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# Midwest Clergy Day Camp

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# Midwest Clery Day Camp

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## **I. Clery Act**

### **A. What is the Clery Act?**

1. The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“the Clery Act”) is codified at 20 U.S.C. § 1092(f). The regulations can be found at 34 C.F.R. §668.46.
2. The Clery Act was recently amended by the Violence Against Women Act (“VAWA”) and Campus SaVE Act.
3. The Clery Act, as its long name suggests, puts requirements on educational entities that participate programs (such as Student Assistance Programs) under Title IV of the Higher Education Act. If your adult education students can receive, for example, Pell Grants, then Clery’s requirements apply to your school.
4. Clery Act violations are subject to a fine of \$67,544 per violation.
5. The [FSA Clery Appendix](#) is the most recent guidance from Ed. The [2016 Clery Handbook](#) was rescinded, but is can still be useful guidance where it does not conflict with the [Clery Act](#), [Regulations](#), or the Appendix.

## **II. Crime Statistics**

### **A. Campus Security Authorities**

1. “An institution must report to the Department and disclose in its annual security report statistics for the three most recent calendar years concerning the number of each of the following crimes that occurred on or within its Clery geography and that are reported to local police agencies or to a campus security authority: ...” 34 C.F.R. 668.46(c)(1).
  - a. Note: No formal police report or investigation is required for a crime report to be included in the statistics.
2. Crimes must be reported by “Campus Security Authorities” (CSAs), which are designated by the institution based on function. If a person has significant responsibility for student and campus activities, they should be designated as a CSA. Examples:
  - a. Dean of students who oversees student housing, a student center, or student extracurricular activities;
  - b. Director of athletics, team coaches, part-time coaches, graduate assistants for athletics;
  - c. Faculty advisors to student organizations and coordinator of Greek Affairs;

- d. Title IX Coordinator;
  - e. Ombudsperson (including student ombudspersons);
  - f. Director of campus health or counseling center;
  - g. Victim advocates or others who are responsible for providing victims with advocacy services;
  - h. Members of a sexual assault response team;
  - i. Officers from law enforcement who are contracts by the institution to provide campus safety-related services;
  - j. Residence hall advisors, students who monitor access to residence halls or buildings that are owned by recognized student organizations;
  - k. Note: In most cases it is possible for a CSA to fulfill their responsibilities while maintaining victim confidentiality. This is about statistics and evaluating the need for timely warning or emergency notification (The Handbook 4-8; 115).
- 3. Not CSA: professional and pastoral counselors who are providing confidential counseling and functioning within the scope of their license, certification, or religious recognition as a pastoral counselor.
  - 4. Institutions must make good faith efforts to obtain statistics from law enforcement.

**B. Clery Geography**

- 1. Statistics must be obtained for reportable crimes occurring:
  - a. On campus;
  - b. In or on a noncampus building or property; or
  - c. On public property that is within the campus or immediately adjacent to campus.
  - d. See the Handbook for much more detailed information.

**C. Reportable Crimes**

- 1. Primary Crimes (34 C.F.R. § 668.46(c)(1)(i))
  - a. Homicide: murder, manslaughter, negligent manslaughter

- b. Sex offenses: rape, fondling, incest, statutory rape
  - c. Robbery
  - d. Aggravated assault
  - e. Burglary
  - f. Motor vehicle theft
  - g. Arson
2. Arrests and referrals for disciplinary actions
- a. Liquor law, drug law, and illegal weapons arrests (34 C.F.R. 668.46(c)(1)(vii)) – report arrests only.
  - b. Not arrested, but reported for student discipline for liquor law violations, drug law violations, and illegal weapons possession.
  - c. Violations of campus policy that are not violations of law should not be counted.
  - d. County the number of incidents or charges.
3. Hate crimes – reported by category of prejudice
- a. Includes the primary crimes above plus larceny-theft, simple assault, intimidation, destruction/damage/vandalism of property, dating violence, domestic violence, and stalking.
4. Violence Against Women Act Crimes (not just against women) – 34 C.F.R. § 668.46(c)(9)(iv)
- a. Dating violence
  - b. Domestic violence
  - c. Stalking – note that there are special rules for how to count stalking, since it typically involves multiple occurrences
  - d. Sexual Assault (includes rape and fondling)
5. Where a single incident constitutes several types of crimes, use the “hierarchy rule,” which reports only the most serious offense unless the offense also involves arson, sexual assault, and hate crimes. See also the Handbook for information about arrests for liquor, drug, or weapons and the hierarchy rule.

**D. Policy Requirements (more on this below)**

1. The Annual Security Report must also include a number of policy statements. See the Handbook for details. Examples include:
  - a. Timely warnings;
  - b. Emergency notification;
  - c. Information about law enforcement;
  - d. Encouraging prompt reporting of all crimes;
  - e. Description of institutional crime prevention programs;
  - f. Statements regarding underage drinking and illegal drug use;
  - g. Where to obtain information on the sex offender registry; and
  - h. Missing Student Policy (if on-campus housing is provided).

**III. As It Relates To Your Title IX Policy**

**A. Clery Act requires specific additions to the school’s non-discrimination policies and procedures.**

1. Clery’s additions to Title IX focus on four specific sexually-oriented crimes: sexual assault, dating violence, domestic violence, and stalking. They do not apply to other sex-based misconduct, such as “quid pro quo” sexual harassment that does not involve one of these four crimes.
  - a. “Sexual assault” is 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 the regulations.
  - b. “Dating violence” is violence that has been committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
    - i. To determine whether there is a relationship, consider the victim’s statement in this regard, as well as the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
    - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
    - iii. Dating violence does not include acts covered under the definition of domestic violence.

- c. “Domestic violence” is a felony or misdemeanor crime of violence committed by:
  - i. A current or former spouse or intimate partner of the victim;
  - ii. A person with whom the victim shares a child in common;
  - iii. A person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
  - iv. 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
  - v. 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.
  
- d. “Stalking” is engaging in a course of conduct directed at a specific person that would cause a reasonable person to either fear for the person’s safety or the safety of others, or suffer substantial emotional distress.
  - i. “Course of conduct” means two or more acts, including, but not limited to, acts in 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.
  - ii. “Reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim.
  - iii. “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

**B. The Clery Act requires you to have in place a policy regarding the school’s programs to prevent domestic violence, dating violence, sexual assault, and stalking. This must include:**

- 1. A description of the school’s educational programs and campaigns to promote the awareness of dating violence, domestic violence, sexual assault, and stalking, including:

- a. A description of the school’s primary prevention<sup>1</sup> and awareness programs<sup>2</sup> for all incoming students and new employees, which must include:
  - i. A statement that the school prohibits the crimes of dating violence, domestic violence, sexual assault, and stalking;
  - ii. The definition of “dating violence,” “domestic violence,” “sexual assault,” and “stalking” in the applicable jurisdiction;
  - iii. The definition of “consent” in reference to sexual activity, in the applicable jurisdiction (Ohio doesn’t have one);
  - iv. A description of safe and positive options for bystander intervention;<sup>3</sup>
  - v. Information on risk reduction;<sup>4</sup> and
  - vi. A description of the institution’s ongoing prevention and awareness campaigns<sup>5</sup> for students and employees.

