor, is not exempt from being a campus security authority if they otherwise have significant responsibility for student and campus activities.

- This may include a triage nurse at the student health center or crisis intervention staff at the rape crisis clinic at your institution.
MSU failed to actively seek out, identify, and notify institutional officials who are or were CSAs

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10/9/20 Recission and Replacement of 2016 Handbook

- “...the Department’s new guidance makes clear that it is up to an institution to identify which individuals are CSAs and it is beyond the Department’s authority to disagree with that reasonable determination” [emphasis added]
- **BE CAREFUL WITH THIS:** “The Department will defer to an institution’s designation of CSAs as authoritative and provide any technical assistance necessary to work with institutions to help ensure proper identification and notification of CSAs consistent with the regulations.”

A CSA’s Primary Responsibility is...

_to report allegations of Clery Act crimes they receive to the reporting structure established by the institution._
Reported Crimes

- Under the Clery Act, a crime is "reported" when it is brought to the attention of a campus security authority, the institution’s police department or campus safety office, or local law enforcement personnel by a victim, witness, other third party or even the offender.

- If a Campus Security Authority receives a report, he or she must include it as a crime report using whatever procedure has been specified by your institution.

What you must include, therefore, are statistics based on reports of alleged criminal incidents.

- It is not necessary for
  - the crime to have been investigated by the police or a campus security authority,
  - nor must a finding of guilt or responsibility be made to include the reported crime in your institution’s crime statistics.

CSA Example

- Scenario 3: Ms. Jones, Director of Student Housing at your school, gets a call from the director of a counseling center in town. The caller wants to let the director know that four students from the school sought assistance at the center and told the center’s counselors that they had been sexually assaulted on campus and were seeking emotional support. They did not want police investigations. These are third party reports and Ms. Jones, having no reason to believe that they were not made in good faith, should document all of the information she was given and forward the reports to the person or office responsible for collecting Clery Act crime reports at her institution.
Reported Crimes

- CSAs are responsible for reporting allegations of Clery Act crimes that are reported to them in their capacity as a CSA.

- This means that CSAs are not responsible for investigating or reporting incidents that:
  - they overhear students talking about in a hallway conversation;
  - a classmate or student mentions during an in-class discussion;
  - a victim mentions during a speech, workshop, or any other form of group presentation; or
  - the CSA otherwise learns about in an indirect manner.

CSA Reporting Example

- **Scenario 4:** Jane, a resident advisor, is attending a Take Back the Night rally at her school. She attends the event as a participant and is not involved in providing any counseling services. As part of the event’s programming, a student gives a speech in which she says that she was raped on campus last year. In response to hearing the speech, three other students decide to address the crowd and disclose their own experiences being sexually assaulted. After the event, Jane returns to her room where a student from her housing facility knocks on her door and tells her that she was sexually assaulted at an On-Campus party in another housing facility three months ago. Jane should forward the report of the incident that was reported to her as she was acting in her capacity as an RA for her housing facility. Jane should not report the Sexual Assaults that she heard discussed at the Take Back the Night event.

Examples of CSAs Reporting Crimes...

- A coach is required to report a sexual assault that is reported to him/her...

- A faculty advisor refers a student to Student Conduct regarding an alleged drug violation that he/she becomes aware of through a member of his/her student organization...

- A person working as an access monitor is required to report a burglary that is reported to him/her while working the desk
Examples of CSAs Reporting Crimes…

- An event security staff member is required to report an alleged robbery that was reported to him/her by a patron entering the event...

- A person working as a driver for a campus safety escort service is required to report an alleged fight (assault) that is reported to him/her by a person who flags him/her down for a ride...

Examples of CSAs Reporting Crimes…

- An Assistant Dean of Students is required to report a suspicious fire that could potentially be classified as an arson…

- The Director of Athletics is required to report a rape that was reported to him/her by the parent of a victim involving one of his/her athletes who may be the perpetrator…

Recommendations in ED Handbook
Campus Security Authorities

- Designate an individual or office to coordinate your CSAs
- Make sure your CSAs know they are CSAs
- Provide training
- Forward reports of crimes immediately to the individual or office responsible for collecting the reports for the campus
- Keep documentation of all crime reports
There is an expectation by the ED auditors that you train or educate each of your CSAs about the fact that they are a CSA and what that means.

Do this annually and…

You should document your training/education efforts each year.

ED Statements on CSA Training (PSU)

"While the Clery Act does not set out training as a separate requirement, identification and training of CSAs and implementing a simple and effective CSA reporting system are necessary conditions precedent for enabling CSAs to fulfill their responsibilities under the Clery Act…

While the Clery Act does not specifically require institutions to provide CSA training, it is virtually impossible to achieve compliance without it." (Penn State University Campus Crime Final Program Review Determination, 2016, p. 117-118)

ED Suggested CSA Training Elements

- Describe the role of a CSA
- Provide reporting materials
  - Clery Map, Clery Crimes, & Crime Reporting Form
- Discuss the importance of documentation
  - Explain that CSA crime reports should include personally identifying information if available. This is important for law enforcement purposes and to avoid double counting crimes. If a victim doesn't want the report to go any further than the CSA, the CSA should explain that he or she is required to submit the report for statistical purposes, but it can be submitted without identifying the victim.
- Emphasize the need for timely report submission
  - How to submit
    - To Whom they should submit
CSA Reporting Recommendations

- CSA crime reports should include sufficient detail, such as dates and locations, and, where appropriate, personally identifying information, including name and contact information if available.

- This is important for law enforcement purposes to ensure that all crimes are counted and to avoid double counting crimes.

CSA Reports and PII

- In most cases it is possible for a CSA to fulfill his or her responsibilities while still maintaining victim confidentiality. CSA reports are used by the institution to compile statistics for Clery Act reporting and to help determine if there is a serious or continuing threat to the safety of the campus community that would require an alert (i.e., a timely warning or emergency notification discussed in Chapter 6). However, those responsibilities can usually be met without disclosing personally identifying information.

- A CSA report does not need to automatically result in the initiation of a police or disciplinary investigation if the victim does not want to pursue this action.

When A CSA Reports a Crime…

- Initial Crime Report
- Assess for Timely Warning
- Daily Crime Log
- Annual Statistical Disclosures
- Annual Statistical Disclosures
- Annual Statistical Disclosures
CSA Clarification

- Institutions are advised to reevaluate the CSA status of all employees (including student employees) on at least an annual basis and document the rationale of the determinations.

Requesting Crime Reports from CSAs

- Develop a system to request crime reports from all CSAs at least annually
  - Ensure all CSAs respond to the request

  - “The College did not explain why it collected crime information from 2 of the 200 CSAs during these years” (Occidental Fine Notice, 2017, p. 7).
  - Fined $27,500 for failure to collect crime statistics from all CSAs for the 2012 and 2013 ASRs.

Confirmation of No Reports - Handbook

Rather than assuming that because a CSA hasn’t forwarded a crime report to the appropriate individual or office no crimes were reported to that CSA, a coordinator can be charged with canvassing each CSA to request crime reports from them. CSAs who don’t have crimes to report can be asked to document this in writing. This could be as simple as writing a statement that reads, “From ______ to _____ I was not aware of, and did not receive, any reports of criminal incidents, arrests or disciplinary actions for Clery Act crimes.” Even if crime reports are submitted online, it’s a good idea to ask CSAs to indicate if they have no crimes to report (p. 4-9)
“Gathering Crime Information from All Required Entities”

To access, visit: http://www.stanleycss.com/gatheringcrimestatingact

Clery Geography

- On-Campus
  - On-Campus Student Housing Facilities

- Noncampus building or property

- Public Property

Identify the Campus Border...

1) What is the campus border?

2) Develop a “Clery Map” to identify your campus border.
**Definition #1 of On-Campus**

- Owned or controlled by the institution
- Within the same reasonably contiguous geographic area and
- Used in direct support of, or in a manner related to, the institution’s educational purposes:
  - Academic, Administrative and Support Buildings
  - Residence halls and other on campus housing facilities
  - “On campus” fraternity & sorority houses

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**Defining Control**

- Controlled by means that your institution (or an institution-associated entity) directly or indirectly rents, leases, or has some other type of written agreement (including an informal written agreement such as a letter or an email) for a building or property or a portion of a building or property.
- Even if there is no payment involved in the transaction, under Clery, a written agreement for use of space gives your institution control of that space for the time period specified in the agreement.

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**“Reasonably Contiguous”**

- Reasonably contiguous refers to a building or property your institution owns or controls that’s in a location that you and your students consider to be, and treat as, part of your campus
- Generally speaking, it is reasonable to consider locations within one mile of your campus border to be reasonably contiguous with your campus.
- However, this determination must be made on a case by case basis by taking into consideration the circumstances of the campus and the location.
“Reasonably Contiguous”

- A location that is within one mile of campus but separated from campus by a river or a six-lane highway might not be considered contiguous unless a pedestrian bridge or tunnel connects the two sides.

- If you exclude from the definition of campus for Clery Act purposes a building or property your institution owns or controls that is within one mile of your campus you must be able to explain your basis for this decision.

Reasonably Contiguous Locations

- Noncampus locations owned or controlled by the institution
- Separate Campus locations

10/9/20 Recission and Replacement of 2016 Handbook

- “…the Department will no longer apply any specific measurable distance definition to ‘reasonably contiguous’ geographic area. For example, the 2016 edition states that, with some exceptions, ‘generally speaking, it is reasonable to consider locations within one mile of your campus border to be reasonably contiguous with your campus.’ (Pg. 2-3)"
On-Campus Geography Example

The On-Campus geography of this institution consists of the college buildings, the parking structure, and the college owned land.

Institution-Associated Entities

Note that for the purposes of the Clery Act, if you have an
- institution-associated foundation,
- holding company,
- subsidiary,
- alumni association,
- athletic booster club, or
- any other institution-associated entity
that owns or controls a building or property that is operated in support of, or in relation to, your institution’s educational purposes, your institution is considered to be in control of that building or property.

State Buildings and Properties Used by a State School

State ownership of a building or property used in support of, or in relation to, the educational purposes of a state school also establishes institutional control of that building or property.

- This does NOT apply to private schools
- This does not mean all state-owned buildings in your state are automatically Clery-reportable
Institution-Associated Hospitals and/or Medical Centers

- Institution-associated hospitals and/or medical centers (that are not owned by the institution and for which no written agreement exists):
  - Overlapping faculty/doctors;
  - Overlapping boards of directors or officers;
  - Use of the hospital or medical center as part of the institution’s educational program;
  - Geographic proximity;
  - An ongoing relationship between the institution and the hospital; and
  - Whether students consider the hospital or medical center to be part of the campus.

Greek Houses

Greek Houses are “On-Campus” only if they are owned or controlled by the institution and are within or reasonably contiguous to the campus border.

Building owned by institution but controlled by Greek organization

Land that the house is built on is owned by the institution.

Definition #2 of On-Campus

- Any building or property reasonably contiguous to the campus that is:
  - Owned by the institution but controlled by another person
  - Frequently used by students, and
  - Used to support institutional purposes…
    - Restaurants or food vendors
    - Bookstores or other retail vendors
On-Campus Student Housing Facilities

- On-Campus Student Housing Facilities, a.k.a. Residential Facilities, are a subset of the On-Campus category.
- Basically, this results in institutions "double counting" occurrences of crime:
  - in the On-Campus category and
  - in the On-Campus Student Housing Facilities category.

On-Campus Student Housing Facilities

- On-Campus Student Housing Facilities include any student housing facility that is:
  - owned or controlled by the institution,
  - or is located on property that is owned or controlled by the institution,
  - and is within the reasonably contiguous geographic area that makes up the campus.

Residential Facilities to Include

- Undergraduate, graduate, married student housing
- Traditional residence halls/dorms or single-family houses used for student housing.
- Buildings that are owned by a third party that have a written agreement with your institution to provide student housing.
  - It doesn’t matter whether the rent is paid to the third party by the institution on behalf of the students or paid directly by the students.
Residential Facilities to Include

- Housing for officially and not officially recognized student groups, including fraternity or sorority houses, that are
  - owned or controlled by your institution or
  - are located on property that your institution owns or controls.

Parking Facilities and Dining Halls

- Parking facilities and dining halls that are physically attached to and accessed directly from student housing facilities must be included as part of the On-Campus Student Housing Facility.

Who Manages the Residential Facility?

- It does not matter whether the housing falls under the management of Residential Life or your real estate office, or another office.

- Be sure to include any facility that meets the definition of an On-Campus Student Housing Facility.
Multi-Use Buildings Owned by a Third Party

- In multi-use buildings that are reasonably contiguous with the campus, the portion of the building leased for student housing, as well as common areas and areas used to access the student housing, should be counted as an On-Campus student housing facility.

  - Do not include as an On-Campus student housing facility any apartments, rooms, or floors not reserved for student housing (including rooms or floors reserved exclusively for faculty or staff) – these are On-Campus only.

Sharing a Residential Facility?

- If your institution shares an On-Campus student housing facility with another Title IV institution, both institutions are considered to be in control of that facility and both institutions must include it when complying with the campus safety and security regulations.

No Crimes in Residential Facilities

- If your institution has On-Campus Student Housing Facilities but there were no crimes reported there:
  - Enter Zeros (0).
  - Zero is a statistic.
- You are not permitted to omit the category or leave it blank.
Other On-Campus Considerations

- The ED Handbook lists examples of how to apply the "on campus" parameters to non-traditional campuses and multiple campuses that have the following scenarios:
  - Institutions that share a campus
  - Institutions that lease space on another institution's campus
  - Institutions that offer dual classes and degrees
  - Institutions that lease space in strip malls
  - Institutions located in institution-owned strip malls
  - Institutions with more than one campus

Noncampus Property

- Does your institution own or control any buildings or property located "off campus," in another city, or even in another country?
- Does it have any officially recognized/registered student organizations?
  
  If so, you may have what Clery refers to as Noncampus buildings or property.

Definition #1 of Noncampus

- Any building or property that is not part of the campus, does not fit the definition of a separate campus, and is:
  - Owned or controlled by the institution
  - Used in direct support of or in relation to the institution’s educational purposes, and
  - Frequently used by students

- For example, noncontiguous remote classrooms or noncontiguous student housing facilities
What Are “Educational Purposes?”

- Classes
- Housing
- Internships
- Jobs or Work Study
- To access campus services like parking office, counseling center, student health center, etc.
- To play sports
- ANY USE INVOLVING STUDENTS…

Limits of Control

- What about buildings or property your institution rents or leases to hold classes on a part-time basis?
  - Report crimes that occur during the time covered by your agreement.
  - For example, if you lease classroom space in a publicly owned high school or a municipal athletic field, report only the crimes that occur during the days and times covered by your lease or rental agreement.

Limits of Control

- Include the portions of the space covered by the written agreement as well as any other areas of the building that your students or employees must use to access the contracted space during that time
  - Lobby
  - Hallway
  - Stairwell/Elevator
  - Parking lot (if addressed by the written agreement)
### Owning vs. Controlling Buildings or Properties

#### Owned Locations
- Disclose statistics for crimes that occur at these locations:
  - 24 hours per day
  - 7 days per week
  - 365/366 days per year
- Disclose crime statistics for the entire location owned by the institution.

#### Controlled Locations
- Disclose statistics for crimes that occur at these locations:
  - During the dates and times specified by the written agreement;
  - For the building or property (or portions thereof) addressed by the written agreement and;
  - Any areas of the building students and employees would use to access the controlled space;
  - Common areas of the building to which students/employees have access.

### Noncampus Examples
If these facilities are not reasonably contiguous to the campus.

- Research Facilities
- Athletic Facilities
- Institution-Owned Hospital
- Residential Facilities

### Corporate Offices
- Include corporate offices that are owned or controlled by your institution and are not reasonably contiguous to your campus in the Noncampus category if they are frequented by your students for any reason, including jobs or internships.
Off-Campus Student Housing:
Third-Party Contracts

- **Third-party contracts:** If there is an apartment building across town from your campus that’s owned by a third party that has a written agreement with your institution to provide student housing, it is a noncampus location.

- Some examples of this type of arrangement are a hotel, apartment building or student housing facility on another campus used for overflow housing. The hotel rooms, apartments or housing facilities and associated common areas specified in your written agreement are considered Noncampus property.

Off-Campus Student Housing:
Third-Party Contracts

- If multiple institutions contract with the apartment building owner to provide student housing, you still must report based on your agreement.
  - If your agreement is limited to apartments on the north wing of the first floor, disclose statistics for the apartments on that wing plus any common areas such as the laundry room and the lobby, and the hallway (stairs/elevators) used to access the apartments.
  - If your agreement doesn’t specify which apartments are reserved for use by your institution’s students, you must disclose statistics for the entire building except for the interior of the apartments that are used by another school’s students.

Off-Campus Student Housing:
Institution-Owned Apartments and Management Companies

- If your school owns an off-campus apartment building and puts a management company or a leasing agent in charge, but doesn’t use the building for student housing or direct students to live there, do not include the building in your Noncampus category even if some of your students happen to rent apartments there. The building doesn’t support the institution’s educational purposes.

- **Caution:** Make sure that residential life and housing don’t have an “agreement” to house students there.
Off-Campus Student Housing: Preferred Leasing

- If you steer students toward recommended off-campus housing, but the housing is NOT owned or controlled by your institution –

**IT IS NOT A CLERY REPORTABLE LOCATION IF NONE OF THE FOLLOWING EXIST:**
- No written agreement between 3rd party & institution to provide student housing;
- No residential life staff located in the building; and
- The building does not follow the institution’s student housing policies.

Off-Campus Student Housing: Mixed Use Apartment Buildings

- If your school owns or controls an off-campus apartment building and reserves certain apartments or floors of apartments for student housing, the areas used for that housing, as well as common areas and areas used to access the student housing, are included in your Noncampus category.

  - Include any unoccupied apartments that are specifically reserved for student housing.
  - Do not include the apartments or floors of apartments that are not reserved for student housing.
  - Do not include the apartments or floors of apartments that are reserved for your faculty or staff.

The college leases the 2nd floor of an off-campus apartment building to house students. The college must disclose statistics in the Noncampus category for crimes reported to have occurred on the 2nd floor, the lobby, and the stairs and elevator that students use to access the second floor.
Research Boats/Ship/Vans/Etc.

- **Research boats/ship/vans or other mobile classrooms:** If your institution owns or controls mobile classrooms that carry students for educational purposes, you must include Clery Act crimes that occur in or on those classrooms in your statistics.

- If the mobile classroom meets the criteria for a separate campus for any part of a calendar year, it should be considered a separate campus for Clery Act purposes for that full year.

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Dual Credit Classes in High School

**QUESTION TO ED:**

- I have a client who has programs where there are dual credit classes taught in an area high school. The instructor is a high school paid employee who has the qualifications to teach on behalf of the college. In the classroom of 30 students only 5 are enrolled for college credit with the remaining 25 not taking the class for college credit. In essence, the five students are enrolled at the College and are receiving credit for this high school class. The College and the High School have a written agreement for the classes to be taught by H.S. instructors on behalf of the College.

- Is this a Noncampus property for Clery Act purposes?

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**ED ANSWER:**

- If the college only has a program agreement with the high school, and not a written agreement for the use of space at the high school, the high school is NOT a Noncampus location.
Definition #2 of Noncampus

- Any building or property owned or controlled by a student organization that is officially recognized by the institution.
  - This is the only Clery-reportable location not owned or controlled by the institution.
  - Count incidents in the house and yard, i.e., all property owned and controlled by the organization.
  - Registration = Recognition, thus--don't over think it.

Student Organization Houses

- Count as On-Campus: If the building or land that the building is built on—is WITHIN the core campus or reasonably contiguous and is owned or controlled by the institution—it is counted under the “On-Campus” category and as a “On-Campus Student Housing Facility” if students live in the facility.
Examples of What *Not* to Report if They Are Within Your Core Campus

- Private Apartment Buildings
- Government Buildings
- A Public Library
- A privately-owned shopping center
- Privately-owned restaurants, coffee shops, etc.

* Unless your institution has a written agreement to use any of these spaces.

Repeated Use of Off-Campus Locations

- Repeated use of a location for school-sponsored trips: If your institution sponsors students on an overnight trip every year and the students stay in the same hotel each year, you must include portions of the hotel in your noncampus geography.

  For example, students in the debate club take a trip to Washington, D.C. and stay at the same hotel every year. You must include in your statistics any crimes that occur in the rooms used by your students and any common areas used to access the rooms (lobby, elevators, etc.) for the times and dates specified in the rental agreement.

Trips to Off-Campus Locations

- Short-stay "away" trips: If your institution sponsors short-stay "away" trips of *more than one night* (emphasis added) for its students, all locations
  - used by students during the trip,
  - controlled by the institution during the trip and
  - used to support educational purposes should be treated as Noncampus property.

  An example is a three-week marine biology study trip to Florida. Any classroom or housing space specified in the agreement between the institution and a third-party providing the space would be noncampus property.
Trips to Off-Campus Locations

- However, if your institution (or a contracted third party) does not have an agreement for the space used, your institution is not in control of the space and you are not required to count it.
- For example, there are some situations, such as sports tournaments, for which the host institution makes all of the housing arrangements for visiting students. In these situations, the visiting institutions do not have a written agreement for the use of space and are not required to disclose crime statistics for the housing in which their students are located. However, the host institution would be responsible for disclosing crime statistics for the housing since they hold the agreement for the housing.

10/9/20 Recission and Replacement of 2016 Handbook

- “The Appendix has also addressed the issues identified in the above-referenced Senate Report regarding reporting crimes that occur during institution sponsored stay-away trips and similar mandates placed upon trips to international destinations, that require institutions to obtain crimes statistics from foreign law enforcement agencies.”
- (P.S. the Appendix is silent on this subject!)
**Public Property**

- All public property, including thoroughfares, streets, sidewalks, that is within the campus, or immediately adjacent to and accessible from the campus.
- 4 other types of Public Property:
  - Public Parks
  - Public Parking Facilities
  - Public Waterways
  - Public Transit Stations/Stops

**Public Property Areas**

- No matter where your campus is located, your Clery public property category consists solely of two limited areas.

  1. The first is public property within your campus. An example is a public road or public bike path that runs through the campus.
  2. The second area is public property that immediately borders and is accessible from the campus.

**Public Streets**

- Public Streets that are the N/S/E/W border streets as well as the public streets that are within the campus border
- Your Public Property does not include anything beyond the second sidewalk. (If there is no second sidewalk, don’t include anything beyond the road).
The college's Public Property consists of the public sidewalk, street and opposite sidewalk along all four borders of the campus.

Nothing beyond the second sidewalk is included in the college's Public Property.

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“The 2016 edition explanation of the definition of public property in 34 CFR 668.46(a) (‘within or immediately adjacent to and accessible from the campus’) – including the ‘sidewalk, street, sidewalk’ instruction (Pg. 2-12) – is not provided for in statute or regulation and, therefore, is not included in the Appendix.”

“The Department applies no specific measurable distance definition into adjacent public property.”

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One of two conditions must be present:

1. There is no barrier of any kind between your campus border and Public Property.

EX: You can step off the curb on the edge of your campus directly onto a public sidewalk.
Accessibility from Campus—Standard of Use?

2. A standard of use has been established by your students. This means that although some type of barrier is present, your students frequently ignore, overcome or even use it to gain access to Public Property.

EX: A wall they climb over; a fence the climb over, under or through (if it has a hole); fence with a missing or broken gate.
Parking Lot Caveat

- If your institution has a written agreement giving it use of the parking lot, regardless of whether it’s publicly or privately owned, include the lot in your On-Campus geography, not your Public Property geography.

Public Park

- Normally, the area of reportable Public Property would extend only as far as the sidewalk across the street from the campus and any immediately adjacent public parking facilities.
- If access is restricted at certain times (by a gate), only crimes that occur when the park is accessible are reported.

Public Parks

- Campus-Sidewalk-Street-Sidewalk-Park
  - Do NOT count the park on the other side of the sidewalk.
- Campus-Sidewalk-Street-Park
  - Do NOT count the park on the other side of the street.
- Campus-Street-Park
  - Do NOT count the park on the other side of the street.
One Mile Rule

- If a public park borders your campus and is "countable" and is accessible (not fenced), count crimes that occur within ONE MILE of the campus border should be included in the Public Property category.

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One Mile Rule: Forest Example

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10/9/20 Recission and Replacement of 2016 Handbook

- "The 2016 edition...advises that, with limited exceptions, institutions 'extend the reporting area one mile into the area of' a public park...that borders your campus.' (Pg. 2-15)

  This is an expansion of the scope of the Clery Act and goes beyond any reasonable expectation a student or parent might have regarding the institution’s responsibility for ensuring student safety."
Public Parking Facilities

- Public parking facilities on campus, or immediately adjacent to and accessible from the campus.
- Public Property refers to property owned by a public entity such as a city or state government.
  
  - An example of public property is a parking lot with a sign that reads, “City of Rockville Public Parking.”
  - A parking lot with a sign that reads, “Joe’s 24-Hour Parking” is not public property despite that fact that the public can park there.