**C. The Clery Act requires you to have procedures that the school will follow once an incident of domestic violence, dating violence, sexual assault, or stalking has been reported, including a statement of the standard of evidence that will be used during any institutional conduct proceeding arising from such a report.**

1. Hint: The U.S. Department of Education told us in the Dear Colleague Letter that the standard of evidence must be the same as that used for all other types of misconduct – generally a “preponderance of the evidence” standard.

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<sup>1</sup> “Primary prevention programs” means programming, initiatives, and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe directions.

<sup>2</sup> “Awareness programs” means community-wide or audience-specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce perpetration.

<sup>3</sup> “Bystander intervention” means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene.

<sup>4</sup> “Risk reduction” means options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence.

<sup>5</sup> “Ongoing prevention and awareness campaigns” means programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault, and stalking, using a range of strategies with audiences throughout the institution.

- D. The Clery Act requires you to have procedures that victims should follow if a crime of dating violence, domestic violence, sexual assault, or stalking has occurred, including written information about:**
1. The importance of preserving evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order;
  2. How and to whom the alleged offense should be reported;
  3. Options about the involvement of law enforcement and school authorities, including notification of the victim's option to:
    - a. Notify proper law enforcement authorities, including on-campus and local police;
    - b. Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and
    - c. Decline to notify such authorities;
  4. Where applicable, the rights of the victims and the institution's responsibilities for orders of protection, "no contact" orders, restraining orders, or similar lawful orders issued by a court or by the institution.
- E. The Clery Act requires you to have a policy that includes information about how the institution will protect the confidentiality of victims and other necessary parties, including how the institution will:**
1. Complete publicly available recordkeeping, including Clery Act reporting and disclosures, without the inclusion of personally identifying information about the victim; and
  2. Maintain as confidential any accommodations or protective measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the accommodations or protective measures.
- F. The Clery Act requires your policy to include a statement that the institution will provide written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both within the institution and the community.**
1. Tip: For visa and immigration assistance, check out this amazing resource that SUNY has prepared for use by all institutions of higher education, which can be customized for your institution: <http://www.suny.edu/violence-response/Visa-and-Immigration-Resource/>.
- G. The Clery Act requires your policy to include a statement that the institution will provide written notification to victims about options for, available assistance in, and**

**how to request changes to academic, living, transportation, and working situations or protective measures.**

1. The institution must make such accommodations or provide such protective measures if the victim requests them and if they are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.

**H. The Clery Act requires an explanation of the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking. This must include:**

1. A description of each type of disciplinary proceeding used by the institution;
2. The steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding;
3. How to file a disciplinary complaint;
4. How the institution determines which type of proceeding to use based on the circumstances of an allegation of dating violence, domestic violence, sexual assault, or stalking;
5. The standard of evidence (“preponderance of the evidence”) that will be used during any institutional disciplinary proceeding arising from an allegation of dating violence, domestic violence, sexual assault, or stalking;
6. All possible sanctions that the institution may impose following the results of any institutional disciplinary proceeding for an allegation of dating violence, domestic violence, sexual assault, or stalking;
7. The range of protective measures that the institution may offer to the victim following an allegation of dating violence, domestic violence, sexual assault, or stalking;
8. A statement that the proceedings will include a prompt, fair, and impartial process from the initial investigation to the final result;
  - a. “Prompt, fair and impartial” proceedings include proceedings that are:
    - i. completed within reasonably prompt timeframes designated by an institution’s policy, including a process that allows for the extension of timeframes for good cause with written notice to the accuser and the accused of the delay and the reason for the delay, and
    - ii. which are conducted in a manner that is consistent with the institution’s policies, is transparent to the accuser and the accused, includes timely notice of meetings at which the accused, accuser, or both may be present, and

- iii. provide timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings; and
  - iv. which are conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused.
- 9. A statement that the proceedings will be conducted by officials who, at a minimum, receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;
- 10. A statement that the proceedings will provide the accuser and the accused with the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice;
  - a. Tip: The advisor may be an attorney, parent, friend, etc. We typically recommend limiting this to individuals who are not fact witnesses and do not play another role in the proceedings.
- 11. A statement that the institution will not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding, but may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;
- 12. A statement that the institution will simultaneously notify, in writing, both the accuser and the accused of:
  - a. The results of any institutional disciplinary proceeding that arises from an allegation of dating violence, domestic violence, sexual assault, or stalking;
  - b. The institution's procedures for the accused and the victim to appeal the result of the institutional disciplinary proceeding, if such procedures are available;
  - c. Any change to the result; and
  - d. When such results become final.
  - e. Note: The Clery Act explicitly states that providing this notice does not violate FERPA.

**I. The Clery Act requires a statement that, when a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of his or her rights and options.**

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## IV. What the Clery Act Requires—Annual Security Report

### A. Crime Statistics:

“An institution must report to the Department and disclose in its annual security report statistics for the three most recent calendar years concerning the number of each of the following crimes that occurred on or within its Clery geography and that are reported to local police agencies or to a campus security authority: . . .” 34 C.F.R. 668.46(c)(1)

Note: No formal police report or investigation is required for a crime report to be included in the statistics.

1. Who is required to supply information for the annual security report?
  - a. Required reporters
    - i. Campus Security Authorities (See The Handbook 4-1 – 4-5; 108-112)
    - ii. Four definitions
    - iii. Who falls into this category: Institution determines who is a campus security authority (CSA) based on function – if a person has significant responsibility for student and campus activities, he or she should be designated as a campus security authority.
    - iv. Examples:
      - (i) Dean of students who oversees student housing, a student center, or student extra curriculum activities.
      - (ii) Director of athletics or a team coach, including part-time coaches and graduate assistants.
      - (iii) Faculty advisors to student organizations and coordinator of Greek Affairs.
      - (iv) Title IX Coordinator.
      - (v) Ombudsperson (including student ombudspersons).
      - (vi) Director of campus health or counseling center.