Public Parking Facilities

- If there is a public or municipal parking facility/lot bordering your campus, it is part of your public property.
- If there is a sidewalk-street-sidewalk or a sidewalk-street between your campus and the parking facility/lot—it is NOT considered immediately adjacent.

Public Parking Lot Example

- Parking Lot A is included in the college’s PP category because it is immediately adjacent to and accessible from the campus. Public Lot B is not included in the college’s PP category because it’s not immediately adjacent to the campus. A sidewalk, street, sidewalk separate it.
Public Waterways

- If the Public Property that is immediately adjacent to your campus is a public waterway, it should be treated the same as a park.
  - ED suggests that you extend the reporting area one mile into the area of the river, lake, ocean, etc. that borders your campus.
  - However, if the portion of the waterway adjacent to your campus is inaccessible from your campus, it is not your public property.
  - If the waterway is accessible at specific times, it is your public property at the times it is accessible from your campus.
- Go back to examples above defining immediately adjacent and accessible.

10/9/20 Recission and Replacement of 2016 Handbook

- “The 2016 edition…advises that, with limited exceptions, institutions ‘extend the reporting area one mile into the area of…a river, lake, ocean, etc.…that borders your campus.’ (Pg. 2-15)

This is an expansion of the scope of the Clery Act and goes beyond any reasonable expectation a student or parent might have regarding the institution’s responsibility for ensuring student safety.”

Public Transit Stops

- A public transit stop (e.g., subway or metro station, trolley or bus stop) located on your campus or immediately adjacent to your campus is included in your Public Property category up to the point at which a rider is required to have paid a fare.
  - For a subway or metro station, your Public Property would end at the fare gates.
  - For a trolley or bus stop, it would end when someone gets on the vehicle.
  - Apply this guidance to all other types of transit stops as well.
Public Transit Stops: Daily Crime Log

- If your institution has a campus police or security department whose patrol jurisdiction extends beyond the point where a fare is required, crimes reported there would be included in your Daily Crime Log (but not your annual crime statistics).
  
  - An example is campus police who patrol the waiting platform of a commuter train station.

Public Buildings

- Buildings or property belonging to a public college or university are not considered Public Property under Clery—they are "On-Campus."
  
  - Do not include the inside of a public building such as a public high school or public library in your Public Property.
  
  - Buildings or property owned by the Federal government are not included in your Public Property.
  
  - College or university buildings that are open to the public at private institutions are not considered Public Property under Clery—they are "On-Campus."

State Roads

- Some state institutions have charters specifying that state-owned roads running through campus are under the control of the campus. Such roads are On-Campus roads, not Public Property.
No Public Property: Examples

- All property within your campus boundaries is owned and controlled by your institution and there are no public streets, sidewalks, thoroughfares or parking facilities immediately adjacent to your campus.

- An institution that is located on, and completely surrounded by, the campus of another institution. If you cannot step out of one of the buildings you control without stepping onto property owned or controlled by the other institution, you don't have any Public Property.

- An institution that is located in a mall or office building if the parking lot and streets surrounding the building are privately owned by an individual or business.

Public Property Depends on the Campus

- Remember that Public Property is defined in relation to your campus...
  
  - Do not report crime statistics for Public Property that surrounds Noncampus buildings or property.
  
  - Do not include Public Property for the whole city in which your institution is located.

Public Property Reporting with Reasonably Contiguous Locations

- Suppose you have an On-Campus location that is not within the core campus border but is reasonably contiguous to the campus border...
  
  - The public property that is immediately adjacent to and accessible from that location is added to your institution's Public Property category.
  
  - This does not mean that all publicly owned property between your campus border and this additional On-Campus building should be included in your Public Property.
When Looking at Geography…

- Look at the 4 walls and the roof...if it happens outside the building, don’t capture the incident as having happened in the building.

Handbook Caveat

- It is important that all Title IV institutions use the same geographic parameters when disclosing statistics in the annual security report and reporting those statistics to the Department.
- However, we are aware that some institutions want to report statistics for public property that is near their campus but outside the public property definition for Clery Act purposes.
- In those cases, the institution may include statistics for those areas in a caveat or table that is clearly separate from the official Clery Act statistics.

How to Categorize “Moving” Offenses

- Scenario 12: A Burglary occurs at a business down the street from campus. The suspect is chased by police and apprehended on campus. The suspect is carrying a firearm in violation of state law and arrested for both Burglary and a Weapons Violation while on campus property. Include this as one On-Campus arrest for Weapons: Carrying, Possessing, Etc. Do not include the Burglary in your Clery Act statistics because the Burglary did not occur on Clery Act geography.
**Off Campus Institution-Owned Property**

- What is the reporting requirement for property that a college owns, but uses solely for income production – such as commercial office buildings or land that is rented to a farmer?

- Off-campus buildings or property that are owned or controlled by an institution, but are not used for its educational purposes and are not frequently used by students, do not meet the definitions of any of the Clery Geography categories.

**Short-Term Rentals: Implications**

- In the summer, we rent out university property to unrelated conferences. Do we have to report any crimes that happen there during that time?

- Short-term rental which places campus property temporarily under the control of another party does not remove it from Clery crime reporting.

- Conversely, if the institution rents property from another party for time-limited student use (such as classroom or athletic space), the Clery reporting requirements only attach during those time periods when the institution is in control of the property.

**Using A Geographic Map**

- Accurate picture
- Update annually
- Separate maps for each campus
- In complying with the statistical reporting requirements, an institution may provide a map that depicts its campus, Noncampus buildings or property, and Public Property areas if the map accurately depicts the its campus, Noncampus buildings or property, and Public Property.
Definition of Separate Campus

- Your institution owns or controls the site;
- It is not reasonably geographically contiguous with the main campus;
- It has an organized program of study; and
- There is at least one person on site acting in an administrative capacity.

If a location meets the criteria for a separate campus at any point during a calendar year, it should be treated as a separate campus for that full year.

Organized Program of Study

- An organized program of study means that the location offers course work in educational programs leading to a degree, certificate, or other recognized credential.
  - Regularly scheduled use of the facility involving recurring classes, recurring field trips, internships, student jobs or other regularly scheduled use.

- If your institution owns or controls noncontiguous academic locations where students take a course or two and there are no administrative personnel on site, those are not separate campuses—they are Noncampus locations.

Administrative Personnel

- Administrative personnel encompass a variety of individuals who may have some responsibility for the activities that take place at the location, for example:
  - a director,
  - a building coordinator,
  - a registrar, or
  - a secretary.

- It is not necessary for administrative personnel to be on site at all times for the location to qualify as a separate campus; the location might share a rotating administrator who is scheduled to be on site once a week.
Separate Campuses

- **Key Concept:** Separate campuses are not reasonably geographically contiguous with the main campus.

Schools Can Be Separate Campuses

- Academic divisions that are organized to give instruction of a defined type, such as:
  - Law School
  - Business School
  - Medical School
  - Nursing School

- Other locations: Other institution-owned or -controlled locations may include satellite, extension or similar types of noncontiguous sites that have an organized program of study and administrative personnel on-site. For example:
  - **Athletic campuses or complexes:** If your institution owns a noncontiguous athletic complex that has administrators on site and houses classrooms used for courses that are part of an organized program of study (for example, the complex includes one or more large auditorium-style classrooms to be used by large courses in any department, or houses one or more regular classrooms used for courses towards a golf course management degree), the athletic complex is a separate campus.
Separate Campuses

- Research campuses: If your institution owns a farm, agricultural or horticultural center, or other noncontiguous research facility that has an administrator on-site and that is used by students for recurring classes, recurring field trips, internships, student jobs or other regularly scheduled use, it should be considered a separate campus.

- If student attendance at these locations is determined by individual research needs and there is no regularly scheduled use of the facility by students (i.e., student use is sporadic), it is not a separate campus.

Other Separate Campus Locations

- Military bases: If your institution has a written agreement giving it use of a defined space within the base, and the base otherwise meets the definition of a campus, it’s a campus. If your school simply sends instructors to the base, it’s not your campus.

- Foreign locations: A foreign location owned or controlled by a U.S. institution that has an organized program of study and administrative personnel on site, is a separate campus.

Other Separate Campus Locations

- Other institution-owned or controlled locations may include:
  - satellite,
  - extension, or
  - similar types of non-contiguous sites that have an organized program of study and administrative personnel on site.

- Audit yourselves: review your institution’s website to see if they use any of these concepts to describe locations where your institution holds classes.
Separate Campus Requirements

- Publish a separate Annual Security Report, or
- Publish a single Annual Security Report for all campuses, that includes:
  - Addressing policy statements that are different from those of the main campus.

NACCOP White Paper

- Find under “Resources” at www.naccop.org.
- Direct link HERE.

Academic Locations Not Typically Subject to Clery Crime Disclosures

- If your institution sends students to study abroad or exchange programs at institutions that you do not own or control, you are not required to disclose crimes occurring there.
- If your institution has an additional location that offers online distance education only, that location is not required to comply with the Clery Act.
General Crime Categories

- Criminal Offenses (Primary Crimes)
- Hate Crimes
- Arrests and Referrals for Disciplinary Action
- VAWA Offenses

Statistics must be disclosed separately for each of these four general categories.

This means that when an incident meets definitions in more than one of these categories, it must be reported in each category.

Primary Crimes (UCR Part 1)

1. Criminal Homicide
   - Murder & Nonnegligent Manslaughter
   - Manslaughter by Negligence
2. Sexual Assault (Sex Offenses)
   - Rape
   - Fondling
   - Incest
   - Statutory Rape
3. Robbery
4. Aggravated Assault
5. Burglary
6. Motor Vehicle Theft
7. Arson

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Classifying and Counting

- In this section of the class, we will discuss the types of crimes that the Clery Act requires your institution to disclose and the rules for classifying and counting them.
- We will discuss examples that illustrate the rules and some exceptions to the rules.

Sources of Crime Definitions

- FBI UCR Summary Reporting System (SRS) User Manual
  - Murder; Manslaughter by Negligence; Rape; Robbery; Aggravated Assault; Burglary, Motor Vehicle Theft; Arson; Weapons: Carrying, Possessing, Etc.; Drug Abuse Violations; and Liquor Law Violations

- FBI UCR National Incident-Based Reporting System (NIBRS) Data Collection Guidelines
  - Fondling, Incest, and Statutory Rape

- FBI Uniform Crime Reporting Hate Crime Data Collection Guidelines and Training Manual
  - Hate Crimes (Larceny-Theft, Simple Assault, Intimidation, Destruction/Damage/Vandalism of Property)

- ED Clery Act Regulations at 34 CFR §668.46(a)
  - Dating Violence, Domestic Violence, and Stalking
FBI Definitions and Standards

- Note that, although the law states that institutions must use the UCR Program definitions, Clery Act crime reporting does not have to meet all of the other UCR Program standards.

Clery Act Guidelines

- Classify and count crimes from the records of calls for service, complaints and investigations.
- You must include in your crime statistics the number of all reported offenses, without regard to the findings of a
  - court,
  - coroner
  - jury, or
  - the decision of a prosecutor.
  - You also should not consider the outcome of the student conduct process when classifying and counting offenses.

Responsibility for Classifying Offenses

"The Department [of Education] must emphasize that the proper classification of an incident is not in any regard dependent on the label that a victim or witness uses to describe it. Rather, a competent institutional official with the requisite knowledge and experience must evaluate the available information and determine the crime classification(s) that apply to the particular set of case facts” (University of Saint Thomas FPRD, 2017, p. 10).
**Murder & Non-negligent Manslaughter**

The willful (non-negligent) killing of one human being by another.

- **Count:** One offense per victim

**General Rule: Criminal Homicide**

- Any death caused by injuries received in a:
  - fight,
  - argument,
  - quarrel,
  - assault, or
  - the commission of a crime

is classified as Murder and Non-negligent Manslaughter.

**General Rule: Criminal Homicide**

- Do not count as Murder and Non-negligent Manslaughter:
  - suicides,
  - fetal deaths,
  - traffic fatalities,
  - accidental deaths,
  - assaults with intent to Murder and attempts to Murder,
  - situations in which a victim dies of a heart attack as the result of a crime, even in instances where an individual is known to have a weak heart, or
  - justifiable homicide (which is defined as and limited to the killing of a felon by a peace officer in the line of duty, or the killing of a felon during the commission of a felony, by a private citizen).
Example
Two groups of students get into an argument in a campus parking lot. Jim punches Joe and causes him to hit his head on a concrete sidewalk, inflicting severe head trauma. Two days later, Joe dies.

Include one incident of on-campus Murder and Non-negligent Manslaughter in your crime statistics.

Manslaughter by Negligence
Killing of another person through gross negligence.

- **Count:** One offense per victim
- **Do not count:** Deaths of persons due to their own negligence, accidental deaths not resulting from gross negligence, and traffic fatalities.

Manslaughter by Negligence

- **Classify as Manslaughter by Negligence:** Any death caused by Gross Negligence of another.
- **Gross Negligence** is the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another.
Example

Two students, Jim and Mike, are handling a gun at an on-campus fraternity house owned by the institution, and Jim “jokingly” points the gun at Mike. Jim fires the gun, and Mike is killed. Jim claims no knowledge of the gun being loaded.

Include this as one Manslaughter by Negligence in the on-campus category and one Manslaughter by Negligence in the on-campus student housing facility category.

Sexual Assault

- **Sexual assault** means an offense that meets the definition of Rape, Fondling, Incest, or Statutory Rape as used in the FBI's UCR program and included in Appendix A of this subpart.

- Sexual assault, a.k.a. Sex Offenses, involves "any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent."

Rape

- The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

- Count one offense per victim.
Rape

- This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol).

- Physical resistance is not required on the part of the victim to demonstrate lack of consent.

Consent

- The ability of the victim to give consent must be a professional determination by a law enforcement agency.

- Note that, while the definitions of Sexual Assault include lack of consent as an element of the offense, for the purposes of including a reported Sexual Assault in Clery Act statistics, no determination as to whether that element has been met is required.

- Therefore, all Sexual Assaults that are reported to a campus security authority must be included in your Clery Act statistics and also included in your crime log (if you are required to have one), regardless of the issue of consent.

DSA Program Review Findings (1)

A student reported to Resident Assistants that she woke up to find a used broken condom on the floor near where she was sleeping, and she was not wearing shorts. The victim had been drinking at an event in the residence hall. She characterized her level of intoxication as being "drunk," and she didn't remember everything that happened the prior night.

A male RA who was present at the same event as the victim recalled that he remembered the victim being "drunk" while there. Furthermore, it appeared (based on a supplemental report authored by the same male RA) that the victim may have been observed to be intoxicated to the point of vomiting and she was subsequently escorted to another room.
The victim told the RAs that she told her parents that "she might've been raped" and inquired about obtaining a rape kit. The victim was reluctant to call campus police to report the incident until she could review camera footage to determine who may have entered and exited the room where she was sleeping. The victim later disclosed that she had sex with another student that night. It appeared that sexual intercourse was consensual, and she clarified that the sexual intercourse she disclosed was separate from the possible rape she was reporting, but she noted that she was scared that the other student's DNA could show up in the rape kit.

Considering the totality of the information, this report establishes that the victim reported to RAs that she may have been sexually assaulted (i.e., she was not able to give consent to sexual intercourse due to her level of intoxication, and she believes she may have been raped in her room based on the circumstantial evidence available to her). It is clear that the RAs who interacted with the victim while making a report also perceived her to be making a report of a rape.

Accordingly, the incident should be classified as 1 On-Campus and On-Campus Student Housing Facility Rape statistic.

This incident was documented within Campus Police’s CAD system with a Call Type of "Sex Offense," but there was no corresponding police report or any other documentation or details indicating the status or disposition of the report. Because the only information available to consider is a record of a call alleging some type of Sex Offense, this CAD report should be treated as a report of a Rape.

Accordingly, the incident should be classified as 1 On-Campus Rape statistic.
Fondling

The touching of the private body parts of another person for the purpose of sexual gratification, without consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or temporary or permanent mental incapacity.

Count one offense per victim.

Fondling is recognized as an element of the other sex offenses. Therefore, count Fondling only if it is the only sex offense.

Scenario 7: A woman is walking on a public sidewalk in front of your campus and a man pinches her buttocks as he runs by her. Include this as one public property Fondling only if the victim reports that it was sexual in nature.

Note: In the 2011 Handbook, the last sentence used to read “Classify the incident as one Public Property Forcible Sex Offense if it’s determined that the man’s intent was sexual gratification.”
**MSU Finding**

“Survivor J: In 2015, Survivor J reported that, during a treatment at the MSU Sports Medicine Clinic, Nassar groped her bare breasts with his bare hands. The woman informed Employee 7, her former boyfriend and a Michigan State athletic trainer, of the abuse in his capacity as a University employee; yet no report of this crime was ever properly lodged in accordance with the Clery Act. This incident should have been classified as an incident of Fondling, and should have been included in the University’s campus crime statistics.” (Michigan State University, Campus Crime Program Review Report, 2018, p. 11-12).

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**ED Audit-University of Texas Arlington (4/2/13)**

- Victim stated that an “unknown male grabbed her thigh and female intimate area through her clothing”
- ED Disagrees with UTA’s contention that Forcible Fondling requires evidence of a state of tumescence (becoming swollen) or utterance to indicate that the perpetrator’s touching was for sexual gratification.
- ED fined UTA $27,500 for this violation.

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**Incest**

Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

- If force was used or threatened, if the victim did not consent, or if the victim was incapable of giving consent—count as Rape.
- **Count one offense per victim.**
Statutory Rape

Sexual intercourse with a person who is under the statutory age of consent

- If force was used or threatened, if the victim did not consent, or if the victim was incapable of giving consent—count as Rape.
- **Count one offense per victim.**
- Count only the victims that fit the state's statutory age limit.

Example

A 21-year-old student has sex with a 15-year-old juvenile in the student's on-campus apartment. There is no use of force or threat of force (the statutory age of consent is 16).

Include this as one Statutory Rape in the on-campus category and one Statutory Rape in the on-campus student housing facility category.

Date Rape Drugs

- Note that a case which is determined through investigation to have involved the administration of a date-rape drug in an unsuccessful attempt to incapacitate and sexually assault the victim (and the officer believes that the perpetrator's intent was to commit a sex offense)—the incident should be classified as a sex offense.
**Date Rape Drugs**

- If the officer has no knowledge of the "intent" of the perpetrator, the incident should be classified as an Aggravated Assault.

- The ED Handbook says: “The use of drugs to subdue a victim, such as the use of date rape drugs, should be counted as Aggravated Assault because it can be assumed that the intent was to inflict aggravated bodily harm. However, if the use of the drugs results in Rape or Murder within the same incident, follow the Hierarchy Rule, and count the more serious offenses.”

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**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.

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**Essential Elements of Robbery**

- Committed in the presence of a victim (usually the owner or person having custody of the property).

- Victim is directly confronted by the perpetrator.

- Victim is threatened with force or put in fear that force will be used.

- Involves a theft or larceny.

- Because some type of assault is an element of Robbery, do not report an assault as a separate crime as long as it was performed in furtherance of the Robbery.
Weapons

- The UCR considers a weapon to be a commonly known weapon (a gun, knife, club, etc.) or any other item that, although not usually thought of as a weapon, becomes one in the commission of a crime.

- Robbery also includes crimes involving pretend weapons or those in which the weapon is not seen by the victim, but the robber claims to possess one.

Larceny vs. Robbery: Purse-Snatching

- What is not a Robbery—when a victim has physical possession of their property?

- Purse-Snatching: The grabbing or snatching of a purse, handbag, etc., from the custody of an individual (common now with snatching cell phones out of someone’s hand).

- The purse must be in the physical possession of the victim in order for the theft to be classified as purse-snatching. If more force is used than is actually necessary to snatch the purse from the grasp of the owner, or if the victim resists the theft in any way, then the offense is classified as a strong-arm robbery.

Larceny vs. Robbery: Pocket-Picking

- What is not a Robbery—when a victim has physical possession of their property?

- Pocket-Picking: The theft of articles from a person by stealth where the victim usually does not become immediately aware of the theft.

- Pocket-picking includes the removal of such items as wallets from women’s purses and men’s pockets. It usually occurs in a crowd, public conveyance, or other similar situation to disguise the activity. Include theft from a person in an unconscious state, including drunks, in this category. However, if the victim is manhandled or if force beyond simple jostling is used to overcome the resistance of the victim, the offense becomes a strong-arm robbery and must be so classified.
Robbery

**COUNT:**
- One offense for each distinct operation (i.e., incident), including attempts.
- Carjacking counts as Robbery only and not as a Motor Vehicle Theft.
- If the victim offers "resistance"

**DO NOT COUNT:**
- The number of:
  - Offenders,
  - Victims, or
  - People present
- If force or threat of force doesn't exist - such as a pick-pocket or purse snatching.

Example

Two students returning to campus from a night at a local bar are approached by three armed men on a city sidewalk outside their residence hall and told to hand over their wallets. The students comply, and the three armed men leave without harming the students.

Include this as one Robbery on public property.

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.)
Aggravated Assault

- Factors to consider:
  - Type of weapon employed or use of an object as a weapon
  - Seriousness of the injury
  - Intent to cause serious injury

- Count: One offense per victim

Aggravated Injuries

- Broken Bones
- Internal Injuries
- Stitches
- Loss of Teeth
- Severe Laceration
- Loss of Consciousness

Include as Aggravated Assault

- Assaults or attempts to kill or Murder;
- Poisoning (including the use of date rape drugs);
- Assault with a dangerous or deadly weapon;
- Maiming;
- Mayhem;
- Assault with explosives;
- Assault with disease (as in cases when the offender is aware that he or she is infected with a deadly disease and deliberately attempts to inflict the disease by biting, spitting, etc.).
Aggravated Assault

- If an attack results in
  - broken bones, a loss of consciousness or significant blood loss, or
  - requires medical treatment or hospitalization, such as stitches or casting (regardless of whether or not the victim accepts such assistance),

  the incident must be classified as an Aggravated Assault.

Aggravated Assault

- The intent to cause death or severe bodily harm can arise after the parties to an incident have already engaged in some consensual contact.
  - For example, consider a situation where friends are on opposite teams in an intramural basketball game or where roommates are wrestling in their dorm room.

  Aggressive but consensual “horseplay” can become a violent altercation.
  - For example, where one of the players in the basketball game punches a member of the opposing team instead of defending the goal, rendering him unconscious, or one roommate wants to stop wrestling and the other applies a violent headlock, causing a serious neck injury. Both of these examples count as Aggravated Assault.

Do Not Count as Aggravated Assault…

- “Do not classify an incident as an Aggravated Assault based solely on prosecutorial policy in a jurisdiction. Examine and count assaults according to the standard UCR definitions, regardless of whether they are labeled ‘misdemeanors’ or ‘felonies’ by local definitions” (2016 Handbook, p. 3-12).

- Use the Clery Act definitions and standards for statistical reporting purposes

  **Note:** This is true for all Clery Act crimes!
Aggravated Assault & DUI

- Cases where a drunk driver accidentally strikes a pedestrian with their vehicle should not be counted as Aggravated Assault for Clery Act reporting purposes. You must have intent to kill, maim, or inflict severe bodily injury in order to count an incident as Aggravated Assault or attempted Aggravated Assault. In some states there is such a charge as Aggravated Assault while DUI; however, in order to count this behavior as Aggravated Assault for Clery Act reporting purposes, intent must be present.

Distinguishing Aggressors from Victims

- If a number of persons are involved in a dispute or disturbance and law enforcement investigation cannot distinguish the aggressors from the victims, the reporting agency must count the number of persons assaulted as the number of offenses.

- In such circumstances, assault classifications may require agencies to report both aggravated and simple assaults.

Use of Weapons

- 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 that could cause serious personal injury is used.

- Also count attacks using personal weapons, such as hands, arms, feet, fists and teeth that result in serious or aggravated injury.
Use of Knives to Threaten Others

- "A former member of the football team was armed with a knife and threatened a current player in the football team’s dining hall. "The blade of the knife measured eight (8) inches in length, with an overall measurement of twelve (12) inches including the handle."

- The intended victim stated that "he noticed (the assailant) coming into the dining hall" and the assailant made a threatening statement to the victim. At that point, the assailant "pulled out a knife from his sleeve and threatened to stab" the victim.

- Three coaches disarmed and subdued the assailant…

Use of Knives to Threaten Others

- "When a victim is attacked or threatened by an armed assailant and is put in apprehension of an impending violent assault with a weapon, the proper UCR classification is aggravated assault, even if the victim is not wounded in any way.

- Based on our review of this incident report, this incident should have been coded as an "aggravated assault" and should have been included in Penn State’s 2008 campus crime statistics." (Penn State University Campus Crime Final Program Review Determination, 2016, p. 80).

Burglary

The unlawful entry of a structure to commit a felony or a 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; safecracking; and all attempts to commit any of the aforementioned.

1) Forcible Entry
2) Unlawful Entry-No Force
3) Attempted Forcible Entry
Burglary

An incident must meet three conditions to be classified as a Burglary.