- (vii) Victim advocates or others who are responsible for providing victims with advocacy services.
  - (viii) Members of a sexual assault response team.
  - (ix) Office from law enforcement who are contracted by the institution to provide campus safety-related services.
  - (x) The Handbook indicates that student resident advisors and students who monitor access to residence halls or buildings that are owned by recognized student organizations meet the definition of a CSA.
- v. Note: The Handbook recommends that you include the CSA duty in job descriptions, provide annual notice and provide training.
- b. A note on confidentiality
 

In most cases it is possible for a CSA to fulfill his or her responsibilities while maintaining victim confidentiality – this is about statistics and evaluating the need for timely warning or emergency notification. (The Handbook 4-8; 115).
- c. Those exempted from reporting: The following people are not CSAs under the act—
  - i. Professional counselors: official responsibilities include providing mental health counseling and who are functioning within the scope of their license or certification.
  - ii. Pastoral counselors: associated with a religious order or denomination as someone who provides confidential counseling and is functioning within the scope of that recognition as a pastoral counselor.
- d. Other requirements for collecting information
  - i. Local police agencies (city, township, and sheriff) for non-campus buildings or property and public property.
  - ii. State Police or State Highway Patrol for non-campus buildings or property and public property.
    - A. Note: Institutions must make a reasonable and good faith effort to obtain the required statistics from police agencies. If the institution makes the effort, it is not responsible for either the failure of the police

to provide the statistics or for verifying the accuracy of the statistics provided. The institution should document its good faith efforts in writing.

iii. Confidentiality reports

(i) Confidential not anonymous –

B. Some states require reporting of felonies to police (see e.g., Ohio Revised Code § 2921.22)

2. Geography

a. An institution must specify whether each of the reportable crimes recorded occurred—

i. On campus;

Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution’s educational purposes, including residence halls; and

Any building or property that is within or reasonably contiguous to the area identified in paragraph (1) of this definition, that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor). (Handbook 2-2; 25).

ii. In or on a noncampus building or property; or

iii. On public property: All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus or immediately adjacent to and accessible from the campus. For roads, thoroughfares and streets that are immediately adjacent to your campus include crimes that occur on “sidewalk, street and opposite sidewalk.” This means if you have a college across the street, your reports will count overlapping sidewalks.

b. Additional Guidance

i. An institution must identify, of the crimes that occurred on campus, the number that took place in dormitories or other residential facilities for students on campus.

- ii. Use of Map in the Campus Security Report (34 C.F.R. § 668.46(c)(8)) – this is not required, although some institutions elect to use a map to help identify the geographic reporting areas. A map may be used only if it presents an accurate picture of the geographic locations it depicts.
  - iii. Foreign campuses should be reported as a separate campus.
3. What statistics must be included in the annual security report
- a. Primary Crimes (34 C.F.R. § 668.46(c)(1)(i))
    - i. Homicide: murder, manslaughter, negligent manslaughter
    - ii. Sex offenses: rape, fondling, incest, and statutory Rape
    - iii. Robbery
    - iv. Aggravated assault
    - v. Burglary
    - vi. Motor vehicle theft
    - vii. Arson
  - b. Arrests and referrals for disciplinary actions
    - i. Liquor Law, Drug Law, and Illegal Weapons Arrests (34 C.F.R. 668.46(c)(1)(vii)) – report arrests only.
    - ii. Not arrested, but reported for student discipline for liquor law violations, drug law violations, and illegal weapons possession.
    - iii. Violations of campus policy that are not violations of law should not be counted.
    - iv. Count the number of incidents or charges.

- c. Hate crimes
  - i. Hate Crimes must be reported by category of prejudice (intentional selection of victim based on actual or perceived) – Race, Religion, National Origin, Sexual Orientation, Gender, Gender Identity, Ethnicity or Disability. Hate Crimes are defined in the Hate Crime Data Collection Guidelines of the UCR.
  - ii. The number of primary Crimes above plus Larceny-Theft, Simple Assault, Intimidation, Destruction Damage or Vandalism of Property, Dating Violence, Domestic Violence, and Stalking. (Report only if Hate Crime).
- d. Violence Against Women Act Crimes (§ 668.46(c)(9)(iv))
  - i. Dating Violence includes threats of violence, while Domestic Violence must be a felony or misdemeanor.
  - ii. Domestic Violence can be among family members (i.e., father/son), not only intimate partners.
  - iii. Stalking is two or more acts that cause a reasonable person to experience significant mental suffering.
  - iv. Amended definition of sexual assault makes it an umbrella term for rape and fondling.
  - v. How to count stalking, which is repetitive by nature, usually –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.
- 4. Additional information
  - a. Multiple Offenses and the Hierarchy Rule – Typically, but with exceptions, only the most serious offense must be reported. Exceptions include arson, sexual assault, and hate crimes. Note: The Handbook includes arrests for liquor, drug, or weapons in the hierarchy rule. (See The Handbook 3-2, 53; 3-24, 75; 3-32, 83).
  - b. Reporting Year – Report crime statistics based on the year the crime was reported.
  - c. Burglaries – for additional information on reporting burglaries see the Summary of New and Revised Campus Safety and Security Reporting Requirements Required by the Higher Education Opportunity Act (Public Law 110-315) – July 2010 (Exhibit A).

## **B. Policies and Procedures**

1. Statement of policies and procedures for how to report criminal activities or other emergencies, including:
  - a. Preparation of the annual report: Include a brief description explaining the purpose of the report, who prepares it, and how and from what sources the crime statistics are collected.
  - b. List of people to whom crimes should be reported: Include any procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis, for inclusion in annual reports, and if so, a description of the process. You do not need to list all CSAs- list only those persons or organizations to which you want reports to be made (e.g., police).
  - c. Timely warning policies
    - i. Requirements: Institutions must, in a manner that is timely, that withholds the names of victims as confidential, and will aid in the prevention of similar crimes, report to the campus community on reportable crimes, including hate crimes that are reported to campus security authorities, or local police agencies that are considered by the institution to represent a serious or continuous threat to students and employees. Include circumstance(s) under which a warning will be issued, person or office responsible for issuing the warning, and manner in which it will be disseminated.
    - ii. Timely warnings can be issued for threats to property, as well as for threats to persons. It is irrelevant whether the victims or perpetrators are members of the campus community. The Clery Act mandates timely warnings only for Clery Act crimes, but nothing in the Clery Act prohibits timely warnings for other crimes that may pose a serious or continuing threat to the campus community (e.g., kidnapping). (The Handbook – pages 6-13; 146). Schools are not required to provide timely warning with respect to crimes reported to pastoral or professional counselor (34 C.F.R. § 668.46(b)(2)).
  - d. Emergency notification policies
  - e. Emergency notification v. timely notification: If there is an immediate threat to the health or safety of students or employees occurring on campus, the institution must follow its Emergency Notification Procedures. No timely warning based on the same

circumstances is required. However, follow-up information “as needed” must be disseminated to the community.

2. Policies concerning security of and access to campus facilities including campus residences. Include security considerations used in the maintenance of campus facilities.
3. A statement of current policies concerning campus law enforcement that:
  - a. Address the law enforcement authorization of campus police/security personnel and whether those security personnel have the power to arrest.
  - b. Address the working relationship of campus police/security with state and local law enforcement agencies; institution must disclose their relationship with local law enforcement including any operational memorandum of understandings/mutual aid agreements for investigation of crimes (MOU).
  - c. Encourage accurate and prompt reporting of all crimes to police when the victim of such crime elects or is unable to make such a report.
  - d. A description of the procedures, if any, that encourage pastoral and professional counselors, if and when they deem it appropriate to inform persons they are counseling, of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.
4. A description of the programs (type and frequency) 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 (34 C.F.R. § 668.46(b)(5)).
5. A description of institutional crime prevention programs (34 C.F.R. § 668.46(b)(6)).
6. A statement of policies regarding monitoring and recording through local police, criminal activity engaged in by students at off-campus locations of recognized student organizations, including organizations with off-campus housing (34 C.F.R. § 668.46(b)(7)).
7. A statement of policy regarding the possession, use and sale of alcoholic beverages, and enforcement of state underage drinking laws (34 C.F.R. § 668.46(b)(8)).

8. A statement of policy regarding the possession, use and sale of illegal drugs and enforcement of federal and state drug laws (34 C.F.R. § 668.46(b)(9)).
9. Description of drug abuse education programs required by the Higher Education Act § 120(a)-(d) (may be a cross-reference to other publications) (34 C.F.R. § 668.46(b)(10)).
10. Statement of policy regarding the institution's programs to prevent domestic violence, dating violence, sexual assault, and stalking and procedures the institution will follow once a report has been made, including a statement of the standard of evidence that will be used during any institutional conduct proceeding arising from a report. The Policy must include the following:
  - a. Educational programs to promote awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking. The education programs must include:
    - i. Primary prevention and awareness programs for all incoming students and new employees, and ongoing prevention and awareness campaigns for continuing students and employees. These education programs will include: a statement that these crimes are prohibited at the institution; definitions of consent, domestic violence, dating violence, sexual assault, and stalking in the institution's jurisdiction; safe and positive bystander intervention when there's a risk of one of those incidents; information on risk reduction to recognize warning signs of abusive behavior and avoiding potential attacks; and information about the institutional disciplinary procedures.
    - ii. For descriptions of bystander intervention, ongoing prevention and awareness campaigns, risk reduction, and more, please feel free to consult this resource from the State University of New York on Policy and Programming Changes Pursuant to the Campus SAVE Provisions of the Violence Against Women Act (page 68, and others). <http://bit.ly/1wVsatx>.
  - b. All possible sanctions or protective measures the institution may impose following a final determination of an institutional disciplinary procedure regarding rape, acquaintance rape, sexual assault, domestic violence, dating violence, or stalking. This list should be exhaustive, not a range. For more on why institutions must list all sanctions, and not a range, see page 62772 of the preamble to the VAWA regulations, <http://bit.ly/2pvY183>.

- c. Procedures victims should follow if domestic violence, dating violence, sexual assault or stalking has occurred including information in writing about: evidence preservation, how and to whom to report these crimes, options about involvement of law enforcement (or not involving law enforcement), options for obtaining an order of protection or “no contact” order, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court or by the institution.
- d. Statement that the institution will provide written notification to students and employees about existing counseling, mental health, health, victim advocacy, legal assistance and other services for victims both on-campus and in the community.
- e. Statement that the institution will provide written notification for victims about options for and available assistance in changing a victim’s academic, living, transportation and working situations if requested by student; and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.
- f. Information how the institution will protect the confidentiality of victims, including how publicly-available recordkeeping will be accomplished without the inclusion of identifying information about the victim, to the extent permissible by law.
- g. Explanation of the procedures for institutional disciplinary action in cases of alleged domestic violence, dating violence, sexual assault, or stalking including a clear statement that:
  - i. The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding including the opportunity to be accompanied to any related meetings or proceeding by an advisor of their choice;
  - ii. Both the accuser and the accused will be simultaneously informed in writing of the following:
    - A. Outcome of any disciplinary proceeding;
    - B. The institution’s procedures for the accuser and accused to appeal the results to the disciplinary proceeding;

- C. Any changes to the results that occurs prior to the time such results become final; and
    - D. When the results become final.
  - h. Note: A student or employee who reports to an institution that the student or employee has been a victim of domestic violence, dating violence, sexual assault or stalking, whether the offense occurred on or off-campus, must be provided with a written explanation of the student's or employee's right and options as described above.
- 11. A statement advising where law enforcement information concerning registered sex offenders may be obtained (34 C.F.R. § 668.46(b)(12)).
- 12. A Missing Student Policy (34 C.F.R. § 668.46(h)) – Institutions that provide on-campus student housing are required to establish a Missing Student Policy for students residing in on-campus housing and include the policy in the Clery Act Annual Security Report.
  - a. Definitions.
    - i. *On-campus student housing facility*: A dormitory or other residential facility for students that is located on an institution's campus.
    - ii. *On-Campus (Clery definition)*: Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of or in a manner related to the institution's educational purposes, including residence halls. Any building or property that is within or reasonably contiguous to the area identified above that is owned by the institution, but controlled by another person, is frequently used by students and supports institutional purposes (such as a food or other retail vendor).
  - b. The Policy must:
    - i. Contain a list of the titles of persons or organizations to which students, employees, or other individuals should report that a student has been missing from campus for 24 hours.
    - ii. Require that any missing student report be referred immediately to institution's police or campus security department. If there is no campus police or campus security, must report to local law enforcement.

- iii. Contain an option for students to identify a confidential contact person(s) whom the institution will notify within 24 hours of the determination that the student is missing by law enforcement, campus security, or local law enforcement.
  - (i) Confidential means this information will be accessible only to authorized campus officials and it may not be disclosed except to law enforcement personnel in furtherance of a missing person investigation. NOTE: The institution must advise students that their contact information will be registered confidentially.
- iv. Inform students that if they are under 18 and not emancipated, the institution must notify a custodial parent or guardian within 24 hours of the determination the student is missing, in addition to any additional confidential contact person designated by the student.
- v. Advise the student that the institution will notify the local law enforcement agency within 24 hours of the determination that the student is missing, unless it was the law enforcement agency that made the determination.
- c. Procedures to be followed by the institution – If a student who resides in on-campus housing is determined to have been missing for 24 hours:
  - i. Notify the confidential contact person that the student is missing;
  - ii. Notify the custodial parent or guardian if the missing student is under 18 and not an emancipated minor; and
  - iii. Notify local law enforcement agency (unless already notified).

**C. Fire Safety Reporting Requirements (34 C.F.R. § 668.49).**

1. Institutions that provide on-campus student housing are required to issue an Annual Fire Safety Report and maintain a Fire Log for public inspection.
2. Definitions
  - a. Fire: Any instance of open flame or other burning in a place not intended to contain the burning or in an uncontrolled manner.
  - b. Fire-cause: The factor or factors which give rise to a fire. The causal factors include intentional or unintentional acts, mechanical failure or act of nature.
  - c. Fire drill: A supervised practice of a mandatory evacuation of a building for a fire.
  - d. Fire Related Injury: Any instance in which a person is injured as a result of a fire, including those injured while involved in fire control, rescue, or escaping from the dangers of fire. Person includes students, employees, visitors, firefighters, or any other individuals.
  - e. Fire Related Death: Any instance in which a person is killed as a result of a fire or dies within one year of injuries sustained as a result of the fire.
  - f. Fire Safety System: Any mechanism or system related to the detection, warning or control of a fire. This includes sprinklers, other fire extinguishing systems, fire The National Association Of College and University Attorneys 19 detection devices, stand-alone smoke alarms, fire alerts (horns, bells, strobe lights, smoke control and reduction mechanisms), and fire doors and walls that reduce the spread of a fire.
  - g. Value of Property Damage: The estimated value of the loss of the structure and contents based on cost replacement. Include contents damages by smoke, water, and overhaul. Do not include indirect costs such as business interruption.