1. There must be evidence of unlawful entry (trespass). Both forcible entry and unlawful entry – no force are counted.

2. The unlawful entry must occur within a structure, which is defined as having four walls, a roof, and a door.

UCR Definition of a Structure Includes

- Apartment
- Barn
- Cabin
- Church
- Condominium
- Dwelling house
- Factory
- Garage
- House trailer or houseboat (if used as a permanent dwelling)
- Mill
- Office
- Other building
- Outbuilding
- Public building
- Railroad car
- Room
- School
- Stable
- Storage facility
- Vessel (ship)
- Warehouse
- Any house trailer or other mobile unit that is permanently fixed as an office, residence or storehouse.

UCR Definition of a Structure Does Not Include

- Motor vehicles
- Tents
- Tent trailers
- Motor homes
- House trailers
- Other mobile units that are being used for recreational purposes
- A telephone booth
- A gym locker or cubby
Burglary

3. The structure was unlawfully entered to commit a felony or a theft. If the intent was not to commit a felony or a theft, the incident is not a Burglary. For example, if a homeless student unlawfully entered a structure to sleep, do not include the incident as a Burglary.

Burglary

- It is imperative that institutions carefully evaluate the operative facts of each reported incident to determine if it fits into any subpart of this definition.

Burglary

- **Forcible Entry:** All offenses where force of any kind is used to unlawfully enter a structure for the purpose of committing a theft or felony. This rule applies when a thief gains entry by
  - using tools;
  - breaking windows;
  - forcing windows, doors, transoms or ventilators;
  - cutting screens, walls or roofs; and
  - where known, using master keys, picks, unauthorized keys, celluloid, a mechanical contrivance of any kind (e.g., a passkey or skeleton key) or other devices that leave no outward mark but are used to force a lock.
- This includes Burglary by concealment inside a building followed by exiting the structure.
Burglary

- **Unlawful Entry–No Force**: The entry of a structure in this situation is achieved by use of an unlocked door or window.

- The element of trespass to the structure is essential in this category, which includes thefts from open garages, open warehouses, open or unlocked dwellings (such as dorm rooms) and open or unlocked common basement areas in apartment houses where
  - entry is achieved by someone other than the tenant who has lawful access, or
  - others whom the tenant allows to have free and regular access to the structure.

Burglary

- If an item was taken from an unlocked dorm room and you can establish that neither the tenant nor those friends with free and regular access to the room have taken the item, then unlawful access has occurred.

- In this context, it is important to note that a "breaking" occurs when a perpetrator crosses the threshold of a boundary that results in a trespass. As such it is possible for a burglar to "break" an open doorway or window.

- There is no requirement that entry be forced in any way or that damage to a door, window or frame be evident.

Burglary

- **Attempted Forcible Entry**: A situation where a forcible entry into a locked structure is attempted but not completed.

- An attempt to commit the crime of Burglary must be evaluated in context based on all available information. Such incidents must not be classified merely as "suspicious activity" or "vandalism" where the totality of facts indicates that a Burglary was in fact attempted.
Burglary

- Possible indicators of an attempted Burglary may include, but are not limited to,
  - damage to a door or window,
  - the presence of Burglary tools,
  - a recurring or similar modus operandi or “signature” that ties an incident to other similar offenses (sometimes referred to as “common plan and scheme”), and/or
  - proximity in time and place to a pattern of other similar crimes.

Counting Burglary Offenses

On-Campus Student Housing Facilities

- Each bedroom in a student housing facility suite is considered a separate dwelling.
- In suite-style residential facilities, count unlawful entry into the common area of a suite as a separate Burglary statistic.

Academic and Administrative Buildings

- Use Hotel Rule if the Burglaries occurred as part of the commission of one crime (typically under the control of a single manager).

Burglary of 25 Residence Hall Rooms

- If 25 dorm rooms are entered in one building during a school break when no students are present, is each entry counted as a burglary?
  - If it is determined that the intent of the unlawful entries was to commit a felony or a theft, then yes, the count would be 25 burglaries on campus [and 25 burglaries in the On-Campus residence category] – regardless of whether items were actually stolen from all of the rooms.
  - The rationale is that burglaries (or attempted burglaries) of individual dwellings would normally be reported separately by the occupants.
Important Criteria for the Incident Report

- Were there signs of forcible entry?
- Was the space (room/office/bldg) locked (ask the victim)?
- Was the building in a secure mode when the theft occurred?
- In a suite in a residential facility- how many rooms were entered?
- When is the last time the victim saw the property?
- When did the victim notice the property was missing?
- Who else has free and regular access to the space?

Counting Burglary in Patient Rooms

- Burglaries in patient rooms in campus or Noncampus medical centers: Because residents in patient rooms in hospitals or medical centers are transient, offenses are most likely to be reported to law enforcement by the institution. Count the burglary of a number of patient rooms as a single offense.

Can a Burglary Become a Robbery?

- A structure can be burglarized, but it cannot be robbed. It is possible, however, for an Attempted Burglary to become a Robbery. For example, a student returns to her dorm room and surprises a burglar. The burglar physically attacks the student, steals her purse, and flees. Because the burglar attacked the student and took her property, classify this incident as a Robbery. If the student had not been physically confronted by the burglar and merely observed the burglar leaving her room, the incident would be classified as a Burglary, even if the burglar left empty-handed.
**Initial Classification & State Codes**

- Do not count offenses based on local law classifications or institutional policy definitions.

- However, if the local law enforcement agency's original classification includes:
  - Burglary (any degree),
  - Unlawful entry with intent to commit a larceny or felony,
  - Breaking and entering with intent to commit a larceny,
  - Housebreaking, or
  - Safecracking,

  the institution should count the offense as a Burglary for Clery Act purposes.

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**Burglary of Residence Hall: Help Desk**

- In cases where the perpetrator first breaks into a residence hall, then breaks into one or more residence hall rooms, you should only count the initial break-in as a Burglary if you have documentation that shows that the intent of that initial trespass was to commit a theft or felony.

- However, if the perpetrator committed a theft from the entryway or a common area that was accessed through the initial break-in, that would count as one burglary in addition to the burglaries of each dorm room.

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**Example**

Facilities personnel who are authorized to enter an office only for maintenance tasks use their keys to enter an office not on the maintenance schedule and take a computer.

This is one Burglary and is classified in the On-Campus category.
Campus police officers responded to the Facilities Maintenance Building in reference to a “burglary of a building.” Upon arrival, officers met with a staff member who reported that he attempted to enter the building and discovered that the door was open and unlocked. It appeared that the bottom right corner of the door looked as if it was slightly pried open. While officers where on scene, another employee responded and indicated that he had left the building the prior evening in a secure status, which was approximately 16 hours prior to the other employee discovering the pried open door.

The two employees indicated that they were unaware of how the door could have been damaged and left open. No items were observed to be missing.

Although Burglaries for Clery Act reporting are classified using the FBI’s UCR definition, the report’s status as being classified as a Burglary in accordance with the Texas Penal Code (which contains very similar elements to the UCR definition) supports it is reasonable to include this as a Clery-reportable Burglary.

Accordingly, the incident should be classified as 1 On-Campus Burglary statistic.

The Police report indicates that a current student who previously lived in the College’s On-Campus Student Housing Facilities (but who was not a residential student at the time of the incident) entered a residential facility without permission (she was not a guest or invitee of a current residential student, and when she swiped her student identification card, the card reader turned red indicating she did not have access to the building). A security guard was unable to stop her from entering (the student entered the building before the officer could intervene).
DSA Program Review Findings (2)
The student was subsequently found to be utilizing laundry facilities that are reserved for residential students (who pay a fee to access these facilities). While the College indicated guests may be permitted to use these facilities even if they are not a residential student, the student involved in this incident was neither a resident nor guest/invitee during the incident. The student's unauthorized use of property or services after unlawfully entering the structure constitutes a Burglary for Clery Act statistical reporting purposes.

Accordingly, the incident should be classified as 1 On-Campus and On-Campus Student Housing Facility Burglary statistic.

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DSA Program Review Findings (3)
The original "Call Type" was properly classified as a Burglary, but the incident was not included on the audit trail (the "Classification" was listed as Theft only). The report describes several thefts occurring at various locations within an on-campus residential facility during an institutionally-sponsored Camp. One of the reporters indicated that money was stolen from their room while the others indicate money and other items may have been stolen from them while attending a class or study group in a common area of the residence hall (i.e., where others had lawful access at the time of the thefts). The incident in which a victim reported that someone trespassed into their room and stole money should be classified as a Burglary.

Accordingly, the incident should be classified as 1 On-Campus and On-Campus Student Housing Facility Burglary statistic.

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Motor Vehicle Theft
The theft or attempted theft of a motor vehicle.
(Classify as motor vehicle theft all cases where automobiles are taken by persons not having lawful access even though the vehicles are later abandoned—including joyriding.)
Motor Vehicle Theft

- **COUNT**
  - One offense for each stolen vehicle
  - If taken by a person who doesn't have legal access or owner consent.
  - Include attempts and joyriding, even if the vehicle is recovered.

- **DO NOT COUNT**
  - Taking a vehicle for temporary use when prior authority has been granted or can be assumed, such as in family situations, rental car agreements, or unauthorized use by chauffer's and others having lawful access to the vehicle.

Other Vehicles that Count as Motor Vehicle Theft

- Golf Cart
- Trail Bike
- Moped
- Self-Propelled Motor Home
- Motorcycles
- Motor Scooters
- All-Terrain Vehicles
- Snowmobiles

Other Vehicles That Do NOT Count as Motor Vehicle Theft

- Farm Equipment
- Bulldozers
- Airplanes
- Construction Equipment
- Motorboats
- Sailboats
- Houseboats
- Jet Skis
**Thefts from a Motor Vehicle**

- If a vehicle parked on campus is broken into and a CD player is stolen, is this considered an attempted Motor Vehicle Theft?
  - If there is no evidence of any attempt to steal the vehicle itself, the only crime would be a Theft From a Motor Vehicle, which is classified by the FBI's Uniform Crime Reporting [UCR] program as a Larceny-Theft. Larceny-Thefts are not required to be included in the annual Clery Act statistical disclosure.
  - If there is also evidence of an unsuccessful attempt to steal the vehicle (such as a broken-out ignition switch), count this crime as one On-Campus Motor Vehicle Theft.

**Example**

A faculty member's car is reported stolen from a campus parking garage and is later recovered a block off campus.

This is classified as a Motor Vehicle Theft in the On-Campus category.

**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 or personal property of another, etc.
Classify as Arson

- Only fires determined to have been willfully or maliciously set.
- The Clery Act requires institutions to disclose all Arsons that occur on their Clery Act geography. This includes seemingly minor fires such as burning wastebaskets or bulletin boards, regardless of whether they are discovered while burning or after being extinguished.
- All of the evidence for any fire not known to be accidental (such as a cooking fire) must be considered by the institutional official designated to make such determinations.

Arson

- Some jurisdictions have specific rules that state that a fire is not to be classified as Arson unless and until a fire marshal makes a determination of malicious burning.
- The Clery Act’s Arson definition does not require that any findings be made by a fire official before classifying an incident.

Classify as Arson

- Any fire that investigation determines to meet the UCR definition of Arson regardless of the value of the property damage.
- Incidents where an individual willfully or maliciously burns his or her own property.
- Attempts to burn.
Counting Arson Offenses

- Count one offense for each distinct incident.
- Count all fires determined to be arsons by the institutional official designated to make such determinations.
- Count most serious other offense and arson—if there are multiple offenses.

Cautions in Disclosing Arson Statistics

Points of Origin:

- If a fire (determined to be Arson) starts in a privately owned house located next to your campus and spreads to a building on your campus, you are not required to disclose the arson statistic because the point of origin for the arson was not your Clery geography.
- If the situation is reversed, and an On-Campus fire (determined to be arson) spreads to the house, you must include the "On-Campus" arson in your Clery statistical disclosures.

Cautions in Disclosing Arson Statistics

- If the private home and the On-Campus building are burning, and investigators later determined that the cause was Arson, but the point of origin could not definitively be determined, your school is responsible for disclosing the Arson statistic for the On-Campus building.
Other Important Considerations

- Do NOT classify as Arson:
  - Fires of suspicious origin
  - Fires of unknown origin
    (Investigative Report)

- For institutions with On-Campus Student Housing Facilities, Arson in an On-Campus Student Housing Facility must also be disclosed in your fire statistics and in your fire log.

University of Missouri – Kansas City
FPRD (June 2, 2015)

- “The Department’s settled position is that evidence of a burning and/or the existence of flames where they should otherwise not be and that cannot be explained by some
  - atmospheric (e.g. lightening),
  - mechanical (e.g. electrical malfunction) or
  - some other specific non-criminal activity (e.g., a sanctioned bonfire)
    must be defined as arson” (p. 8).

Example

A bulletin board was lit on fire in a residence hall. The investigation results indicate that someone intentionally set the papers on the bulletin board on fire while walking by the area as a joke.

Include this as one Arson in the On-Campus and On-Campus Student Housing Facilities categories.
Example

A suspicious fire is reported in a campus academic building, but fire authorities cannot determine if it was intentionally set.

Do not include this in your Clery Act statistics.

Attempted Crimes

- Do not differentiate between attempted and completed crimes—the only exception is that there is not offense of Attempted Murder.

- “Attempted Murders” are counted as Aggravated Assaults.

Counting Crimes Against Persons

- For crimes of Murder and Nonnegligent Manslaughter as well as Manslaughter by Negligence: count one offense per deceased victim

- For Rape, Fondling, Incest, Statutory Rape, and Aggravated Assaults, as well as any attempts: count one offense per victim
### Counting Crimes Against Property/Persons

- For Robbery, Burglary, and Arson: generally—count one offense for each distinct operation, including attempts.
  - For multiple Burglaries during the same incident—use Hotel Rule for academic/administrative buildings. Count each room unlawfully entered for apartments/residence hall rooms.
- For Motor Vehicle Theft: count one offense for each stolen vehicle or attempted theft.

### General Crime Categories

- Criminal Offenses (Primary Crimes)
- Hate Crimes
- Arrests and Referrals for Disciplinary Action
- VAWA Offenses

### Hate Crimes

- A hate crime is "a criminal offense that manifests evidence that the victim was intentionally selected because of the perpetrator’s bias against the victim" (2016 Handbook, 3-25).
- Bias is "a preformed negative opinion or attitude toward a group of persons based on their race, religion, disability, sexual orientation, ethnicity, [national origin], gender, or gender identity" (FBI, 2015, p. 31).

Source for this section: FBI Hate Crime Data Collection Guidelines and Training Manual (2015)
Hate Crimes

- A hate crime is not a separate, distinct crime, but is the commission of a criminal offense which was motivated by the offender’s bias.

- For example, a subject assaults a victim, which is a crime. If the facts of the case indicate that the offender was motivated (in whole or in part) to commit the offense because of his/her bias against the victim's race, sexual orientation, etc., the assault is then also classified as a hate crime.

Hate Crime Data

- Must be collected and reported according to category of prejudice for all Clery Act Primary Crimes (except Manslaughter by Negligence) as well as:
  - Larceny-Theft
  - Simple Assault
  - Intimidation
  - Destruction/damage/vandalism of property

- Hate crimes are not reported for:
  - Liquor, Drug, or Weapons Law Violations
  - Dating Violence, Domestic Violence, or Stalking

Categories of Bias

- Include any of the aforementioned crimes that manifest evidence that the victim was intentionally selected because of the perpetrator’s bias.
Bias Definitions

- **Race Bias:** A preformed negative opinion or attitude toward a group of persons who possess common physical characteristics (e.g., color of skin, eyes, and/or hair; facial features, etc.) genetically transmitted by descent and heredity which distinguish them as a distinct division of humankind (e.g., Asians, blacks or African Americans, whites).

- **Disability Bias:** A preformed negative opinion or attitude toward a group of persons based on their physical or mental impairments, whether such disability is temporary or permanent, congenital or acquired by heredity, accident, injury, advanced age or illness.

- **Religious Bias:** A preformed negative opinion or attitude toward a group of persons who share the same religious beliefs regarding the origin and purpose of the universe and the existence or nonexistence of a supreme being (e.g., Catholics, Jews, Protestants, atheists).

- **Sexual Orientation Bias:** A preformed negative opinion or attitude toward a person or a group of persons based on their actual or perceived sexual orientation. Sexual Orientation is the term for a person’s physical, romantic, and/or emotional attraction to members of the same and/or opposite sex, including lesbian, gay, bisexual, and heterosexual (straight) individuals.

Gender Bias

- FBI distinguishes between gender and gender identity
  - **Gender**—(noun) This term is used synonymously with sex to denote whether a newborn is male or female at birth, e.g., “it’s a boy” or “it’s a girl.”
  - **Gender Bias**—(noun) A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender, e.g., male or female. *(this is the definition used for Clery Act purposes)*
Gender Identity Bias

- **Gender Identity**—(noun) A person’s internal sense of being male, female, or a combination of both; that internal sense of a person’s gender may be different from the person’s gender as assigned at birth.
  - Note: A transgender person may express their gender identity through gender characteristics, such as clothing, hair, voice, mannerisms, or behaviors that do not conform to the gender-based expectations of society.

- **Gender Identity Bias**—A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender identity, e.g., bias against transgender or gender non-conforming individuals.
  (this is the definition used for Clery Act purposes)

Gender Identity Bias

- **Gender Non-Conforming**—(adjective) Describes a person who does not conform to the gender-based expectations of society, e.g., a woman dressed in traditionally male clothing or a man wearing makeup.
  - Note: A gender non-conforming person may or may not be a lesbian, gay, bisexual, or transgender person but may be perceived as such.

Transgender—(adjective) Of or relating to a person who identifies as a different gender from their gender as assigned at birth.

- Note: The person may also identify himself or herself as "transsexual."

- Note: A transgender person may outwardly express his or her gender identity all of the time, part of the time, or none of the time; a transgender person may decide to change his or her body to medically conform to his or her gender identity.

- Note: Avoid the following terms: "he-she," "she-male," "tranny," "lt," "shim," "drag queen," "transvestite," and “cross-dresser.”
Bias Definitions

- Ethnicity Bias
  A preformed negative opinion or attitude toward a group of people whose members identify with each other, through a common heritage, often consisting of a common language, common culture (often including a shared religion) and/or ideology that stresses common ancestry.
  
  The concept of ethnicity differs from the closely related term race in that “race” refers to grouping based mostly upon biological criteria, while “ethnicity” also encompasses additional cultural factors.

Ethnicity Bias Example

Scenario 8: The office of the Arab-American Student Center on the third floor of the campus student union contains both Arabic and English writing on the outside of the door. One night the office is vandalized, with anti-Arab threats and disparaging anti-Arab messages.

Include this as one on-campus Destruction/Damage/Vandalism of Property incident characterized by Ethnicity Bias.

Bias Definitions

- National Origin Bias
  A preformed negative opinion or attitude toward a group of people based on their actual or perceived country of birth. This bias may be against people that have a name or accent associated with a national origin group, participate in certain customs associated with a national origin group, or because they are married to or associate with people of a certain national origin.
National Origin Bias Example

Scenario 9: Two students are walking on campus, speaking Spanish. Five other white students surround them, shove them and throw them to the ground, shouting “You’re in America. This is our country. We speak English here! Go back to your own country if you don’t like it!”

Include this as two on-campus Simple Assaults characterized by National Origin.

Hate Crime Offenses Categories

Group A
- Murder and Non-negligent Manslaughter
- Sexual Assault
  - Rape,
  - Fondling,
  - Incest, and
  - Statutory Rape
- Robbery
- Aggravated Assault
- Burglary
- Motor Vehicle Theft
- Arson

Group B
- Larceny-Theft
- Simple Assault
- Intimidation
- Destruction/damage/vandalism of property

Larceny-Theft

The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another.

Constructive possession is the condition in which a person does not have physical custody or possession, but is in a position to exercise dominion or control over a thing.
Larceny-Theft

- Agencies must report local offense classifications such as grand theft, petty larceny, felony larceny, misdemeanor larceny (regardless of the value of the property stolen) as Larceny-Theft.

- Classify as Larceny:
  - Thefts of bicycles or automobile accessories;
  - Shoplifting;
  - Pocket-picking;
  - The stealing of any property or article which is not taken by force and violence or by fraud; and
  - Any of the above regardless of the value of the item or items taken.

Larceny-Theft

- Agencies must not classify as Larceny the offenses of:
  - Embezzlement;
  - Fraudulent conversion of entrusted property;
  - Conversion of goods lawfully possessed by bailees, lodgers or finders of lost property;
  - Counterfeiting;
  - Obtaining money by false pretenses;
  - Larceny by check; or
  - Check fraud.

Simple Assault

An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration or loss of consciousness.
Intimidation

To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

Intimidation

- Include in this category cyber-intimidation if the victim is threatened via computer while on your Clery geography
- Evaluate these types of offenses in your state crime/penal code to see if they meet the UCR definition of intimidation:
  - Threats
  - Witness Intimidation
  - Harassment (verbal, telephone)
  - Cyber Stalking or Harassment (Written)
  - Terroristic Threats
  - Stalking

Occidental College 2017 FPRD

Occidental College did not include the following incident in their Hate Crime statistics:

- "Incident No 12-0607 Classified as Harassment – should have been classified as Hate Crime Offense/Intimidation. Complainant was surrounded by five or six males who started to call him sexually orientated slurs. This placed the complainant in "reasonable fear" causing him to quickly retreat from the area. Intimidation occurred when the suspect was surrounded, which unlawfully placed the suspect in reasonable fear of bodily harm, even though no weapons were displayed and the complainant was not physically attacked. This would result in an underreporting of Hate Crime/Intimidation (FPRD p. 17)."
Reasonable Fear (ED Handbook)

- A person is assumed to be placed in “reasonable fear” if he or she reports threatening words or other conduct to law enforcement personnel.
- To be the victim of Intimidation, one doesn’t have to be the intended target of the offender.
- For example, a person who reports seeing anti-gay threats on a bathroom wall to law enforcement is considered a victim. (For the Intimidation to be considered a Hate Crime there would have to be other supporting evidence of bias as well).

Intimidation Example

- An African-American female student reports that she has received numerous emails from her ex-boyfriend’s new girlfriend, who is not happy about their previous relationship. The ex-boyfriend is a white male. They have remained friends and they email and talk periodically. His new girlfriend, who is white, has addressed emails to the African-American student using a racial epithet and indicated in several emails that “if you don’t stop communicating with him via email, you are going to regret it.” The campus police investigation determines that the perpetrator was motivated, in part, by racial bias.

Intimidation Example

- The Campus PD classified the incident as Harassment due to the following information received from the victim:
  - When the victim responded to the campus police department and reported that she is annoyed with the emails sent by the new girlfriend and that she has told her to stop emailing her. She reports this as an annoyance, she stated that she is NOT afraid of her, and she does not believe that she will harm her physically, but that she came to the police department to file a report to get assistance in getting the new girlfriend to stop sending her harassing emails.
ED Response to Intimidation Example

- If the victim states that she is not afraid then, there is no "reasonable fear."

- The assumption of "reasonable fear" essentially means that law enforcement must "believe" a victim if he/she reports threatening behavior and seems to be afraid or states that he/she is afraid.

- Each incident must be investigated and all the facts considered before making a determination.

Note: This guidance pre-dates the 2016 Handbook.

Destruction/Damage/Vandalism of Property

- To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

- Includes a wide range of malicious behavior directed at property, such as:
  - Cutting auto tires.
  - Drawing obscene pictures on restroom walls.
  - Smashing windows.
  - Destroying school records.
  - Defacing library books.

- "Institution" can be the victim of the crime—e.g., graffiti in an elevator not directed toward a particular person or group.
FBI Hate Crime Classification Approach

- In our NIBRS system, we train that incidents that involve ambiguous facts should be reported as an unknown bias. This allows for an investigation to be completed and be conclusive either way. Should an agency code an incident as an unknown bias and never update with the final determination, our policy is to not count it as hate crime for inclusion into our annual Hate Crime publication. In other words, we do not want to count a hate crime until an agency’s investigation positively concludes that one occurred.

Determining Bias Motivation (ED)

- The 2016 Handbook states:
  Before an incident can be reported as a hate crime, sufficient objective facts must be present to lead a reasonable and prudent person to conclude that the offender’s actions were motivated, in whole or in part, by bias.

  While no single fact may be conclusive, facts such as the following, particularly when combined, are supportive of a finding of bias:

Determining Bias: Factors to Consider

1. The offender and the victim were of a different race, religion, disability, sexual orientation, ethnicity, national origin, gender or gender identity. For example, the victim was African American and the offender was white.
2. Bias-related oral comments, written statements, or gestures were made by the offender which indicates the offender’s bias. For example, the offender shouted a racial epithet at the victim.
3. Bias-related drawings, markings, symbols, or graffiti were left at the crime scene. For example, a swastika was painted on the wall of a mosque, or anti-gay graffiti on the door of an LGBTQ center.
4. Certain objects, items, or things which indicate bias were used. For example, the offenders taped a photo of a burning cross to the door of an African American student’s dorm room.
5. The victim is a member of a group that is overwhelmingly outnumbered by other residents in the student housing facility where the victim lives and the incident took place. This factor loses significance with the passage of time (i.e., it is most significant when the victim first moved into the facility, and becomes less and less significant as time passes without incident). The victim was visiting a neighborhood where previous hate crimes had been committed because of race, religion, disability, sexual orientation, ethnicity, gender, or gender identity and where tensions remained high against the victim’s group.