**D. Annual Fire Safety Report – By October 1 prepare and publish an Annual Fire Safety Report that includes:**

1. Fire Statistics

For each on-campus student housing facility, for the three most recent calendar years for which data are available:

- The number of fires and the cause of each fire;
- Number of persons who received fire related injuries that resulted in treatment at a medical facility (includes student health centers);
- Number of fire related deaths; and
- Value of property damage.

2. Description of each on-campus student housing facility fire safety system.

3. Number of fire drills held the previous calendar year.

4. Student Housing policies and rules on portable electrical appliances, smoking and open flames in a student housing facility.

5. Procedures for student housing evacuation in the case of a fire.

6. Policies regarding fire safety education and training programs provided to students and employees. Must describe the procedures the students and employees should follow in case of a fire.

7. List of the titles of each person or organization to which fires should be reported.

8. Plans for future improvements in fire safety, if determined necessary by the institution.

**E. When Must the Annual Reports be Made?**

By October 1 of each year, each institution must report its security policies and crime statistics (Annual Security Report) and its fire safety information and fire statistics (Annual Fire Safety Report) for the preceding three (3) calendars years.

**F. To Whom Must the Annual Reports be Distributed?**

1. To all enrolled students and to all current employees.

2. To prospective students upon request – Prospective student means an individual who has contacted an eligible institution requesting information concerning admission to that institution (34 C.F.R. § 668.41(a)).

3. To prospective employees upon request – Prospective employee means an individual who has contacted an eligible institution for the purpose of requesting information concerning employment with that institution (34 C.F.R. § 668.41(a)).
4. To U.S. Department of Education – The website for the Annual Safety Report is opened in mid-August for institutional entry of crime statistics. The data and website is typically locked in early October. Presumably, the Department will establish a similar website for the Annual Fire Report.

**G. How Must the Annual Reports be Distributed?**

1. The Annual Security and Annual Fire Reports (the Annual Reports) must be distributed to **all enrolled students and current employees** directly by publications and mailings including direct mailing through the U.S. Postal Service, campus mail, or electronic mail or an institution may choose to fulfill its distribution obligation to enrolled students and current employees by posting the Annual Reports on the Internet or Intranet.
2. The Annual Reports must be distributed to **all prospective students and prospective employees** directly by publications and mailings including direct mailing through the U.S. Postal Service, campus mail, or electronic mail or an institution may choose to fulfill its distribution obligation to prospective students and prospective employees by posting the annual report on the Internet.
3. If an institution elects to publish the Annual Reports to **all enrolled students and current employees** via the Internet or Intranet, a notice must be distributed to each enrolled student or current employee. The notice must be sent via the U.S. Postal Service, campus mail, or electronic mail and must include the following:
  - a. A statement of the report’s availability;
  - b. A list and brief description of the information contained in the report;
  - c. The exact electronic address (URL) of the website where the report is posted; and
  - d. A statement saying the institution will provide a paper copy upon request.

**H. Internet Publishing – If an institution elects to publish its annual report for prospective students and prospective employees, via the Internet, the institution must provide a notice sent by U.S. Postal service, campus mail, or electronic mail to each prospective student and prospective employee and must include the following:**

1. A statement of the report's availability;
2. A brief description of the contents;
3. The exact electronic address (URL) of the website where the report is posted; and
4. A statement that the institution will provide a paper copy upon request.

## V. Public Inspection Logs

### A. **Crime Log – Campus police and campus security departments must maintain a written, easily understood daily crime log. The crime log must be open to public for inspection during regular business hours (log(s) of crimes older than 60 days must be made available within two (2) business days).**

1. Log must report by the date the crime was reported to campus police or campus security, crimes that occurred:
  - a. On-campus;
  - b. On non-campus building or property;
  - c. On public property; and
  - d. Within patrol jurisdiction of campus police or campus security department. Note: Mutual aid agreements.
2. Log must include:
  - a. Nature, date, time, and general location of each crime;
  - b. Disposition of the complaint if known;
  - c. Updates – Log must be updated within two (2) business days unless the disclosure is prohibited by law or would jeopardize the confidentiality of the victim; and
  - d. Withholding Information – May withhold information from the log if there is clear and convincing evidence that the release of information would:
    - i. Jeopardize an ongoing criminal investigation;
    - ii. Cause a suspect to flee or evade detection; and
    - iii. Result in destruction of evidence.

\*\* Once the adverse effect is no longer likely to occur, the information must be disclosed.

Note: Ohio State Program Review – Any crime reported to campus police or to a campus security authority, regardless of whether a formal report is filed, must be included as an entry to the daily crime log within two (2) business days of the report of the crime to the police department.

- e. Hierarchy Rule Does Not Apply – If multiple offenses are committed during a single incident, all of the offenses must be recorded in the log.
- f. What to Do if Your Institution Already Maintains 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.” (The Handbook – page 90).

**(ii) Fire Log – Each institution that maintains on-campus student housing facility must maintain a written, easily understood fire log that records by date any fire in a student housing facility including:**

- General location of fire;
- Nature of fire;
- Date and time of fire; and
- Entry into log must be made within two (2) business days of receiving the information.

Log must be available for the most recent 60 day period – open for public inspection. Log(s) older than 60 days must be made available within two (2) business days of a request for public inspection.

## **VI. Whistleblower Protection and Anti-Retaliation**

No officer, employee or agent of an institution shall retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising their rights or

responsibilities under the “Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.”

## **VI. Standard of Care**

### **A. Nothing in the Act:**

- Creates a cause of action against any institution or any employee of an institution for civil liability; or
- Establishes any standard of care.

**Midwest Clery Day Camp**

**June 13, 2023**

Hypotheticals for Discussion

*The scenarios in this packet are not real. They have been written to help illustrate various learning points relating to Clery Act compliance using common fact patters. Any resemblance to any individual person or situation is purely coincidental.*

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## Timely Warnings and Emergency Notifications

### Hypothetical #1 – Timely Warning vs. Emergency Notifications

In these situations, must you issue a timely warning, an emergency notification, or neither – and why?

1. An unknown person has broken into the football team's locker room, stolen several wallets from unlocked lockers, and vandalized a bathroom stall door.
2. Rolling brown outs are expected to cause electricity failures at the University's main campus.
3. A nearby shooting has resulted in a lock-down of the main entrance to the Administration building.
4. An RA reports a student is agitated, has a knife, and is unable to be located.
5. A supervisor is reported to have sexually harassed several subordinates.
6. Over the past two weeks, several cars in the student union parking lot have been broken into and prescription medications have been removed.
7. Over the past two weeks, several cars in the privately owned lot directly across the street from the administration building (where many employees choose to park) have been broken into and prescription medications have been removed.
8. A professor was assaulted by a student at a non-campus property and the student has not been apprehended.
9. An employee's spouse committed several acts of domestic violence offsite. The employee is concerned that the spouse may come to campus and commit an act of violence.

### Hypothetical #2 – Getting the Word Out

Police activity near your student union has caused two of the three exits to be blocked by emergency vehicles. The main street has been barricaded, and police are prohibiting entering or exiting the building for the next hour for safety reasons.

- How do you notify employees?
- How do you notify university community members in the building?
- Do you notify others who may visit campus?
- Does this campus need to notify any other campuses or non-campus properties of its current status?

## Creating MOUs and SOPs

### Hypothetical #1 – CSAs by Contract

Your institution wishes to contract with an outside agency to provide security services at the entrance to each residence hall, as well as to certain other buildings on campus. These individuals will be responsible for checking IDs and signing in visitors. They will interact with students, staff, and faculty, and will be required to have access to a database of all campus community members to verify identities. What contractual provisions would be helpful in drafting this contract to ensure Clery compliance?

### Hypothetical #2 – Reporting to Law Enforcement

Your campus has a police department, but it has a “handshake agreement” that the local police will investigate violent felonies. The local mayor comes to a fundraising event and engages with protestors. An argument ensues and both the mayor and a protestor end up brawling on the asphalt in front of the event.

Your police department decides that instead of referring to the local police, it will handle the investigation itself. The aftermath of this incident has created tension between the two law enforcement units, which has resulted in a meeting to establish an MOU regarding how to handle future incidents. What are the key factors that you will want to include to minimize friction and also ensure Clery Act compliance?

### Hypothetical #3 – Reconciling Your Data

It is July and you are exceptionally well prepared for submitting your Annual Security Report in October. You want to do a self-audit to ensure that all crimes have been counted, and that each crime has been counted only once. You’re going to call a meeting together and ask individuals from across campus to share data to assist in this endeavor.

Who comes to your meeting and what do they bring?

## VAWA Hypotheticals

### Hypothetical #1 – More Stalking

Two students, Complainant and Respondent, were dating but broke up. Since that time, over the course of November and December, Respondent continued to text Complainant, even after Complainant told Respondent to stop. Complainant approached the Title IX Coordinator to report stalking, but did not want a formal complaint. Instead, Complainant requested a no-contact order with Respondent, which the Coordinator immediately issued to both parties.

Since the no contact-directive was issued in early January, Respondent has texted Complainant ten more times, emailed twice, and has called five times in a row.

- Assume Complainant was on campus at all times during the alleged stalking. What, if anything, is reported for purposes of Clery?
- Can you refer this to your student conduct director for failure to comply with the no-contact order?
- What are your next steps?

### Hypothetical #2 – Sexual Assault

Complainant and Respondent, both students, have an occasional sexual relationship. Complainant alleges that Respondent committed sexual assault against Complainant in Respondent's off-campus apartment. Complainant immediately, left, angrily, and began walking towards campus. Respondent followed, trying to get Complainant to return to the apartment. Complainant refused, finally yelling at Respondent, "You raped me!" Respondent was shocked and slapped Complainant across the face. They had just crossed the property line onto campus when this occurred.

- What, if anything, is reported for purposes of Clery?
- What, if anything, can you refer to student conduct?
- What, if anything, must you address through your Title IX process?

### Hypothetical #3 – DV Employee

Complainant is not affiliated with the institution. Respondent is an employee. Complainant reports to Respondent's supervisor that Respondent has engaged in off-campus domestic violence. The supervisor immediately calls Respondent into the office to discuss the situation.

- What, if anything, is reported for purposes of Clery?
- What went wrong in this scenario?
- What should have happened?

#### Hypothetical #4 – Preventive Mismatch

Complainant reports a sexual assault, alleging that Respondent committed sexual assault on campus. According to the formal complaint, Complainant said “no” repeatedly when Respondent asked to have sex. Respondent then said, “You know, I’m not sure I want to be in a relationship with someone who is never interested in having sex with me.” Complainant said, “Fine. Let’s have sex.” Complainant alleges that this constitutes coercion, which invalidates consent.

The formal process concludes with a finding that Respondent was not responsible for sexual assault. Complainant is incredibly angry and complains to the Title IX Coordinator that “This was clearly coercive. That’s what the Counseling Center told me.” The Coordinator investigates and, sure enough, the Counseling Center has a training on healthy relationships that covers coercive behavior, but the definition of coercion use in the training is far broader than what the Title IX Policy contemplates.

What, if anything, is reported for purposes of Clery? What are your next steps?

## Additional Resources

### Addressing Geographic Separation of Campuses

#### -Campus

- Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls, and
- Any such building or property owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes.

#### -Noncampus

- Any building or property owned or controlled by an institution that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.

#### -Separate Campus

- Appendix standards for separate campus
  - If an additional location, branch campus, school within the institution, or an administrative location is not within a reasonably contiguous area, such location would be considered a separate campus for reporting purposes.
- Handbook (Rescinded) standards for 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.

An organized program of study means that the location offers courses in educational programs leading to a degree, certificate, or other recognized credential.

#### - Institution-associated hospitals/medical centers

- Institution-associated hospitals and/or medical centers that are controlled by your institution and reasonably contiguous with your campus should be included as part of your campus.

- Beyond formal legal arrangements, other factors that are considered in determining whether, for Clery Act purposes, the institution controls a hospital or medical center include
  - 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.

2016 Clery Handbook (Rescinded)

Timely Warnings and Emergency Notifications

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 employees occurring on the campus.

Who will and how will they:

- Confirm emergency
- Determine who receives notice
- Determine notice content
- Initiate notification

	Emergency Notifications	Timely Warnings
Scope	Significant emergency or dangerous situation	Clery crimes, reported to CSAs
Triggered by?	Event that is currently occurring on or imminently threatening campus	Crimes that occurred and represent an ongoing threat
Where event occurs?	Only on campus	Anywhere on Clery Geography
How soon to issue?	Immediately upon confirmation of situation	As soon as information is available

## The Definition of CSA

### **The Definition of CSA**

- (i) A campus police department or a campus security department of an institution.
- (ii) Any individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a campus security department under paragraph (i) of this definition, such as an individual who is responsible for monitoring entrance into institutional property.
- (iii) 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.
- (iv) An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. If such an official is a pastoral or professional counselor as defined [in the regulations], the official is not considered a campus security authority when acting as a pastoral or professional counselor

### Case Study Materials

Michigan State University Clery Program Review report

<https://www2.ed.gov/documents/press-releases/20190905-michigan-state-letter.pdf>

Michigan State University U.S. Dept. of Health and Human Services Voluntary Resolution Agreement (Non-Clery, but informative regarding requirements for clinical response)

<https://www.hhs.gov/sites/default/files/vra-between-msu-and-ocr.pdf>

***Midwest Clery Day Camp***  
**June 13, 2023**

**Background Information**

Jesuit College is a small residential liberal arts institution located on a hill in Smallville, Ohio. JC has 1,800 undergraduate students, 4,000 graduate students, and about 1,500 students enrolled in on-line courses who live in Ohio and surrounding states, but do not come to campus for instruction.