6. Several incidents occurred in the same location at or about the same time, and the victims were all of the same race, religion, disability, sexual orientation, ethnicity, national origin, gender or gender identity.

7. A substantial portion of the community where the crime occurred perceived that the incident was motivated by bias.

8. The victim was engaged in activities related to his or her race, religion, disability, sexual orientation, ethnicity, national origin, gender or gender identity. For example, the victim was a member of the National Association for the Advancement of Colored People (NAACP) or participated in an LGBTQ Pride celebration.

9. The incident coincided with a holiday or a date of particular significance relating to a race, religion, disability, sexual orientation, ethnicity, national origin, gender or gender identity, e.g., Martin Luther King Day, Rosh Hashanah or the Transgender Day of Remembrance (November 20).

10. The offender was previously involved in a similar Hate Crime or is a hate group member.

11. There were indications that a hate group was involved. For example, a hate group claimed responsibility for the crime or was active on the campus.

12. A historically established animosity existed between the victim’s and the offender’s groups.

13. The victim, although not a member of the targeted racial, religious, disability, sexual-orientation, ethnic, national origin, gender or gender identity group, was a member of an advocacy group supporting the precepts of the victim group.
Determining Bias: Factors to Consider

- Need for Case-by-Case Assessment of the Facts.
  The aforementioned factors are not all-inclusive of the types of objective facts which evidence bias motivation. Therefore, examine each case for facts that clearly provide evidence that the offender’s bias motivated him/her to commit the crime.

Caveats

- Each case should be assessed separately
- Be alert to misleading facts
- Be alert to feigned facts meant to give false impression of bias
- Remember, it is the perception of the offender, not the perception of the victim that determines whether a crime is classified as a Hate Crime.
- Knowing that an offender is prejudiced is not enough to classify a crime as a Hate Crime. There must be evidence that the offender was motivated by that prejudice to commit the crime.

Offender’s Mistaken Perception

- Even if the offender was mistaken about the victim’s race, religion, disability, sexual-orientation, ethnicity, national origin, gender or gender identity, the offense is still a Hate Crime as long as the offender was motivated by bias against that group.

- For example, a non-gay student leaving a publicized LGBTQ meeting in a noncampus fraternity house is followed back to campus and attacked behind a dorm by six teenagers who mistakenly believed the victim is gay. Although the offenders were mistaken, the offense is a Hate Crime because it was motivated by the offenders’ anti-gay bias.
Hate Crimes

All of the offenses committed in a multiple offense incident that are bias-motivated should be disclosed.

- For example, there is a single reported incident involving an Aggravated Assault and a Motor Vehicle Theft that were both motivated by bias. Include the incident in the statistics for both crimes.

- Note: Disclose the Primary Crime of Aggravated Assault as well as the two additional Hate Crimes of Aggravated Assault motivated by bias and Motor Vehicle Theft motivated by bias. The Primary Crime of Motor Vehicle Theft will not be disclosed due to the Hierarchy Rule.

In a multiple-offense incident, only the crimes that are bias-motivated should be classified as hate crimes.

- For example, three armed men commit a Robbery on the porch of a fraternity house. Two of the offenders go inside the house intending to rob more students. One of them spots a Hispanic woman, grabs her, and rapes her. The two offenders were later arrested and the investigation showed that although the Robbery was not bias-motivated, the Rape was. Include only the Sexual Assault as a Hate Crime.

NACCOP White Paper

- "An Institutional Approach for Responding to Incidents of Bias and Hate Crimes"

- Find under "Resources" at www.naccop.org

- Direct link HERE
**General Crime Categories**

- Criminal Offenses (Primary Crimes)
- Hate Crimes
- Arrests and Referrals for Disciplinary Action
- VAWA Offenses

**Disclosing Arrest & Referral Statistics**

“We must report statistics for violations of the law resulting in arrests or persons being referred for disciplinary action.”

*(Handbook, 2016, p. 3-42).*

**Assessing Applicable Laws/Ordinances**

“Because state laws and local ordinances vary widely, you need to ascertain the specific laws and ordinances that apply to your institution.”

*(Handbook, 2016, p. 3-42).*
Law Violation Assessment

- Institutions must assess their applicable state laws and local ordinances to determine which laws and ordinances correspond to the Clery-reportable UCR categories of Liquor, Drug and Weapon Law Violations.

- Institutions must then explore the nuances of applicable laws and ordinances to determine the various types of conduct that are sufficient to establish that a countable law violation has been alleged.
  - This may involve engaging your local City Attorney, District Attorney/Prosecutor, Police Department, or other civil authorities.

Weapon Law Violations

- The violation of laws or ordinances prohibiting the:
  - Manufacture
  - Sale
  - Purchase
  - Transportation
  - Possession
  - Concealment or
  - Use

  of firearms, cutting instruments, explosives, incendiary devices, or other deadly weapons.

Weapon Law Violations

- This classification encompasses weapons offenses that are regulatory in nature.

- Agencies must include:
  - manufacture, sale, or possession of deadly weapons;
  - carrying deadly weapons, concealed or openly;
  - using, manufacturing, etc. of silencers;
  - furnishing deadly weapons to minors;
  - aliens possessing deadly weapons; and
  - attempts to commit any of the above.
Drug Law Violations

- Violations of laws prohibiting the production, distribution, and/or use of
  - certain controlled substances and
  - the equipment or devices utilized in their preparation and/or use.

Drug Paraphernalia

- If a person cannot be arrested for the production, distribution, and/or use of drug paraphernalia as a result of merely possessing drug paraphernalia, the conduct of possessing the drug paraphernalia is not a criminal law violation (and should not be disclosed as a Drug Law Violation Arrest or Referral).

  However, if a state law or local ordinance equates possession of drug paraphernalia with the use of drug paraphernalia, offenses involving the possession of drug paraphernalia should be disclosed as Drug Law Violations by the institution.

Drug Law Violations

- The unlawful
  - cultivation,
  - manufacture,
  - distribution,
  - sale,
  - purchase,
  - use,
  - possession,
  - transportation or importation
  of any controlled drug or narcotic substance.

- Includes:
  - opium or cocaine and their derivatives (morphine, heroin, codeine)
  - marijuana
  - synthetic narcotics (demerol, methadone)
  - dangerous nonnarcotic drugs (barbituates, benzedrine)
**Drug Law Violations**

- Arrests [and referrals] for violations of state and local laws, specifically those related to the unlawful
  - possession,
  - sale,
  - use,
  - growing,
  - manufacturing, and
  - making,
  of narcotic drugs.

**Decriminalized Possession**

- Do not classify as a Drug Abuse Violation:
  Possession of a small amount of marijuana in states that have decriminalized this conduct, meaning that the conduct is no longer a criminal offense. (p. 3-48)

- **DSA NOTE**: If possession is still prohibited as a criminal offense, but it is a violation/infraction rather than a misdemeanor (meaning one cannot go to jail, even through it is a crime) possession would still be considered a Drug Abuse Violation.

**Civil Citations and Marijuana**

- The Handbook indicates that institutions must “Classify as a Drug Abuse Violation: All drugs, without exception, that are illegal under local or state law where your institution is located” (p. 3-48).
  - The Help Desk has clarified that “all drugs...that are illegal” refers to crimes (i.e., excludes civil marijuana possession offenses).

- The Handbook also indicates that:
  - “If a person is issued a civil citation for a law violation (e.g., in lieu of an arrest) do not count as an arrest.
  - If the person is also referred for disciplinary action for the same violation, count the disciplinary referral” (p. 3-46).
Medical & Recreational Marijuana

- Some states allow for medicinal use of marijuana (see here for a complete list: http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx)
- Other states have made recreational use/possession lawful under certain circumstances
- Marijuana use, possession, and distribution must be prohibited, as a matter of campus policy, under the Drug Free Schools and Communities Act of 1989
- If a person is possessing or using marijuana in concert with state laws, they have not – by definition – engaged in a law violation and should not be included in your Clery Act arrest or referral statistics.

Drug Law Violations

- Drug Law Violations do not include the use of legally obtained, personal prescription drugs used by the owner in a manner not consistent with the instructions provided by the physician.
- Arrests or referrals for being under the influence of drugs are not countable offenses for Clery Act reporting purposes (unless intoxication equates to possession in the jurisdiction).
- Even though prior use can be inferred by the current state of the offender, an arrest for being under the influence does not fit into the “use” concept.
- The offender must be in the act of using the controlled substance or the equipment/devices utilized in their preparation and/or use.
Liquor Law Violations

- The violation of state laws or local laws or ordinances prohibiting the:
  - manufacture,
  - sale,
  - purchase,
  - transportation,
  - possession, or
  - use
  of alcoholic beverages.

Classify as a Liquor Law Violation:

- The manufacture, sale, transporting, furnishing, possessing, etc. of intoxicating liquor.
- Maintaining unlawful drinking places.
- Bootlegging and operating a still.
- Furnishing liquor to a minor or intemperate person.
- Underage possession.
- Using a vehicle for illegal transportation of liquor.
- Drinking on train or public conveyance.
- Attempts to commit any of the above.

Drunkenness – To Include or Not?

- Do not include drunkenness “unless state law classifies drunkenness as internal possession and a violation of possession laws” (p. 3-49).
  - This reinforces the importance of conducting an assessment of the applicable laws/ordinances of YOUR jurisdiction to know what conduct is sufficient to establish a law violation for Clery Act purposes.
UCR Drunkenness Definition Includes:

- Drunk and Disorderly
- Common or Habitual Drunkard
- Intoxication
- Do NOT count these offenses as Liquor Law Violations

Do Not Include in Your Statistics…

- Policy violations (count only law violations)
  - Drunkenness
  - DUI/DWI

DSA Program Review Findings (1)

Case Information: (An incident was included in the annual crime statistics as 1 On-Campus and On-Campus Student Housing Facility Liquor Law Violation Arrest statistic.):

According to the incident report narrative a female student was issued a citation for Public Intoxication in an On-Campus and On-Campus Student Housing Facility. Campus Police confirmed that the student was 21 years old. Public Intoxication is not a Clery-reportable Liquor Law offense.

Accordingly, the incident should not be included in the annual crime statistics.
Definition of Arrests

**Persons processed by arrest, citation or summons.**

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Head Count

- Regarding arrests for Drugs, Weapons and Liquor Law Violations—count the number of persons arrested not the number of occurrences of law violations.
- Example, a group of 8 underage students are found in possession of alcohol during a tailgating event prior to a football game. The 8 students are issued citations for violating state law.
- This counts as 8 Arrests!

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Other Rules for Counting Arrests

- If the same person is arrested for multiple incidents in the same calendar year (e.g., one arrest in February and one arrest in March), count this as two arrests. Count this as two arrests even when both arrests are for the same type of violation (e.g., both were Drug Abuse Violations).
- If an individual is arrested for one type of law violation and referred for disciplinary action for a different type of law violation during a single incident (e.g., arrested for a Drug Abuse Violation and referred for a Liquor Law Violation), count only the arrest.
Other Rules for Counting Arrests

- If a person is both arrested and referred for disciplinary action for a single incident involving a law violation (e.g., a Drug Abuse Violation), count only the arrest.

- If a person is arrested for multiple violations during a single incident (e.g., violations of both drug abuse and liquor laws), law enforcement or security officer discretion should be used to determine which violation to count. We recommend that you document the justification for this determination.
  - Officer discretion is allowed only for Weapons, Drug Abuse and Liquor Law Violation arrests resulting from a single incident.

DSA Program Review Findings (1)

Case Information: (This incident was included in the annual crime statistics as 5 On-Campus and On-Campus Student Housing Facility Liquor Law Violation Arrest statistics and 2 On-Campus and On-Campus Student Housing Facility Drug Law Violation Arrests).

According to the report narrative, officers responded to an On-Campus and On-Campus Student Housing Facility in response to an RA smelling marijuana. Upon arrival, officers discovered 6 individuals in the residential room. One of the individuals was issued a citation for both Possession of Drug Paraphernalia and Minor in Possession of Alcohol. Four individuals received only Minor in Possession citations, and one individual received only a Possession of Drug Paraphernalia citation.

However, the individual that was cited for both a Liquor Law Violation and a Drug Law Violation appears to have been counted as an arrest for both the Drug Law and Liquor Law Violations. However, when an offender is arrested for two different types of law violations during the same incident (in this case, a Liquor Law Violation and a Drug Law violation), officer discretion should be utilized to determine which offense to count. Campus police indicated that the Controlled Substance offense was a more serious violation. Accordingly, this incident should have been included in the crime statistics as 4 On-Campus and On-Campus Student Housing Facility Liquor Law Violation Arrest statistics and 2 On-Campus and On-Campus Student Housing Facility Drug Law Violation Arrest statistics.
Example

A student is cited for having a firearm in his or her residence hall room in violation of state law.

Include this as one arrest for Weapons: Carrying, Possessing, Etc., in the on-campus category and one arrest for Weapons: Carrying, Possessing, Etc., in the on-campus student housing facility category.

Example

Two nonstudents are arrested during an on-campus football game for possession of cocaine.

Classify this as 2 On-Campus arrests for Drug Law Violations.

Example—Stay Out of Hot Water!

- The officers can write a citation for public drunkenness and in this state, they can also charge someone under 21 with a possession violation if they possess the alcohol in their stomach. So, here they have both statutes which would be violations of the law, but the officers typically only write Public Drunkenness on the citation as the violation. They have the ability to write them up for both violations, but the officers typically don’t do that—they consistently pick the public drunkenness violation or charge for the citation.
- Problem?
Example

Three underage students and a non-student are found in the campus parking lot drinking alcohol. The students are referred for disciplinary action, while the non-student is given a written citation.

Classify this as:
3 Liquor Law Violation referrals for disciplinary action in the On-Campus category, and 1 Liquor Law Violation arrest in the On-Campus category.

Count as an Arrest if…

- A juvenile taken into custody but he/she is warned and released without being charged.
- A person is arrested and released without a formal charge.
- A person is referred for another violation (e.g., arrested for a weapon law violation and referred for a liquor law violation).
- A person is referred and arrested for the same violation (arrested and referred for a liquor law violation).

Detention MAY = Clery Reportable Arrest
Do NOT Count as an Arrest if…

- The arrest was for something other than a violation of a weapons, drug or liquor law (e.g., an arrest for an Aggravated Assault).
- A person is issued a civil citation for a non-criminal offense (e.g., possession < 1 oz. of marijuana in some jurisdictions is not an arrestable, criminal offense).
- The arrest was for a violation of a weapons, drug or liquor law that occurred outside your Clery Geography (i.e., a warrant is served to a subject while they are present on or within your Clery Geography, but the crime occurred off campus).

On-Campus Arrest for Off-Campus Crime

- If a student is arrested on campus on a warrant that was obtained due to his or her involvement in a crime off campus, how is that arrest to be disclosed?
  - If the location of the off-campus crime was somewhere other than on Public Property or Noncampus property (as defined under Clery), then it would not be included in the school’s annual security report.
  - If the offense had occurred on Public Property or Noncampus property and was one of the crimes enumerated in Clery, then the offense (or the arrest, if for a drug law, liquor law, or weapons possession violation) – should be disclosed in the appropriate geographic category.

DSA Program Review Findings (1)

Case Information: (Included in the annual crime statistics as 2 On-Campus and On-Campus Student Housing Facility Drug Law Violation Arrest statistics.): According to the report narrative, officers responded to an On-Campus and On-Campus Student Housing Facility and discovered that a student was in possession of marijuana and drug paraphernalia. It appears that two Drug Arrests were counted for this individual: One for Possession of Drug Paraphernalia and one for Possession of Marijuana. Only one arrest should be counted for one individual who has violated two drug law offenses during the same incident. Accordingly, the incident should be included as 1 On-Campus and On-Campus Student Housing Facility Drug Law Violation Arrest.
Referred for Disciplinary Action

The referral of any person to any official who initiates a disciplinary action of which a record is established and which may result in the imposition of a sanction.

“Referred for Disciplinary Action”: A Three-Part Test

1) “The official receiving the referral must initiate a disciplinary action,

2) A record of the action must be established, and

3) The action may, but does not have to, result in a sanction.”

Handbook Guidance

- It is not necessary that referrals originate with police or that a sanction be imposed.
- “The disciplinary process at your institution might be called ‘disciplinary action,’ ‘mediation,’ ‘judicial process’ or some other term.”
- “Note that a disciplinary action can be initiated in an informal as well as a formal manner. It can include an interview or an initial review of names submitted to an official.”
**Types of Disciplinary Action**

- Review of incident report/No further action
- Placing a “hold” that prevents registration, obtaining transcripts or viewing grades
- Contacting student to request a meeting
- Conducting a preliminary or informational meeting
- Informal disciplinary conference/hearing
- Formal disciplinary conference/hearing
- Requiring assessment, training or education
- Issuing a no contact order
- Interim suspension
- Facilitated dialogue
- Mediation
- Restorative justice practices
- Shuttle diplomacy
- Medical Amnesty/Good Samaritan policy
- Any other action or resolution mechanism that is possible in your student conduct process

**Disclosing Referral Statistics**

- “You must report statistics for violations of the law resulting in arrests or persons being referred for disciplinary action.

- Do not include [in your crime statistics] violations of your institution’s policies that:
  - resulted in persons being referred for disciplinary action
  - IF there was no violation of the law” (emphasis added, Handbook, 2016, p. 3-42).
Inaccurate Reporting of Referrals

- The failure “to include specific criminal offenses…should result in the imposition of a fine calculated on the basis of each missing criminal offense” [emphasis added] (Duncan, 2012, p. 5).
- Campuses have been found in noncompliance for inaccurate reporting of referral statistics:
  - University of Northern Iowa*
  - University of North Dakota*
  - Lincoln University*
  - University of Texas at Arlington*
  - University of Missouri – Kansas City
  - The College of William & Mary
  - Ohio State University
  - Penn State University*
  - Concordia University*
  - Emerson College
  - University of Texas at Arlington
  - South Dakota State University
  - Tarleton State University
  - Green River College*
  - University of Montana*
  - UC Berkeley*

* Fined by ED

Counting Referrals in Your Conduct RMS

- If a case involving a violation of a drug, weapon or liquor law is
  - sent to Student Conduct and
  - entered into an electronic Records Management System (RMS) [i.e., Student Conduct establishes a record],
the institution should disclose the referred students in the crime statistics as referrals, even if “no action is taken” (as long as the violation occurred on or within the institution’s Clery Geography).

ED Handbook Example: Pg. 3-49/#5

- A student is referred for disciplinary action for smoking a marijuana cigarette in his On-Campus dorm room. Because this is his first offense, he is issued a warning and no sanction is given. A record is established of the action.

Classify this as one On-Campus referral and one On-Campus student housing facility referral.
Police respond to an incident at a Noncampus, institution-owned sorority house where there are underage students drinking at a party. The officers list all 10 of the students in their report, which is forwarded to the campus Judicial Affairs office. A Judicial Affairs official interviews the students and finds that two of them had not been drinking. Those students are not charged. Judicial Affairs continues the disciplinary process against the eight students who were drinking.

Classify this as 10 Noncampus referrals for disciplinary action.

A resident assistant (RA) has the duty of loading disciplinary information into an electronic database. She enters the names of 15 students who were referred for disciplinary action as a result of being at an On-Campus party where there was underage drinking in violation of state law. The RA's supervisor begins the disciplinary action process by reviewing the information in the database. She determines that five of those students were present in a location where illegal drinking took place but that these five students did not violate any liquor laws. Nothing more is done in terms of disciplinary action for those five individuals. The disciplinary process continues for the remaining 10 individuals who were at the party.

Include this as 15 referrals for disciplinary action in the On-Campus category because 15 students were referred for underage drinking.
Take Home Lesson: Reports are Key!

- If incident reports
  - fail to distinguish between which individuals were participating in the law violation and which ones were not and
  - instead documents that individuals were present at a location where a Clery-reportable law violation was occurring,

  then institutions should treat all individuals documented in the report as though they were participating in the law violation for statistical reporting purposes and include these persons as referrals in the crime statistics.

Take Home Lesson: Reports are Key!

- It is in the school’s best interest to determine which students are breaking the law at the time of referral, but if the official initiating the referral does not take the time to do so, and refers all students for the law violation you must count all referrals.
  - Training & report writing implications for Resident Assistants and others that may document alleged violations of Liquor, Drug and Weapons Law Violations

Rules for Counting Referrals

- Do not count the number of persons who were referred for disciplinary action solely for a violation of institutional policy. Only count the number of persons referred for violations of the law.

- If a person is referred for disciplinary action for multiple incidents in the same calendar year (e.g., one referral in February and one referral in March), count this as two referrals for disciplinary action.
  - It is counted as two referrals even if both referrals are for the same type of violation (e.g., both were Drug Abuse Violations).
Rules for Counting Referrals

- If an individual is arrested for one type of law violation and referred for disciplinary action for a different type of law violation during a single incident (e.g., arrested for a Drug Abuse Violation and referred for a Liquor Law Violation), count only the arrest.

- If a person is both arrested and referred for disciplinary action for a single incident involving a law violation (e.g., a Drug Abuse Violation), count only the arrest.

- If a person is issued a civil citation for a law violation (e.g., in lieu of an arrest) do not count as an arrest. If the person is also referred for disciplinary action for the same violation, count the disciplinary referral.

- If a person is referred for disciplinary action for multiple violations during a single incident (e.g., violations of both drug abuse and liquor laws), law enforcement or security officer discretion should be used to determine which violation to count.

- We recommend you document the justification for this determination.

- Officer discretion is allowed only for Weapons, Drug Abuse and Liquor Law Violation referrals resulting from a single incident.

Do not consider whether the person referred was ultimately determined to be responsible for the alleged violation. The ED Handbook says: “You must include in your crime statistics the number of all reported offenses, without regard to the findings of a court, coroner or jury, or the decision of a prosecutor” (p. 3-3).

Key Concept: Assess the lawfulness of the conduct at issue as originally reported to the official who initiated disciplinary action (i.e., assess the narrative of the incident report submitted for potential student conduct action).
**Charge Title Types in Conduct RMS**

- **Law Violation**
  - Prohibited conduct that is also a violation of a Clery-countable state law or local ordinance (e.g., underage possession)

- **Policy Violation**
  - Prohibited conduct that is not a violation of a Clery-countable state law or local ordinance (e.g., 21 year old lawfully possesses a keg on campus in violation of institutional policy, or 21 year old arrested for DUI, which is not a Clery-countable crime)

- **Combined**
  - Prohibited conduct that includes a combination of law and policy violations in a single charge (e.g., generic “Alcohol Policy” that prohibits underage possession and possession of alcohol in certain quantities, regardless of age)

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**Classifying Referrals in Conduct RMS**

**Liquor Violation Charge Example**

- Alcohol/Underage Possession (YES)
- Alcohol/Underage Purchase (YES)
- Alcohol/Furnishing Liquor to Minor (YES)
- Alcohol/Public Drunkenness (NO)
- Alcohol/21+ in Possession of Keg (NO)
- Alcohol/21+ Tailgating (NO)
- Alcohol/DUI-DWI (NO)

NOT all inclusive list…
Counting Referrals: Key Questions

1. Has the person been referred for disciplinary action per the Handbook definition?
2. Was the referral made for a countable Liquor, Drug, or Weapon Law Violation?
3. Did the law violation occur on or within the institution’s Clery Geography?
4. Was the person also arrested for a countable Liquor, Drug, or Weapon Law Violation?
5. Will the charge title in the Conduct RMS impact the classification decision? (see chart)

Student Conduct Discussion...

- Is the student conduct office receiving referrals from other sources—Ex. Sex Offenses—are they being reviewed for potential Timely Warnings?
- Location Problems in Student Conduct RMS
  - Outside of Residence Halls
  - Fraternities/Sororities
  - Public Streets running through/adjacent to campus
- Campus bars
- Guest Violations
- Double-check age of those referred

Referrals: Important Elements

- Human Resources—make sure they are aware that they need to report any situations referred to them regarding employees who are referred for action involving drug, liquor, or weapons law violations.
- Do you have other disciplinary systems on campus that are separate and apart from your central student conduct office?
  - ROTC
  - Housing/Residence Life
  - Athletics
  - Student Organization/Risk Management boards
  - Greek governing bodies with disciplinary authority
  - Others?
Documenting Incidents

- If we go to a residence hall room to confront suspected drug use, is a separate report written for each person in the room?
  - How the particulars of the incident itself and any arrests or disciplinary referrals are documented is a matter of institutional discretion within the parameters of state law or regulation.
  - What Clery governs is how statistics are compiled for the annual security report. In a drug case, each person who was either arrested or referred for campus discipline (and not also arrested) would be counted once – as either an arrest or referral statistic.

Crime Categories

- Criminal Offenses (Primary Crimes)
- Hate Crimes
- Arrests and Referrals for Drug, Liquor and Weapon Violations
- VAWA Offenses

VAWA Offenses are Clery Crimes

- Following each of the definitions of Dating Violence, Domestic Violence, and Stalking in the final regulations, the following phrase appears:
  - For the purposes of complying with the requirements of this section and section 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.
- In other words, it does not matter if these offenses are crimes in your jurisdiction. For Clery crime classification and reporting purposes, use the definitions provided in the regulations.

VAWA Offenses

- **VAWA Offenses**—Any incidents of Domestic Violence, Dating Violence and Stalking.

- Note that Sexual Assault is also a VAWA Offense but is included in the Criminal Offenses category for Clery Act reporting purposes.

Domestic Violence

- A felony or misdemeanor crime of violence committed by:
  a) a current or former spouse or intimate partner of the victim,
  b) by a person with whom the victim shares a child in common,
  c) by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner,
  d) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred OR
  e) by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Definition of Crime of Violence

- According to Section 16 of title 18 of the United States Code, the term “crime of violence” means—
  a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
  b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.
Domestic Violence

- **Scenario 1:** A student's wife is waiting for her husband outside of his On-Campus classroom building. She attacks her husband with a knife when he exits the building.

Include this as one On-Campus incident of Domestic Violence and one On-Campus Aggravated Assault.

Domestic Violence

- **Scenario 2:** A neighbor reports yelling in the apartment next door in a university housing complex. The officer who arrives at the apartment finds a husband and wife having an argument. Neither party reports any physical injuries and neither party reports being intimidated.

Do not include this incident in your Clery Act statistics.

Domestic Violence: Roommates

- According to the Handbook, “To categorize an incident as Domestic Violence, the relationship between the perpetrator and the victim must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship” [3-38].
  - The Help Desk has indicated this text was intended to clarify situations involving roommates. In particular, that violence that occurs between roommates should only be counted as domestic violence if the relationship between the two roommates is more than just two people living together as roommates...
  - This text was not meant to indicate that the only cases that should be counted as Domestic Violence are cases in which the perpetrator and the victim are currently cohabitating as current or former spouses, or individuals with an intimate relationship.
Domestic Violence: Roommates

- If a state law or court ruling indicates that roommates are to be included in the definition of "household member" for the purposes of classifying domestic violence, the institution should count incidents between roommates in the count of Domestic Violence incidents.

- This is a state by state exception to the guidance on page 3-38.

- Without such a state law/ruling, the relationship of roommates must be more than just two people living together as roommates.

DSA Program Review Findings (1)

Case Information (Incident originally disclosed as a Fondling. Although this statistic was correctly disclosed, an additional crime was reported in this incident and not disclosed on statistics):

A conduct report indicated that the suspect in this incident was the current roommate of the victim. This is relevant because applicable Texas family violence laws protect household members from one another's acts (Texas Family Code, Sec. 71.004). "Household" is defined as "a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other" per Family Code, Sec. 71.005. (While not directly relevant to this incident, Sec. 71.006 also states that "Member of a household" includes a person who previously lived in the same dwelling, without regard to whether they are related to each other).

Since Fondling is a crime of violence for purposes of the Clery Act definition of Domestic Violence, and the offense occurred between two individuals who were members of the same household within the meaning of applicable Texas law, this incident should also be classified as a Domestic Violence incident.

Accordingly, the incident should be disclosed as 1 On-Campus and On-Campus Student Housing Facility Fondling statistic and 1 On-Campus and On-Campus Student Housing Facility Domestic Violence statistic.
**Dating Violence**

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
  - i. The existence of such a relationship shall be based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
  - ii. For the purposes of this definition—
    - A. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
    - B. Dating violence does not include acts covered under the definition of domestic violence. (i.e., Do not double count Dating Violence if you already counted incident as Domestic Violence).

**Classifying Dating Violence**

**ED Clarification in Federal Register**

- Institutions are responsible for determining whether or not an incident meets the definition of dating violence, and they must consider the reporting party's characterization of the relationship when making that determination. We stress that generational or other differences in terminology and culture may mean that a reporting party may describe a dating relationship using different terms from how an institutional official might describe "dating."

- When the reporting party asserts that there was a dating relationship, institutions should err on the side of assuming that the victim and the perpetrator were in a dating relationship to avoid incorrectly omitting incidents from the crime statistics and the crime log. The victim's use of terms such as "hanging out" or "hooking up" rather than "dating," or whether or not the relationship was "monogamous" or "serious" should not be determinative.

- Third parties who are reporting an incident of dating violence are not required to use specific terms to characterize the relationship or to characterize the relationship at all; however, they should be asked whether they can characterize the relationship.

- In rejecting the inclusion of emotional and psychological abuse (i.e., DO NOT COUNT THEM) in the definition of dating violence, the Department said: ...such a broad definition of "dating violence"...would include some instances of emotional and verbal abuse that do not rise to the level of "violence" which is a part of the statutory definition of dating violence under VAWA...including emotional and psychological abuse...would pose significant challenges in terms of compliance and enforcement of these provisions.
Dating Violence

Scenario 2: A female student reports that her boyfriend forced her into nonconsensual sex in her On-Campus dorm room.

Include one Rape in both the On-Campus category and the On-Campus student housing facility category, and one incident of Dating Violence in both the On-Campus category and the On-Campus student housing facility category.

Scenario 3: After a party on campus, John walked back to his apartment in a noncampus housing complex with Matt, whom he has hooked up with a few times over the past month. When they reached John’s apartment, it became clear that Matt was angry that John had been talking with other men at the party, causing Matt to punch two holes in the wall and threaten to beat John if he sees him flirting with any other men on campus. John now fears for his safety around Matt.

Include one incident of noncampus Dating Violence for the threat of physical abuse.

Distinguishing Between Dating and Domestic Violence

Per the Help Desk:

- Domestic Violence is intended to include situations where the victim and perpetrator currently have, or have had in the past, a relationship of a domestic nature. This means that they are currently or formerly married, have cohabitated as intimate partners, or have had an intimate relationship of a similar domestic nature.

- Dating Violence is intended to include situations where the victim and perpetrator have, or have had, a social relationship of an intimate nature, but have not entered into a domestic relationship as described above. The most common example is a dating relationship where the two parties do not live together, have never been married, and do not share a child.
Domestic Violence

- A felony or misdemeanor crime of violence committed by:
  a) a current or former spouse or intimate partner of the victim,
  b) by a person with whom the victim shares a child in common,
  c) by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner,
  d) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred OR
  e) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

ARE DATING PARTNERS COVERED BY YOUR DOMESTIC OR FAMILY VIOLENCE LAWS?

DSA Program Review Findings (1)

Case Information (Misclassified as Dating Violence, and Stalking was also occurring within incident, but was not included in statistics):

A victim reports being assaulted by someone she described as her "ex-boyfriend." The definition of family violence in Texas includes acts against family members, household members, and those who have (or have had in the past) a continuing dating relationship (See 71.004 Tex. Family Code). Essentially, this means that persons who are, or who have been, in a continuing dating relationship fall under the federal Domestic Violence definition. This is because the federal definition of Domestic Violence includes "…any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred."

In this case, the characterization of the suspect as an "ex-boyfriend," coupled with the officer's characterization of the incident as an "assault family violence incident," strongly suggests the more appropriate classification of this offense should be Domestic Violence, not Dating Violence.

In addition to the assault offense, the narrative of the report also describes a course of conduct when the victim references an act of physical violence with her ex-boyfriend that occurs a few weeks prior to the Domestic Violence incident. The previous incident occurred off-campus. Given the multiple instances of Domestic Violence, we believe a reasonable person in the victim's position would fear for their safety or suffer substantial emotional distress. Therefore, a report of Stalking should also be included for this report. Accordingly, the incident should be disclosed as 1 On-Campus Domestic Violence statistic and 1 On-Campus Stalking statistic.
Stalking

i. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
   A. Fear for the person’s safety or the safety of others; or
   B. Suffer substantial emotional distress.

ii. For the purposes of this definition—
   A. Course of conduct means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third parties, by any action, method, device, or means—follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person’s property.

DSA Program Review Findings (1)
Case Information (Misclassified Stalking):

An incident was included in the annual crime statistics as 4 On-Campus Stalking statistics. According to the report narrative, officers responded to complaints of a student being inappropriate with 4 females who were attending a summer camp. Each female reported a single incident involving a male student. The behaviors the females experienced range from inappropriate sexual statements, winking, and blowing kisses to being touched on a thigh. However, no female experienced a course of conduct, which involves two or more acts, which is necessary to establish a Stalking incident. Additionally, the report narrative only includes a description of the male subject but does not positively identify the same individual involved in each incident. Accordingly, the incident should not be included in the annual crime statistics.

Stalking

B. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

C. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
ii. when recording reports of stalking that include activities in more than one calendar year, an institution must record a crime statistic for each and every year in which the course of conduct is reported to a local police agency or to a campus security authority.

**NOTE:** A course of conduct should be counted as a single incident of stalking regardless of the number of stalking-related behaviors or activities reported during the same calendar year.

**ED Clarification in Federal Register**

- An institution is not required to follow up with victims each year to determine whether the behavior has continued, although institutions are not precluded from doing so.
- If, as a result of following up with a stalking victim, the institution learns that the behavior has continued into another year, the institution must record the behavior as a new report of stalking in that year. Otherwise, institutions must record only reports that they receive in each year.

ii. An institution must record each report of stalking as occurring at only the first location within the institution’s Clery Geography in which:

A. A perpetrator engaged in the stalking course of conduct; or
B. A victim first became aware of the stalking.

- It is not necessary for all activities in the course of conduct to occur on Clery Act geography in order to count the incident. A Stalking incident in which only one or some of the activities took place on Clery Act geography must be included in the reported statistics.
DSA Program Review Findings (2)

Case Information (Incorrect geography): This incident was originally disclosed as 1 On-Campus Stalking statistic. Although this case was correctly classified and counted, it was disclosed in the incorrect Clery Geography category.

According to the summary of an interview with the victim, there was an event at the Student Center during which time the suspect followed her, but prior to that event, the victim indicated that the suspect "would show up in [the victim's] dorm area." This suggests that the first act that occurred in the broader course of conduct occurred in the victim's On-Campus Student Housing Facility (i.e., either the suspect was inside the facility, or the victim was inside the facility when she became aware of the suspect's presence).

Categorizing Stalking by Geography

QUESTION TO ED:

- If the perpetrator is in the library when he engaged in the course of conduct (sent texts) and the victim is in her residence hall room when she first becomes aware of the Stalking (received texts)... which location trumps the other if they are both in a Clery geographic location? Victim (on campus/residential) or perpetrator (on campus only)?

RESPONSE FROM ED:

- In cases where both locations of the first act are known (both where the perpetrator engaged in the conduct and where the victim received the conduct) the institution should select one location and keep documentation of which location was selected. What is most important is that the stalking is reported.

- If an institution has multiple stalking incidents where both locations of the first act are known, we recommend that the school use the same policy for selecting which location to report.
Recording Reports of Stalking

ED Clarification in Federal Register

- We are not persuaded that we should include stalking based on the use of the institution's servers or networks, but where neither the victim nor the perpetrator was on or within the institution's Clery geography.

- Including these incidents would be inconsistent with our traditional approach in regard to the Clery Act, which uses physical location as the determining factor.

- Moreover, it may not always be clear whether a particular message used a particular institution's computer servers or networks.

If stalking occurs on more than one institution's Clery geography and is reported to a campus security authority at both institutions, then both institutions must include the stalking in their statistics.

Although the statute does not require an institution that learns of stalking occurring on another campus to alert the other campus, we strongly encourage an institution in this situation to do so.

Stalking

- Scenario 1: A female student reports that she is being followed by a man she met at her job at a café off-campus. He began showing up at the café and would not leave her alone. Since then she has also noticed him following her around campus and she fears for her safety.

Include this as one incident of Stalking On-Campus since the first occurrence on Clery Act geography occurred when the victim noticed the perpetrator following her On-Campus.
**Scenario 3:** A female student reported that she is afraid for her safety because her ex-boyfriend has been sending harassing emails to her private email account over the past several weeks. She opened the first five emails in her off-campus apartment. However, earlier that day she opened another email on her mobile phone while walking on campus. She came directly to the Campus Police to report the behavior. The location of the ex-boyfriend when he was sending the harassing messages is unknown.

Include this as one On-Campus Stalking because the first incident in the course of conduct to occur on Clery Act geography was the victim reading the email On-Campus.

**Scenario 4:** A male student reports that his ex-girlfriend has been sending him harassing text messages. The ex-girlfriend attends another university 200 miles away. While at home over summer break, the ex-girlfriend showed up at the student’s house every day asking if he has a new girlfriend at school. Now that he has returned to school, she sends him daily text messages threatening to "check-in" on him On-Campus. The ex-girlfriend sends these text messages late at night and the victim receives them when he is inside his On-Campus dorm room.

Include one incident of Stalking in both the On-Campus category and in the On-Campus student housing facility category if the male student fears for his safety as a result of this behavior.

**DSA Program Review Findings (3)**

**Case Information** (Incident not included in annual statistics):

A female student reported to an RA that the previous evening, she was visiting a male student in his on-campus student housing facility. Sometime during the visit, the female student’s ex-boyfriend knocked on the male student’s door seeking information as to the female student’s whereabouts. As the ex-boyfriend and male resident spoke at the door, the ex-boyfriend made eye contact with the female student, at which point the female student ran out of the room because, according to the Residence Life report, "she was in fear of her safety." The female student explained to the RA that she ended her relationship with her ex-boyfriend “due to his aggression” and because he sexually assaulted her.
While the assault occurred in an undisclosed location (the report says it "happened last year when the two were in high school"), the sexual assault establishes one act for purposes of evaluating this report for Clery Act statistical reporting purposes. The ex-boyfriend coming to the room looking for the female student is a second act that establishes a course of conduct. The 2nd act occurred in an On-Campus Student Housing Facility, which is the first location in the institution's Clery Geography where the offender engaged in an act. It also is the same location at which the victim became aware of the act since they were in the same location during the second act.

The victim was clearly in fear for her safety as a result of the course of conduct. (We note that the Title IX Case Log includes this report and identifies the "Accusation" as "Sexual Assault" with an Unknown location. While it was reasonable not to disclose a Rape in the institution's crime statistics because of location, it does not appear the institution viewed the incident in its totality as Stalking).

Accordingly, the incident should be classified as 1 On-Campus and On-Campus Student Housing Facility Stalking statistic.

Case Information (Stalking Incident not Included in Statistics):

The student participated in a Title IX interview at which time she reported that she has "an ex who keeps calling to check and make sure that I am in class." The Title IX Interview notes were not clear as to whether the individual referenced by the student is an ex-boyfriend or ex-husband (we will refer to the ex as the "suspect" in our incident summary).
DSA Program Review Findings (4)
The student reported receiving over 300 calls from the suspect each day. He is no longer allowed to come to the student's place of employment and drives by her house "all the time." The suspect apparently sends the student pictures of her home and states he is parked outside (the student reported she has called the police in response to his presence outside her home).

The student advised College officials she has obtained a restraining order against the suspect and the restraining order applies to both her and her children. The student also reported during the Title IX interview that around the 2nd week of school, the suspect "followed [her] from an off-campus location to campus." She asked him to leave, and when he refused, she called campus security, who subsequently escorted the suspect off-campus.

These facts clearly establish that the suspect directed a course of conduct at the victim through repeatedly contacting the victim directly, and indirectly through a third party. The course of conduct also involved the suspect coming to the student's personal residence, workplace, and school. Although the victim began the interview by characterizing the phone calls she received only as "embarrassing," she disclosed that the suspect has been abusive in the past and she has a restraining order against him. She further affirmed during the interview that she does not want the suspect on campus.

The first location within the institution's Clery Geography in which one of the acts appears to have occurred is On-Campus. Accordingly, the incident should be classified as 1 On-Campus Stalking statistic.

DSA Program Review Findings (5)
Case Information (Stalking incident not originally included in crime statistics):
A victim submitted an online report alleging that another student was directing a course of conduct at her. She indicated that since she served as a proctor for the student's exams in the Disability Resource Center, she has noticed that she sees the student all over campus, including both inside and outside the building where she works. The victim reports that he is "lingering" in the hallways and that she has noticed him in the student center when she eats lunch. She reported that "many times I have glanced up at the balcony and have seen him staring down in my direction." The victim also reported that, on an earlier date the student was outside an administrative building where she works. As she and a friend walked past him, the student followed them into the building.
DSA Program Review Findings (5)

These acts, as reported by the victim, are sufficient to establish a course of conduct that is directed at the victim. The victim reported that his staring made her "feel a little uneasy" and "Although nothing too far has happened, this issue has started to make me feel uncomfortable." A reasonable person in the victim's position would also fear for their safety and/or suffer substantial emotional distress.

Accordingly, the incident should be classified as 1 On-Campus Stalking statistic.

Hierarchy Rule

- Count only the most serious offense when more than one Criminal Offense was committed during a single incident
- Apply this rule when:
  - Offenses are committed at the same time and place.
  - Time interval and distance between offenses are insignificant.
  - Unbroken time duration
  - Same or adjoining location(s)
  - If there is a separation of time and place between the commission of several crimes, the reporting agency must handle each crime as a separate incident and must classify and score each offense individually.

Hierarchy Rule

1. Murder and Non-negligent Manslaughter
2. Manslaughter by Negligence
3. Sexual Assault (Rape, Fondling, Incest, Statutory Rape)
4. Robbery
5. Aggravated Assault
6. Burglary
7. Motor Vehicle Theft

Note: The Hierarchy Rule discussed on pages 3-24 and 3-25 applies only when counting crimes within the Criminal Offenses [i.e., Primary Crimes] category.
Hierarchy Rule – 2016 Handbook

*Note that arrests and referrals for [Liquor, Drug and Weapon] law violations are not covered by the Hierarchy Rule used to count Criminal Offenses.

Therefore, you must count arrests for Weapons, Drug Abuse and Liquor Law Violations in addition to the most serious Criminal Offense when occurring in a single incident.

- For example, if an Aggravated Assault is committed with the use of a firearm in violation of a weapons law, count both the Aggravated Assault and the arrest or referral for the Weapons Law Violation*

This is a change from 2011 Handbook guidance.

Hierarchy Rule Application

**Applies To:**
- Criminal Offenses (Primary Crimes) except Arson:
  - Murder and Non-negligent Manslaughter
  - Manslaughter by Negligence
  - Sexual Assault
  - Robbery
  - Aggravated Assault
  - Burglary
  - Motor Vehicle Theft

**Does Not Apply To:**
- Hate Crimes
- Arson
- Arrests and Referrals for Disciplinary Action
  - Liquor Law Violations
  - Drug Law Violations
  - Weapon Law Violations
- VAWA Offenses
  - Domestic Violence
  - Dating Violence
  - Stalking

Hierarchy Rule Example

A robber entered a bank in the On-Campus student center and stole $5,000 from a teller at gunpoint. The robber fled the student center and hotwired a car that was parked on the public street in front of the building. The robber drove the car away from campus.

Count as an On-Campus Robbery and a Public Property Motor Vehicle Theft
Hierarchy Rule Example

A friend of a student broke into the student's residence hall room. The friend stole several items and placed them in a car belonging to the student. The student returned to the room and surprised the friend, who in turn knocked the student unconscious by hitting him over the head with a chair.

What crimes were committed in this incident, in order of how they were committed?

Answer

- Burglary
- Larceny
- Robbery
- Aggravated Assault

This is counted as a Robbery

Hierarchy Rule Exceptions

These offenses always count in multiple-offense situations in addition to the most serious Primary Crime:

- Dating Violence
  - Don't report an incident as Dating Violence if the case also fits the Domestic Violence definition–report as Domestic Violence
- Domestic Violence
- Stalking
- Arson
- Hate Crimes
- If a Murder and a Sexual Assault occurs in the same offense, both crimes should be disclosed
- Arrests or Referrals for Disciplinary Action
Hierarchy Rule Exceptions: Arson

- Arson is always counted
- Multiple Primary Crimes – report most serious along with Arson
- Example—A subject burglarizes an office and to destroy physical evidence, sets the office on fire before leaving the area—count as Burglary and Arson.

Hierarchy Rule Exceptions: Hate Crimes

- Disclose all of the offenses committed in a multiple-offense incident that are bias-motivated.
- In a multiple-offense incident, only the crimes that are bias-motivated should be classified as Hate Crimes.

Hierarchy Rule – Handbook Error

- Scenario #4 on page 3-23 (an Arson resulting in 12 deaths and 6 persons with serious injuries – Handbook says to count 1 Arson, 12 Murders and Non-negligent Manslaughters and 6 Aggravated Assaults).
- Help Desk said “This change was incorrectly made to Scenario 4 during Handbook revisions. Following the Hierarchy Rule...Scenario 4 should be counted as one Arson and 12 Murder and Non-negligent Manslaughters.”
**Reporting Crimes**

- An institution must include in its crime statistics all Clery Act crimes occurring on or within its Clery geography that are reported to a Campus Security Authority for purposes of Clery Act reporting.

- Crimes must be disclosed:
  - regardless of whether the crimes have been investigated by the police or security, and
  - regardless of whether a finding of guilt or responsibility has been assigned.

**Definition of “Reported”**

- A crime is reported when it is brought to the attention of a campus security authority or local law enforcement by (regardless of that person’s affiliation with your campus):

  - If a Campus Security Authority receives a report, he or she must include it as a crime report using whatever procedure has been specified by your institution.

**Unfounded Crimes**

- An institution may withhold, or subsequently remove, a reported crime from its crime statistics in the rare situation where:
  - sworn or commissioned law enforcement personnel have fully investigated the reported crime and,
  - based on the results of this full investigation and evidence, have made a formal determination that the crime report is false or baseless and therefore “unfounded.”

- Beginning with the reports due in 2015, institutions have been required to include in the Web-based survey and the annual security report statistics for the total number of crime reports that were “unfounded” and subsequently withheld from crime statistics during each of the three most recent calendar years.
Unfounded Crimes

- Only sworn or commissioned law enforcement personnel may “unfound” a crime report.

- A reported crime cannot be designated “unfounded” if no investigation was conducted or the investigation was not completed.

- Nor can a crime report be designated unfounded merely because the investigation failed to prove that the crime occurred; this would be an inconclusive or unsubstantiated investigation.

- The recovery of stolen property or the low valuation of stolen property is not adequate grounds for unfounding a reported Robbery, Burglary, or Larceny-Theft.

- Similarly with regard to sex offenses, subsequent acts or inactions on the part of a victim, a witness, or a third party are not an independent ground for unfounding a reported crime.

- A reported crime may not be unfounded solely because a victim or witness fails to follow an institution’s rules for filing a complaint or is unwilling to provide additional information or evidence, or to otherwise assist in an investigation or prosecution.

- Moreover, a crime may not be unfounded simply because a complainant agrees to execute a “Declination to Prosecute” form or because a prosecutor subsequently decides not to pursue criminal charges.

- The mere lack of sufficient evidence to make an arrest is not adequate grounds to unfound a crime report either.
**Unfounded Crimes**

To count a crime as unfounded for Clery Act purposes, the reported crime must have been
- a Clery Act crime;
- reported to have occurred on Clery Act geography;
- thoroughly investigated by sworn or commissioned law enforcement personnel; and
- found through investigation to be false or baseless, meaning that the crime did not occur and was never attempted.

**DSA Program Review Findings (1)**

**Case Information (Improper use of “Unfounding” - Misclassification):**

This incident was originally disclosed as 1 On-Campus and On-Campus Student Housing Facility Unfounded statistic. Campus Police unfounded a reported sexual assault because investigators determined there was a lack of evidence to corroborate the report. However, this is not a valid reason for unfounding an offense. The 2016 Handbook notes, in pertinent part, "Nor can a crime report be designated unfounded merely because the investigation failed to prove that the crime occurred; this would be an inconclusive or unsubstantiated investigation. As such, for Clery Act purposes, the determination to unfound a crime can be made only when the totality of available information specifically indicates that the report was false or baseless" (p. 3-51). Accordingly, the incident should be disclosed as 1 On-Campus and On-Campus Student Housing Facility Rape statistic.

**Do Not Count as Unfounded Crimes**

- Crimes that were initially misclassified. Do not count a crime as unfounded if investigation shows that a crime has occurred but the initial description of the crime was inaccurate.
  - For example, an Aggravated Assault is reported to authorities but police investigation determines that the crime is Simple Assault, not Aggravated Assault. The initial crime report was not unfounded. The crime was reclassified.

- Crimes that were initially reported as occurring on Clery Act geography but determined through investigation to have occurred outside of Clery Act geography.
**Do Not Count as Unfounded Crimes**

- Burglary, Robbery, or Larceny-Theft incidents in which the property was returned. The crimes still occurred. (Unfounded Larceny-Theft would be included only if it was reported as a Hate Crime.)

- Reports of Weapons: Carrying, Possessing, Etc. Violations, Drug Abuse Violations, or Liquor Law Violations in which officers were unable to substantiate the report and no arrests were made.
  - For example, if an officer investigates a report of marijuana smoke and does not find any Drug Abuse Violation, the report is unsubstantiated, not unfounded. There is no crime to unfound.