The College has a four-year live-on requirement for its undergraduate students. It also provides housing for graduate assistants, student affairs staff, assistant coaches, and visiting faculty in College-owned houses surrounding campus. Typically, the College's housing capacity averages 98% occupancy rate and the College does not permit students to live off-campus.

This year's incoming class was record-setting; and while the Admissions staff were high-fiving each other and bragging about their success, the Residential Life folks began scrambling to find an additional 150 beds two months before opening in August. To create the necessary bed space, the College rented hotel rooms in the Golden Eagle Inn for thirty students to live there during the academic year, permitted members of the Kappa Epsilon Gamma (KEG) fraternity to move into an old Victorian mansion located a few blocks from campus called "the Castle," and released one-hundred rising seniors from their housing contracts to live off-campus in rental properties located in the neighborhoods adjacent to campus.

**You are the JC's newly appointed Clery Coordinator (congratulations) and have been tasked with collecting, collating, and recording campus crimes.**

**Scenario 1:**

The Golden Eagle Inn is a hotel located 1.5 miles from campus in Smallville's town square. The property is owned by Jesuit College Hotel LLC, a single member limited liability company owned and controlled by the College. The property is leased to a non-profit operating company that runs the hotel for the benefit of the educational mission of the College. The Golden Eagle Inn employs student workers enrolled in the College's hospitality program to run the front desk, monitor the property, and provide necessary services. An adjunct faculty member has an office at the Inn and conducts lectures in the Inn's conference facilities. There is a written agreement with the operating company to have access to the hotel operations for education purposes, but it does not expressly rent conference room space.

The College entered into a hastily written lease agreement to use fifteen double occupancy rooms of the hotel for student housing. The agreement was not reviewed by the College's counsel before it was executed. It is silent about which areas of the Inn will be used for student housing and does not articulate whether the operating company has an obligation to report criminal activity that occurs on the property to either the College or Jesuit College Hotel LLC.

**Questions:**

- 1. What is the Clery Geography designation for the Golden Eagle Inn?**
  - a. On campus? (Explain your answer)**
  - b. Public Property? (Explain your answer)**
  - c. Noncampus Buildings and Property? (Explain your answer)**
  
- 2. Is the Inn a Separate Campus?**

**Scenario 2:**

The Castle hosted a KEG party during Orientation. Smallville police arrived on scene and issued citations to eighty first-year students for underage consumption and to five KEG brothers for disorderly conduct and public drunkenness. All of the students were referred to the dean of students office for disciplinary action.

Smallville police also arrested Magnus Von Magnus, the College's women's rugby coach, for marijuana possession, disorderly conduct, and proving alcohol to minors. The College's director of athletics met with Magnus. The AD is required by College policy to initiate disciplinary action under these circumstances. A written summary of the AD's conversation is placed in Magnus' employee file. He does not receive any formal sanction.

**Questions:**

- 1. What is the Clery Geography designation for the Castle?**
  - a. On campus? (Explain your answer)**
  - b. Public Property? (Explain your answer)**
  - c. Noncampus Buildings and Property? (Explain your answer)**
  
- 2. Should the arrests be reported in your ASR? If yes, as an arrest or disciplinary referral?**
  - a. Student citations for underage drinking? (Explain your answer)**
  - b. KEG brothers' citations for public intoxication? (Explain your answer)**

- c. **Magnus’s arrest for marijuana possession? Public intoxication? Providing alcohol to minors?**
  - i. **What if Magnus was at the party and the Smallville police reported the conduct to the AD without arresting him or issuing a citation?**

**Scenario 3:**

You receive reports from the Smallville Police that some seniors living off-campus were the victims of burglary during Winter Break – their apartments were broken into and valuable items were stolen. Some of the students reported that their cars were broken into as well. One student reported that his car was stolen. These cars were parked on public streets that ring campus.

1. **What is the Clery Geography designation for the off-campus apartments?**
  - a. **On campus? (Explain your answer)**
  - b. **Public Property? (Explain your answer)**
  - c. **Noncampus Buildings and Property? (Explain your answer)**
2. **Would the incidents involving the motor vehicles be reported under Clery? If yes, please explain your answer.**
  - a. **If the students who reported incidents involving motor vehicles all had gay pride flag stickers on their car? Would this be enough to consider the incident bias-motivated?**
  - b. **The police arrest an individual who admits to breaking into the cars and stealing one of the vehicles. He is under the mistaken belief that all of the students identify as gay and this was the reason that he engaged in the criminal conduct. Would the conduct be reported in the Hate Crimes category? Explain your answer.**

**Midwest Clery Day Camp**

**June 13, 2023**

Scenarios for Discussion

*The scenarios in this packet are not real. They have been written to help illustrate various learning points relating to Clery Act compliance using common fact patterns. Any resemblance to any individual person or situation is purely coincidental.*

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## Counting Crimes

Congratulations! You have been appointed to the new Clery Coordination Team for Corona Valley Campus. Unfortunately, every member of the prior team has mysteriously disappeared, and you've discovered that they did not categorize a single incident report for preparation of the ASR this year, which is now a month overdue. Hmm...

Work together with your small group to fill out the matrix on the next page using the incident descriptions that follow. Feel free to use tally marks as you count. You do not need to fill in the zeroes.

If you believe a separate campus exists, tally it in the box as if everything occurred on one campus, and we'll discuss it.

## Counting Crimes Matrix

Team Name: \_\_\_\_\_

	On Campus	On Campus Student Housing	Non-Campus	Public Property
Murder and Non-negligent Manslaughter				
Negligent Manslaughter				
Rape				
Fondling				
Incest				
Statutory Rape				
Robbery				
Aggravated Assault				
Burglary				
Motor Vehicle Theft				
Arson				
<b>Arrests</b>				
Liquor Law Violations				
Drug Law Violations				
Weapons Law Violations				
<b>Disciplinary Referrals</b>				
Liquor Law Violations				
Drug Law Violations				
Weapons Law Violations				
<b>Hate Crimes<sup>1</sup></b>				
<b>VAWA-Related</b>				
Dating Violence				
Domestic Violence				
Stalking				

<sup>1</sup> For today's exercise, just count the crimes in these boxes (if you in fact find a hate crime). Normally, you would either prepare a grid or, more likely, drop footnotes explaining which crime and which bias.

## Counting Crimes: Incident Reports

You can assume that all of the incidents listed occurred during the calendar year in question.