**Do Not Count as Unfounded Crimes**

- Reports from local law enforcement of unfounded arrests. *Arrests cannot be unfounded.*

- Disciplinary referrals in which it is determined through the disciplinary process that no law violation occurred or no sanction is imposed. Once a student has been referred for disciplinary action, a record has been initiated and the referral must be counted. *Disciplinary referrals cannot be unfounded.*

**Do Not Count as Unfounded Crimes**

- Reports from local law enforcement of crimes that were unfounded because the victim refused to cooperate with authorities or there was not enough evidence to press charges. To be unfounded, investigation must prove that the crime did not occur and was never attempted.
Count as Unfounded Crimes

- Motor Vehicle Thefts where investigation determined that the car was misplaced by the owner and a Motor Vehicle Theft did not occur and was never attempted.

- Burglaries where investigation determined that the items were misplaced by the owner and Burglary did not occur and was not attempted.

Statistics From Local Police

- The local/state police are not mandated by Clery or any other law to provide information to campuses and if they do provide information, they are not required to provide it using UCR definitions.

- Make a good faith effort (early in the year) to obtain the statistics by requesting them in writing (and document any follow-up requests).

- The institution is permitted to rely on information provided to them by the local/state police.

- The institution is not responsible if the information is not provided or is inaccurate.

What To Include In Your Request

- Applicable Clery Act crimes and definitions

- List of addresses for Clery-reportable locations as well as all public property within the agency's jurisdiction
  - Be very specific about what constitutes public property for Clery Act reporting purposes.
  - For example, ask for "crime statistics for the sidewalk, street and opposite sidewalk between the 1200 and 1400 blocks on Elm Street," rather than "crime statistics for public property around the school."
  - State that you do not need statistics about crimes at private homes or businesses.
  - Incident Report Numbers & Date of Incident
**What to Include In Your Request**

According to the 2016 Handbook:

“We also recommend that your institution request that local law enforcement keep you informed on an immediate basis of crimes that may require timely warnings. This request may be made as part of your annual letter to law enforcement agencies requesting crime statistics.” (p. 6-14)

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**Green River College FPRD**

Finding #6: Failure to Properly Request Crime Statistics from Local Law Enforcement Agencies

“GRC failed to properly request information regarding incidents of crimes that were reported to local law enforcement, specifically, the Auburn Police Department. The Campus Safety Office...only requested that the local law enforcement agency provide the College with the numbers of crimes without any identifying information...

Without the dates, locations, and other identifying factors, the Campus Safety Office was not able to discern which crimes it had accounted for in its crime log from those that had not recorded.” (Green River College FPRD, 2018, p. 22).

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**NACCOP White Paper**

- Find under “Resources” at www.naccop.org.
- Direct link HERE.
TW Scenario #1

On March 7th, a female resident student reported to campus police that she had been “sexually assaulted” by her former boyfriend (a resident student) two nights ago in her residence hall room. She described the assault as him performing oral sex on her without her permission.

Since then, the former boyfriend has sent multiple threatening text messages over the last two days that she opened and read while she was in the campus library, and he even followed her off campus last night while she was going for a walk.
TW Scenario #1 (Continued)

She is concerned about his emotional state and what he might end up doing to her. She is requesting a no-contact order but does not want to see him arrested or otherwise getting into trouble.

She is concerned that he might take out his aggression on someone else in a very physical way, because she doesn’t believe he can control his emotions or potential violent actions. She doesn’t want to see him get into trouble, she just wants the harassment to stop and for him to see a counselor.

TW Scenario #1 Discussion

- What crime/crimes has occurred?
- Did the crime(s) occur within the Clery Geography?
- Do you issue a Timely Warning Notice? Why or Why Not?
- Do you issue an Immediate/Emergency Notification? Why or Why Not?
- Do you include a suspect description or suspect identity?
- If you issue a Timely Warning or Immediate/Emergency Notification, what does it say about the report?

TW Scenario #2

On the afternoon of April 2nd, Campus Police was notified by a student who had been walking on campus earlier that day that he was slapped on the buttocks by an unknown male riding a bicycle. The student reported that the male rode up behind him, slapped and groped his buttocks while yelling, “Nice Butt”, and then rode off on his bike heading in a northerly direction.

The bike was described as a red Trek and the suspect was described as a white male, college age, long brown hair, goatee, dark rimmed glasses, with a large scar on his left cheek. The suspect was wearing cargo style pants, a blue denim jacket with a black bookbag strapped to his back.
TW Scenario #2 Discussion

- What crime/crimes has occurred?
- Did the crime(s) occur within the Clery Geography?
- Do you issue a Timely Warning Notice? Why or Why Not?
- Do you issue an Immediate/Emergency Notification? Why or Why Not?
- Do you include a suspect description or suspect identity?
- If you issue a Timely Warning or Immediate/Emergency Notification, what does it say about the report?

TW Scenario #3

On April 4th, an Assistant Women’s Soccer coach was informed by a player that last night an unknown male entered her on-campus college owned apartment that she occupied with three other women and was caught surreptitiously recording one of her roommates in the shower. When confronted by a different roommate, the unidentified male reached out in an attempt to grab that roommate’s breasts but ran out of the apartment after his failed attempt.

The students are worried he may return and if he does, that he might become even more violent. Other than reporting the male was “young, tall and dark complexioned”, no other descriptive characteristics are available.

TW Scenario #3 Discussion

- What crime/crimes has occurred?
- Did the crime(s) occur within the Clery Geography?
- Do you issue a Timely Warning Notice? Why or Why Not?
- Do you issue an Immediate/Emergency Notification? Why or Why Not?
- Do you include a suspect description or suspect identity?
- If you issue a Timely Warning or Immediate/Emergency Notification, what does it say about the report?
TW Scenario #4

On March 25th, just after 6pm, a student reported to the campus police that while they were off campus last night, someone stepped out of an alleyway and threatened them with a large knife asking for them to turn over her personal belongings. The student initially refused, and the suspect pressed the blade of the knife up against her throat.

The student subsequently turned over their cellphone and some jewelry. The student is afraid that the suspect knows they are a student who lives on campus and is worried about a subsequent attack. The student was not able to provide any useful suspect descriptors other than she believes the suspect was an older woman.

TW Scenario #4 Discussion

- What crime/crimes has occurred?
- Did the crime(s) occur within the Clery Geography?
- Do you issue a Timely Warning Notice? Why or Why Not?
- Do you issue an Immediate/Emergency Notification? Why or Why Not?
- Do you include a suspect description or suspect identity?
- If you issue a Timely Warning or Immediate/Emergency Notification, what does it say about the report?

What is a Timely Warning?

- "All of us want to be alerted promptly to potentially dangerous criminal situations near our homes or workplaces so that we have both the time and the information necessary to take appropriate precautions.

- Apply this to your institution, and you have the concept of the ‘timely warning’" (2016 Handbook, p. 6-12).
What Are The Requirements?

- Assess the:
  - Clery crimes
  - that are reported to a Campus Security Authority or Local Law Enforcement Agency
  - that occurred on or within the institution's Clery Geography.

- Put out a timely warning notice if a reported crime is considered by the institution to represent a serious or continuing threat to students and employees.

Timely Warning Dissemination

- A Timely Warning is expected to be distributed quickly, i.e., as soon as pertinent information is available.

- It must be distributed community-wide, i.e., reasonably likely to reach the entire campus community.

- The goal is to aid in the prevention of similar crimes.

Handbook Guidance: “Timely”???

- Although Clery doesn't define “timely,” because the intent of a warning is to enable people to protect themselves this means that a warning should be issued as soon as the pertinent information is available.
  - This is critical; it’s expected that even if you don’t have all of the facts surrounding a criminal incident or incidents, you will issue a warning.
  - You can then follow up with additional information as it becomes available.
TWN Apply to ENTIRE Campus Community (PSU)

- Timely warnings are not limited to Clery Act crimes occurring in an IHE’s Clery Geography that pose an ongoing threat to students and employees. The requirement extends to the entire campus community, including invitees and guests.

- Institutions...must issue timely warnings anytime a Clery-reportable crime is reported to a CSA or the police that may pose an ongoing threat to students, employees, or other members of the campus community, including guests such as campers or persons attending concerts or sporting events. (PPRD, p. 26).

South Carolina State University (2017)

  - SCSU persistently failed to issue timely warnings (none were issued in 2010 or 2011).

Baylor University Timely Warning Fines

1. Incident #15-1083 (Assault-As classified by BUPD): On November 9, 2015, BUPD was notified that a female student had been walking on campus when she was slapped on the buttocks by an unknown Hispanic male riding a bicycle. Despite the fact that this fondling incident occurred on campus and could represent a threat, no notification was sent to the campus community.

2. Incident #15-1186 (Assault - As classified by BUPD): Approximately one month after the above-referenced incident, on December 2, 2015, BUPD was notified by a female student that, earlier that day, she had been walking on campus, along “bear trail,” when an unknown male approached her and asked to speak with her. Upon stopping to speak with him, the male subject walked over to the victim and began to hug and kiss her on the cheek, stating repeatedly that he needed kisses, hugs, and money. The victim was able to escape from the suspect but as she fled the area, the suspect slapped her on the buttocks.
“3. Incident #15-1105 (Assault Threat or Offense Touch- As classified by BUPD) Also, on December 2, 2015, after previous and similar incidents were reported to BUPD, a third victim was fondled, on campus, by a suspect matching a similar description and method of operation as the suspect from the two incident reports above. The suspect was apprehended a short time later, but no timely warning was issued to the campus community.”

(Baylor University Fine Notice, 2020, p. 8).

- These 3 cases resulted in a $75,000 fine for failing to issue Timely Warnings.

What Should a TW Include?

- First and foremost, include some specific information about the crime that prompted the alert. Minimally, include:
  - the date/time of the incident,
  - the location and
  - the nature of the crime.

- Include information that promotes safety, such as crime prevention and safety tips.

- Information that will assist individuals in protecting themselves—what do you want them to do or not to do?
Timely Warning Policy Statement

- The regulations require that your ASR include:
  - Policies for making timely warning reports to members of the campus community regarding the occurrence of crimes listed in the Clery Act.

- The rest of the slides in this subsection identify the specific disclosures necessary to address this requirement.

“Suggested” Timely Warning Policy Components

- ED suggests that your ASR policy statement include:
  - The circumstances for which a warning will be issued

“Suggested” Timely Warning Policy Components

- ED suggests that your ASR policy statement include:
  - The individual or office responsible for issuing the warning
    - The individual or office responsible for issuing the warning (who writes it or develops content).
    - The individual or office responsible for issuing the warning (who initiates it or sends it).
Who Decides to Issue TWN?

Is it an individual?

Is it a department or office?

Is it a consultation process?

“Suggested” Timely Warning Policy Components

- ED suggests that your ASR policy statement include:
  - The manner in which the warning will be disseminated.

Methods of Distribution

- E-Mail
- SMS/Text Messages
- Posters
- A Combination of Methods?
- Other Methods
- Remember that timely warnings should not be issued in a manner that requires the campus community to make special requests for them or to search for them.
Timely Warning Policy Statement: Pastoral and Professional Counselors

- Crimes exclusively reported to a Pastoral or Professional Counselor are exempt from Timely Warnings.

- Make sure you state this in your ASR!
  - The University of Saint Thomas was found out of compliance with ASR disclosure requirements because of their "failure to include a clear statement that an institution is not required to issue a timely warning with respect to crimes reported to a pastoral or professional counselor. 34 C.F.R. §668.46(e)(2)"

Timely Warning Policy Statement

- A statement that such reports shall be provided to students and employees in a manner that is timely, that withholds the names of victims as confidential, and that will aid in the prevention of similar occurrences.

TIMELY WARNINGS: ADDITIONAL CONSIDERATIONS
Sources of Reports for TWN Review

- Campus Police/Public Safety/Security
- Campus Security Authorities (CSAs)
- Local Law Enforcement

Do you issue Timely Warning Notices for Acquaintance Sexual Assaults?

- How does Department of Education view this?
- Does it make a difference whether or not the offender has been identified by the victim?
- What is your criteria or standard for assessing whether an incident was reported in a timely manner?
- What is the established criteria for conducting an assessment of whether a TWN should be distributed?
- Are you certain that there is no further serious or ongoing threat to the campus community??????

USC admits to ‘troubling delay’ in warning about fraternity drugging, sexual assault reports

By TERRA WATANABE, COLLEEN SHALBY
Oct. 29, 2021 UPDATED 9:02 PM PT
USC admits to ‘troubling delay’ in warning about fraternity drugging, sexual assault reports

USC acknowledged Friday a “troubling delay” in warning the campus community about allegations of drugging and sexual assault by a fraternity last month as a rare faculty protest added to mounting criticism about the university’s handling of the crisis.

In a message to the campus community Friday night, USC President Carol Folt said that a university confidential reporting program received five to seven disclosures of possible drugging and possible sexual assault at a fraternity in late September. The information, however, was not shared with the campus community until Oct. 20, when the Department of Public Safety posted an alert that the university had received a report of sexual assault and reports of drugs being placed into drinks at the Sigma Nu fraternity house, “leading to possible drug-facilitated sexual assaults.”

Six students reported that the alleged drugging and assault took place at Sigma Nu on Sept. 24 and one student reported she was drugged Sept. 27 at an unknown location, according to the department’s daily crime log posted Oct. 21. The university subsequently announced it had suspended the fraternity.

University of California, Berklely (2020)

- Finding #5: Failure to Issue Timely Warnings
  - Failed to develop adequate internal policies for the issuance of TW’s
  - TW’s, when issued, were often delayed by a day or two— even when incidents were reported on the same date they occurred
  - Five burglaries were reported on different dates during the months of September, October, and November 2010.
    - All burglaries were similar in nature and occurred at the same apartment complex
    - Four burglaries occurred while the apartments were occupied— imposing serious threats to students
    - TW not issued until after the fifth burglary
    - Distribution determined untimely
    - A TW should have been issued for each reported burglary due to nature of ongoing threat

University of North Carolina-Chapel Hill (2019)

- Finding #3: Failure to Issue Timely Warnings
  - Two fondling incidents approximately 3 weeks apart
  - Unlawful entry of a residential suite to surreptitiously record a student in the shower
    - UNC argued (successfully) that this “peeping” was not a felony in NC and a TW was not required
    - ED conceded, but ultimately said an EN was required
  - ED also found UNC failed to issue some warnings in a timely fashion (5 hours)
Timely Warning Notice Guidance

To download, go to “Resources” at www.naccop.org.

Direct link HERE.

Timely Warnings – 2016 Handbook

- The continuing danger to the campus community. This means that after a Clery Act crime is reported you should consider whether your students and employees are at risk of becoming victims of a similar crime. For example, if a Rape is reported on campus and the alleged perpetrator has not been caught, there is a risk of similar crimes. If the alleged perpetrator was apprehended, there is no continuing risk. If the alleged perpetrator was reported or apprehended, there may not be a continuing risk. However, you should still evaluate other factors such as whether the apprehended perpetrator had accomplices or had already set other attacks in motion.

The Possible Risk of Compromising Law Enforcement Efforts

- This factor does not mean that in the event of a serious or continuing threat to your students or employees you should decide not to issue a timely warning.

- It means that the institution should consider the potential impact on various law enforcement operations as it issues these warnings.
  - For example, you should warn students if there is a serial rapist preying on female joggers along the bike paths running through campus; you should not compromise law enforcement efforts by disclosing that 2 undercover female officers are being assigned to patrol the bike path.
Content of the Timely Warning

- Issuing a warning that cautions the campus community to be careful or to avoid certain practices or places is not sufficient.
- You must include information about the crime that triggered the warning.
- Your institution’s policy regarding timely warnings should specify what types of information will be included.

Handbook Cautions...

- Timely warnings are not limited to violent crimes or crimes against persons so you should not have a timely warning policy that contains this restriction. Timely warnings can be issued for threats to persons or to property.
- Institutions cannot outsource the requirement to issue timely warnings to local law enforcement agencies and must not enter into agreements that prohibit the issuance of such warnings.

The Family Educational Rights and Privacy Act (FERPA) and the Timely Warning Requirement

- An institution may, in appropriate circumstances, include personally identifiable information in a timely warning. Although personally identifiable information is generally protected from disclosure under FERPA, such information may be released in an emergency situation.
- The Department’s FERPA regulations, at 34 CFR 99.36, describe the rule relating to the disclosure of information in health and safety emergencies.
Additional FERPA Considerations
(per the “Intersection of Title IX and the Clery Act” document prepared by the White House Task Force to Protect Students from Sexual Assault, April 2014)

- FERPA does not preclude an institution’s compliance with the timely warning provision of the Clery Act. FERPA recognizes that information can, in the case of an emergency, be released without consent when needed to protect the health and safety of others. 34 C.F.R. §99.36(a).

- Further, if institutions utilize information from the records of campus law enforcement to issue a timely warning, those records are not protected by FERPA. 20 U.S.C. §1232g(a)(4)(B)(ii).

Confidentiality

- VAWA REQUIREMENT: TWN reports shall be provided to students and employees in a manner that is timely, that withholds the names of victims as confidential.

- There is no requirement to withhold the perpetrator’s identity.

Emergency Notifications
The Requirement...

- The Clery Act requires every Title IV institution, without exception, to have and disclose emergency response and evacuation procedures in response to a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus.

- This requirement does not apply to emergency situations in or on Noncampus buildings or property.

When is an Emergency Notification Required?

- Under the Clery Act, every institution is required to immediately notify the campus community upon confirmation of a significant emergency or dangerous situation occurring on the campus that involves an immediate threat to the health or safety of students or employees.

  - An “immediate” threat as used here includes an imminent or impending threat, such as an approaching forest fire, or a fire currently raging in one of your buildings.

Examples of Significant Emergencies or Dangerous Situations

- The types of incidents that may cause an immediate threat to the community (and therefore require an emergency notification) could include, but are not limited to:

  - an active shooter on campus
  - hostage/barricade situation
  - a riot
  - suspicious package with confirmation of a device
  - a tornado/earthquake
  - a fire/explosion
  - suspicious death
  - structural damage to a University owned or controlled facility

  - Outbreak of meningitis, norovirus, or other serious illness
  - biological threat (anthrax, etc.)
  - significant flooding
  - a gas leak,
  - hazardous materials spill, etc.
  - other risk factors, including ones that have been present in the environment for an extended period of time such as asbestos or lead paint
General Reminders

- Include all of your procedures and describe them in a manner that lets the campus community and others know:
  - what you will do, and
  - who or what office or organization will be responsible for each step along the way.

- Be sure to provide information about how an individual can report an emergency.

Use of Electronic and Cellular Communication

- A statement of current campus policies regarding immediate emergency response and evacuation procedures, including the use of electronic and cellular communication (if appropriate), which policies shall include procedures to—
EN Policy Statement: Text Message Sign-Up Information

- If any of the emergency notification services require the campus community to sign up, include information in your ASR about how to do this.

- This is a requirement outlined in the ED Handbook on p. 6-4.

Opt-In Emergency Notifications

- Institutions must ensure that notifications and warnings can be transmitted quickly to all students and employees.
  - Therefore, an institution would not be able to rely solely on a text messaging system if all members of the campus community are not required to participate in that system.
  - Similarly, relying on an e-mail would not be adequate for institutions that do not:
    - establish an e-mail account for all students and employees, or
    - require each member of the campus community to register an e-mail address with the institution.

EN Policy Statement: Immediate Issuance

- Immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff occurring “on campus.”
  - Confirmation means that an institution official (or officials) has verified that a legitimate emergency or dangerous situation exists.
  - Confirmation doesn’t necessarily mean that all of the pertinent details are known or even available.
EN Policy Statement Requirements

- Provide a list of the titles of the person(s) or organization(s) responsible for carrying out the following actions AND
- Provide a description of the process the institution will use to:
  1. Confirm that there is a significant emergency or dangerous situation;
  2. Determine the appropriate segment or segments of the campus community to receive the notification;
  3. Determine the content of the notification (who writes the notice?); and
  4. Initiate the notification system (who sends the notice?).

The following slides will use numbers (1) through (4) to refer to these required disclosures.

EN Policy Statement: (1) Confirmation

- This part of your statement describes how your institution will confirm that there is an emergency or dangerous situation.
  - Saying that “the school will size up the situation to determine whether there’s an emergency” is not adequate information.

- You have to describe the process your school will use.
  - For example, is the director of your school solely responsible for confirming an emergency, or are there multi-layers of information gathering? If there are multiple people or offices involved, what is the relationship? Do you rely on outside resources for certain types of emergencies or for all emergencies? How is this process coordinated?

EN Policy Statement: (2) Segment(s)

- Describe how you will make the decision to notify or not notify specific segments of the campus community.
  - For example, you may state that the entire campus community will be notified when there is at least the potential that a very large segment of the community will be affected by a situation or when a situation threatens the operation of the campus as a whole.

  - You may also indicate that there will be a continuing assessment of the situation and that additional segments of the campus community may be notified if a situation warrants.
EN Policy Statement: (3) Content

- Describe how your institution will determine what information will be contained in a notification.
  - For example, you might state that your campus police department will determine how much information is appropriate to disseminate at different points in time.
  - Depending on what segments of the community your notification targets, the content may differ. In the case of an approaching tornado, you may want to tell dorm residents to take shelter in the basement but you may want to tell commuter students to stay away from the campus.

EN Policy Statement: (4) Initiate the Notification System

- Describe how your institution initiates notifying the campus community that there’s an emergency or dangerous situation.
  - For example, does your institution have first responders who are alerted before anyone else?
  - Will you use fire alarms or public address systems to alert the campus community and follow up with text messages and posted bulletins as more specific information becomes available?
  - Who is responsible for initiating the system?

EN Policy Statement: Without Delay

A statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing a notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency.
EN Policy Statement: Larger Community

- The Annual Security Report must address: The institution's procedures for disseminating emergency information to the larger community.

- This part of your statement addresses how your institution disseminates emergency information to individuals and/or organizations outside of the campus community.

EN Policy Statement: Follow-Up Information

- An institution that follows its emergency notification procedures...must provide adequate follow-up information to the community as needed.

EN Policy Statement: TWN Not Required for Same Circumstances

- "If there is an immediate threat to the health or safety of students or employees occurring on campus...an institution must follow its emergency notification procedures."

- An institution that follows its emergency notification procedures is not required to issue a timely warning based on the same circumstances; however, the institution must provide adequate follow-up information to the community as needed."

34 C.F.R. §668.46(e)(3)
Emergency Notification vs. Timely Warning

Consider the circumstances on a case-by-case basis:

- An employee spots an armed intruder in a classroom building. The employee alerts a campus police officer who is present in the building and who confirms the situation.
- Following your emergency notification procedures, the officer alerts the campus police chief who initiates campus-wide emergency notification procedures.
- In the course of trying to apprehend the intruder, the intruder shoots and wounds two people trying to flee the building.
- Although emergency notification procedures were initiated, the circumstances have changed, and you must issue a timely warning for the shootings (i.e., the crimes of Aggravated Assault).

Challenges for All of Us…

- The biggest challenge is to develop a standard operating procedure to assign various responsibilities to different units at your institution.
- Who has the responsibility and authority to send messages using all of systems? Police? Other departments?

Final Summary of TW vs. EN

<table>
<thead>
<tr>
<th></th>
<th>Timely Warning (TWN)</th>
<th>Emergency Notification (EN)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Standard</td>
<td>Potential ongoing or serious threat</td>
<td>Immediate threat to health and safety</td>
</tr>
<tr>
<td>Circumstances</td>
<td>Clery-reportable crimes that have been reported (occurred in past)</td>
<td>Clery-reportable crimes as well as other types of emergencies (happening right now or about to happen)</td>
</tr>
<tr>
<td>Audience</td>
<td>Community-wide</td>
<td>Can send to a segment of the community, if appropriate</td>
</tr>
<tr>
<td>When Issued</td>
<td>As soon as pertinent information is available</td>
<td>Upon confirmation of emergency (when possible)</td>
</tr>
<tr>
<td>Follow-Up</td>
<td>Not Required</td>
<td>Required</td>
</tr>
</tbody>
</table>

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Daily Crime Log Requirement

- Any institution, regardless of whether it’s public or private, that has a campus police or security department, must create, maintain and make available a Daily Crime Log.

- It doesn’t matter if your security staff is paid by your institution or by a contractor, or if you have one security officer or a police department. Any of these arrangements put your institution in the category of “having a security department.”

Purpose of Crime Log

- The purpose of the Daily Crime Log is to record criminal incidents, and alleged criminal incidents, that are reported to or identified by the campus police or security department.

  - For example, if the institution writes a citation for a violation of the law and that is the only documentation of the incident, that information is required to be included in the Daily Crime Log.

- The Daily Crime Log is not intended to be a general, catch-all incident log.
What if You Already Maintain a State Crime Log?

- Many institutions are also required by state law to maintain a log. If your institution maintains such a log, you may use it for your Daily Crime Log as well, providing it meets all Clery Act requirements.