- Two underage students break into a car in the faculty parking lot. When they are found, they have open containers of alcohol. There is no indication they were attempting to steal the car. The police officer arrests them for underage drinking and the vandalism to the vehicle, and refers them for student discipline.
- A student reports to the Title IX office that they were subjected to dating violence at the hands of their partner on three separate occasions. Two of these occurred in the residence halls. One occurred at an off-campus location. The student says that their partner had been stalking them, both on campus and off campus, which led to the violence.
- Two students light a dumpster on fire behind a residence hall to celebrate a big football win.
- A staff member is robbed at gunpoint on the sidewalk adjacent to your campus. The perpetrator attempts to rape the staff member, but a bystander intervenes and the perpetrator runs away.
- A woman reports that she was raped by a stranger in her unlocked dorm room. After canvassing the building, the police are unable to find any witnesses to the stranger in the building. The stranger does not appear in security footage at the doorways, but one door doesn't have a working camera.
- A male student reports that he was touched in a sexual manner without consent in at a bar immediately adjacent to campus.
- A faculty member is arrested on campus for distributing alcohol to minors at their off-campus residence.
- A staff member witnesses a member of the public slapping their own six-year-old child across the face at an athletic event on campus. The staff member reports the slap to the nearest security guard, who is an outside contractor that only works on campus for game days.
- A patient at your medical facility reports that they were raped during an appointment. The police report indicates that there are no witnesses to the incident. The patient is reported to have been experiencing mental health issues including paranoia and delusion, leading to an involuntary mental health hold.
- A student reports that their next-door neighbor entered the student's residence hall room and groped the student's buttocks. The student also reports that the neighbor frequently enters the student's room without permission and has done so at least three times since the groping incident. The student reports they are afraid to live on the same floor as the neighbor.
- A mandatory reporter indicates that a 17-year-old student has disclosed a year-long dating relationship with a fellow student, 19 years of age, during which the two had consensual sex approximately 10 times in a residence hall. The younger student also disclosed that the older student threatened physical violence frequently and that the older student put hands on the younger student out of anger "under 10 times." During one of those incidents, the older student placed a hand over the younger student's nose and mouth, causing the person to have difficulty breathing.
- Your institution has a program that it runs yearly on a campus in England. Two of your professors staff it and live in a residence hall that you rent for all 30 student participants. The students stay together but take some classes from your professors in a rented classroom, and other

classes through the host campus. One of your students is robbed on the steps of the residence hall the first weekend they arrive.

- A motorized scooter and a motorized bicycle are both parked outside your library when they are stolen.
- Your institution rents a second-floor classroom for an entrepreneurship program in a start-up incubator building that is two miles from your main campus. Several start-ups also rent space in the building. The start-ups are permitted to use your classroom space after hours by accessing a sign-up sheet. A disgruntled former employee of one of the start-up companies that rents an office on the third floor assaults three people with a knife: one in the main hallway outside the start-up, once in the start-up's office, and once in your classroom, which (thanks to your sign-up program) is hosting an event by the start-up.

## **Timely Warning**

Dear Community,

Campus notification messages are part of the College's commitment to provide campus-area crime information in compliance with the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act or, Clery Act, as it is commonly known.

### **Incident Summary**

A male student reported to Campus Security this afternoon, that while walking alone off-campus around Smith Avenue by the water towers, he was approached and restrained by two men who went through his pockets taking his wallet. The victim reported that the assailants found no cash and fled the scene leaving the victim unharmed. The victim was unable to provide a description of the men, and the incident was reported to the City Police Department.

### **Personal Safety Reminders**

- Let friends know where you are going and what time you expect to arrive/depart.
- Remain alert to what's going on around you.
- Use the buddy system and watch out for each other.
- Consider contacting Campus Security for a walking escort.
- Trust your instincts. If you feel unsafe, get to a safe place and call for help.
- If you feel uneasy about a situation, trust your instincts and attempt to interrupt the chain of events.
- Be mindful of the locations of the emergency call boxes and use them if you feel threatened.
- Always report crimes and suspicious people to Campus Security or the City Police by calling 911.

### **Campus Resources**

(list primary contacts)

Members of the community are encouraged to call Campus Security at 577-432-3333 after office hours to reach the Counseling Center and Dean of Students.



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This content is from the eCFR and is authoritative but unofficial.

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## **Title 34 – Education**

### **Subtitle B – Regulations of the Offices of the Department of Education**

#### **Chapter VI – Office of Postsecondary Education, Department of Education**

#### **Part 668 – Student Assistance General Provisions**

#### **Subpart D – Institutional and Financial Assistance Information for Students**

**Source:** 51 FR 43323, Dec. 1, 1986, unless otherwise noted.

**Authority:** 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, 1099c–1, 1221–3, and 1231a, unless otherwise noted. Section 668.14 also issued under 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a–3, 1099c, and 1141. Section 668.41 also issued under 20 U.S.C. 1092, 1094, 1099c. See *Part 668 for more*

### **Appendix A to Subpart D of Part 668—Crime Definitions in Accordance With the Federal Bureau of Investigation's Uniform Crime Reporting Program**

The following definitions are to be used for reporting the crimes listed in § 668.46, in accordance with the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Program. The definitions for *murder, rape, robbery, aggravated assault, burglary, motor vehicle theft, weapons: carrying, possessing, etc., law violations, drug abuse violations, and liquor law violations* are from the “Summary Reporting System (SRS) User Manual” from the FBI's UCR Program. The definitions of *fondling, incest, and statutory rape* are excerpted from the “National Incident-Based Reporting System (NIBRS) User Manual” from the FBI's UCR Program. The definitions of *larceny-theft (except motor vehicle theft), simple assault, intimidation, and destruction/damage/vandalism of property* are from the “Hate Crime Data Collection Guidelines and Training Manual” from the FBI's UCR Program.

#### **Crime Definitions From the Summary Reporting System (SRS) User Manual From the FBI's UCR Program**

##### **Arson**

Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

##### **Criminal Homicide—Manslaughter by Negligence**

The killing of another person through gross negligence.

##### **Criminal Homicide—Murder and Nonnegligent Manslaughter**

The willful (nonnegligent) killing of one human being by another.

##### **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.

## **Robbery**

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

## **Aggravated Assault**

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

## **Burglary**

The unlawful entry of a structure to commit a felony or 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.

## **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.)

## **Weapons: Carrying, Possessing, Etc.**

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.

## **Drug Abuse Violations**

The violation 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. The unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation, or importation of any controlled drug or narcotic substance. Arrests for violations of State and local laws, specifically those relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs.

## **Liquor Law Violations**

The violation of State or local laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, or use of alcoholic beverages, not including driving under the influence and drunkenness.

## Crime Definitions From the National Incident-Based Reporting System (NIBRS) User Manual from the FBI's UCR Program

### Sex Offenses

Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

- A. **Fondling** –The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- B. **Incest** –Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- C. **Statutory Rape** –Sexual intercourse with a person who is under the statutory age of consent.

## Crime Definitions From the Hate Crime Data Collection Guidelines and Training Manual From the FBI's UCR Program

### Larceny-Theft (Except Motor Vehicle Theft)

The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. Attempted larcenies are included. Embezzlement, confidence games, forgery, worthless checks, etc., are excluded.

### 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.

### 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.

[79 FR 62789, Oct. 20, 2014]