- However, if the state crime log requires the victims’ names to be listed, for Clery purposes those names must be redacted for public inspection.

- The federal Clery Act regulations state that a disclosure may not jeopardize the confidentiality of the victim. This takes precedence over state crime log laws.

How the Crime Log Differs from Other Campus Safety and Security Disclosures

- Crime log entries include all crimes reported to the campus police or security department for the required geographic locations, not just Clery Act crimes.

- The crime log discloses specific information about criminal incidents, not crime statistics.

- The UCR Hierarchy Rule does not apply to the crime log.
  - If multiple Criminal Offenses are committed during a single incident, all of the offenses must be recorded in the log.

How the Crime Log Differs from Other Campus Safety and Security Disclosures

- The log is designed to disclose crime information on a more timely basis than the annual statistical disclosures.
  - A crime is entered into the log within 2 business days of being reported to the campus police or security department.

  - A business day is Monday through Friday, except for days when the institution is closed (for example, closed for holidays or other scheduled breaks when no security personnel are present).
How the Crime Log Differs from Other Campus Safety and Security Disclosures

- Crimes that must be entered in the Daily Crime Log within two business days include:
  - crimes that are reported directly to the campus police or security department;
  - crimes that are initially reported to another campus security authority who subsequently reports them to the campus police or security department; and
  - crimes reported to a local law enforcement agency which subsequently reports them to the campus police or security department.

Local Law Enforcement Reports

- Crime reports received from local law enforcement agencies (for example, in response to your request for annual statistics) that cannot be matched to other crimes already entered in the crime log should be entered into the log by the date your campus police or security department received the report from the local law enforcement agency.
How the Crime Log Differs from Other Campus Safety and Security Disclosures

- The log has a more specific location focus than the statistical disclosures.
  - For example, the location might be recorded as the name of the building rather than "on campus."
- There is an additional geographic location that applies exclusively to the crime log, which includes reports of crimes that occurred within the patrol jurisdiction of the campus police or security department.

Geographic Areas Covered by the Daily Crime Log

- On Campus Buildings and Property
- Noncampus Buildings and Property
- Public Property
- Official Expanded Patrol Jurisdiction

Clarifying “Patrol Jurisdiction”

- Essentially, the “patrol jurisdiction” (also referred to as a “patrol zone”) is any property that does not meet any of the Clery annual security report geographic area definitions, but which is regularly provided with police or security patrol services by the campus agency — typically pursuant to a formal agreement with the local police jurisdiction, a local civic association, or other duly constituted public entity.
Crime Log General Reporting Requirements

- The crime log must contain all reported crimes
  - Note: You can exclude off-campus crimes reported to campus police/public safety/security provided the crimes occurred outside of the agency’s expanded patrol jurisdiction.
- The crime must be entered into the Daily Crime Log within 2 business days after the crime has been reported to Campus Police/Public Safety/Security or other Campus Security Authority.

Required Crime Log Components

- Nature of the Crime (Classification)
- General Location
- Date/Time Occurred
- Disposition
- Date Reported

Crime Log Sample

<table>
<thead>
<tr>
<th>Nature (Classification)</th>
<th>Case Number</th>
<th>Date/Time Reported</th>
<th>Date/Time Occurred</th>
<th>General Location</th>
<th>Disposition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Larceny</td>
<td>2001-0001</td>
<td>01/01/2015 10:30am</td>
<td>01/01/2015 10:00am</td>
<td>Admin Building</td>
<td>Closed 01/02/15</td>
</tr>
<tr>
<td>Graffiti</td>
<td>2002-0002</td>
<td>02/02/2015 12:30pm</td>
<td>02/02/2015 12:00pm</td>
<td>Jordan Hill</td>
<td>Closed 02/03/15</td>
</tr>
<tr>
<td>Vandalism</td>
<td>2003-0003</td>
<td>03/03/2015 10:30am</td>
<td>03/03/2015 10:00am</td>
<td>Residence Hall</td>
<td>Closed 03/04/15</td>
</tr>
<tr>
<td>Property Damage</td>
<td>2004-0004</td>
<td>04/04/2015 08:30am</td>
<td>04/04/2015 08:00am</td>
<td>Library</td>
<td>Closed 04/05/15</td>
</tr>
</tbody>
</table>

Figure 6. Sample Daily Crime Log With Required Elements

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Withholding Information

- You may temporarily withhold information only if there is clear and convincing evidence that the release would:
  - Jeopardize an ongoing [criminal] investigation
  - Jeopardize the safety of an individual
  - Cause a suspect to flee or evade detection
  - Result in the destruction of evidence

- **NOTE:** Your institution may withhold only that information that could cause an adverse effect, and you must disclose such information once the adverse effect is no longer likely to occur.
  - Document the rationale for withholding information.

Maintaining the Log

- You must record entries within 2 business days of report to campus police/public safety/security

- You must update entries for 60 days after the incident was recorded on the log
  - For example, if the disposition of a crime is "pending" and you later receive word that an arrest has been made, you have two business days to update the disposition on the original entry to reflect the arrest.

- Do not delete an entry once it's been made; update the disposition instead.

- **Limited exceptions to adding/updating entries within 2 business days:**
  - If the disclosure is prohibited by law; or
  - If the disclosure would jeopardize the confidentiality of the victim.

- **Archive the Crime Log for 7 years**

- **Note:** Your institution is not required by the Clery Act to provide the public with access to logs that are older than seven years (even if you have more than 7 years on file).
Making the Log Available

- Make a hard copy available, even if you have it available on your website.
- Make it available on-site at each campus where you have Police or Security (including contract security).
- The most recent 60 days must be available immediately, free of charge.
- It must be available during normal business days/hours.
- For entries older than 60 days, the log must be made available within 2 business days of a request.

Publicizing Availability

- Let students and employees know that the log is available, what it contains and where it is.
- You may post a notice
  - on your website,
  - in your security or police headquarters,
  - in your student and employee handbooks or
  - anywhere else it's likely to be seen.
- Best Practice—Address the availability of your log in the Annual Security Report.

Handbook Reminder

- Entries in the crime log should be used, along with additional information, to gather the statistics that are required for inclusion in the annual security report and the annual Web-based data collection.
- Use only Clery Act crimes that occur in the geographic locations described in Chapter 2 of the handbook for this purpose.
Annual Security Report

General Areas Governing Issuance of Policy Statements

IN THIS PRESENTATION
I. Policies on Reporting Crimes
II. Policies on Security of and Access to Campus Facilities
III. Law Enforcement Policies
IV. Educational Programs: Security Awareness Programs and Crime Prevention Programs
V. Drug and Alcohol Policies
VI. Sex Offender Registration Policy

IN OTHER PRESENTATIONS
VII. Timely Warning Notice Policies
VIII. Emergency Response and Immediate Notifications
IX. Fire Safety Policies
X. Missing Person Policies
XI. VAWA Policies re: Sexual Assault, Domestic Violence, Dating Violence and Stalking

General Guidelines

- **Language.** Use language that will be understood by the general public (i.e., avoid heavily legal language).
- **Accuracy.** Your statements or descriptions of policies must accurately reflect your institution’s current procedures and practices.
  - If your institution does not have a policy or program responding to one or more of the categories listed in the regulations, you must disclose this fact.
  - If you are compiling security reports for multiple campuses, make sure your policy statements accurately reflect the current policies and practices of each separate campus.
General Guidelines

- **Required components.** Pay close attention to the requirements of each policy statement.
  - In general, the law does not prescribe policies and procedures for schools to follow; however, both the law and the regulations set minimum requirements for specific information that must be addressed in your institution’s annual security report.

- **Missing policies.** Failure to have a required policy or to disclose all of the required policy statements means that your school is not in compliance with the law.

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Important Lesson from PSU Audit

- Institutions can and will be held accountable for adhering to any policies or procedures described in the ASR even if the specific policies or procedures are not required by the Clery Act.
  - *When an institution voluntarily assumes a standard that goes beyond a specific regulatory requirement and announces that standard to the public, the institution will be held responsible for meeting its public commitment, lest the consumer protection and transparency goals of the Department be undermined and the public misled.* (Penn State University Campus Crime Final Program Review Determination, 2016, p. 132)

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Publishing the ASR

- You may include the report in a publication, such as a campus directory that is given to all students and employees, provided the report appears in its entirety within that publication.
  - If the report is incorporated into a larger publication, the cover must identify the inclusion of the Annual Security Report.
  - You don’t have to provide the report to both students and employees in the same publication, however.
Reporting Crimes

1. A statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus.

2. Titles of each person or organization to whom crimes should be reported for the purposes of making timely warning reports and the annual statistical disclosure.
   - Remember the intent of the regulation is to provide a list of CSAs that the institution has designated as the preferred receivers of reports, not just campus police/public safety.

3. This statement must include the institution's policies concerning its response to these reports.

Reporting Crimes: Accurate and Prompt Reporting Policy

4. Encourages accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies, when the victim of a crime elects to, or is unable to, make such a report.
   - Federal Register Clarification: "This language captures situations involving both physical and mental incapacitation. It does not include situations where a victim is unwilling to report."
   - If the institution does not have a campus police/security department, this should be stated in the policy.

Annual Disclosure of Crime Statistics Requirement

- Description of how the institution prepares the annual crime statistics.
  - From whom are crime statistics collected?
  - How are they collected?
  - From what sources are they collected?
Voluntary Confidential Reporting

- Policies or procedures for victims or witnesses to report comes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.
- Institutions must disclose:
  - Whether they have policies or procedures; and if so
  - Provide a description of those policies and procedures.

Confidential Reporting Policy

- Describe, if any, procedures that encourage pastoral and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.

Security & Access Policy Statement

- Security of and access to campus facilities including:
  - Residence halls
  - Academic and administrative buildings

  There are 4 concepts to address in the above statement.
- Security considerations in the maintenance of campus facilities
Campus Law Enforcement Policies

- Policies concerning campus law enforcement
  - Enforcement Authority: The enforcement authority of police and/or security personnel working for the campus.
  - Arrest Authority: Be specific and indicate if no authority, limited authority, or who does or doesn't have arrest powers.
  - Jurisdiction: Describe the jurisdiction of security and/or police personnel.

For all 3 issues above: If you have sworn police and security officers working for the campus—address the authority of both types of positions.

Relationship with Local and State Police

- Relationship with Local and State Police: Describe the campus security personnel's relationship with local and state police agencies
  - List the names of both local and state police agencies with whom you have a relationship.

- MOU: Any agreements, such as written memoranda of understanding between the institution and such agencies, for the investigation of alleged criminal incidents.
  - Be sure to address the concept of alleged criminal incidents rather than describing a mutual aid agreement.

Monitoring and Recording of Criminal Activity By Students at Student Organization Locations

- Does institution use local police to monitor criminal activity by students at Noncampus locations of officially recognized student organizations?
  - Not mandated to monitor these activities with local police.
  - May monitor these activities themselves with the institution's own police.
  - If the institution does not have any Noncampus student organizations, it must say so in the policy.
Crime Prevention Programs Policy Statement

- Describe programs designed to inform students and employees about the prevention of crimes.
  - If you do not have any programs of this nature, you must provide a statement disclosing this fact.

Security Awareness Programs

- A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.
  - You do not have to list every program, but be sure to address all the statement’s components (i.e., type, frequency, students, employees).

Drug and Alcohol Policy Statements

- A statement of policy regarding the:
  - possession
  - use; and
  - sale of alcoholic beverages, and the enforcement of State underage drinking laws.

- A statement of policy regarding the:
  - possession
  - use; and
  - sale of illegal drugs, and enforcement of Federal and State drug laws.
### Substance Abuse Education Programs

- A description of any drug or alcohol abuse education programs as required under Section 120(a) through (d) of the HEA (otherwise known as the Drug-Free Schools and Communities Act of 1989 [DFSCA]).
  - This is the only policy statement in the Annual Security Report for which you can cross-reference materials.
  - The language of “education programs” is not a reference to traditional programming aimed at preventing and reducing alcohol and drug use and abuse; rather, it is a reference to the Drug and Alcohol Abuse Prevention Program (DAAPP) required by the DFSCA (see next slide).

### Required DAAPP Components

- Standards of conduct clearly prohibiting the unlawful possession, use, or distribution of illicit drugs and alcohol on IHE property or as part of any of its activities.
- A description of the applicable legal sanctions under local, state, or federal law for the unlawful possession or distribution of illicit drugs and alcohol. *(Note: read the “or” like an “and”)*
- A description of the health risks associated with the use of illicit drugs and the abuse of alcohol.
- A description of any drug or alcohol counseling, treatment or rehabilitation or re-entry programs that are available to employees and students.
- A clear statement that the IHE will impose disciplinary sanctions on students and employees and a description of those sanctions.

### DFSCA—Are You in Compliance?

- Develop of a comprehensive DAAPP that includes all required components;
- Implement procedures to ensure the annual written distribution of the DAAPP to all students and employees; and
- Conduct a biennial review of the institution’s program to:
  - Determine the program’s effectiveness and implement changes to the program, if the changes are needed;
  - Determine the number of drug and alcohol-related violations and fatalities that occur on campus or as part of any of the institution’s activities and are reported to campus officials;
  - Determine the number and type of sanctions that are imposed by the institution as a result of drug and alcohol-related violations and fatalities on the institution’s campus or as part of any of the institution’s activities; and
  - Ensure that the sanctions are consistently enforced.
NACCOP White Paper

- "The Resurgence of the Drug-Free Schools and Communities Act: A Call to Action"
- Find under "Resources" at www.naccop.org.
- Direct link HERE.

Inside Higher Ed (2019)

- https://www.insidehighered.com/views/2019/02/18/colleges-are-facing-more-consequences-not-complying-drug-free-schools-and

Notification of Final Results

- In your Annual Security Report, you must provide a policy statement about the following:

The institution will, upon written request, disclose to the alleged victim of a crime of violence or a non-forcible sex offense, the report on the results of any disciplinary proceeding conducted by the institution against a student who is the alleged perpetrator of such crime or offense. If the alleged victim is deceased as a result of such crime or offense, the next of kin of such victim shall be treated as the alleged victim for purposes of this paragraph.
Notification of Final Results

- According to Section 16 of title 18 of the United States Code, the term "crime of violence" means—
  a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
  b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

- The results of a disciplinary proceeding means—only the institution's final determination with respect to the alleged sex offense and any sanction that is imposed against the accused.

Registered Sex Offender Policy Statement

- Advises the campus community where information provided by the state concerning registered sex offenders may be obtained.
  - Only required to inform the campus community
  - NOT required to collect information

- Final regulations updated this requirement to reference the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16921)

Presenting Crime Statistics

- Determine if your institution's ASR contains all the required crime statistics.
- Develop a format that presents the crime statistics in a clear and understandable manner.
- All Criminal Offenses, VAWA Offenses, and Arrests and Referrals for Disciplinary Action for Weapons, Drug Abuse and Liquor Law Violations should be presented in a table or tables.
- You may present Hate Crime data in either a tabular format or in a narrative or descriptive format.
Confirming ASR vs. CSSDACT Data

“The Department’s reviewers determined that the crime statistics for calendar years 2012, 2013, 2014, and 2015 included in Baylor’s 2015 and 2016 ASRs did not match the crime statistics it submitted to the Department for those years. Additionally, Baylor failed to report several crimes for 2012 and 2013 that were discovered by the Department during the review.”

(Baylor University, Fine Notice FPRD, 2020, p. 5).

General Crime Statistics Presentation: Three Required Elements

- Calendar year in which crime was reported for each of the three most recent years
- Type of Crime
  - Primary Crimes
  - VAWA Offenses
  - Arrests and Referrals for Disciplinary Action
- Geographic area
  - On Campus Property
    - On Campus Student Housing Facilities
  - Noncampus Property
  - Public Property

Criminal Offenses
Reporting Hate Crime Statistics

- Because institutions typically do not have many Hate Crimes to report, or none at all, Hate Crime data can be presented in a narrative or descriptive format (in lieu of a table).
- Remember to:
  - Report Hate Crime statistics for the three most recent calendar years.
  - Report Hate Crime statistics by crime category, geographic location, and by category of prejudice.
  - Do not attempt to combine your Hate Crime data with your general crime statistics.
Narrative Reporting Examples

- **Hate Crimes: Example One**
  - 2021: 1 On Campus Robbery characterized by religious bias
  - 2020: 1 Noncampus Robbery characterized by ethnicity-national origin bias, and 1 Public Property Aggravated Assault characterized by sexual orientation bias.
  - 2019: No hate crimes reported.

- **Hate Crimes: Example Two**
  - There were no reported hate crimes for the years 2019, 2020, or 2021.

Unfounded Crimes

- For each of the three years, you are required to report the total number of unfounded crimes across all Clery Act geographic categories and Clery Act crimes. You are not required to break down the number of unfounded crimes by geographic category or type of crime.

Distribution of Reports

- By October 1st—distribute Annual Security Report (ASR) and, if the institution maintains on-campus housing—distribute the Annual Fire Safety Report (AFSR) to current students and employees

  - Develop effective distribution methods for current and prospective student and employee populations.

  - Maintain appropriate documentation to demonstrate compliance.

  - There are no grace period or extensions to the October 1 deadline
Who Gets the ASR/AFSR?

- Current Students
  - If you have students who are enrolled in your institution but who are currently taking courses at another school or who are not taking courses but are completing thesis or dissertation work, you are still required to provide them with your annual security report.

- Current Employees

- Prospective Students
  - Individuals who have contacted an eligible institution requesting information about admission

- Prospective Employees
  - Individuals who have contacted an eligible institution requesting information about employment

ASR Distribution Methods

Current Students & Employees

- Direct Distribution
  - U.S. Postal Service or any other direct mail service (i.e., Federal Express)
  - Campus mail
  - Email (as an attachment)
  - A combination of these methods

- Indirect Distribution (notice of availability)

Notice of Availability of ASR to

Current Students & Employees

- Posting on an Internet or intranet website that is reasonably accessible to all students and employees (which requires sending all students and employees a notice of availability)

- You may use this method only if you distribute an individual notice about the annual security report to each student and employee by Oct. 1.

- Do not bury the notice in another document where a student or employee may be unlikely to read it.
Notice of Availability of ASR to Current Students & Employees

- Individual, direct notice including:
  - A statement of the report's availability
  - A brief description of the contents
  - Exact electronic address (URL)
    - This means that you must provide a direct link to the annual security report. It is not acceptable simply to give the URL for the institution’s website.
  - Statement that a paper copy will be provided upon request
    - Note: You may not charge fees to individuals for copies of the annual security report, nor can you include the Annual Security Report in any publication for which you charge a fee.

ASR Distribution Methods
Prospective Students & Employees

- If you don’t post your ASR on an Internet site, the notice of availability must include:
  - A statement of the report’s availability
  - A description of its contents
  - Opportunity to request a copy (tell them how to request it).

- Unlike current students and employees this notice may be provided along with other information.

ASR Distribution Methods
Prospective Students & Employees

- If you post your ASR on an Internet site, the notice must include:
  - the exact URL for where the report is posted;
  - a brief description of the report; and
  - a statement that the institution will provide a paper copy of the report upon request.
Title of the Report

- If you are combining your Annual Security Report and your Annual Fire Safety Report, the title must reflect both reports.

- The report title should identify the year the report was published and the academic year it addresses.
  - **2022 Annual Security Report** *(Containing Information for the 2022-2023 Academic Year)*; or
  - **2022 Annual Security & Fire Safety Report** *(Containing Information for the 2022-2023 Academic Year)*

Publication of Reports


- If the institution chooses to publish the Annual Fire Safety Report separately from the Annual Security Report, both reports must contain information about how to directly access the other report.

Examples of Records to Retain

- Retain all unredacted originals of the following:
  - Copies of Crime Reports
  - Daily Crime Log
  - Arrests and Referrals for Disciplinary Action
  - Timely Warning Reports
  - Emergency (Immediate) Notification Reports
  - Letters to/from Campus Security Authorities
  - Letters to/from Local Police (Clery Act Items)
  - ED Correspondence on Clery Act Items
  - ASR Availability Notices to Students and Employees
  - Copies of Admissions and Employment Notifications to Prospective Students/Employees

- If you scan paper documents for archiving purposes, be sure to scan complete records.
How Long to Retain Records?

- Retain all supporting records used in compiling the Annual Security Report for three years from the latest publication of the report to which those records apply.
  - For example, the 2015 annual security report should contain statistics for 2012, 2013 and 2014. The 2012 statistics and supporting records must be kept until Oct. 1, 2018—in effect, seven years.
  - Note: This means that the 2014 statistics and supporting records must be kept until Oct. 1, 2020.

Correcting the ASR

- If your institution makes corrections to your statistical disclosures or changes its safety and security policies at any time after publishing your Annual Security Report for a particular year (no later than Oct. 1), you must update your annual security report.

- If your institution corrects the crime statistics for a previous calendar year, you must correct the statistics in all previous Annual Security Reports that included the statistics.
  - For example, if your institution discovers in December 2015 that the numbers reported for 2013 on-campus disciplinary actions were incorrect, you must correct the 2013 statistics in the 2014 and 2015 Annual Security Reports.

- If your institution makes changes to its safety and security policies, you must update the information in your most recent Annual Security Report to reflect your new policies.

- The statements or descriptions in your Annual Security Report must accurately reflect your institution’s current procedures and practices.
Correcting the ASR

- When a change is made to the statistics or policies in an Annual Security Report, you should add a note to the Annual Security Report explaining the change. This note should include:
  - what change was made,
  - the date the change was made and
  - the reasons for the change.

- Once revised, you must redistribute the annual security report.
  - If you post the revised Annual Security Report online, you must distribute a notice about the availability of a revised Annual Security Report to each student and employee.

Note: These requirements also apply to the Annual Fire Safety Report.

Testing of Emergency Response/Evacuation Procedures

- The emergency response and evacuation requirements are intended to ensure that your institution
  - has sufficiently prepared for an emergency situation on campus,
  - that you are testing these procedures to identify and improve any weaknesses and
  - that you have considered how you will inform the campus community and other individuals, such as parents and guardians, in the event of an emergency.

- In other words, the institution must have an emergency plan, test it, evaluate it and publicize it.
Policy Statement Requirements

- A statement of policy regarding emergency response and evacuation procedures
  - Be sure to include a summary of your emergency response procedures and your evacuation procedures in addition to the required disclosures regarding emergency notifications
  - In developing and disclosing your procedures, be sure to address the who, what, when and how elements. For example, explain:
    - who makes decisions and initiates procedures,
    - the procedure for reporting an emergency,
    - when information is released,
    - how information is provided, etc.

ASR Disclosures

- This does not mean you have to publish your Emergency Operations/Management Plan in your ASR:
  - "...the Department notes that the ASR need only address the specific disclosure requirements of the Clery Act. As long as that information is included in the ASR, an institution is certainly free to direct users of the ASR to supplemental material, such as a more comprehensive emergency management plan that students, employees, parents, or other stakeholders may find useful" (Penn State University Campus Crime Final Program Review Determination, 2016, p. 56).
Policy Statement Requirements

- Publicize the procedures to test emergency response and evacuation procedures on an annual basis, including:
  - Tests may be announced or unannounced.
  - Publicizing institutional emergency response and evacuation procedures in conjunction with at least one test per calendar year.
  - Documenting, for each test, a description of the exercise, the date, time, and whether it was announced or unannounced.

What is a Test?

- A “Test” is defined as regularly scheduled drills, exercises, and appropriate follow-through activities, designed for assessment and evaluation of emergency plans and capabilities.
- You must conduct at least one test a year.
- To comply with the Clery requirement the test must meet all of the criteria in the definition:
  - Drills
  - Exercises
  - Follow-through activities

ED Definition of “Drill”

- “Drill” is defined as an activity that tests a single procedural operation (e.g., a test of initiating a cell phone alert system or a test of campus security personnel conducting a campus lockdown).
Definition of “Exercise”

- “Exercise” is defined as a test involving coordination of efforts (e.g., a test of the coordination of first responders including police, firefighters, and emergency medical technicians).

- Includes:
  - Tabletop
  - Functional
  - Full-Scale

The Test Must...

- **Be scheduled**: You cannot say that an actual emergency situation or a false emergency alarm served as a test of your institution’s procedures.

- **Contain follow-through activities**: A follow-through activity is an activity designed to review the test (e.g., a survey or interview to obtain feedback from participants).

  - Best Practice: Write and file an After-Action Report.

Assessment and Evaluation

- The test must be designed for assessment and evaluation of emergency plans and capabilities—what does that mean?
  - **Assessment**: means that your test should have measurable goals. For example, “Everyone involved in the emergency response and notification procedures will understand his or her role and responsibility.”
  - **Evaluation**: means to design the test so that, using the assessments, you can judge whether or not the test met its goals. For example, “The evacuation process accounted for/did not account for the diverse needs of all members of the campus community.”
**Designing the Tests (Handbook)**

- You have **flexibility** in designing tests. For example, you may conduct a tabletop exercise (i.e., a simulated scenario) or conduct a live test.

- Whichever method you use, your test must **address emergency response and evacuation on a campus-wide scale**. By “campus-wide” scale we mean that tests must address your plan for evacuating all of your campus buildings.

- This does not mean that your plan must involve evacuating the entire campus at once. Just have a plan for each building. We recognize that a shelter-in-place contingency might be the best procedure to use in certain circumstances when evacuation is not a reasonable option.

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**Documenting Tests**

- An institution must document a description of each test (exercise and drill), including:
  - Description
  - Date
  - Time
  - Whether it was announced or unannounced.

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**Publication Requirement for Tests**

- Publicize emergency response and evacuation procedures in conjunction with at least one test per calendar year.

- Time the publicizing to coincide with one test (drill and exercise) every calendar year.

- Distribute it to the campus community; you can’t simply put it on your website.
Fire Safety Disclosures

Each eligible institution participating in any program under this title that maintains any on-campus student housing facility must, on an annual basis, publish a fire safety report, which shall contain information with respect to the campus fire safety practices and standards of that institution, including—

- Housing built by institutionally-related foundations
- Third parties, such as private developers

These regulations do not apply to other buildings on your campus or to any Noncampus student housing facilities your institution might own or control.

If you have multiple campuses, only those that have on-campus student housing facilities must comply with these regulations.
Fire Safety Disclosures

- An institution with on-campus student housing facilities is required to:
  - Maintain a log of all reported fires that occur in those on-campus student housing facilities,
  - Publish an annual fire safety report that contains fire safety policies and fire statistics for those facilities, and
  - Submit the fire statistics from the fire safety report annually to ED.

Annual Fire Safety Report

1. A description of each on-campus student housing facility fire safety system.
   - Your statement should describe the fire safety system in each of your on-campus student housing facilities. It isn't enough to provide a general description of fire safety systems that encompasses all of the facilities.
   - If you are not sure whether a specific mechanism or system is part of a fire safety system, ask yourself if the mechanism or system is related to the:
     - Detection of a fire,
     - Warning resulting from a fire, or
     - Control of a fire.

Fire Safety System

- This may include:
  - sprinkler systems or other fire extinguishing systems,
  - fire detection devices,
  - stand-alone smoke alarms,
  - devices that alert one to the presence of a fire, such as horns, bells, or strobe lights;
  - smoke-control and reduction mechanisms; and
  - fire doors and walls that reduce the spread of a fire.
2. The number of fire drills held during the previous calendar year.
   - The HEA defines a fire drill as "A supervised practice of a mandatory evacuation of a building for a fire."
   - Disclose the number of fire drills for each on-campus student housing facility. If no fire drills were held for a facility during this time period, you must state this.
   - This requirement cannot be met by a false alarm that leads to the evacuation of a building, even if the evacuation is supervised.
     - A drill involves planning, supervision, and evaluation.

3. The institution’s policies or rules on:
   - portable electrical appliances,
   - smoking, and
   - open flames
   in a student housing facility.

4. The institution’s procedures for student housing evacuation in case of a fire.
Annual Fire Safety Report

5. The policies regarding fire safety education and training programs provided to the students, and employees.

6. In these policies (#5), the institution must describe the procedures that students and employees should follow in the case of a fire.

7. For purposes of including a fire in the statistics in the annual fire safety report, a list of the titles of each person or organization to which students and employees should report that a fire occurred.

8. Plans for future improvements in fire safety, if determined necessary by the institution.
   - Your plan can be limited to “our institution is going to do the following…,” or can include “if we obtain the means we’d like to do the following….”
   - We suggest that you include information that tells the reader why the improvements are necessary. Do not simply state that the institution has plans for future improvements without indicating what those improvements will be. You may, but are not required to, include a timeline.
   - If you determine that future improvements in fire safety are not necessary, state this.

Fire Statistics

- Publish an Annual Fire Safety Report to include:
  - Statistics for each On-Campus Student Housing Facility separately for the 3 most recent calendar years
    - Number of fires in each OCSHF
    - Cause of each fire
    - Number of persons who received injuries that resulted in treatment at a medical facility (including at an on-campus health center)
    - Number of deaths related to a fire
    - Value of property damage caused by a fire
Fire Statistics

- You MUST identify each facility by name and street address.
- You may treat a group of attached buildings, such as a row of townhouses, as a single student housing facility if
  - they share a name and
  - have the same fire safety policies and systems.
- All other student housing facilities must be reported separately.

Fire Statistics

- If there were no reported fires in any of your student housing facilities for the reporting year, you may list the names and address of each facility and state that there were no reported fires in the facilities for the reporting year.
- Remember, if there were no reported fires at a facility, state this, or enter a 0; do not omit the facility from your disclosures.

Definition of Fire

- Fire: Any instance of open flame or other burning in a place not intended to contain the burning or in an uncontrolled manner.

- NOTE: The definition contains two descriptions of a fire.
  - The first is "any instance of open flame or other burning in a place not intended to contain the burning."
  - The second is "any instance of open flame or other burning in an uncontrolled manner."
Examples of Fires in Places Not Intended to Contain Burning
- Trash can fire
- Oven or microwave fire
- Burning oven mitt on a stove
- Grease fire on a stovetop
- Flame coming from electric extension cord
- Burning wall hanging or poster
- Fire in an overheated bathroom vent fan
- Couch that is burning without any flame evident

Examples of Fires Burning in an Uncontrolled Manner
- Chimney fire
- Gas stove fire
- Fuel burner or boiler fire

Include All Fires
- Include all fires that meet the HEA definition regardless of:
  - Size
  - Cause
  - Whether the fire results in injury, death, or property damage
  - Your institution’s fire safety policies
- Even if your institution prohibits the burning of candles in dorms, a lit candle doesn’t meet the definition of a fire. If drapes catch on fire due to brushing against a lit candle, the burning drapes meet the definition.
Included Fires

- An incident where there is evidence that there was burning, for example, a singed electrical cord.
- Fires reported to any official at your institution (e.g., to a residence life officer), not just campus fire authorities or Campus Security Authorities.

Do NOT Include

- Sparks or smoke where there is no open flame or other burning.
- Incidents such as burnt microwave popcorn that trigger fire alarms or smoke detectors, but there are no open flames or other burning.
- Attempted arson in cases where there is no open flame or burning.

Do NOT Include

- Incidents that violate your institution’s fire safety policies but that do not meet the HEA definition of a fire.
  - For example, if your institution prohibits fires in fireplaces in on-campus student housing, and a student lights a fire in the fireplace, this is not a reportable fire under the HEA.
  - However, if the fire began burning in an uncontrollable manner and ignited the chimney or flue, that would be a reportable fire.
When is a Fire “Reported”…

- Unlike Clery crime reporting, in which a crime is “reported” when it’s brought to the attention of a campus security authority or a local law enforcement agency, there are no such restrictions with fire reporting.

- Any student housing fire that is reported to any official at your institution must be documented (fire log and statistics).
  - An “official” is any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution.
  - To help ensure that fire reports get documented, your institution must have and disclose a policy and procedure informing students and employees of the individuals or organizations to which fires should be reported.

Sample Fire Statistics Chart

- This is a screenshot from the Campus Safety & Security Data Analysis Cutting Tool (CSSDACT) and is NOT a compliant Fire Statistics table for your Annual Fire Safety Report.
An institution that maintains on-campus student housing facilities must maintain a written, easily understood fire log that records, by the date that the fire was reported, any fire that occurred in an on-campus student housing facility.

This log must include:
- Nature of the fire
- Date and time of the fire
- Date the fire was reported
- General location of the fire

Sample Fire Log (Handbook)

<table>
<thead>
<tr>
<th>Date</th>
<th>Case Number</th>
<th>Nature of fire</th>
<th>Date and Time of Fire</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>03/13/2015</td>
<td>2015-1280</td>
<td>Cigarette thrown in trash can</td>
<td>03/11/2015 5:30 p.m.</td>
<td>North Campus 1416 lounge</td>
</tr>
<tr>
<td>03/20/2015</td>
<td>2015-1281</td>
<td>Paper on fire</td>
<td>03/25/2015 3:15 p.m.</td>
<td>Third floor in Theta Chi house</td>
</tr>
</tbody>
</table>
Maintaining the Fire Log

- An institution must make an entry or an addition to an entry to the log within two business days of the receipt of the information.

- Your institution may decide who or what department is responsible for maintaining the log and where it should be kept if it's a hard copy log.

- Consider a “No Fires Reported Last Week/Month” entry

Making the Fire Log Available

- An institution must make the fire log for the most recent 60-day period open to public inspection during normal business hours.

- You may use either a hard copy log or an electronic format. Either format must be accessible on-site.
  - This means that if you have separate campuses that have on-campus student housing facilities, a fire log must be available at, or accessible from, each campus.

- Make any portion of the log older than 60 days available within 2 business days of a request for public inspection.

- Archive the Fire Log for 7 years.
ED Audits re: Fire Log

- Mid Atlantic Christian University (11/14/2014)
  - $15,000: No such log exists, instead, when ED requested the institution to demonstrate compliance, the institution submitted copies of log sheets from the Elizabeth City Fire Department.

- Sterling College (11/7/2014)
  - $27,500: Sterling failed to maintain a Fire Log at the time of the review.

- Hope International University (9/27/2017)
  - $15,000: Failed to maintain a fire log

- University of Jamestown (9/27/2017)
  - $35,000: Failed to maintain a daily crime log and daily fire log for 2012 and 2013

A Note About Arson

- An Arson that occurs in an On-Campus Student Housing Facility must be disclosed in your:
  - Annual Fire Safety Report,
  - Fire Log,
  - Annual Security Report, and
  - Daily Crime Log (if you are required to keep a Daily Crime Log).

Summary of Reporting On-Campus Student Housing Facility Fires Based on Cause

<table>
<thead>
<tr>
<th></th>
<th>Intentional (i.e., Arson)</th>
<th>Unintentional/Undetermined</th>
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<tbody>
<tr>
<td>Fire Log</td>
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<tr>
<td>Annual Fire Safety Report (Fire Statistics)</td>
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<tr>
<td>Campus Safety and Security Data Analysis Collection Tool (Fire Statistics)</td>
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<tr>
<td>Daily Crime Log (if required to keep one)</td>
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<tr>
<td>Campus Safety and Security Data Analysis Collection Tool (Crime Statistics)</td>
<td>X</td>
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</tbody>
</table>
NACCOP White Paper

- “Analyzing a Fire from a Clery Act/HEOA Perspective”
- Find under “Resources” at www.naccop.org.
- Direct link HERE.

Missing Students

An institution that provides any on-campus student housing facility must include a statement of policy regarding missing student notification procedures for students who reside in on-campus housing facilities in its annual security report.
**Missing Student Protocols**

- If you have **multiple campuses**, only those that have on-campus student housing facilities must comply with these regulations.
- If your institution has any **foreign campuses** with on-campus student housing facilities, those campuses must also comply with the HEA missing student notification regulations.
- Note that these regulations do not apply to students who normally live in your on-campus student housing, but who are **temporarily residing off campus** in study abroad programs.

**The essence of the requirement is that if a student who lives in on-campus student housing is determined to have been missing for 24 hours, you have only 24 hours after the determination in which to initiate specific notification procedures.**

- This requirement does not preclude your institution from making a determination that a student is missing before the student has been missing for a full 24 hours, or from initiating notification procedures as soon as it determines that the student is missing.
- In other words, you must initiate HEA-related procedures if a student has been determined to be missing for 24 hours; however, you may act sooner.

**Required ASR Statements**

- Indicate a list of titles of the persons or organizations to which students, employees, or other individuals should report that a student has been missing for 24 hours;
  - Think about developing and publishing an institutional policy to support your policy statement.
Required ASR Statements

- Require that any official missing student report must be referred immediately to the institution’s police or campus security department, or, in the absence of an institutional police or campus security department, to the local law enforcement agency that has jurisdiction in the area;
  - If your institution does not have a campus police or security department, your policy statement should require that a report of a missing student be immediately reported to the local law enforcement agency with jurisdiction
  - Provide contact information for that agency

Required ASR Statements

- Contain an option for each student living in an on-campus student housing facility to identify a contact person or persons whom the institution shall notify within 24 hours of the determination that the student is missing, if the student is determined missing by the institutional police or campus security department, or the local law enforcement agency.
  - You need to develop a system to gather this information...

Registering a Confidential Contact

- You must give students this option even if they have already identified a general emergency contact.
  - A student may identify the same individual for both purposes, but your institution may not make this assumption.
  - The contact person does not have to be associated with the institution.
- Offer students this option annually regardless of whether they chose to register a contact the previous year.
- If any students move into on-campus student housing mid-year, you must give them the option to name a contact person as well. Include information about how to register a contact or contacts.
Required ASR Statements

- Advise students that their contact information will be registered confidentially, and that this information will be accessible only to authorized campus officials, and that it may not be disclosed, except to law enforcement personnel in furtherance of a missing person investigation.
  - To protect confidentiality, general emergency contact information and missing student contact information must be kept separate, even if the student has registered the same person for both purposes.
  - Because the HEA requires the information to be kept confidential, student’s contact information has greater privacy protections than FERPA.

Required ASR Statements (and procedurally, you must do it).

- The procedures that the institution must follow when a student who resides in an on-campus student housing facility is determined to have been missing for 24 hours include:
  - If the student has designated a contact person, notifying that contact person within 24 hours.
2016 Handbook Example

“For example, suppose a student goes to your campus security office at 10 a.m. on a Monday and reports that a student living in her dorm left the campus at 9 p.m. Sunday and didn’t return for her Monday 8 a.m. class. The student has been missing for 11 hours. Campus security investigates and comes to the conclusion at 11:15 a.m. that the student is missing. If the missing student has identified a confidential contact, campus security has 24 hours (i.e., until 11:15 a.m. Tuesday) to notify that contact person.” (p. 10-6)

Required ASR Statements (and procedurally, you must do it).

Advise students that if they are under 18 years of age and are not emancipated, the institution must notify a custodial parent or guardian within 24 hours of the determination that the student is missing, in addition to notifying any additional contact person designated by the student.

- State that if it has been determined that such a student has been missing for 24 hours, the institution will notify both the student’s custodial parent or guardian and the student’s contact person, if he or she has registered one.

Required ASR Statements (and procedurally, you must do it).

Advise students that, the institution will notify the local law enforcement agency within 24 hours of the determination that the student is missing, unless the local law enforcement agency was the entity that made the determination that a student is missing.

- This statement addresses any missing student who lives in on-campus student housing regardless of age or status, and regardless of whether he or she registered a confidential contact person.
Missing Students Policy Statement

Summary

- An institution that provides any on-campus student housing facility must include a statement of policy regarding missing student notification procedures for students who reside in on-campus student housing facilities in its annual security report. This statement must—
  
i. Indicate a list of titles of the persons or organizations to which students, employees, or other individuals should report that a student has been missing for 24 hours;
  
ii. Require that any missing student report must be referred immediately to the institution's police or campus security department, or, in the absence of an institutional police or campus security department, to the local law enforcement agency that has jurisdiction in the area;
  
iii. Contain an option for each student to identify a contact person or persons whom the institution shall notify within 24 hours of the determination that the student is missing, if the student has been determined missing by the institutional police or campus security department, or the local law enforcement agency;

 iv. Advise students that their contact information will be registered confidentially, that this information will be accessible only to authorized campus officials, and that it may not be disclosed, except to law enforcement personnel in furtherance of a missing person investigation;

 v. Advise students that if they are under 18 years of age and not emancipated, the institution must notify a custodial parent or guardian within 24 hours of the determination that the student is missing, in addition to notifying any additional contact person designated by the student; and

 vi. Advise students that the institution will notify the local law enforcement agency within 24 hours of the determination that the student is missing, unless the local law enforcement agency was the entity that made the determination that the student is missing.

Missing Students Procedures Summary

- The procedures that the institution must follow when a student who resides in an on-campus student housing facility is determined to have been missing for 24 hours include—
  
i. If the student has designated a contact person, notifying that contact person within 24 hours that the student is missing;
  
ii. If the student is under 18 years of age and is not emancipated, notifying the student's custodial parent or guardian and any other designated contact person within 24 hours that the student is missing; and

 iii. Regardless of whether the student has identified a contact person, is above the age of 18, or is an emancipated minor, informing the local law enforcement agency that has jurisdiction in the area within 24 hours that the student is missing.
668.16 Standards of administrative capability.
The Secretary considers an institution to have that administrative capability if the institution—

- "uses an adequate number of qualified persons to administer the Title IV, HEA programs in which the institution participates" — 34 C.F.R. 668.16(b)(2)

- "has written procedures for or written information indicating the responsibilities for the various offices with respect to… the preparation and submission of reports to the Secretary [of Education]" — 34 C.F.R. 668.16(b)(4)

- "administers Title IV, HEA programs with adequate checks and balances in its system of internal controls" — 34 C.F.R. 668.16(c)(1)

- "establishes and maintains records required under this part and the individual Title IV, HEA program regulations" — 34 C.F.R. 668.16(d)(1)
668.16 Standards of administrative capability.

The Secretary considers an institution to have that administrative capability if the institution—

- "shows no evidence of significant problems that affect...the institution’s ability to administer a Title IV, HEA program" -- 34 C.F.R. 668.16(j)
- "does not otherwise appear to lack the ability to administer the Title IV, HEA programs competently." -- 34 C.F.R. 668.16(j)

Clery-Related Administrative Capability Findings

<table>
<thead>
<tr>
<th>Year</th>
<th>Institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td>Baylor University, Auburn University</td>
</tr>
<tr>
<td>2019</td>
<td>University of California, Berkeley, University of North Carolina, Chapel Hill, University of East-West Medicine*</td>
</tr>
<tr>
<td>2018</td>
<td>Delta State University*</td>
</tr>
<tr>
<td>2017</td>
<td>Michigan State University, Green River College</td>
</tr>
<tr>
<td>2016</td>
<td>University of Jamestown</td>
</tr>
<tr>
<td>2012</td>
<td>Penn State University, Centenary College</td>
</tr>
<tr>
<td>2008</td>
<td>Delta State University</td>
</tr>
<tr>
<td>2007</td>
<td>Paul Smith's College of Arts &amp; Sciences</td>
</tr>
<tr>
<td>2006</td>
<td>Eastern Michigan University</td>
</tr>
<tr>
<td>2004</td>
<td>Salem International University</td>
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</table>

Penn State University (2016)

- **Finding #1: Lack of Administrative Capability ($27,500)**
  - PSU “delegated nearly all responsibilities to the PSUPD, without providing sufficient funding or arranging for training, for many years, to support PSUPD compliance efforts" (Fine Notice, p. 8)
  - The University did not have sufficient staff to ensure compliance with the Clery Act, and did not have a system of checks and balances to ensure compliance.
  - Penn State failed to retain records to substantiate the crime statistics included in its 2011 ASR
  - From 1998, to 2010, PSU did not develop, publish, and actively distribute a comprehensive DAAPP
Penn State University (2016)

Finding #1: Lack of Administrative Capability ($27,500) (cont.)
- Failed to properly record and compile accurate crime statistics for the 2011 ASR and prior years
- Failed to ensure that PSUPD officers received the necessary training and information to meet the University’s obligations under the Clery Act
- Failed to properly identify and train CSAs
- Failed to develop and implement required crime reporting and security policies and procedures and include them in the ASR
- Failed to provide vital and timely security information to the campus community and the Department; and
- Failed to exercise sufficient oversight, governance or coordination of University officials and departments responsible for the Clery Act

Michigan State University (2018)

Finding #4: Lack of Administrative Capability

“Michigan State failed to:
1. implement an adequate system of internal controls to stop a sexual predator from abusing hundreds of women on its campus over two decades;
2. implement an effective system for issuing timely warnings to protect the campus community from crimes that may pose an ongoing safety threat;
3. report required crime statistics accurately;
4. identify employees who met the definition of CSAs and require them to provide crime statistics for inclusion in its ASRs; and,
5. develop and adequately implement certain required crime reporting and security policies and procedures.

The evidence also demonstrates that many CSAs did not receive adequate notification of their responsibilities, and that the University failed to exercise sufficient oversight, governance, and/or coordination of those University officials and departments that were responsible for safety-related functions across the enterprise” (MSU PRR, 2018, p. 33-34).
“While institutions are not required to employ a Clery Coordinator, it is difficult for most schools to fully comply with the law without one.

To be effective, the Clery Coordinator must be able work across the enterprise, taking in and synthesizing information, reviewing and refining publicly-facing and internal policies and procedures, and providing technical advice on an ongoing basis.” (MSU PRR, 2018, p. 34-35)

Policies, Procedures & Practices

- Review and update Clery-related departmental or institutional policies
  - Coordinate efforts with key departments/offices
    - Campus police/public safety, residence life, human resources, student life, student conduct, Title IX, compliance office, general counsel, etc.
  - Develop broader policies and procedures that support current ASR/AFSR policy statements

- Assess local/State jurisdictional laws and ordinances for any changes
  - Liquor, Weapons and Drug Law Violations
  - Incest/Statutory Rape
  - VAWA processes related to protection from abuse orders and any impact to Domestic Violence laws
  - Confirm with LLE, DA and courts

- Review and update any MOUs with LLE or contracts with external agencies for service (security, victim support services, health and counseling, etc.)
Key Institutional Policies of Focus

- TW/EN
- VAWA
- Emergency Response/Evacuation
- ASR Development/Distribution
- Crime Stats Collection/Disclosure
- CSA Management
- Clery Geography Management
- DCL Management

NACCOP Clery Compliance Officer Certification Program

- For more information on the program, including program requirements, costs and application instructions, visit: [http://www.naccop.org/cco-certification](http://www.naccop.org/cco-certification)

Foundations of the Clery Act: Live, Virtual & In-Person Classes

- The NACCOP Foundations of the Clery Act class will provide a basic overview of the requirements of the Clery Act and is suited for people who are new to the Clery Act as well as those who have previously attended Clery Act training, as we continually update the curriculum to include new information received from the U.S. Department of Education based on our questions about practical application of the regulations and handbook.

- Live, Virtual - All Classes will be held from 12:00 pm to 4:00 pm (Eastern Time)
  - February 15-18, 2022
  - July 5-8, 2022
  - September 6-9, 2022
  - November 15-18, 2022

- In-Person – Classes held from 8:00 am – 5:00 pm on Day 1 and 8:00 am – 4:00 pm on Day 2
  - April 21-22, 2022 (University of Delaware in Lewes, DE)
  - May 24-25, 2022 (University of Southern Maine in Portland, ME)
  - December 1-2, 2022 (College of San Mateo in San Mateo, CA)

- Cost: NACCOP or IACLEA Member Rate: $445 (Non-Member Rate: $495)

Register at [https://www.naccop.org/naccop-classes](https://www.naccop.org/naccop-classes)
**DSA Advanced Clery Act Training Academy: Practical Application**

The ADVANCED Clery Act Compliance Training Academy is a 3 ½ day training program that provides an opportunity for attendees to build upon the foundation provided in the D. Stafford & Associates Clery Act Compliance Training Academy through a combination of instruction, discussion, and group-based learning activities that explore how to practically apply relevant laws and ED guidance to some of the most vexing issues facing practitioners. This experience is designed to be interactive, with attendees participating in group analysis and exercises throughout the 3 ½ days. Participants will be able to assess their ability to competently apply the law to specific scenarios and problems while evaluating pertinent operating procedures and practices that relate to complying with the Clery Act.

**VISIT OUR WEBSITE FOR MORE INFORMATION ABOUT IN-PERSON CLASSES IN 2022**

Register at: www.dstaffordandassociates.com

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**2022 NACCOP Webinar Series**

NACCOP is excited to continue our webinar series which provides an overview of the foundational topics related to Clery Compliance activities. The NACCOP Webinar Series is updated annually to include the changes and updates to the requirements for complying with the Clery Act each year.

- Each webinar begins at 2pm ET
- Visit [www.naccop.org](http://www.naccop.org) and select "Trainings and Webinars" to register
- FREE for NACCOP Members!

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<tr>
<th>#</th>
<th>Webinar Title</th>
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<tr>
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<td>Developing a Clery Compliance Committee</td>
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<tr>
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<td>Campus Security Authorities</td>
<td>90 minutes</td>
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<tr>
<td>2</td>
<td>Clery Geography</td>
<td>90 minutes</td>
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<tr>
<td>3</td>
<td>Classifying and Counting Crimes</td>
<td>3 hours</td>
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<td>4</td>
<td>Drug, Liquor and Weapons Arrests and Referrals</td>
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<td>5</td>
<td>Annual Security Report Statements of Policy</td>
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<tr>
<td>6</td>
<td>Timely Warnings and Emergency Notifications</td>
<td>90 minutes</td>
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<tr>
<td>7</td>
<td>Violence Against Women Act</td>
<td>2 hours</td>
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<tr>
<td>8</td>
<td>Daily Crime Log and Fire Log</td>
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</tr>
<tr>
<td>9</td>
<td>Fire Safety Disclosures and Missing Persons</td>
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<tr>
<td>10</td>
<td>Preparing for a U.S. Department of Education Program Review</td>
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**9th ANNUAL NACCOP CONFERENCE**

**SAVE THE DATES!**

July 20-22, 2022 – Annual Conference

More information available at [www.naccop.org](http://www.naccop.org)